DRAMATIC CHANGES PROPOSED IN THE DEFINITION OF THE TAX TERM "ISRAELI RESIDENT"

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INTRODUCTION

In July, the Israeli Ministry of Finance published draft legislation aimed at reshaping the rules that determine when an individual is classified as an Israeli tax resident. The proposal introduces new numerical thresholds and a fresh framework for assessing residency. This article explains how the draft compares with existing law and what it may mean in practice.

BACKGROUND

Current Rules

Under current Israeli tax law, an individual's residency status is determined primarily by the "Center of Life" test, which examines personal, economic, and social ties to Israel and compares those ties to ties that exist with another country. In this regard, it is similar to the "Center Of Vital Interests" test that appears in Paragraph 2.a) of Article 4 (Resident) of the O.E.C.D. Model Tax Convention on Income and on Capital.

The test is supplemented by numerical presumptions. If an individual spends at least 183 days in Israel in a single tax year, or 425 days across three years (with a minimum of 30 days in the most recent year), the law presumes residency. This presumption is not absolute and may be challenged by either the taxpayer or the Tax Authority.

2023 Proposed Rules

In 2021, the Committee for International Tax Reform – a technical committee composed of representatives from both the Tax Authority and the private sector – recommended the adoption of a single-factor test based on the number of days an individual spends in Israel. That recommendation formed the basis for a 2023 draft bill which established an irrebuttable determination of tax residence or nonresidence in any of the following fact patterns.

Residence

- The individual is present in Israel for 183 days or more during any two-year period.
- The individual is present in Israel (i) for 100 days or more during the relevant tax year and (ii) for a total of 450 days over the tax year and the two preceding tax years. However, an individual who meets this test will not be considered an Israeli resident if he or she is present in a tax treaty partner

jurisdiction for 183 days or more and a tax residency certificate from that country has been issued.

- The individual is present in Israel for 100 days or more during the tax year and has a spouse or common law partner who is an Israeli resident during that year.

Nonresidence

- The individual is present in Israel for not more than 29 days in each tested tax year, except where the individual stays in Israel for 15 days or more within (i) the first 30 days of the first tested tax year described below or (ii) the last 30 days of the last tested tax year.
- The individual and that individual's spouse or common law partner are present in Israel for not more than 59 days in each tested tax year, except where at least one of the individuals is present in Israel for more than 29 days within (i) the first 60 days of the first tested tax year or (ii) the last 60 days of the last tested tax year.
- The individual and that individual's spouse or common law partner are present in Israel for not more than 99 days in each tested tax year and are resident in a tax treaty partner jurisdiction where each is present for at least 183 days each year. However, both will be treated as Israeli residents if either is present in Israel for 50 days or more within the first 100 days of the first tested tax year or the last 100 days of the last tested tax year.

A tested year is any year described below:

- The relevant tax year and the two subsequent tax years.
- The relevant tax year and the immediately preceding and subsequent tax years.
- The relevant tax year and the two preceding tax years.

2025 Proposal

In response to public criticism that the rules proposed in 2023 did little to reduce ambiguity, the Justice Ministry proposed a new set of rules that largely disregards the committee's findings and introduces a new framework.

The new framework relies on the calculation of weighted days of stay over a rolling five-year period consisting of (i) the tax year in issue, (ii) the two preceding years, and (iii) the two subsequent years. Within this framework, three testing periods are evaluated to determine whether an individual is an Israeli tax resident for a particular year. The testing periods are as follows:

- The current tax year and the two preceding years.
- The current tax year and the two subsequent years.
- The current tax year and the immediately preceding and subsequent years.

Tests for Residence and Nonresidence

Depending on the total number of weighted days of presence in Israel during the tested periods, an individual is determined to be either a resident or a nonresident of Israel. An individual is conclusively determined to be an Israeli tax resident in either of the following circumstances:

- The individual is present in Israel for 75 days or more during the current tax year, and cumulatively for at least 183 weighted days in any of the three-year testing periods.
- The individual is present in Israel for 30 days or more during the current tax year, and cumulatively for at least 140 weighted days of stay, and the individual's spouse or common-law partner meets the 75-day and 183-day thresholds mentioned in the preceding bulleted paragraph.

Conversely, an individual is conclusively determined to be a foreign resident for Israeli tax purposes in either of the two following circumstances:

- The individual is present in Israel for 74 days or less during the current tax year, and for a maximum of 110 weighted days in each of the three alternative calculation periods.
- The individual and his or her spouse are present in Israel for 90 days or less during the tax year, and for a maximum of 125 weighted days in each of the three alternative calculation periods.

Note that any part of an actual day of presence in Israel is treated as a full day for purposes of applying the weight given to that day. Thus, a person who arrives in Isael on a flight landing at 11:59 p.m. is treated as being present in Israel for a full day. The same rule applies to a departing flight leaving Israel that takes off at 12:01 a.m. That one minute constitutes a full day of presence.

The draft also addresses partial-year residency. If an individual becomes an Israeli resident after previously being a foreign resident, or severs Israeli residency and becomes a resident abroad, he or she will only be considered an Israeli resident for part of the tax year of arrival or departure, provided that no more than 21 cumulative days are spent in Israel outside the period of Israeli residence.

Weighting Factors

In computing days of presence, not all days in a three-year period are given the same weight. The calculation applies the following weights to the days in each year as follows:

- The current year in issue is given 100% weight.
- The immediately preceding year and succeeding year are given 33.33% weight.
- The second preceding year and the second succeeding are given 16.67% weight.

