



Newsletter

KPMG in Panama



Formal request for the tax residence certificate

Resolution 201-0354 of 2016 issued by the General Directorate of Revenues (DGI)

CI No. 2 – February 2016

Background

Article 752-N of the Fiscal Code introduced by Law 52 of 2012, defines the tax residence concept applicable to individuals and corporations of the Republic of Panama, and establishes the requirements to qualify as a tax resident.

Through the Official Gazette No. 27,951-A of January 19, 2016, Resolution No. 201-0354 of January 13, 2016 issued by the DGI was enacted. In force since the date of publication, the Resolution regulates the request of Tax Resident Certificates for Panamanian individuals and corporations, and repealed articles from second to seventh of Resolution No. 201-10860 of 2013 issued by the National Authority of Public Revenues.

All individuals and corporations that require obtaining a tax residence certificate from the Republic of Panama must file at the offices of the General Directorate of Revenues a formal petition that must fulfill all requirements as established in the Resolution. Notwithstanding, it is highlighted that the filing of the request does not imply the approval from the authority, which is obliged to carry an evaluation and furthermore issues a resolution to accept or decline the tax residence certificate for the tax period requested.

Likewise, in the event that the DGI becomes aware that one individual to whom a tax residence certificate was issued, fails to comply with the requirements to qualify as a tax residence, the DGI may revoke such certificate.

Important Aspects

Following, important aspects of the provision are outlined:

Legal grounds for the residence status. The provision indicates that the requestor must provide in the petition, the legal rationale that supports tax resident status. These are the facts and circumstances that give rise to the qualification as a tax resident. The interested party may enclose any documentation considered relevant..

Language. all documents must be consigned in Spanish, or duly translated by public certified translator.

Period to amend the petitions. If the request is found incomplete or whenever the authority requires additional information, the interested party will have a two - month period, starting from the date of the providence, which will be duly notified, to provide the documentation.

These requests will not be processed as long as all the pending information is provided.

In case where the request was filed through a power of attorney and it is not accompanied by the power of attorney duly notarized, a period of fifteenth (15) working days will be granted, starting from the date of the filing of the petition.

Reasons to decline the request. The DGI may reject all the tax residence certificates request, through resolution legally substantiated, if the criteria followed by the requestor does not fulfill all the requirements established on Article 762- N of the Tax Code.

Formalities. Documentation accompanying the petition for the Tax Residence Certificate must be submitted in original or a notarized copy.

A) The petition must explain the legal reasoning by which the applicant considers that is eligible as tax resident of the Republic of Panama.

- Clear and explicit identification of the applicant
- Address in the Republic of Panama
- Economic activity performed by the applicant in the Republic of Panama
- Specific reference of the Double Taxation Treaty that will be applied, when applicable
- Tax year for which the applicant requests the Tax Residence Certificate

B) It is also required to attach:

- Notarized power of attorney, if the petition is filed through an attorney (in all cases of juridical persons).
- Original certificate issued by the Public Registry Office, in case of juridical persons
- Copy of identity card or passport of the applicant, duly authenticated by a notary, in the case of individuals.

Elements under analysis. In case of **Individuals**, it is required to prove that they remained in the country for more than one hundred eighty three (183) days, continuous or dis-continuous in a calendar year. The term of permanent housing is interpreted as the center of vital interests of the individual: economic or family interests. It is important to mention that the resolution provides that having a house available does not mean necessarily that the person qualifies as a tax resident since it is mandatory having a personal connection to said permanent housing.

In the case of **corporations**, to determine if a company registered in the Public Registry of Panama has ties in the Panamanian territory and that the material means of management and administration are in existence in Panama it is necessary that the applicant reports to the DGI about the commercial activity or support to other companies performed from the national territory, and that the entity has offices available for such purposes.

Likewise, it will be required to prove that the corporation has personnel available, as a consequence of conducting business activities.

In case of **Private Interest Foundations**, even though it is understood that these entities are not permitted to conduct commercial activities, it is required to prove the existence of material means of management and direction in order to obtain a Tax Residence certification.

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