



# **GUIDELINES FOR FISCAL RESIDENCE OF INDIVIDUALS**

**2019**



## TABLE OF CONTENTS

<b>1. To whom are these guidelines addressed?</b>	<b>2</b>
<b>2. Criteria for determining the residence of an individual, according to the convention for avoidance of double taxation</b>	<b>2</b>
<b>3. Arrival of the non-resident individual on the territory of Romania</b>	<b>3</b>
<b>3.1. Elements which attest residence in Romania</b>	<b>3</b>
<b>3.2. Establishment of residence by the competent central fiscal body on the arrival of the individual in Romania</b>	<b>4</b>
<b>3.3. Departure of resident and non-resident individuals from the territory of Romania</b>	<b>6</b>
<b>3.4. Determining the residence by the competent central fiscal body at the departure of individuals from Romania</b>	<b>7</b>
<b>4. Situations for residence/taxation of income for the Romanian resident individuals and non-resident individuals</b>	<b>8</b>
<b>4.1. Specifications regarding Romanian resident individuals</b>	<b>8</b>
<b>4.2. Specifications regarding the non-resident individuals</b>	<b>9</b>
<b>5. Other specifications</b>	<b>9</b>
<b>5.1. Submission of the Set of questions</b>	<b>9</b>
<b>5.2. Official language</b>	<b>9</b>
<b>6. Sanctions</b>	<b>10</b>
<b>7. How can you obtain further information?</b>	<b>10</b>
<b>8. Fiscal legislation and informative materials</b>	<b>10</b>

## 1. TO WHOM ARE THESE GUIDELINES ADDRESSED?

These GUIDELINES are addressed to the resident/non-resident individuals who leave/arrive in Romania and for whom it is necessary to establish/change the fiscal residence, respectively the taxation of income obtained.

## 2. Criteria for determining the residence of an individual, according to the Convention for avoidance of double taxation

If an individual is considered resident both in Romania and in a signatory state of the Convention for avoidance of double taxation, the residence of the individual is **established as follows**<sup>1</sup>:

**2.1. An individual is considered resident only of the state where he/she has his/her home address**, respectively the permanent home at his/her disposal.

A home is considered permanent if it is the personal property of the individual, if it is rented by that person or if it remains available any time for this person and/or his/her family.

**2.2. If a person owns a permanent home at his/her disposal in both states, he/she is considered resident only of the state where he/she has the centre of his/her vital interests**, respectively in the state with whom his/her personal and economic relations are closer.

If an individual holds a home in a signatory state of a convention for avoidance of double taxation signed with Romania and he/she holds at his/her disposal a house in Romania, while he/she keeps the first house, the fact that he/she keeps the first house in the state in which he/she mainly lived, worked and where his/her family is and all his/her properties are, can prove together with other elements that the person has kept the centre of his/her vital interests in the other state, not in Romania.

The same criterion for determining the centre of his/her vital interests is adequately used for the resident individuals who leave Romania<sup>2</sup>.

**2.3. If we cannot determine the state in which the person has the centre of his/her vital interests or if that person does not hold a permanent home at his/her disposal in any state, we consider that he/she is resident of the state where he/she lives frequently.** Thus, we will have in view the stays of that person in all the places from the same state;

**2.3. If the person usually lives in both states or does not live in either of them, we will consider that the person is resident of the state of his/her nationality/citizenship.**

**2.4. If the person has the nationality/citizenship of both states or does not have the nationality/citizenship of either of them, the competent authorities of the contracting states**

<sup>1</sup> Art. 9 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of individuals in Romania;

<sup>2</sup> Art. 9 let. b) of Order of the minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of individuals in Romania;

will settle this problem amicably at their level, according to the article "Amiable procedure" from the convention for avoidance of double taxation.

For the determination of residence, we will have in view the comments of article 4 "Resident" from the Model Convention for avoidance of double taxation of the Organisation for Economic Cooperation and Development<sup>3</sup>.

Any change appeared, which can bring changes to residence, must be brought to the knowledge of the competent central fiscal body by the individual in question<sup>4</sup>.

### 3. Arrival of the non-resident individual on the territory of Romania

#### 3.1 Elements which attest residence in Romania

**3.1.1 The main elements considered for determining residence**, according to the Fiscal Code<sup>5</sup>, further amended and supplemented, are<sup>6</sup>:

- a home address in Romania;
- a permanent home of the individual in Romania; this home can be personal property or rented or which remains available any time for this person and/or his/her family;
- the centre of vital interests is located in Romania;
- the individual is present in Romania for a period or several periods which totally exceed 183 days, during any period of 12 consecutive months, which ends in the calendar year concerned.

