

New Proposed Tax Residency Rules for Individuals



In November 2021, The Committee for International Tax Reform published recommendations for revisions in the Israeli international tax regime; [see our previous publication in this regard](#).

On July 24, 2023, the government took the first step for the implementation of the Committee's recommendations, as the Israeli Ministry of Finance published a proposed bill addressing the tax residency definitions for individuals under the Israeli Tax Ordinance (the "**Proposed Legislation**").

According to the current legislation, an individual is an Israeli tax resident if his "center of vital interests" is in Israel. This facts-and-circumstances test examines the individual's family, economic, and social ties.

In addition, there are two rebuttable presumptions based on the number of days an individual spends in Israel. Under these presumptions, an individual is considered a resident if s/he was present in Israel for:

- i. 183 days or more in a particular tax year, or
- ii. 30 days or more in a particular tax year, and the total period of his stay in Israel in that tax year and the two years preceding it is 425 days or more.

Both the individual and the Israeli Tax Authority can rebut the presumptions and prove the 'center of life' of the individual, while the burden of proof lies on the party challenging the presumption.

The Proposed Legislation introduces *irrebuttable* presumptions according to which an individual would be considered a tax resident of Israel if any of the following fact patterns occur:

- i. 183 days or more of presence in Israel in each of two consecutive tax years.
- ii. 100 days or more of presence in Israel in a particular tax year and the total period of stay in Israel in that tax year and in the two years preceding it is 450 days or more.

This presumption will not apply to a tax resident of a country with which Israel has tax treaty (a "**Treaty Country**"), provided that the individual holds a tax residency certificate issued by the Treaty Country and that he was present in that Treaty Country for 183 days and more in each of the said 3 years.

- iii. 100 days or more of presence in Israel in a particular tax year while the individual's spouse, including a common-law partner (a "**Spouse**"), is an Israeli tax resident.

At the same time, the Proposed Legislation introduces irrebuttable presumptions determining that an individual is a foreign tax resident, namely:

- i. If s/he spends less than 30 days per tax year in Israel, during each of the recent 4 tax years, s/he will be a foreign tax resident from the beginning of the 4 year period; or

If s/he spends less than 30 days per tax year in Israel, during each of the recent 3 tax years, s/he will be a foreign tax resident starting at the beginning of the second tax year.

The presumptions provided in this subsection (i) will apply under the condition that no more than 15 days are spent in Israel during the first month of the first tax year or the last month of the last tax year.

- ii. If an individual and her/his spouse spend less than 60 days per tax year in Israel, during each of the recent 4 tax years they will be foreign tax residents from the beginning of the 4 year period; or

If an individual and her/his spouse spend less than 60 days per tax year in Israel, during each of the recent 3 tax years, they will be foreign tax residents from the beginning of the second tax year.

The presumptions provided in this subsection (ii) will apply under the condition that no more than 30 days are spent by the couple in Israel during the first two months of the first tax year or during the last two months of the last tax year.

- iii. If an individual and her/his spouse spend less than 100 days per tax year in Israel, during each of the recent 4 tax years they will be foreign tax residents from the beginning of the 4 year period, only if they spend more than 183 days in a Treaty Country, and obtain a certificate of residency therefrom; or

If an individual and her/his spouse spend less than 100 days per tax year in Israel, during each of the recent 3 tax years, they will be foreign tax residents starting at the beginning of the second tax year, only if they spend more than 183 days in a Treaty Country, and obtain a certificate of residency therefrom.

The presumptions provided in this subsection (iii) will apply under the condition that no more than 50 days are spent by the couple in Israel during the first 100 days of the first tax year or the last 100 days of the last tax year.

The Proposed Legislation maintains the rebuttable presumptions and the center of life test, examining the individual's vital interests in cases where the irrebuttable presumptions would not apply.

The Proposed Legislation will not apply retroactively; however - previous years could be considered when examining the applicability of the Proposed Legislation for the years to follow. It should also be noted, that according to the Proposed Legislation the tax residency could also be determined for part of the tax year.

Though the purpose of the Proposed Legislation was to increase certainty, it seems that the conditions included in the Proposed Legislation are complicated and the phrasing thereof is not clear enough, and thus may cause complexities in interpretation and implementation of the rules set therein. However, the Proposed Legislation is not yet in effect and could potentially (and hopefully) undergo modifications.

Please feel free to contact us with any questions that you have on this matter.



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