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Significant Legislative Change Expected in the Test for Determining an Individual as an "Israeli Resident" for Income Tax Purposes

July, 2025

לדיווך בעברית, לחצו כאן.

Dear Clients,

On July 2, 2025, a draft bill was published to amend the Israeli Income Tax Ordinance (the "Draft Bill" and the "Ordinance," respectively), which, if enacted, will establish new criteria for classifying an individual as an "Israeli resident" or a "foreign resident" for income tax purposes. The primary innovation in the Draft Bill is the introduction of conclusive presumptions for clear-cut cases, where the classification as an Israeli or foreign resident will be determined solely based on the number of days spent in Israel, excluding the need to examine the "center of life" of an individual as is currently required. For cases that do not fall under the conclusive presumptions, the individual's residency will continue to be determined in accordance with the center of life test, as is currently the practice.

The Draft Bill has only been published for public comments at this time. If the Draft Bill is enacted as currently worded, it will constitute a substantial amendment to the residency test for individuals under the Ordinance. However, as is common during the legislative process (including discussions in the Finance Committee), it is highly likely that changes will be made to the original proposal.

Background – The Current Residency Test

Since 2003, Israel has applied a combined territorial and personal tax system, similar to many other countries. Under this system, Israeli residents are required to pay income tax in Israel on their worldwide income (whether

the income was generated in Israel or abroad). By contrast, foreign residents are required to pay income tax in Israel only on income sourced in Israel. Accordingly, the determination of whether a person is an “Israeli resident” for tax purposes is critical.

Currently, under the definitions of “resident” or “Israeli resident” and “foreign resident” in Section 1 of the Ordinance, an individual’s residency is determined both according to the **center of life test** and according to **quantitative rebuttable presumptions**.

An **“Israeli resident”** is someone whose center of life is in Israel.

- The center of life test is a qualitative test that examines, among other things, the location of the taxpayer’s permanent home, the residence of the taxpayer and their family, the location of their regular occupation or employment, the center of their economic interests, their involvement in organizations and institutions, and other similar factors. (the “center of life test”).

- In addition, the Ordinance sets out quantitative rebuttable presumptions, which may be rebutted by either the tax assessor or the taxpayer. If these presumptions are met and not rebutted, the individual’s center of life is deemed to be in Israel. These presumptions state that if an individual is present for 183 days or more in Israel in a given tax year, or if they are present for 30 days or more in Israel in the tax year and a total of 425 days or more in Israel during the tax year and the two preceding years, their center of life is deemed to be in Israel for that tax year (the “rebuttable presumptions”).

The center of life test (in conjunction with the rebuttable presumptions) creates a certain degree of uncertainty, leading to complexity and contention with the Tax Authority regarding its application. The Draft Bill is intended, in part, to increase certainty regarding the determination of residency; to reduce controversy and disputes between taxpayers and the tax authorities; and, from the perspective of the Tax Authority, to alleviate detrimental effects to the state treasury resulting from tax planning by taxpayers.

Proposed Changes in the Draft Bill – Determining Residency Based on Irrebuttable Presumptions Solely According to Days Spent in Israel

The Draft Bill proposes to establish two types of **conclusive presumptions** (irrebuttable), with the first type of presumption examining only the individual’s days of presence, and the second type of presumption examining the days of presence of the individual and their spouse (including common-law partners). If either of these presumptions are met, the individual will be deemed an Israeli resident or a foreign resident, as applicable. In other words, if an individual is present for a substantial number of days in Israel (as detailed below) within a certain period of years, they will be deemed an “Israeli resident”; conversely, if they are present for a minimal number of days in Israel over several years, they will be deemed a “foreign resident,” all without the need to examine the center of life test.

Weighted Days of Presence. The Draft Bill, inspired by a test in U.S. federal tax law, proposes to assign different weights to days of presence in Israel depending on their relation to the tax year under examination. Days spent in Israel during the tax year under examination will be counted in full, while days spent in the preceding or following tax year will be counted as one-third of a day. Days spent in the second year before or after the tax year under examination will be counted as one-sixth of a day (“weighted days of presence”). It should be noted that the existing rule for counting days will

continue to apply, whereby a partial day in Israel is considered a full day for these purposes.

The Draft Bill also updates the criteria listed in the center of life test (although not an exhaustive list) to explicitly include days of presence as a criterion to be considered.

- **Conclusive Presumptions for Israeli Residency (irrespective of the Center of Life Test):**

    1. **Days of Presence – Individual Only:** An individual who is present for 75 days or more in Israel during the tax year, and in addition, is present for a total of 183 weighted days or more in Israel during the tax year and in one of the following periods:

        a. The two preceding tax years.

        b. The preceding tax year and the following tax year.

        c. The two subsequent tax years.

    2. **Days of Presence – Individual and Spouse (including common-law partners):** An individual who is present for 30 days or more in Israel during the tax year, and whose spouse (including a common-law partner) is considered an Israeli resident under the previous conclusive presumption, and in addition, the individual is present for a total of 140 weighted days or more in Israel during the tax year and in one of the following periods:

        a. The two preceding tax years.

        b. The preceding tax year and the following tax year.

        c. The two subsequent tax years.

