

Jurisdiction's name:	TRINIDAD AND TOBAGO
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Information on Residency for tax purposes

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

Please list the domestic legal provisions that determine whether an Individual is to be considered a tax resident of that jurisdictions. Such legal provisions may be articles of the relevant tax code (with hyperlinks to the provisions themselves, where possible), as well as any further regulations specifying the residency criteria (if available, with hyperlinks).

This section should ideally also provide further guidance for Individuals to determine whether they are a resident for tax purposes in the jurisdiction, presented either in narrative form or by means of hyperlinks to the relevant sections of the government or tax authority website or publications.

Response:

The term resident is not defined in the Income Tax Act (ITA). However, S (5) of the ITA is referred to as 'Charging Provisions' which states :-

S (5) (1) "Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter for each year of income upon the income of any person accruing in or derived from Trinidad and Tobago or elsewhere, and whether received in Trinidad and Tobago....."

S (5) (2) states: - "In the case of income arising outside Trinidad and Tobago to a person who is not ordinarily resident or not domiciled therein, tax shall be payable on the amount received in Trinidad and Tobago, so however, that where any employment or office is exercised by any such person in Trinidad and Tobago, gains or profits from the employment or office, whether received in Trinidad and Tobago or not, shall be treated as income arising therein."

http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.01.pdf

It follows that individuals who are ordinary resident or domicile in Trinidad and Tobago are considered tax residents in Trinidad and Tobago.

S (47) "Tax shall not be payable in respect of any income arising outside Trinidad and Tobago of any person who is in Trinidad and Tobago for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Trinidad and Tobago at one or more times for a period equal in the whole to six months of the year of income."

Countries with whom double tax treaties are agreed, usually addresses the term "resident of a Contracting State" which means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature."

In cases where such individuals also have a permanent home available to them in another country, they shall be deemed to be residents in Trinidad and Tobago if they have their centre of vital interest in the national territory.

Residents of Trinidad and Tobago are subject to tax on their worldwide income, this means that they are subject to taxes on both the income earned in Trinidad and Tobago as well as income arising outside of Trinidad and Tobago.

However, temporary residents are not subject to tax relating to income arising out of Trinidad and Tobago. This is defined by S 47 of the Income Tax Act Chapter 75:01 which states the following:

"Tax shall not be payable in respect of any income arising outside Trinidad and Tobago of any person who is in Trinidad and Tobago for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Trinidad and Tobago at one or more times for a period equal in the whole to six months of the year of income."

As such, persons will therefore be considered resident for tax purposes if they are in Trinidad and Tobago for a period in excess of six months.

The interpretation section of the Income Tax Act Chapter 75:01 defines a person as inclusive of a company. The interpretation section of the Corporation Tax Act Chapter 75:02 defines “company” as; “means any body corporate or unincorporated association, but does not include a partnership.”

Although the laws of Trinidad and Tobago does not treat partnerships as taxable residents, the partners of a partnership are taxed as individuals based on their residency.

The *Income Tax Act* s.59 provides that trustees are charged to tax on the income derived from trusts. Trustees are obliged to include trust income on their personal income tax returns, which do not require disclosure of identity information of the settlors and beneficiaries of the trust.

Further guidance regarding these provisions are available via the following links:

Income Tax Act Chapter 75:01 - http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.01.pdf

Corporation Tax Act Chapter 75:02 -

http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.02.pdf

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

Please list the domestic legal provisions that determine whether an Entity is to be considered a tax resident of that jurisdiction. Such legal provisions may be articles of the relevant tax code, as well as any further regulations specifying the residency criteria. Ideally, also a list of domestic Entity types that are in principle considered tax residents of the jurisdiction should be included (if available, with hyperlinks).

This section should ideally also provide further guidance for the different types of Entities to determine whether they are a resident for tax purposes in the jurisdiction. It can be presented either in narrative form or by means of hyperlinks to the relevant sections of the government or tax authority website or publications.

