



NEW COURT RULINGS ON RESIDENCE

In the light of 2 recent court rulings governing the issue of residence (Giora vs. Jerusalem Assessing Officer & Gonen vs. Haifa Assessing Officer) both given in December 2005, but relating to periods prior to the Income Tax Reform beginning in 2003, we summarise hereunder what appear to us to be the significant principles. The Gonen ruling was by the Supreme Court. Whilst the tax law-post 2002-now defines closely the definition of residence, it would appear that these rulings, as others (eg. the Zeiger-Eilat case) certainly provide further clarification (for individuals only):

A. The Gonen Case (Supreme Court)

1. "Focus/Centre" of life test is based more on the overall "picture" (objective and subjective) than a simple mathematical calculation of number of days. This general picture is influenced by various factors in the life of the person both prior and subsequent to the years under review. Change of status is not a one-time act but an on-going process over time.
2. Income tax directives indicate a range of factors that are to be considered (mentioned by the Court). These include time spent in Israel during the tax year, existence of assets in Israel, the place of residence of the taxpayer, place of residence of the family, type of residence, place of birth of person, and factors which indicate his/her intentions.
3. The Court referred to the new definitions as being of relevance even prior to 2003; this does have a bearing on the significance.
4. The judges (ie. a majority) held that the move to the US by the appellant, together with his wife and children, rental of home, purchase of car, opening new bank account, children studying in US, and set-up of new company/business indicate a process of change in residence.
5. Continued links to Israel-ownership of apartment, bank account, children in army and unpaid leave of absence by wife from place of employment- do not necessarily indicate continued residence in Israel.

B. The Giora Case (Jerusalem Regional Court):

1. In considering the subjective factors--the intention of the taxpayer--the Court ruled that the primary considerations concern the appellant, as distinct from his family, despite them having a bearing under certain circumstances.
2. The fact that the appellant returned to Israel, following his dismissal from work, does not, in the opinion of the Court, provide evidence that the intention was never to cease residence in Israel.
3. Short visits to Israel--never exceeding 2 months in any year--indicate that the appellant was not physically resident in Israel.
4. The Court also ruled that the wife's residing in Israel, under the circumstances (viz. children in the army, sick mother), do not automatically impact on the husband's "residence." (Similarly the children, particularly adult children.)
5. The judge indicated that continued payments to Bituach Leumi (National Insurance) and Kupat Cholim to safeguard rights relate to the future and not to current residence.
6. An important aspect here is the "total picture" approach adopted by the Court.

Do note that this is a brief summary of the court rulings; and again they are based on pre-tax reform law. They provide certain guidelines but proper professional counsel should be taken before acting hereon. We shall be glad to assist.

Warm Regards,

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