

GMS Flash Alert

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Greece – Judicial Body Decides on Tax Residence and Filing of Joint Returns

A decision issued by Greece's Council of State (CoS) reverses the interpretation applied to date of an individual's tax residence and formulates a different approach regarding the filing of joint tax returns of spouses who are tax residents of different countries.¹ In particular, the CoS considers that separate tax residences of spouses is acceptable given current social and ethical norms and practices, as well as the socio-economic conditions of spouses.

WHY THIS MATTERS

International assignees, their program administrators, and their international tax service providers should familiarize themselves with this decision since the criteria and methodology for establishing a person's tax residence (in cases where spouses who are tax residents of different countries are filing joint tax returns in Greece) is now different, in light of the CoS ruling.

This could impact a variety of personal tax matters, among which, tax liability, tax burden, and compliance.

Other Key Aspects of the CoS Decision

For the determination of an individual's residence, the CoS considers that all relevant details arising from the facts of each case should be cumulatively taken into account. Subsequently, any decision of the tax authority – which according to the court bears the burden of proof – should be specifically justified and not merely based on the residence of the spouse and children in Greece.

Moreover, the CoS considers that spouses should file a joint tax return only where both of them are Greek tax residents. In case one of them is not a Greek tax resident, then there is no obligation to file a joint tax return. Conversely, the fact that one of them is a Greek tax resident is not itself sufficient to give rise to the obligation to submit a joint tax return.

KPMG NOTE

It is quite possible that the time is nearing when the Greek tax system may see its rules and practices altered to finally accept separate tax returns from married couples.

FOOTNOTE:

1 Text of case ΣτΕ 1445/2016 (in Greek) can be found on TaxHeaven, at: <https://www.taxheaven.gr/laws/circular/view/id/24083>. (Please note this is a 3rd party Web site which KPMG does not endorse nor with which KPMG has any relationship.)

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RELATED RESOURCE

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