

New Regime for Family Offices – Is Tax Certainty Included in the Package?

Greece recently introduced a new incentive regime to encourage the establishment of family offices. In this article, the author presents the main aspects of the regime, outlines key tax considerations and reflects on whether the regime serves its purported purpose, which is to establish an attractive framework for high-net-worth individual economic activity in Greece that also provides tax certainty.

1. Introduction

Article 25 of Law 4778/2021¹ introduced a set of amendments to the Greek Income Tax Code (ITC)² and the Greek VAT Code (VAT Code)³ that incentivize the operation of family offices in Greece. A new article 71G was introduced into the ITC on income tax incentives⁴ (article 71G), whereas article 3(1) of the VAT Code (persons subject to tax) was amended to regulate the VAT treatment of transactions carried out between the family office and its members.⁵ The new regime applies to the 2021 tax year onwards.⁶ A joint decision by the Minister of Finance and the Governor of the Greek tax administration (Decision A. 1043/2022)⁷ was recently issued on the implementation of the family office regime.

According to the Explanatory Memorandum on article 25 of Law 4778/2021 (the Explanatory Memorandum), the family office framework aims to complement the recently introduced set of tax incentives seeking to attract foreign tax resident individuals into Greece.⁸ The regime provides

for a set of tax law incentives in respect of family offices operating in Greece upon the fulfilment of certain conditions, which relate to the scope of activities, members and specific operational requirements. This note outlines the main features of the family office regime (section 2.) and the key tax considerations (section 3.). Section 4. offers some conclusions on whether the regime meets its objectives. This article does not deal with regulatory issues (for example, AML, FATCA/CRS), nor does it address any potential considerations regarding whether the new regime constitutes a harmful tax practice, or has EU State aid implications.⁹

2. Main Features of the Greek Family Office Regime

There is no “one size fits all” family office model. They serve various purposes and objectives, depending on a family’s needs and circumstances, which may range from investment management activities to a wide range of additional services, such as legal and accounting services, household and concierge services and the coordination of charitable giving. They can operate as single or multi-family offices. There is also significant variety in terms of their operating structures and modalities. In particular, their activities can be conducted by family members or outsourced. Regardless of their various shapes and sizes, family office structures worldwide have become an increasingly popular model for managing family wealth.¹⁰

The Greek legislator made a number of choices as regards the family office framework, as outlined in sections 2.1. to 2.7.

2.1. Legal form

Article 71G(1) of the ITC allows family offices to assume any of the legal forms prescribed under article 45 of the ITC.¹¹ These include any type of company with legal

* Tax Partner, Koutalidis Law Firm, Athens, Greece. The author can be contacted at Isofrona@koutalidis.gr.

1. GR: Law 4778/2021, Government Gazette folio A’ 26 (19 Feb. 2021).
 2. GR: Law 4172/2013, Government Gazette folio A’ 167 (23 July 2013).
 3. GR: Law 2859/2000, Government Gazette folio A’ 248 (7 Nov. 2000).
 4. Art. 71G ITC, entitled “Incentives for special purpose entities for the management of family assets”, was introduced by way of art. 25(1) Law 4778/2021. Art. 71G was recently amended by way of art. 61 of GR: Law 4916/2022, Government Gazette folio A’ 65 (28 Mar. 2022).
 5. Art. 3(1) VAT Code was amended by way of art. 25(2) Law 4778/2021. For the purposes of this article, persons participating in the family office will be referred to as “members”, regardless of their actual capacity, which depends on the legal form of the family office (for example, shareholders, partners, etc.).
 6. Art. 25(1) Law 4778/2021.
 7. GR: Decision A. 1043/2022, Government Gazette folio B’ 1638 (1 Apr. 2022). Art. 25(3) Law 2778/2021 provides that a joint decision by the Minister of Finance and the Governor of the Greek tax administration is to determine, inter alia, the services that may be provided by the family office and any other necessary details for the implementation of the family office framework.
 8. See art. 5A ITC on alternative taxation for individuals that wish to invest in Greece, art. 5B ITC on a special tax regime for pensioners that transfer their tax residence to Greece and art. 5C ITC on alternative taxation for executives (employees or self-employed). Art. 5A ITC was introduced in 2019; arts. 5B and 5C ITC were introduced in 2020.

