



Greece issues updated guidance on the application of tax residency and permanent establishment rules during COVID-19 outbreak

By virtue of the recently issued Administrative Circular E. 2130/2021, the Greek Tax Administration has provided additional guidelines in relation to the application of domestic law and double tax treaty provisions with respect to matters such as the tax residency of individuals and legal persons and permanent establishments (PE), in light of the exceptional circumstances resulting from the COVID-19 pandemic. Circular E. 2130/2021 updates the previous Circular E. 2113/2020 and covers the period as of 15 June 2020.

The Tax Administration, taking into account the ongoing public health measures imposed by the Greek Government against the COVID-19 outbreak and based on the relevant guidance issued by the Organisation for Economic Co-operation and Development, has clarified that **the period from 9 November 2020 to 14 May 2021** is considered as a **second period of objective inability to travel due to the COVID-19 pandemic** for the purpose of applying the relevant provisions of articles 4 (tax residency) and 6 (PE) of L. 4172/2013 - the Greek Income Tax Code (the prior issued Circular E. 2113/2020 had already set the period from 18 March to 15 June 2020 as the first period of objective inability to travel). Said period shall not be taken into account for the application of the relevant provisions.

Detailed discussion:

Tax residency of individuals

- ▶ The period from 9 November 2020 to 14 May 2021 shall not be taken into account for the assessment of the tax residency status of foreign tax resident individuals, due to the increased restrictive measures imposed during that period against the COVID-19 pandemic. For the period as of 15 June to 9 November 2020, it shall be assessed on a case-by-case basis whether travel restrictions were in place.
- ▶ With respect to individuals who work remotely from Greece (teleworking) for a non-Greek tax resident enterprise, further examination of the exact facts and circumstances that may affect their habitual abode will be required, such as whether:
 - ▶ Their presence in Greece is related to the extraordinary circumstances shaped by the COVID-19 pandemic;
 - ▶ The enterprise still provides an office, which in the absence of public health measures is available to the relevant employee;
 - ▶ The employment contract in place specifically provides for the provision of the employment services by the employee remotely (i.e. from home) as a mandatory condition etc.

Tax residency of legal persons / entities

- ▶ The place of effective management of a legal person or entity and especially factors, such as the place where decisions are made or the residence of persons that participate in the corporate bodies, shall be assessed in the light of the exceptional circumstances under which enterprises operate, as shaped in every case and based on the public health measures taken in response to the COVID-19 pandemic.
- ▶ Consequently, the period from 9 November 2020 to 14 May 2021 shall not be taken into account when determining an enterprise's tax residence, due to the increased restrictive measures imposed during that period against the COVID-19 pandemic. For the period from 15 June to 9 November 2020, it shall be assessed on a case-by-case basis whether travel restrictions were in place.
- ▶ Legal persons / entities should be in position to demonstrate by all appropriate means that any change in the location of directors or other executives is temporary. In addition, for that purpose, any other factors, facts and circumstances should be taken into account.

Permanent Establishment (PE) - Home Office

- ▶ The continuation and establishment of teleworking measures by a large number of enterprises (e.g. with a view to either avoiding the overcrowding in workplaces or due to the reintroduction of the measure of mandatory stay at home) may affect the presence of individuals in Greece and thus PE issues may arise for foreign employers.
- ▶ The Greek Tax Administration has clarified that the existence of a fixed place of business with sufficient degree of permanence through which the business of an enterprise is wholly or partly carried on continues to be required for a PE to be deemed to exist.
- ▶ The temporary presence of an individual in Greece due to employment restrictions imposed by government orders in the context of impeding the spread of COVID-19 pandemic shall not be taken into account for the existence of a PE.
- ▶ However, PE issues would be triggered where a specific location (e.g. an employee's home office) is used on a continuous basis for carrying on business activities for an enterprise and the latter has required the individual to use said location; in such a case, the enterprise may be deemed as having this location at its disposal. Also, where an individual continues to work from home for a prolonged period after the cessation of the public health measures, the sufficient level of permanence requirement may be considered as met (being the new norm) and thus PE issues would be triggered.
- ▶ The period from 9 November 2020 to 14 May 2021 shall not be taken into account when assessing the existence of a PE (with the exception of building sites, construction or installation projects or related supervision activities), due to the increased restrictive measures imposed during that period against the COVID-19 pandemic. For the period from 15 June to 9 November 2020, it shall be assessed on a case-by-case basis whether similar restrictions were in place that would lead to the creation of a PE in Greece.
- ▶ Enterprises should be able to demonstrate by any appropriate means whether a PE exists in Greece whereas all facts and circumstances of each case should be cumulatively evaluated and assessed.

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