

**SECRETARIAT OF STATE
OF FINANCE GENERAL DIRECTORATE OF TAXES
Binding Queries**

NUM-QUERY	V1983-20
ORGAN	SG of Income Taxes of Individuals
DEPARTURE DATE	06/17/2020
NORMATIVE	LIRPF, 35/2006, Art. 9.
DESCRIPTION-FACTS	Marriage of tax residents in Lebanon, who arrived in Spain in January 2020 for a 3-month trip but who, due to the state of alarm, have not been able to return, at the time of presenting the consultation letter (early June) to their country. They do not receive income in Spain and spend less than 6 months a year in Spain regularly.
QUESTION-RAISED	If the days spent in Spain while the duration of the state of alarm are not counted for the purposes of determining tax residence in Spain.
ANSWER-COMplete	<p>In the first place, it should be noted that Lebanon (officially the Lebanese Republic) is one of the territories considered by Spanish legislation (Royal Decree 1080/1991, of July 5, BOE of July 13) as a tax haven.</p> <p>In Spanish internal legislation, the tax residence of natural persons is determined by virtue of the provisions of article 9 of Law 35/2006, of November 28, on Personal Income Tax and partial modification of the Laws of Corporation Tax, Non-Resident Income and Equity (BOE of November 29), hereinafter LIRPF, which, in its section 1, establishes the following:</p> <p>"one. It will be understood that the taxpayer has his habitual residence in Spanish territory when any of the following circumstances occurs:</p> <p>a) That they remain more than 183 days, during the calendar year, in Spanish territory. To determine this period of stay in Spanish territory, sporadic absences will be counted, unless the taxpayer proves his tax residence in another country. In the case of countries or territories considered as tax havens, the Tax Administration may require proof of permanence in it for 183 days in the calendar year.</p> <p>To determine the period of permanence referred to in the preceding paragraph, temporary stays in Spain that are a consequence of the obligations contracted in cultural or humanitarian collaboration agreements, free of charge, with the Spanish public administrations will not be counted.</p> <p>b) That the main nucleus or the base of its activities or economic interests resides in Spain, directly or indirectly.</p> <p>It will be presumed, unless proven otherwise, that the taxpayer has his habitual residence in Spanish territory when, in accordance with the above criteria, the spouse not legally separated and the minor children who depend on him or her habitually reside in Spain. "</p> <p>According to the aforementioned precept, a natural person will be considered a tax resident in Spain, in a certain tax period, to the extent that any of the criteria set forth above concurs, that is, on the basis of:</p> <ul style="list-style-type: none"> - Staying more than 183 days, during the calendar year, in Spanish territory, counting, for this purpose, sporadic absences, unless tax residence in another country is proven. In the case of countries or territories considered as tax havens, the Tax Administration may require proof of permanence in it for 183 days in the calendar year. - That the main nucleus or the base of its activities or economic interests resides in Spain, directly or indirectly. <p>Likewise, the LIRPF establishes a presumption, which admits proof to the contrary, that the taxpayer has his tax residence in Spain when, in accordance with the above criteria, his spouse not legally separated and the minor children who depend on it habitually reside in Spain. of that one.</p> <p>To the extent that any of the circumstances provided for in article 9.1 of the LIRPF occurs, the individual in question will be considered a taxpayer of the Personal Income Tax (IRPF) in Spanish</p>

territory.

Tax residence in Spain is determined, in accordance with the foregoing, in each tax period, which, according to article 12 of the LIRPF, coincides with the calendar year (except in the case of the death of the taxpayer, referred to in article 13 of the LIRPF).

In the present case, in relation to the aforementioned criterion of permanence more than 183 days, within the calendar year, in Spanish territory, the days spent in Spain by the marriage, due to the state of alarm, would be counted, so if they remained more than 183 days in Spanish territory in 2020, would be considered income tax payers. However, they could return to their country of origin once the state of alarm ends (a circumstance scheduled for June 21).

What I communicate to you with binding effects, in accordance with the provisions of section 1 of article 89 of Law 58/2003, of December 17, General Tax.