9. See European Commission, Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01), para. 5.5, Primary Sources IBFD.
 10. See M.N. Kandev & O. Khazam, *The Family Office of Tomorrow: A Canadian Perspective*, 75 Bull. Intl. Taxn. 8, sec. 1 (2021), Journal Articles & Opinion Pieces IBFD. UBS, Global Family Office Report 2021, available at <https://www.ubs.com/global/en/global-family-office/reports/gfo-r-21-4-client.html>.
 11. As per art. 45 ITC: “The following are subject to corporate income tax: (a) capital companies incorporated either in Greece or abroad; (b) partnerships instituted either in Greece or abroad; (c) non-profit legal persons of public or private law instituted in Greece or abroad, including associations or foundations of any kind, with the exception of any income realized in pursuing the fulfilment of their purpose that is not subject to tax; (d) cooperatives and their unions; (e) civil law societies, profit or non-profit civil law associations, silent or dormant partnerships to the extent that they pursue a business or profession; (f) joint

standing, as well as any other corporate or non-corporate structure, irrespective of legal form, with the exception of non-profit entities.

2.2. Scope of activities and services

Articles 71G(1) and (2) of the ITC require that family offices operate as special purpose entities for the sole purpose of managing the assets, capital flows and investments (the “assets”) of individuals (Greek tax residents) and their family members, as well as their personal and lifestyle expenses and charitable or cultural activities.¹²

2.3. Family office members

The Greek legislator has opted for the single-family office model. Article 71G of the ITC provides for the following categories of family office members: (a) individuals who are the owners of the assets under management, either directly or indirectly, through legal entities; (b) their family members, who may also be members of the family office; and (c) legal entities in which the asset owners or their family members have a majority holding.¹³ The law does not seem to require that family members or legal entities also be holders of the assets under management.

Article 71G(4) of the ITC recognizes the following persons as family members: (a) spouses/civil partnership members¹⁴ and their unmarried children (either adults or minors under their legal guardianship); and (b) parents of the asset owners and their spouses/civil partnership members.¹⁵ This seems to restrict the circle of family members to two generations.

2.4. Tax residence requirements

Article 71G of the ITC refers to legal entities that are operating in Greece under any of the prescribed legal forms

ventures; (g) legal entities defined under article 2 ITC which are not included in any of the cases above” [author’s translation]. As per art. 2(d) ITC, a “legal entity” is “any structure of corporate or non-corporate organization (irrespective of legal form), and profit or non-profit nature, that is not an individual or legal person, such as an association, organization, offshore company, any form of private investment company, any form of trust or any similar structure, any form of foundation or union or any similar structure, any form of partnership or any entity of a personal nature, any form of joint venture, any form of capital or funds or assets or bequest or inheritance or donations management company, any type of joint consortium, any form of civil law company, dormant or silent partnerships, civil law societies” [author’s translation].

12. It should be noted that the recent amendments to art. 71G(2) ITC have widened the scope of services that can be provided by the family office to personal and lifestyle matters, in addition to asset management and investment advice, which were originally provided. Details on specific services that fall within the scope of the family office are provided in art. 4 Decision A. 1043/2022.

The amendments also introduced a requirement for a majority holding in the legal entities. Originally, the article made a general reference to “participation”, not requiring a majority holding or even a holding that would classify these entities as related to the individual for ITC purposes (33% capital participation requirement as per art. 2(g) ITC).

13. Id.

14. Under GR: Law 4356/2015, Government Gazette folio A’ 181 (24 Dec. 2015).

15. It is noted that art. 71G uses the same definition of family members as art. 16(5) of GR: Law 4251/2014, Government Gazette folio A’ 80 (1 Apr. 2014), on residence permits for business activities (the Greek “golden visa” regime).

included in article 45 of the ITC. While permanent establishments (PEs) are not explicitly mentioned in article 45 of the ITC, the Greek tax administration has taken the position that they are included within its scope, provided that their head office maintains one of the legal forms referred to in article 45 of the ITC.¹⁶ Decision A. 1043/2022 also clarifies that the family office may be incorporated either in Greece or abroad.¹⁷

2.5. Operating requirements

The family office must employ a staff of at least five in Greece within the first 12 months of its operation forward and incur operating expenses in Greece of at least EUR 1 million per year (article 71G(3) of the ITC).¹⁸ Services may be carried out internally or outsourced, either in Greece, or abroad, subject to certain ITC conditions regarding outbound expenses to non-cooperative jurisdictions or jurisdictions with preferential tax regimes (articles 23(m) and 65 of the ITC). Article 71G of the ITC expressly precludes the employment of family office members.¹⁹

2.6. Income tax treatment

Article 71G(5) of the ITC provides for the application of the cost-plus method in determining gross income from services provided by the family office, i.e. by applying a predetermined 7% mark-up (profit margin) on total expenses and depreciation, excluding corporate income tax. However, if the family office’s gross income, as per its accounting records, is higher than the income determined under the cost-plus method, the gross revenue is determined on the basis of the accounting records.

