

Information on residency for tax purposes – Colombia

Section I – Criteria for Individuals to be considered a tax resident

Legal provisions: Article 10, Colombian Tax Code (*Estatuto Tributario - ET*) and Chapter 3 of the Decree 1625 of 2016.

Further guidance: Pursuant to article 10 of the ET individuals may be deemed to be Colombian tax residents in the following cases:

1. Individuals who have stayed in Colombia, either continuously or discontinuously, and taking into account entry and leaving days, for 183 days in a given 365 days period. If the 365 days period covers more than one fiscal year, the individual will be deemed as a taxpayer for the second year.
2. Individuals who are either, enrolled in the Colombian diplomatic service or are related to individuals who are enrolled in the Colombian diplomatic service, and are, by virtue of the Vienna Convention on Diplomatic Relations, exempt, totally or partially, from taxation on income and capital gains in the country where they have been appointed to during the corresponding fiscal year.
3. Individuals who hold the Colombian nationality and fulfil one or more of the following traits in the corresponding fiscal year:
 1. The individual's significant other or the individual's underage children were deemed as tax residents in the corresponding fiscal year; or,
 2. Fifty percent (50%) or more of the individual's income was deemed to be Colombian sourced income; or,
 3. Fifty percent (50%) or more of the individual's assets were administered in Colombia; or,
 4. Fifty percent (50%) or more of the individual's assets were deemed to be possessed in Colombia;
 5. Having been required by the tax administration to prove the fact that the individual is a tax resident in a different country, the individual fails to provide evidence in this regard; or,
 6. The individual is a tax resident of a jurisdiction deemed by the Colombian Government as a tax haven.
4. It is important to keep in mind that for individuals who may be deemed to be tax residents by virtue of number 3 above, there are two possible exceptions, these being:
 1. If fifty percent (50%) or more of the individual's income were derived from the country where the individual's holds his/her domicile, the individual will not be deemed as a tax resident.
 2. If fifty percent (50%) or more of the individual's assets were held in the country where the individual's holds his/her domicile, the individual will not be deemed as a tax resident.

Section II – Criteria for Entities to be considered a tax resident

Legal provisions: Articles 12, 12-1, 18 and 102, Colombian Tax Code (*Estatuto Tributario - ET*), Decree 3028 of 2013 and Chapter 3 of the Decree 1625 of 2016.

Further guidance: As a general rule, all entities (legal persons) who either:

1. Have their effective place of management in Colombia; or,
2. Have their main domicile in Colombia; or,
3. Have been incorporated in Colombia in accordance with local regulations,

are deemed as Colombian tax residents. Pursuant to article 12-1 of the ET, the effective place of management is understood as the place where the entity's main business and management decisions are taken. These decisions need to be decisive and necessary for the entity to undertake its activities as a whole. In determining the effective place of management all facts and circumstances need to be taken into account; in particular those related to the places where the high executives and the chief officers of the entity usually exercise their main responsibilities and undertake their day-to-day activities.

However, if a foreign entity has its effective place of management in Colombia but it is listed in a stock exchange recognized by the National Tax and Customs Administration, such entity will not be deemed as a Colombian tax resident. This rule is also applicable to the subsidiaries of such an entity (i.e., the foreign entity listed in a stock exchange as long as the subsidiary has been included in the consolidated financial statements of the foreign entity listed in a stock exchange).

In the same line, if a foreign entity has its effective place of management in Colombia but at least 80% or more of its total income is deemed as active income derived from the jurisdiction where the entity has been incorporated, it will not be deemed as a Colombian taxpayer (Paragraph 6 of the Article 12-1 of the Colombian Tax Code).

As a general rule, Colombian tax provisions do not attribute tax residency to legal arrangements. Exceptionally, *patrimonios autónomos*, are deemed as tax residents. The only circumstance when this happens is when it is impossible to determine the beneficiaries of such an arrangement.

Section III – Entity types that are as a rule not considered tax residents

Legal provisions: Articles 23-1, 102 and 368-1 Colombian Tax Code (*Estatuto Tributario - ET*) and Decree 1848 of 2013.

Further guidance: Pursuant to article 23-1 of the ET, collective investment vehicles are not deemed as Colombian tax residents; in fact, they are deemed as transparent entities for tax purposes. In this sense, all income distributed by these vehicles is perceived by the investors on the same tax conditions as if they had undertaken the economic activity that originated the income directly. In a very similar line, *fiducias mercantiles* are also deemed to be transparent entities for fiscal purposes. The only circumstance under which they may be deemed as a tax resident is when the beneficiaries of said arrangement are unknown.

Section IV – Contact point for further information

The Colombian Competent Authority to provide further information on tax residency of Colombian tax residents is the Delegate for International Fiscal Affairs (*Subdirección de Fiscalización Internacional*). On other legal issues, the Colombian Competent Authority is the Legal Director of the

National Tax and Customs Administration (*Dirección de Gestión Jurídica*).