Defining Tax Residency in Greece

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Before Law 3943/2011 (March 31, 2011) came into force, the definition of tax residency in Greece followed the definition of domicile according to articles 51 and 53 of the Greek Civil Code:

- a person’s domicile is his main and permanent abode;
- no one is permitted to have more than one domicile at the same time (article 51);
- the domicile is maintained until a new one is acquired; and
- if a person’s last domicile cannot be determined, his place of residence will be considered as his domicile (article 53).

To acquire a domicile, the individual’s bodily presence at that specific location was required, as well as the individual’s intention to make that place the center of his life, vital relations, material interests and existence, and professional establishment.

Before Law 3943/2011 came into force, the Greek Income Tax Code stated:

Liable to tax is any individual that acquires income in Greece, regardless of his nationality, domicile or residence. Furthermore, any individual, regardless of his nationality, is liable to tax in respect of his income from sources situated abroad, if his domicile is in Greece. In sum, all Greek residents are liable to tax in respect of their global income, while everybody is liable to tax in respect of their income from sources in Greece.

Law 3943/2011 amended the fiscal domicile regime as follows:

- it broadened the category of individuals that are subject to Greek tax regarding their global income, by including along with the persons domiciled in Greece all “long-standing residents”;  
- it defined long-standing residency;
- it imposed additional formalities regarding the procedure for declaring a change of domicile from Greece to another country; and
- it imposed new rules for all individuals already registered as domiciled abroad, as a requirement for maintaining their existing status.

The Provisions

The new provisions (article 2 of the Greek Income Tax Code regarding “persons subject to tax”) state:

a) any natural person which has his domicile or habitual residence in Greece is liable to tax on his global income; and

b) regardless of the location of their domicile or habitual residence, all natural persons are liable to tax on income from sources in Greece.

A person is deemed to be a habitual resident in Greece if that person resides in the country for a total of more than 183 days within one calendar year. Residency is presumed to be habitual, unless otherwise proven by the person who is subject to tax.

Article 2(2) contains special provisions for persons working for Greek public-sector services and international organizations abroad. Similarly, all dependent family members are deemed residents in Greece unless they have their domicile or habitual residence in a country where they are liable to tax on their global income.
income and this country is not included in the list of noncooperative countries (offshore jurisdictions)\(^1\) included in article 51A(4) of the Greek Income Tax Code.

For three consecutive years and only once, a natural person who has a habitual residence in Greece is liable to tax solely on the income from sources in Greece if he has global income from a country that:

- has not concluded an income tax treaty with Greece; and
- is not included in the list of noncooperative countries.

The three-year duration is calculated from the initiation of the natural person’s residency in Greece. A foreigner (natural person) is exempt from taxation on his global income even though he has a habitual residence in Greece that exceeds the 183-day limit and originates from a country with which Greece does not have an income tax treaty, since the competent Greek tax authority cannot put into practice the principles stipulated by a treaty regarding the discovery of global income (for example, exchange of information, mutual settlement procedure in the case of a double domicile, and so forth). For this reason, the provision reads that since they are liable to tax on their global income in a “cooperating” country (a country that is not included in the list in article 51A), they will be taxed on their income only from sources in Greece and only for a three-year period.

According to article 2(1)(3) of the Greek Income Tax Code as amended, habitual residence is substantiated when a natural person resides in Greece for a period exceeding 183 days within the same calendar year. A day of presence in Greece is deemed to be any day during which a natural person is in the Greek territory, however short the duration (for example, part of one day, day of arrival and departure, holidays, and so forth). Any full day of stay outside Greece will not be calculated into the duration. Residency is presumed to be habitual unless otherwise proven by the person subject to tax, unless he submits documentation proving his residency in another country.

However, the Greek legislature had already introduced the term “habitual domicile” (referred to as habitual domicile) in Decision Δ247B/1-3-88, issued by the Ministry of Finance, which was ratified by article 11(4) of Law 1839/1989, and which is also referred to in article 76 of Law 2127/1993 regarding exemptions from the Special Tax on Consumption. Decision Δ247B/1-3-88 states in article 3:

Habitual domicile is deemed the place where a person usually abides, namely at least one hundred and eighty five (185) days, whether consecutive or not, within a twelve month period, due to personal and professional relations or in the case of a person with no professional relations, who however has personal relations from which arises a close relation between the person and the location of its domicile. However, the habitual residence of a person whose professional relations are situated in a different place than that of his personal relations and is for that reason obliged to reside alternatively in different places, which are located in two or more different countries, is deemed to be where his personal relations are, under the condition that he regularly returns to that place. The latter precondition is not required in the case of a person residing in a country in order to carry out a mission with a predetermined duration.

This provision has not been abrogated until now, creating perplexity as to how both definitions of habitual domicile — the most recent definition added in article 2 of the Greek Income Tax Code and the one found in Decision Δ247B/1-3-88 — can coexist.

**Obligations for Persons Domiciled Abroad**

Recent changes introduced by Law 3943/2011 do not concern only those individuals who are now declaring their change of domicile due to immigration abroad, but also those already registered as domiciled abroad. More specifically, article 71(7) and (8) of the Greek Income Tax Code, which was added with article 12(5) of Law 3943/2011, provides:

Any natural person declaring that he is liable to tax with respect only to his income from sources in Greece shall submit to the competent tax authority for nonresidents any documentation proving it, according to the relevant decision by the Ministry of Finance.

