

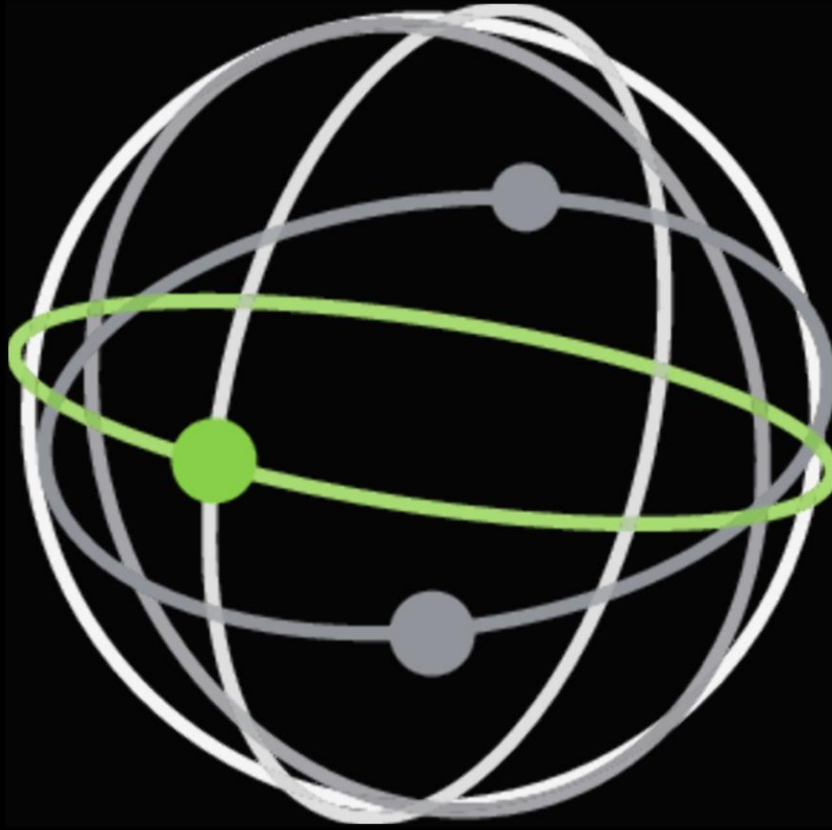
CTSU

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COVID-19 Legal Insights

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COVID-19

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Tax Residence and Compulsory Confinement

1# Tax residence in the Income Tax Code

Under the scope of the amendments introduced to the Portuguese Income Tax Code ("CIRS"), in the year 2014, following the proposals drafted by the Income Tax Reform Commission ("Commission"), we highlight the amendments introduced to the determination of the concept of Tax Residency.

Within the set of goals pursued by the Commission, it was highlighted the need to proceed with changes to the concept of residency which could provide a better suitability of the Portuguese Tax System to new social and economic realities, namely those determined by the increasing globalization of the economic activity.

Thus, the Portuguese tax law started applying the following set of criteria for the qualification of tax residency:

- a) Physical presence in Portuguese territory for more than 183 days, consecutive or in total, within any 12-month period starting and ending in the same year;
- b) If the physical presence is less than the aforementioned period, the holding of housing, by the taxpayers, under presumptive conditions of a current intention of keeping and occupying it as their habitual residence, in any day of the said period;
- c) The individuals who comply with the abovementioned conditions are considered residents since the first day of the stay period in Portuguese territory;
- d) The loss of the quality of resident is effective from the last day of the stay period in Portuguese territory.

Such criteria also established the introduction of the partial residency concept, allowing taxpayers to be considered residents in national territory only for a certain part of the year, as long as the stay period is more than 183 days, consecutive or in total, in any period of 12 months or, in case of a shorter period, when the taxpayers hold housing in said territory in conditions enough to presume an actual intention of keeping and occupying it as their habitual residence.

Additional to this set of premises, and even though the tax residence ends on the last day of the physical presence in Portuguese territory, the taxpayer can be considered a resident for the whole year in the event of obtaining income subject to (and not

exempt from) Portuguese taxation after the last day of physical presence, except if the income is subject to certain taxation criteria before a third country.

2# Potential Consequences due to the Pandemic Situation

The qualification of the tax residency is of particular importance in the Portuguese tax system, taking into account the existing rule of subjecting to Portuguese personal income tax (IRS) income obtained on a global basis by taxable persons (*worldwide income taxation*).

In the current situation, taking into account the limitations that may be imposed to non-resident individuals for tax purposes, either for purposes of compliance with the compulsory confinement set in article 3.º, of Decree n.º 2-A/2020, of 20th of March, which implements the application of the State of Emergency, either for purposes of ban travels outside national territory, due to the closing of airports or the temporary limitation of services provided by airline companies, non-residents risk being qualified as residents in Portugal for tax purposes.

As an example, a foreign citizen may be considered a fiscal resident in Portugal if, owning a real estate property in Portugal, he/she is obliged to comply with the compulsory confinement in that same property, in light of the response measures to SARS-CO-2, and in doing so, spends more than 183 days in Portugal.

Considering that a clarification by the Portuguese Tax Authorities is urgent, we have taken as an example [United Kingdom](#)'s case, where the tax authorities, on the past 23rd of March, have issued a statement clarifying that certain situations (compulsory quarantine, travel bans) which force individuals to stay in national territory can be excluded from the counting period for the assessment of the tax residency of taxable persons in the country.

Following this same understanding, the governments of [Australia](#) and [Ireland](#) have issued statements clarifying that non-residents who are forced to comply with the confinement measures or are prevented from leaving either country, for reasons related to protection measures against the spread of the pandemic situation, wouldn't be considered tax residents in those countries, as long as they keep their intention of returning to their home countries.

Lastly, we highlight the aforementioned guidelines in accordance with the recently issued recommendations by [OECD](#) on the impacts of this pandemic.

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