**3.1.2 Other elements which are taken into account in determining residence in Romania or in the foreign state, but only together with the elements mentioned in point 3.1.1<sup>7</sup>:**

- vehicle recorded in Romania/foreign state;
- driving licence issued by the competent authority of Romania/foreign state;
- passport issued by the competent authority of Romania/foreign state;
- the person is insured in the social security system of Romania/foreign state during the whole period when he/she stays abroad/in Romania;
- the person is insured in the health insurance system of Romania/foreign state during the whole period when he/she stays abroad/in Romania.

**If a non-resident individual does not prove the residence in a state with which Romania has signed a convention for avoidance of double taxation or is resident of a state with which Romania has not signed a convention and fulfils the residence conditions established by the law<sup>8</sup>, we will consider that he/she is resident in Romania<sup>9</sup>.** In this case, that person has a full fiscal obligation in Romania, being subject to income tax for the income obtained from any source, both from Romania

<sup>3</sup> The Model of Convention can be accessed in the following link:

<http://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-2015-full-version-9789264239081-en.htm> ;

<sup>4</sup> Art. 11 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>5</sup> Law no. 227/2015 for Fiscal Code further amended and supplemented; this law can be viewed by accessing the following link: [https://www.anaf.ro/anaf/internet/ANAF/asistenta\\_contribuabili/persoane\\_fizice/legislatie/codul\\_fiscal/](https://www.anaf.ro/anaf/internet/ANAF/asistenta_contribuabili/persoane_fizice/legislatie/codul_fiscal/) ;

<sup>6</sup> Art. 12 para. (1) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>7</sup> Art. 12 para. (2) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>8</sup> Art. 7 point 28 let. b) or c) of Law no. 227/2015 for Fiscal Code, further amended and supplemented;

and from outside Romania, since the date when he/she becomes resident in Romania, when he/she is issued the certificate of fiscal residence at request. In the certificate of fiscal residence, the competent central fiscal body will certify the year/years or the period of a year for which the individual is resident in Romania<sup>10</sup>.

### 3.2. Establishment of residence by the competent central fiscal body on the arrival of the individual in Romania

#### 3.2.1 Completion and submission of the Set of questions for determining the fiscal residence of the individual on the arrival in Romania

The individuals who arrive in Romania and have a stay in Romania for a period or several periods which totally exceed 183 days, during any period of 12 consecutive months, which ends in the calendar year concerned, have the obligation to complete the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania"<sup>11</sup>.

The non-resident individuals have to submit the Set of questions to the competent central fiscal body, **within 30 days from** the fulfilment of the deadline of 183 days of presence in Romania<sup>12</sup>.

The Set of questions can be downloaded from the ANAF's website: [www.anaf.ro](http://www.anaf.ro), section: "Taxpayers' assistance", column: "Fiscal forms and fill in Guidelines " and can be transmitted in person or by empowered person, by post, with confirmation of reception or can be submitted to the registry of the competent central fiscal body.

#### 3.2.2 Supporting documents

The individuals have the obligation to enclose to the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania"<sup>13</sup> the following supporting documents:

- copy of valid passport, (citizens of European Union enclose the copy of valid passport or the national identity document);
- copy of identity card/ permanent residence card/ stay permit/ certificate of fiscal registration issued by the competent authority of Romania;
- documents which attest the existence of a house of the individual in Romania, house which can be personal property or rented or which remains available any time for this person and/or his/her family;
- as applicable, the certificate of fiscal residence issued by the competent authority of the foreign state with which Romania has signed a convention for avoidance of double taxation or another document issued by another authority than the fiscal one, which has assignments in the field of certification of fiscal residence according to the internal laws of that state, in original or in notarised copy, accompanied by a certified translation in Romanian;

<sup>9</sup> Art. 13 para. (1) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>10</sup> Art. 13 para. (2) și (3) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>11</sup> Art. 2 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>12</sup> Art. 14 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>13</sup> The Set of questions for determining the fiscal residence of the individual on the arrival in Romania can be accessed in the following link: [https://static.anaf.ro/static/10/Anaf/formulare/A1\\_OMFP\\_1099\\_2016.pdf](https://static.anaf.ro/static/10/Anaf/formulare/A1_OMFP_1099_2016.pdf);

- a document issued by the foreign fiscal authority which attests that the individual is removed from its fiscal records, as applicable, accompanied by a certified translation in Romanian;
- any other documents which can be the basis for determination of residence of individual.