Response

The interpretation section of the Income Tax Act Chapter 75:01 defines a person as: “person” includes a company.”

The interpretation section of the Corporation Tax Act Chapter 75:02 defines a company as as “any body corporate or unincorporated association, but does not include a partnership.”

As a general rule, an entity is deemed to be a tax resident in Trinidad and Tobago when it is controlled in Trinidad and Tobago whether it is incorporated in Trinidad and Tobago or is incorporated elsewhere but has its mind and management situated in Trinidad and Tobago. This is emphasized under S (8) of the Corporation Tax Act Chapter 75:02 which states:

“For the purposes of the definition of “resident company” and “non-resident company”, the place where such a company is to be regarded as controlled is the place where the mind or management of the company is ordinarily situated.”

The Corporation Tax Act Chapter 75:02 defines a resident and non- resident company as:

“resident company” means a company that is controlled in Trinidad and Tobago, whether or not the company is—

(a) incorporated in Trinidad and Tobago; or

(b) engaged in trade or business or in the pursuit of professional or vocational activities in Trinidad and Tobago;

“non-resident company” means a company not controlled in Trinidad and Tobago, whether or not the company is—

- (a) incorporated in Trinidad and Tobago; or
- (b) engaged in trade or business or in the pursuit of professional or vocational activities in Trinidad and Tobago;

Trusts are not taxable entities in Trinidad and Tobago. As such, trusts are not required to register with the Board of Inland Revenue for a B.I.R. file number. The *Income Tax Act* s.59 provides that trustees are charged to tax on the income derived from trusts. Trustees are obliged to include trust income on their personal income tax returns, which do not require disclosure of identity information of the settlors and beneficiaries of the trust.

Further guidance regarding these provisions are available via the following links:

http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.01.pdf

http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.02.pdf

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

This item should ideally provide a list of entity types that are considered fiscally transparent by the jurisdiction or are considered to have no tax residence by the jurisdiction based on other criteria, including a particular legal status or tax regime (such as trusts, foundations, partnerships, investment funds etc.), but are considered to have a nexus with the jurisdiction, in particular due to the fact that the entity was incorporated or is organised under the laws of the jurisdiction or has its place of effective management within the jurisdiction. Jurisdictions may wish to complement this section with further guidance on their domestic rules on the topic, either in narrative form or by inserting relevant hyperlinks.

Response:

The laws of Trinidad and Tobago treats a company as a person but a partnership is not considered as such for income tax purposes and is therefore treated as fiscally transparent.

The Income Tax Act Chapter 75:01 and the Corporation Tax Act Chapter 75:02 does not have a general rule for deeming entities as non-tax residents. Strictly speaking, an entity would be deemed a non-tax resident if the legislative requirements as outlined in section II are not met.

Where residency cannot be clearly determined via the legislation, consideration is given to International Law and decided tax cases to determine such.

Trusts are not taxable entities in Trinidad and Tobago. As such, trusts are not required to register with the Board of Inland Revenue for a B.I.R. file number. The *Income Tax Act* s.59 provides that trustees are charged to tax on the income derived from trusts. Trustees are obliged to include trust income on their personal income tax returns, which do not require disclosure of identity information of the settlors and beneficiaries of the trust.

Section (8) (1) of the Income Tax Act and **Section (6)** (1) of the Corporation Tax Act provides for exemptions. Although, specific entities are exempt from taxation, companies are still obligated to be registered with the BIR and required to file annual returns.

http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.01.pdf

http://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/75.02.pdf

Section IV – Contact point for further information

Please provide the contact details of the competent service within their tax authority, which can be contacted in case of further questions on tax residency.

(EU Member States can furthermore refer to the Taxes in Europe Data Base maintained by the European Union, which contains a wide range of information on all taxes in the EU Member States, including on tax residency.)

For further information please address enquires to – birchair@ird.gov.tt or araphael@ird.gov.tt