Expenses incurred in earning gross income are deductible if properly documented, as per the Greek accounting standards²⁰ and profits are subject to the regular corporate income tax rate, which is currently 22%.²¹ Family offices are also subject to the general rules on withholding agent tax obligations,²² as well as on filing and payment obligations,²³ and no special tax treatment applies to dividends paid to family office members.

2.7. VAT treatment

Article 25(2) of Law 2778/2021 amended article 3(1) of the VAT Code to characterize transactions carried out between the family office and its members as “single entity” transactions, which are considered to fall outside the scope of VAT.

16. Greek tax administration circular POL 1044/2015, available at <http://elib.aade.gr/elib/view?d=/gr/egk/2015/1044>.

17. Art. 1(1) Decision A. 1043/2022.

18. It is understood that payments made to foreign service providers are not included in the EUR 1 million threshold.

19. Details on the application of these operating requirements are provided in art. 5 of Decision A. 1043/2022.

20. GR: Law 4308/2014, Government Gazette folio A’ 251 (24 Nov. 2014).

21. Art. 58(1) ITC.

22. Part Four (arts. 59-64) ITC.

23. Arts. 68 and 71 ITC, respectively.

3. Key Tax Considerations

3.1. In general

The main tax considerations regarding the framework set out in article 71(G) of the ITC are analysed below. These include the scope of recipients of services and related tax residence considerations, transfer pricing, deductibility of expenses and the application of CFC rules,²⁴ as well as issues related to the VAT treatment of transactions between the family office and its members.

3.2. Recipients of services

Article 71(G) (paragraphs 1 and 2) is rather ambiguous as to whether services can be provided only to legal entities (members of the family office), or to other entities (not members of the family office) through which the individuals hold the assets under management. While the law expressly stipulates that the family office's sole purpose is to support individuals in the management of their assets, which they either hold *directly* or *indirectly, through legal entities*, there is no explicit reference as to whether legal entities (regardless of whether or not they are members of the family office) can be the direct recipients of the family office's services. In the author's view, the broad reference in the law to assets *held directly* or *indirectly* must be interpreted as not excluding any legal entities holding family assets from the scope of recipients of the family office's services, regardless of whether or not they are actually family office members. It is, however, questionable whether or not article 71(G) of the ITC could be interpreted as also including legal entities that do not hold, but solely manage, assets on behalf of the individuals as recipients of services.

3.3. Tax residence issues for foreign entities

Assuming that legal entities/holders of assets can be the recipient of the family office's services, the issue of the tax residence of such foreign entities arises.

As a preliminary comment, it should be noted that the tax framework for family offices is similar to the framework for Law 89/1967 companies, which operate as (shared) service centres for their head office/affiliated entities (both in Greece and abroad). Law 89/1967 companies are also taxed on a cost-plus basis and generally enjoy the same tax treatment in terms of deductions, corporate income tax rate, etc.²⁵ Notably, the Explanatory Memorandum makes explicit reference to the similarities between the two frameworks. However, and as analysed in the following sections, there are some crucial differences in respect of their tax treatment.

24. Art. 66 ITC, which transposed art. 7 of Council Directive 2016/1164 of 12 July 2016 Laying down Rules against Tax Avoidance Practices that Directly Affect the Functioning of the Internal Market, OJ L 193/1 (2016), Primary Sources IBFD [hereinafter ATAD I].

25. GR: Law 89/1967, arts. 1-2, as amended by GR: Law 3427/2005, Government Gazette folio A' 312 (27 Dec. 2005).

Article 1 of Law 89/1967, as amended by article 38 of Law 4605/2019,²⁶ expressly provides that the licensed services²⁷ provided by Law 89/1967 companies to their foreign head office and/or affiliates do not constitute a place of effective management (PoEM) of the recipient entities in Greece and that the ITC tax residence/PoEM provisions²⁸ are not applicable to foreign companies - recipients of services.²⁹ On this issue, the Greek tax administration has clarified that the non-application of the ITC tax residence/PoEM provisions for Law 89/1967 companies extends only to the specific services for which an operating licence has been granted. Therefore, in the event that these companies are found to provide, beyond their licence, services that relate to activities under the PoEM article (article 4(4) ITC), the latter will apply.³⁰