The Certificate of fiscal residence issued by the competent authority of the foreign state with whom Romania has signed a convention for avoidance of double taxation/ Document issued by another authority than the fiscal one is valid for the year(s) for which it is issued<sup>14</sup>.

### **3.2.3 Exceptions from the submission of the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania"**

**The following persons do not have the obligation to submit the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania"<sup>15</sup>:**

- the foreign citizens with diplomatic or consular status in Romania;
- the foreign citizens who are civil servants or employees of an international or intergovernmental body recorded in Romania;
- foreign citizens who are civil servants or employees of a foreign state in Romania;
- members of the families of the persons above.

with observance of the general rules of international law or the provisions of the special agreements to which Romania is Party.

The non-resident individuals who arrived in Romania before 1<sup>st</sup> of January 2014 and who request the issue of the "Certificate of fiscal residence for application of Convention/Agreement for avoidance of double taxation between Romania and..., for individuals resident in Romania" have the obligation to fill in the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania", and also to make the proof of payment of income tax for the income obtained from any source, both from Romania and from outside Romania for the categories of incomes subject to taxation in Romania<sup>16</sup>.

### **3.2.4 Notice issued by the fiscal body following the Set of questions submitted by the individuals on the arrival in Romania**

The competent central fiscal body takes into account the provisions of the Convention for avoidance of double taxation or the Fiscal Code as applicable, the Set of questions submitted, the certificate of fiscal residence issued by the foreign fiscal authority or another document (issued by another authority than the fiscal one), as applicable and any other relevant documents, the competent central fiscal body establishes residence and within 30 days from the submission of Set of questions, notifies the individual if he/she has a full fiscal obligation in Romania or will be taxed only for the income obtained in Romania<sup>17</sup>.

<sup>14</sup> Art. 15 let. d) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of individuals in Romania;

<sup>15</sup> Art. 4 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>16</sup> Art. 22 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>17</sup> Art. 16 para. (1), (2) and (3) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

If an individual becomes resident in Romania only for a period of a fiscal year, this individual has a full fiscal obligation in Romania only for that period of the fiscal year when he/she is considered resident<sup>18</sup>.

For the period of fiscal year, respectively from the date of arrival in Romania until the date when he/she becomes resident in Romania, the individual is considered non-resident, being subject to taxation only for the income obtained in Romania<sup>19</sup>.

### 3.3. Departure of resident and non-resident persons from the territory of Romania

#### 3.3.1 Elements which attest residence in Romania or in the foreign state, according to Convention for avoidance of double taxation, respectively the Fiscal Code, as applicable

#### 3.3.2 The main elements which are taken into account for determining the residence of an individual who leaves Romania<sup>20</sup>

- home address in Romania;
- permanent home of the individual in Romania, house who can be personal property or rented or which remains available any time for this person and/or his/her family;
- centre of vital interests located in Romania;
- the individual leaves Romania for a period of several periods of stay abroad which totally exceed 183 days, during any period of 12 consecutive months.

#### 3.3.3 Other elements which can be taken into account in the maintenance of residence in Romania, but only together with the elements mentioned in point 3.3.2

- vehicles registered in Romania/foreign state;
- driving licence issued by the competent authorities of Romania/foreign state;
- passport issued by the competent authority of Romania/foreign state;
- the person is insured in the social security system of Romania/foreign state during the whole period when he/she stays abroad/in Romania;
- the person is insured in the health insurance system of Romania/foreign state during the whole period when he/she stays abroad/in Romania.

**If a Romanian individual leaves Romania permanently and does not have a home address in our country, the residence obtained in another state will not be affected by the occasional comebacks in Romania<sup>21</sup>.**

<sup>18</sup> Art. 16 para. (4) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>19</sup> Art. 16 para. (4) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>20</sup> Art. 17 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>21</sup> Art. 18 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

### 3.4 Determining the residence by the competent central fiscal body at the departure of the individuals from Romania

#### 3.4.1 Completion and submission of the necessary form for determining fiscal residence

The individuals resident in Romania, and the non-resident individuals who had the obligation to fill in the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania", who leave the country for a period or more periods of stay abroad which totally exceed -183 days, during any interval of 12 consecutive months, have the obligation to fill in the form "Set of questions for determining the fiscal residence of the individual when leaving Romania"<sup>22</sup>.

