



## Supreme Court decisions clarify concept of tax residence

Two new Supreme Court decisions (no. 403/20 and 418/20) issued on 5 February 2021 clarify that an individual may not be treated as a Greek tax resident simply for being appointed as the administrator of a single-member private company (IKE in Greek) and/or for participating in the management of a corporation (SA) in Greece. As a result, the tax residence of a Greek individual who moved abroad may not be brought into question solely because the individual was appointed as administrator/member of the board of a Greek company. Accordingly, in two separate opinions, the Court disagreed with the tax authorities' rejection of a taxpayer's change of tax residence that was based on this fact alone, as further detailed below.

1. Supreme Court decision no. 403/20 initially refers to the taxing right of a state and the concept of permanent home. It notes that the taxing right of a state is exercised on an individual provided there is a connection between the state and the individual. Residence constitutes such a connection according to the [OECD Model Tax Convention](#) (MTC). Furthermore, the state of the individual's residence primarily subjects them to tax on their total income. If the state is required to settle double residency issues and solve the taxing rights of both states involved, the concept of permanent home is used first (article 4, OECD MTC). If the individual has a permanent home in two states, the MTC provides that the individual is resident of the state where their "personal and economic relations are closer (center of vital interests)." Otherwise, other criteria should be examined in a particular order.

The decision analyzes article 4 of the Greek Income Tax Code (ITC) (L.4172/2013) and notes that an individual who is resident in Greece is subject to tax on worldwide income; therefore, an individual whose permanent and main residence is in Greece has made this residence the center of their vital interests. This center defines the notion of residence

(i.e. it is not a distinct criterion). Consequently, an individual's center of vital interests is where this individual develops personal, financial, and social ties. To determine whether the residence of an individual is in Greece according to article 4 of the ITC or whether the residence has been changed, the tax authorities should consider all the available evidence. Such evidence includes (especially) the location of an individual's house, the physical presence of the individual and their family (which is not limited to a spouse and children), the place where the individual exercises their professional activity, the place of the individual's property/financial interests, the place of administrative ties with the public authorities and other organizations (social security, professional and social organizations), and the place where cultural or other activities are developed.

In a tax dispute, the tax authorities bear the burden of proof and should clearly justify why they believe an individual is resident in Greece. In the event the tax residence has changed, the taxpayer bears the burden of proof and must provide facts evidencing such change but the tax authorities should still justify their position in their opinion after considering all the evidence that the taxpayer has provided regarding their residence.

Pursuant to the ITC, an individual is deemed resident in Greece if the individual resides in the country for more than 183 days. The Supreme Court found that the tax authorities must prove the actual place of residence during the greater than 183-day period for the deemed rule to apply. It further ruled that exercising management, as an administrator of an IKE does not necessarily require actual presence in the company's registered office for a prolonged period. Therefore, being appointed as an administrator does not mean physical presence in Greece for the relevant period.

2. Supreme Court decision no. 418/20 also addresses a change of tax residence and initially analyzes the same general rules and principles as court decision no. 403/20 (i.e., concept of residence/permanent home, center of vital interests as a notion defining permanent home and not being a distinct criterion, reference to other criteria to be taken into account by the tax authorities such as, especially, the location of the individual's house, the physical presence of the individual and their family (beyond a spouse and children), etc.).

With respect to the burden of proof, the decision is also similar in that it states that the tax authorities are primarily required to support their claims, and a taxpayer is required to provide proof in case of a change of residence while the tax authorities are still required to fully justify their position.

The Supreme Court states that in, all cases, the participation of the taxpayer in the management of an SA whose registered office is in Greece, by itself, does not support the tax authorities' rejection of the change of residence, irrespective of whether such participation results in the maintenance of the taxpayer's center of vital interests in Greece. Therefore, the Court ruled that the tax authorities' argument that participation in management was of definitive importance for the determination of the taxpayer's center of vital interests and that this center was a distinct criterion for the determination of the taxpayer's residence violated the terms of the law ([article 4 paragraph 1](#), Greek ITC (in Greek only)). The tax authorities failed to take into account other relevant factors for determining residence and failed to recognize that the center of vital interests is simply a factor used in determining a taxpayer's permanent home and is not a distinct criterion.

- Both Supreme Court decisions, by duly interpreting the provisions of the law, clarified the position that the tax authorities may take as they have claimed, on a number of occasions, that an individual's participation in the capital and/or management of a Greek company negated the individual's change of tax residence.



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