

# Tax Flash

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## Alternative taxation of employees who transfer their tax residence in Greece - Procedure and conditions

Following the introduction of the alternative taxation of income from salaried employment and business activity arising in Greece for individuals who transfer their tax residence in Greece (hereinafter "5C regime"), the decision A.1087/2021, which defines the procedure and the conditions for its application, was published in the Government Gazette. In detail:

### What are the conditions?

The 5C regime applies to individuals who transfer their tax residence in Greece, for the salaried employment income they obtain in Greece, provided that, cumulatively, they:

- were not Greek tax residents for the previous 5 of the 6 years before the transfer of their tax residence in Greece.
- transfer their tax residence from an EU Member State or EEA country or from a country with which an administrative cooperation agreement in the field of taxation with Greece is in force.
- provide services in Greece in the context of an employment relationship with a Greek legal entity or with a permanent establishment of a foreign company in Greece, including the Law 89/1967 offices.
- declare that they will remain in Greece for at least 2 years.

### What are the consequences?

The individual who is subject to the 5C regime is exempt from income tax and the solidarity contribution for 50% of the salaried employment and business activity income that he obtains in Greece during the tax year, while for the determination of his notional (deemed) income the amount which arises on the basis of the residence and the private car is not taken into account. Furthermore, the individual is obliged to declare all his income that arises in Greece, as well as any income that arises abroad, by submitting an income tax return in accordance with the applicable provisions.

It is noted that the inclusion in the 5C regime does not affect the taxation of inheritances or donations and therefore the individual is not exempt from inheritance or donation tax for property located abroad.

### What is the procedure and the deadline for inclusion?

For the tax residence transfer in Greece and the inclusion in the 5C regime, an application is submitted to the Tax Office for Foreign Residents and Alternative Taxation of Greek Tax Residents by the individual, no later than the 31st of July of the year of assuming his service or starting his business. The application and the supporting documents are submitted via e-mail, by post or at the protocol office of the Tax Office.

Especially for the applications for inclusion in the 5C regime, which will be submitted within the year 2021 and concern the assumption of service or commencement of business activity that will take place until 31 July 2021, the deadline for submitting the relevant application and the supporting documents expires on **30 September 2021**.

Can a person who transferred his tax residence in 2020 be included?

An application for inclusion in the 5C regime can also be submitted by individuals who have already transferred their tax residence in Greece and have concluded employment contracts or have started their business within the tax year 2020, if they were not Greek tax residents from 2015 until 2019. In case said persons have taken up salaried employment or started their business before 4 December 2020, it is not required to submit the formal declaration of the employer regarding the filling of a new job. However, for these persons the inclusion in the 5C regime will be valid from 1 January 2021 onwards. The deadline for submitting the relevant application and the supporting documents also expires on 30 September 2021 in this case.

Can a person earning income both from salaried employment and business activity be included?

An individual who earns income both from salaried employment and business activity arising in Greece, may be subject to the 5C regime, for all his said incomes, provided that the relevant conditions for each of the above income categories are met. Otherwise, the income tax and the solidarity contribution exemption apply only to the income category for which the conditions are met.

What supporting documents are required?

For the review of the beneficiaries' previous tax residence, it is not required to present supporting documents if the individual requests to be provided with a Tax Identification Number (AFM) for the first time or appears in the files of the Tax Administration as a foreign resident for 5 of the 6 previous years before the application to transfer his tax residence.

However, in the event that no evidence proving his tax residence abroad exist in the Independent Authority for Public Revenues' records, the individual must file a tax residence certificate by the competent tax authority of the state where he is resident, or a certificate for the application of the Double Taxation Treaty (DTT), as the case may be, for each of the years for which records are not available. If such documents are not required to be issued by the competent tax authority, a copy of the income tax return submitted to the other state or, finally, a certificate from any other public or municipal or other recognized authority, proving the permanent establishment of that person in the other state must be filed.

In order to prove the provision of service in Greece, the filing of supporting documents is required, which indicatively may be:

- the fixed-term or indefinite-term employment contract;
- the contract by which the individual concludes a dependent employment relationship with another person who has the right to define and control the manner, time and place of the provision of his services;
- the recruitment announcement form;
- the publication in the Business Registry (GEMI) of the act by which the individual is appointed as a director, member of the Board of Directors of a company or any other legal entity;
- the contract for the provision of legal services by an in-house lawyer.

Along with his application, the individual must submit a formal declaration stating that he will remain in Greece for at least two years starting from January 1st of the first year of his inclusion in the 5C regime. In addition, a formal declaration by the employer is submitted, which confirms that the applicant is filling a new job.

Especially for individuals who transfer their tax residence in Greece in order to carry out business activity in Greece, a declaration of commencement of individual business activity must also be filed to the competent Tax Office.

How is the 5C regime "linked" to the other alternative taxation regimes?

An individual may be included in the 5C regime, if he has already been included or simultaneously with his application for the alternative taxation regime of foreign investors transferring their tax residence in Greece (5A regime) or the alternative taxation regime for individuals earning income from pensions arising abroad, who transfer their tax residence in Greece (5B regime), and vice versa, if the relevant conditions of each regime are met at the time of inclusion.

What happens if the conditions are not met for a period of time?

If an individual who has been included in the 5C regime, does not meet the relevant conditions in a tax year, he ceases to be covered by the beneficial provisions from this tax year onwards and is taxed on all his income from employment or business activity obtained in Greece in accordance with the general provisions. This applies unless he concludes a new employment contract for a position for which the relevant conditions are met again or commences individual business activity within 12 months, informing also the competent Tax Office.

What happens if the job changes?

In any case where the job changes, the individual should inform the competent authority for the change of his employer and submit the formal declaration on behalf of the new employer about filling a new job, in order to continue to be subject to the 5C regime for as many years as are left for the completion of a period of 7 years.

Is it possible to re-apply for the 5C regime in case of withdrawal?

In case of withdrawal from the 5C regime, it is possible to re-apply for inclusion, provided that the new application is submitted at any time within the 7-year period. In the event that the individual remained a Greek tax resident, the conditions regarding the previous tax residence are not re-examined. However, if in the meantime he became a foreign tax resident, he may submit an application for which all the relevant conditions will be reconsidered. In any case, the inclusion will be possible for as many years as are left until the completion of 7 years from the initial inclusion in the 5C regime.

*It is noted that the decision does not provide clarity on some practical issues, such as, for example, how the monthly withholding taxes will be deducted by the beneficiaries' income, as well as how any amounts already withheld will be treated in cases of retroactive inclusion in the 5C regime. In addition, with regard to the conditions for inclusion, there is no clear definition of the concept of "new job", however, it is clarified that the fulfillment of this condition is proved by the formal declaration of the employer.*

*It is important to note that each individual case needs to be examined based on its own merits, and that the above-mentioned general principles might not necessarily capture all possible eventualities. Our expert advisors are in a position to advise you on the implications arising from a Greek perspective in relation to your specific case.*