**The form must be registered 30 days before the departure from Romania** to the competent central fiscal body where the individual has his/her fiscal home address, respectively where he/she registered the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania", if that person has not informed about the change of his/her home address/permanent home address, as applicable<sup>23</sup>.

The Set of questions can be downloaded from the ANAF`s website: [www.anaf.ro](http://www.anaf.ro), section: "Assistance of taxpayers", column: "Fiscal forms and fill in Guidelines" and can be transmitted in person or by empowered person, by post, with confirmation of reception or can be submitted to the registry of the competent central fiscal body.

#### 3.4.2 Supporting documents

The individuals have the obligation to enclose to "Set of questions for determining the fiscal residence of individuals when leaving Romania", any documents which can be the basis for determination of residence of the individual and as applicable, the certificate of fiscal residence issued by the foreign fiscal authority or another document issued by another authority than the fiscal one, which has assignments in the field of certification of fiscal residence according to the internal laws of that state.

#### 3.4.3 Exceptions from the submission of the form "Set of questions for determining the fiscal residence of the individual when leaving Romania"

The Romanian citizens who work abroad as civil servants or employees of the Romanian state in a foreign state do not have the obligation to submit the form "**Set of questions for determining the fiscal residence of the individual when leaving Romania**"<sup>24</sup>.

<sup>22</sup> Art. 3 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>23</sup> Art. 19 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>24</sup> Art. 5 of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;



#### **3.4.4 Notice issued by the fiscal body following the Set of questions submitted by the individuals when leaving Romania**

The competent central fiscal body takes into account the provisions of the convention for avoidance of double taxation or the Fiscal Code, as applicable, the *Set of questions* submitted, the certificate of fiscal residence issued by the foreign fiscal authority or another document (issued by another authority than the fiscal one) as applicable, and any other relevant documents, establishes the residence and within 15 days from the submission of the Set of questions, notifies the individual and establishes if he/she has full fiscal obligation in Romania or will be removed/maintained from/in the fiscal records<sup>25</sup>.

In case of full fiscal obligation, the resident individual continues to be subject to income tax for the income obtained from any source, both from Romania and from outside Romania<sup>26</sup>.

### **4. Situations regarding the residence/taxation of incomes of Romanian resident individuals and non-resident individuals**

#### **4.1 Specifications regarding the Romanian resident individuals**

The Romanian resident individual, with home address in Romania, will fill in the form "Set of questions for determining the fiscal residence of the individual when leaving Romania" before the travel abroad, with the information known at completion date.

If after the registration of the form "Set of questions for determining the fiscal residence of the individual when leaving Romania", the Romanian resident individual, with home address in Romania, obtains the document/certificate which attests the change of residence in a state with whom Romania has signed the convention for avoidance of double taxation, he/she fills in a new form with the updated information, to which he/she encloses the document/certificate of fiscal residence issued by the competent authority of the state which considers him/her resident, in order to apply the provisions of convention.

The Romanian resident individual with home address in Romania continues to be considered resident in Romania, has a full fiscal obligation until the date of changing the residence according to the convention for avoidance of double taxation signed by Romania with the foreign state<sup>27</sup>.

The Romanian resident individual, with home address in Romania, who proves the change of residence in a state with whom Romania has not signed a convention for avoidance of double taxation must fill in the form "*Set of questions for determining the fiscal residence of the individual when leaving Romania*", and continues to be obliged to pay the tax on income obtained from any source, both from Romania and from outside Romania, for the calendar year when the residence is changed and the next 3 calendar years<sup>28</sup>.

<sup>25</sup> Art. 20 para. (1), (2) and (3) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>26</sup> Art. 20 para. (3) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>27</sup> Art. 21 para. (1) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>28</sup> Art. 21 para. (2) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

## 4.2 Specifications regarding the non-resident individuals

The non-resident individual who had the obligation to fill in the form "Set of questions for determining the fiscal residence of the individual on the arrival in Romania" and obtained residence in Romania during the stay in Romania, when leaving Romania must fill in only "The Set of questions for determining the residence of the individual when leaving Romania" and will not make the proof of change of fiscal residence in another state. The individual is considered resident in Romania until he/she leaves Romania for a period or several periods of stay abroad which totally exceed 183 days, during any interval of 12 consecutive months<sup>29</sup>.

