



May  
2017



## Israeli Tax Residency of Individuals: New Supreme Court Case

Recently, the Israel Supreme Court published its ruling in the case of **John Doe V. Ashkelon Income Tax Assessor Officer**. This ruling may have a significant implication on individuals' tax residency under Israeli tax law. An individual is considered an Israeli resident for tax purposes, if his center of life is in Israel, and the ruling examines the issue of determining one's center of life.

### The Facts

John Doe made Aliyah as a child, got married and had four children in Israel. Since 1992, most of his business activity took place outside of Israel, although he maintained investments and business activity in Israel. During his years abroad, despite being married, John Doe had relationships with women located in his places of business. His wife and children continued to reside in Israel, under John Doe's financing. In addition, John Doe used to spend holidays, as well as some weekends, in Israel with his family. John Doe filed an appeal to the Israeli Supreme Court, following the ruling of the District Court that he was to be regarded as an Israeli tax resident.

The Supreme Court rejected John Doe's appeal and upheld the District Court's ruling. As a result, a number of material issues arose, which may hold significant implications:

- 1. Calculating the days spent in Israel as part of the "Days Presumption"** – the Israeli Tax Ordinance ("ITO") defines a "Day" as including "part of a day". The Court addressed the question of how to calculate the entrance day to Israel and the exit day from Israel, when the individual did not spend a full day in Israel. The Court held that both days should be counted, and therefore, determined that the "Days Presumption" had come into effect and accordingly shifted the burden of proof to rebut the presumptions onto John Doe.

2. **Permanent abode in Israel** – the Court determined that the most significant criteria for a residence to be considered a permanent abode is the availability of the residence to the individual, from both a physical and legal perspective. Despite the fact that John Doe had several different residences around the world that meet the conditions for a permanent residence, the Court ruled that since the residence in Israel meets the relevant criteria, John Doe has a permanent abode in Israel.
3. **Family's place of residence** - The Court ruled that despite John Doe's claim that his marriage in Israel was purely for formal purposes, the fact that he decided not to divorce his wife out of respect for his family and children as well as for his community in Israel, indicates his strong affinity to Israel.
4. **Individual's status and taxes paid globally** – the Court attributed weight to John Doe's status in other countries and to the fact that John Doe did not report and paid taxes elsewhere, stating that in certain cases, the fact that an individual is not a tax resident elsewhere weakens the claim that his center of life is outside Israel.
5. **Business and economic ties to Israel** – John Doe held various investments in Israel amounting to tens of millions of NIS, including investments in securities of Israeli corporations, Israeli real estate assets and Israeli bank accounts. Even though a major portion of his business was conducted outside Israel and his investments in Israel were immaterial compared to the total investments outside Israel, the Court determined that since John Doe held significant economic interests in Israel, he did not assume the burden of proof that was imposed upon him to prove he is not an Israeli tax resident.

The Supreme Court's decision is of importance since it addresses several essential matters, regarding which there was no clear and binding precedent. The ruling allows for a better understanding of the "center of life" test, as specified in the ITO and developed in various case laws in recent years.

**For further information please contact:**



**Daniel Paserman, Adv. (CPA), Head of Tax**

✉ paserman@gornitzky.com

☎ office: +972-3-7109191

📠 fax: +972-3-5606555



**Ofer Levy, Adv. (CPA)**

✉ oferl@gornitzky.com

☎ office: +972-3-7109191

📠 fax: +972-3-5606555