

# Tax - Breaking News

July 2016



As part of our continuous effort to keep you informed of the latest tax developments, we summarize below an important clarification introduced by the decision issued by the Council of State no A1445/2016 concerning the tax residence of an individual and the filing of joint tax returns

- A decision issued by the 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. In particular, the CoS considers that separate tax residences of spouses is acceptable given current general social and ethical norms, including the social - economic conditions of spouses.
- Furthermore, 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 Court 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. Finally, the Court emphasizes that the system should adapt to the tax law rules and serve the needs of proper implementation of the rules instead of tax legislation being applied on the basis of the system's restricted capabilities.

Perhaps the time has finally come for the tax system to be updated to accept separate tax returns?

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**This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.**

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