If these documents are not submitted, or are overdue, the individual will be deemed to be domiciled in Greece and will be liable to pay tax on his global income. The provision also reads that this decision by the Ministry of Finance also determines the way chargeable persons will be summoned, the procedure regarding the submission of the documents, and any other relevant issue.\(^2\)

\(^1\)According to article 51A of the Greek Income Tax Code (updated on January 20, 2012), the following are considered noncooperative countries: Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, Brunei, the Cayman Islands, the Cook Islands, Costa Rica, Dominica, Gibraltar, Grenada, Guatemala, Guernsey, Hong Kong, the Isle of Man, Jersey, Lebanon, Liberia, Liechtenstein, the Former Yugoslav Republic of Macedonia, Malaysia, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Panama, the Philippines, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Samoa, Seychelles, Singapore, Turks and Caicos, the U.S. Virgin Islands, Uruguay, and Vanuatu.

\(^2\)For a related decision, see ΠΟΑ 1145/31.5.2012.
Change in Individual’s Country of Residence

Law 3943/2011 added paragraphs 5 and 6 to article 76 of the Greek Income Tax Code, setting out the criteria that the Greek tax authority will take into consideration when an individual intends to transfer his domicile or habitual residence to another country:

- According to the new paragraph 5 of article 76 of the Greek Income Tax Code, if the taxpayer states that he intends to transfer his domicile or habitual residence to a country included in the list of non-cooperative countries of article 51A, his domicile is deemed to be in Greece and he is liable to tax regarding his global income.

- According to the new paragraph 6 of article 76 of the Greek Income Tax Code, if the taxpayer states that he intends to transfer his domicile or habitual residence abroad, he will continue to be liable to tax in Greece regarding his global income, for a five-year period, starting on the date when the change of domicile or habitual residence is declared, provided that all of the following requirements are met:
  - The taxpayer was liable to tax in Greece on his global income for the past five years before the declaration of change of domicile or habitual residence.
  - The taxpayer transfers his domicile or habitual residence to a country where his income is subject to a privileged tax regime, within the meaning of article 51A(7) of the Greek Income Tax Code, which provides that a country with a privileged tax regime is a country in which the natural person is not liable to tax or, if liable, he is not taxed de facto, or is taxed regarding his income/capital and the tax is equal to or less than 60 percent of the tax rate that would have been charged if he had been a Greek resident.
  - The taxpayer has important financial interests in Greece — namely, at the time of the declaration for the change of domicile or habitual residence, he:
    - participates with a share of at least 25 percent in a company liable to tax, according to the provisions of article 2(4) of the Greek Income Tax Code (for example, a limited partnership (O.E.) or general partnership (E.E.) company, civil partnership, or joint venture) or participates with a share of at least 5 percent in a legal entity liable to tax, according to the provisions of paragraphs 1 and 2 of article 101 of the Greek Income Tax Code;
    - his income from sources in Greece is higher than 30 percent of his total income or is higher than €45,000 (about $57,485); or
    - the value of his assets in Greece, which yield an income, is higher than 30 percent of the value of his total assets or higher in value than €150,000 (about $191,625).

Now, a simple notification to the Registry Department of the competent tax authority’s intention to change his domicile does not automatically imply this change of domicile (as was the case before the law amendment). In addition to the investigation regarding the existence of domicile or habitual residence in Greece, an investigation will be made to verify whether the taxpayer meets the criteria, since if he meets these criteria he must declare his global income in Greece, as domiciled in Greece.

For this purpose, the taxpayer will submit before the Registry Department of the competent tax authority a request (Form M0) to change domicile, attaching forms M1 and M7. The Registry Department will then forward the request along with the attached forms to the Income Department of the same tax authority, which will determine whether the criteria are met. If the taxpayer meets the criteria, he will be notified in writing that his request for domicile transfer is accepted, and the notification along with the attached forms will be filed under his name. If the taxpayer does not meet the criteria, the Income Department of the tax authority will forward to the Registry Department the two forms, M1 and M7, stating the date of the change of domicile. The tax authority will mail the domicile transfer certificate to the person’s address of service.

If a taxpayer who meets the above criteria intends to move to a country with which Greece has concluded an income tax treaty, he must submit a certificate issued by the foreign competent tax authority stating that he is registered as tax resident in that country. Then the issue of double tax residency arises. In that case, the competent service of the Ministry of Finance (Directorate for International Financial Relations) will contact the foreign tax authority to address the issue.

Defining Tax Domicile

The new amendments that hamper both the procedure for changing domicile for tax reasons and the procedure for those already meeting the criteria should be read in light of Greece’s income tax treaties, which enjoy a superior status over Greek laws. Article 28 of the constitution states that international conventions, once validated by law and entered into force, have precedence over any other contrary law provision. Thus, if the above provisions differ from one of Greece’s income tax treaties, the latter will prevail.3

3Greece has signed many treaties, and most, if not all, comply with the OECD standard.