- **Conclusive Presumptions for Foreign Residency (irrespective of the Center of Life Test):**

    1. **Days of Presence – Individual Only:** An individual who is present for 74 days or fewer in Israel during the tax year, and in addition, is present for a total of 110 weighted days or fewer in Israel during the tax year and in each of the following periods:

        a. The two preceding tax years.

        b. The preceding tax year and the following tax year.

        c. The two subsequent tax years.

    2. **Days of Presence – Individual and Spouse (including common-law partners):** An individual, who together with their spouse, is present for 90 days or fewer in Israel during the tax year, and in addition, both the individual and their spouse (each separately) are present for a total of 125 weighted days or fewer in Israel during the tax year and in each of the following periods:

        a. The two preceding tax years.

        b. The preceding tax year and the following tax year.

        c. The two subsequent tax years.

According to the Tax Authority, **the above scenarios are conclusive cases in which calculating the days of presence alone is sufficient to determine Israeli or foreign residency, without the need to examine the center of life test.**

As these are conclusive presumptions, they cannot be rebutted, even if there are circumstances indicating that the individual's center of life is in another country. In such cases, the only recourse would be to rely on tax treaties or on other relief that may be legislated, if any.

In cases where none of the conclusive presumptions apply, the existing law will continue to apply whereby residency will be determined according to the center of life test. In applying the center of life test, days of presence will be considered as a criterion, but without reference to the current rebuttable presumptions, which are proposed to be repealed.

It should be emphasized that if a tax treaty to prevent double taxation exists between Israel and a particular country, a person who is considered a resident of that country may still apply the "tie-breaker" rules of the treaty. These rules provide that if a person is considered a resident of both countries under their respective domestic tax laws, residency will be determined according to the tie-breaker rules set out in the treaty. These rules will continue to apply even to those considered Israeli residents as a result of the application of a conclusive presumption.

While the Draft Bill clarifies that the residency tests set forth in tax treaties to which Israel is a party will prevail over the proposed conclusive presumptions, in the case of a person residing in a country that does not have a tax treaty with Israel (such as Cyprus) and for whom one of the Israeli residency presumptions applies, it will not be possible to rebut this presumption even if the person can prove that their center of life is elsewhere. Examples may include when a person can prove that he or she lives in that country with their family in their own home, or have other ties.

In addition, the specific cases detailed in the Income Tax Regulations (Determination of Individuals to be Considered as Israeli Residents and Determination of Individuals Not to be Considered as Israeli Residents), 2006, will continue to apply, and the above conclusive presumptions will not apply to those cases for residency determination purposes.

The Draft Bill also sets out provisions regarding the determination of residency in transition years when an individual leaves or returns to Israel and codifies the principle of the split tax year, which has previously been recognized in case law. According to the Draft Bill, in the first tax year in which an individual becomes an Israeli resident, they will be considered a resident only for part of the tax year – starting from the first day in that year on which they were present in Israel. In the last tax year in which the individual was an Israeli resident, they will be considered a resident until the last day in that year on which they were present in Israel. It is also proposed that presence in Israel for visits not exceeding 21 consecutive days will not be taken into account for the purpose of determining the start or end date of residency (but such days will be counted for the purpose of calculating days of presence for the conclusive presumptions and the center of life test). This rule will apply provided that the total days of presence in Israel do not exceed 21 days in the tax year before or after the visit, as applicable.

Primary Implications of the Proposed Change

The current Draft Bill is essentially a continuation of a previous draft bill on this subject from July 24, 2023 , which was published for public comment but did not progress to legislation, both of which were derived from

recommendations by a committee on international tax reform that discussed these issues in 2021.

The presumptions proposed in the current Draft Bill differ from the previous draft, both for determining Israeli residency and for determining foreign residency.

The establishment of the above conclusive presumptions will increase certainty as to whether a particular taxpayer will be considered an Israeli or foreign resident and will reduce controversy with the Tax Authority on this issue, as the Tax Authority will also be precluded from rebutting a conclusive presumption. This will leave a smaller number of cases in which it will be necessary to examine the center of life test. This reduction allows for more precise planning of residency status by using the number of days of presence, but eliminates the planning flexibility (except for treaty purposes) provided by the various center of life parameters, where the number of days of presence triggers the conclusive presumptions.

The change in the law will affect not only the status of individuals but also the status of trusts, whose taxation and classification are affected by whether the settlors or beneficiaries are Israeli residents, which may have significant implications.

According to the Draft Bill, the changes to the rules for determining the residency of an individual will go into effect in the tax year beginning after the effective date, even if some of the factual conditions for determining residency were met in the tax year in which the effective date occurs or in the preceding tax year. However, it can be assumed that if the Draft Bill becomes law, its principles will serve as a guiding criterion even for earlier tax years.

Our firm has extensive experience representing individuals, trusts, and companies in various international tax matters, including residency determination, and in particular, tax planning for individuals and families prior to moving to Israel or prior to "breaking residency" with Israel. We would be pleased to assist you in examining the implications of the Draft Bill as they relate to your specific circumstances and to help you prepare for the anticipated legislative changes.

Please note that the above is general information only, does not address specific circumstances or facts, and should not be considered as a legal opinion and/or legal advice regarding any particular matter.

We are at your disposal for any questions or clarifications and would be happy to assist in any matter.

Sincerely,

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