The non-resident individual who during the stay in Romania has proven residence in another state with whom Romania has signed the Convention for avoidance of double taxation and who had the obligation to fill in the form "Set of questions for determining the fiscal residence of individual on the arrival in Romania", when leaving Romania must fill in the form "Set of questions for determining the fiscal residence of the individual when leaving Romania"<sup>30</sup>.

## 5. Other specifications

### 5.1. Submission of the Set of questions

The submission of Set of questions was compulsory since the coming into force of the Order of minister of public finances no. 74/2012, which was repealed by the Order of minister of public finances no. 1099/2016, which is in force at the date of these guidelines. If the taxpayers have not fulfilled the declarative obligations according to the Order of the minister of public finances no. 74/2012, they have the obligation to submit the Set of questions<sup>31</sup>.

### 5.2. Official language

The official language in fiscal administration is Romanian. If supporting documents, certificates or other documents in a foreign language are submitted to the fiscal body, the fiscal body requests that they are accompanied by translations in Romanian certified by translators authorised by the Ministry of Justice, according to the law.

If petitions, supporting documents, certificates or other documents in a foreign language are submitted to the fiscal body, for which no authorised translators exist, the fiscal body requests that they are accompanied by translations in Romanian performed or

<sup>29</sup> Art. 21 para. (3) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>30</sup> Art. 21 para. (4) of the Order of minister of public finances no. 1099/2016 for regulation of aspects regarding the residence of the individuals in Romania;

<sup>31</sup> Set of questions for determining the fiscal residence of the individuals on the arrival in Romania, according to the Order of Minister of Public Finances no. 1099/2016, can be accessed at the following link: [https://static.anaf.ro/static/10/Anaf/formulare/A1\\_OMFP\\_1099\\_2016.pdf](https://static.anaf.ro/static/10/Anaf/formulare/A1_OMFP_1099_2016.pdf);

Set of questions for determining the fiscal residence of the individuals when leaving Romania, according to the Order of Minister of Public Finances no. 1099/2016, can be accessed at the following link: [https://static.anaf.ro/static/10/Anaf/formulare/A2\\_OMFP\\_1099\\_2016.pdf](https://static.anaf.ro/static/10/Anaf/formulare/A2_OMFP_1099_2016.pdf);

certified by an embassy or a consular office of the state in the official language of which the document was issued.

The supporting documents, certificates or the documents drawn up in a foreign language submitted without the observance of obligation to present their certified translation are not taken into account by the fiscal body if they requested the translation in Romania and the taxpayer/payer did not comply with the request.

## 6. Sanctions

The submission of Set of questions for determining the residence of the individual on the arrival in Romania/when leaving Romania, makes the object of Law no. 270/2017 – Prevention Law, which sets forth that if a contravention was committed and noted a report for observation of contravention is signed and by this report they apply the sanction of warning, in which case no fines are applied.

## 7. How can you obtain further information?

Detailed information can be obtained:

- for answers to frequent questions regarding the submission of Set of questions for determining the residence of the individuals on the arrival/departure in/from Romania, you can consult the website [www.anaf.ro](http://www.anaf.ro), section "[Taxpayers' Assistance - Questions and Answers on Facebook](#)" the guidance and assistance sessions carried out on Facebook page of the National Agency for Fiscal Administration on [3 August 2016](#), [31 May and 7 June 2017](#), [20 September 2017](#) and [27 September 2017](#);
- by phone to the Central Office of Telephone Assistance for Taxpayers – Call-center, at the phone number: 031.403.91.60;
- at the assistance offices for taxpayers from the territorial fiscal bodies.

## 8. Fiscal legislation and informative materials

[Order of the Minister of Public Finances no. 1099/2016](#) for regulation of aspects regarding the residence of individuals in Romania;  
[Law no. 227/2015](#) for Fiscal Code, further amended and supplemented;  
[Law no. 207/2015](#) for Fiscal Procedural Code, further amended and supplemented;  
[Calendar of fiscal obligations](#);  
[Guidelines drawn up by the National Agency for Fiscal Administration.](#)

Guidelines developed by  
**GENERAL DIRECTORATE FOR TAXPAYERS ASSISTANCE**  
in collaboration with  
**GENERAL REGIONAL DIRECTORATE FOR  
PUBLIC FINANCES BUCHAREST**

**2019**