To illustrate, 150 physical days spent in an immediately preceding year or an immediately succeeding year would be counted as 50 days, while 150 days spent in a second preceding year or a second succeeding year in issue would be counted as 25 days. All 150 days of presence in Israel during the current tax year would be given full weight.

IMPLICATIONS OF THE NEW DRAFT

One major consequence of the draft bill is that any individual who spends fewer than 183 days in Israel in a given year, but accumulates 183 weighted days over three years, will be deemed an Israeli resident, with no option to contest this determination. The same result applies to an individual who spends 75 days or more in Israel but less than 183 days in one year, combined with 183 weighted days across three years. Even a person who limits presence in Israel to 30 days in one calendar year could be deemed an Israeli resident if that person's spouse or common law partner is an Israeli resident and is present in Israel for 140 weighted days or more in any of the 3-year measuring periods.

Conversely, an individual will be classified as a foreign resident if presence in Israel during the tax year is limited to not more than 74 days and presence in Israel over three years is limited to nor more than 110 weighted days. Alternatively, a couple who each spent 90 days or fewer in a given tax year and not more than 125 weighted days each over three years would be considered foreign residents.

EXAMPLES

The Goldman Couple from New York

Arty and Beth Goldman, long-time New York residents, own an apartment in Israel and visit annually to spend time with their grandchildren, ensuring they stay no more than 150 days in any tax year. They reside in New York for the remainder of the year and are actively involved in their local community. Under the new draft, the Goldmans would be conclusively classified as Israeli residents, with no recourse unless relief is granted under the Israel-U.S. Income Tax Treaty ("the Treaty"), as discussed below.

This scenario highlights the risk to frequent vacationers or retirees who maintain a home in Israel but clearly reside abroad. To clearly remain nonresident, people in this category must cap their stays to an average of 120 days per year (a gray zone). To be conclusively treated as foreign residents, these individuals should cap their stays at not more than 73 days or fewer per year or not more than 110 weighted days across three years (about 95 days annually).

Ravit, High-Tech Entrepreneur

Ravit, a high-tech entrepreneur is married to Ram, an Israeli resident. She spends around 100 days in Israel per year, with her residence and primary business operations centered in Silicon Valley. Under the proposed rules, Ravit would be classified an Israeli resident, solely because of her spouse's residency, despite her strong economic and social ties abroad. Absent recourse to relief under the Treaty, Ravit would need to cap her annual stays in Israel to not more than 96 days. To be considered a foreign resident definitively, she must cap her stays in Israel to not more than 75 days on average each year.

This example illustrates how the spousal presumption can override clear indicators of foreign residency, making the framework particularly harsh for global couples.

Yoni and Keren, Postdoctoral Studies and High-Tech Relocation

In August 2025, Yoni and Keren and their children relocate to Boston, where Keren will pursue postdoctoral studies and Yoni will transfer to the U.S. branch of his Israeli employer. In 2024, the family spent 50 days in Israel. In 2025, they plan to spend 210 days in Israel. To avoid being classified as Israeli Residents for the 2026 tax year and thereby also for 2025, the couple must cap their time in Israel to less than 21 days in 2025 from August to December, and less than 67 days in 2026.

Note, the Treaty will not provide a benefit for Keren if she is present in the U.S. under a student visa. However, it is likely that the family is present in the U.S. under Yoni's L-1 visa status as an intercompany transferee. That visa allows Yoni to work in the U.S.

"Note, the Treaty will not provide a benefit for Keren if she is present in the U.S. under a student visa."

This scenario illustrates the complexity of "tail-end" residency determinations when individuals enter or exit Israel. Similar rules would apply to first-time Israeli residents and senior returning residents having lived abroad for ten or more consecutive years. If adopted, the draft law could shift the calculation of the ten-year period, potentially accelerating tax exposure for returnees.

TREATY PROTECTION

Residence Tiebreaker

Israel has entered income tax treaties with most O.E.C.D. countries. These treaties establish rules for resolving dual residency through tiebreaker provisions that look to the location of an individual's permanent home, habitual abode, center of vital Interests, and citizenship. If none of the tiebreaker tests resolve the issue, the tax authorities of the respective countries are empowered to reach an agreement through a mutual resolution process. Note that they are not obligated to resolve the matter.

Splitting the Right to Tax

Even when the issue of sole residence for treaty purposes is resolved, another issue pops up. The jurisdiction that has the primary right to tax the individual – and in some cases, the exclusive taxing right – must be identified.

A person who exits from the Israeli tax net is subject to exit tax in Israel, which, under current rules, may be deferred to the date of the actual sale of the property. Israel will determine when the individual ceases to be an Israeli resident under its internal rule. This means that the Tax Authority will assert the right to tax the gain attributable through the date on which residence is relinquished. No foreign tax credit is available to offset the Israeli tax on that portion of the gain.

While treaty provisions may take precedence over domestic Israeli law, the right of a taxpayer to invoke a treaty benefit is subject to interpretation by the relevant tax authorities. Moreover, Israel has no tax treaties in effect with certain countries having low thresholds to tax residence and low tax rates. Individuals moving to such countries are exposed to unfavorable surprises if ties remain to Israel.

SUMMARY

It is worth questioning why the Israeli Tax Authority set aside the original committee's recommendations without broader consultation. While the stated aim was to increase certainty and reduce disputes, it is far from clear whether this goal will be achieved in the absence of treaty relief. If the proposal is enacted as drafted, many individuals who consider themselves to be nonresident may encounter unexpected challenges to claimed nonresident status.

While the effort to reduce uncertainty and enable individuals to plan their days in Israel is a positive objective, the thresholds established in the law are likely to be troubling to many.