

Greek Supreme Court rules on spouses' tax residence status

Greek tax authorities do not accept separate tax residence status for spouses. Under the current practice, a spouse is considered a Greek tax resident by default if the other spouse resides permanently in Greece. In addition, the Greek electronic tax registration system does not include the option of entering separate residence statuses.

According to a very recent irrevocable judgment of the Greek Supreme Administrative Court (Judgment n. 1445/2016) (a) spouses may be tax residents of different countries, (b) the Greek electronic tax registration system must be modified in order to support such separate tax residence status and (c) Greek tax authorities must substantiate their arguments when challenging the non-Greek tax resident status of individuals. The above conclusions of the court judgment are binding.

The foregoing ruling was based on the following factual background:

A German self-employed architect married to a public servant (judge) who is a Greek tax resident claimed an exemption from the Greek obligation to declare his worldwide income in Greece in his capacity as a German tax resident.

The Greek tax authorities recognised the German spouse's strong economic relationships and vital interests in Germany. However, they rejected his request on the basis that his spouse resides in Greece with their underage child and therefore he maintains a "home" in Greece, thus having strong personal relations in Greece.

In order to support his claim, the German spouse submitted (i) documents evidencing contractual commitments in Germany, which require full presence therein during the working week and (ii) a German tax residence certificate.

The Greek Supreme Administrative Court accepted the above documentation and ruled that the German spouse maintains stronger relationships with Germany and he should therefore be considered a German tax resident regardless of his marital status, taking also into consideration the modern way of life.

For purposes of substantiating its position, the Court also referred to relevant CJEU jurisprudence.

As mentioned above, only the above principles set by the court under (a)-(c) should be considered binding for the tax administration. This means that Greek tax authorities may still challenge the tax residence status of spouses on the basis of a different factual background. However, such decision may have a favourable impact on similar situations.

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