Apart from Law 89/1967, similar provisions that provide certainty as to the tax residence of foreign entities have already been adopted in respect of shipping companies³¹ and, most recently, managers of EU Alternative Investment Funds (AIFs).³²

Such a provision, excluding the application of tax residence/PoEM provisions to foreign companies/recipients of family offices services, is missing from article 71G of the ITC. In the author's view, this is a significant hurdle, as it is very likely that family offices will offer several services to legal entities that would fall under the POEM spectrum as per article 4(4) of the ITC, such as day-to-day management activities or bookkeeping services.³³ Consequently, if the family office provides comprehensive

26. GR: Law 4605/2019, Government Gazette folio A' 52 (1 Apr. 2019).

27. Such services, as per art. 1 Law 89/1967, include the following: advisory services, central accounting support, quality control of production, product process and services, design of studies, projects and contracts, advertising and marketing services, data processing, supply of information, IT software development and IT support, storage and management of records and data, management of suppliers, customers and supply chain, excluding transportation by own means, HR management and training of employees, and computer-based call centre and telephone information services.

28. Art. 4(3) on tax residence for legal entities and 4(4) ITC on PoEM.

29. As noted by the Greek Parliament's Scientific Committee (*see* comments on art. 38 Law 4605/2019), the provision excluding the application of tax residence/PoEM provisions for Law 89/1967 companies is redundant given that the scope of services that can be provided by Law 89/1967 companies does not include the activities that would be considered in order to determine whether there is a PoEM in Greece, as per art. 4(4) ITC, such as the place of day-to-day management, the place where strategic decisions are made, board and annual shareholders' meetings are held, etc.

30. GR: Tax Administration Circular E. 2076/2019, available at <https://aade.gr/egkyklioi-kai-apofaseis/e-2076-14-05-2019>.

31. Art. 72(15) ITC provides that arts. 4(3) and 4(4) ITC do not apply to companies established and operating under Law 27/1975 and Law Decree 2687/1953.

32. GR: Law 4706/2020, Government Gazette folio A' 136 (17 July 2020), art. 56, provides that the management of EU AIFs in Greece does not constitute a PoEM according to art. 4(4) ITC and that arts. 4(3) and 4(4) ITC do not apply exclusively to AIF activities.

33. According to art. 4(4) ITC, "4. The 'place of effective management' is in Greece, on the basis of actual facts and circumstances, mainly taking the following into account: a) the place of day-to-day management, b) the place where strategic decisions are made, c) the place where the annual shareholders' meeting is held, d) the place where the books and records are kept, e) the place where the Board or any other executive management body convenes, f) the residence of members of the Board or any other executive management body. In conjunction with the above facts and circumstances, the residence of the majority of shareholders or partners may also be considered".

management services to foreign legal entities/recipients, those companies might be considered as being effectively managed from Greece and, therefore, subject to unlimited taxation. Unfortunately, the mention in the Explanatory Memorandum that the establishment and operation of a family office does not per se entail a change of tax residence of other entities in which the individuals/family office members participate, lacks clarity. Sufficient substance abroad could mitigate these concerns; however, it would not offer automatic *ex ante* protection from audits and relevant assessments by the Greek tax authorities.

3.4. Tax residence considerations for family office members

While article 71G(1) of the ITC expressly requires that the individuals/asset holders of assets be Greek tax residents, it remains silent on whether such a requirement extends to their family members or to the legal entities in which the asset owners or their family members participate. The author is of the view that, in the absence of any explicit restrictions, the provision must be interpreted to mean that family members or legal entities are not required to be Greek tax residents. Notably, since there does not appear to be any restriction as to the country of residence, family members and legal entities may be tax residents in any foreign jurisdiction, even in non-cooperative jurisdictions or jurisdictions with preferential tax regimes.³⁴

As stated in the Explanatory Memorandum, the family office regime is explicitly designed to complement the existing set of tax residence incentives offered to foreign high-net-worth individuals;³⁵ therefore, any foreign individuals that have become Greek tax residents by virtue of articles 5A, 5B or 5C of the ITC have access to the regime. Clarity, however, is needed as to the consequences for the family office regime in the event that the individuals/asset holders change tax residence. This consideration becomes particularly relevant in light of the limited duration of the regimes under articles 5A, 5B and 5C of the ITC.³⁶ In the author's view, the expiry of any of the special tax residence regimes for individuals/asset holders would result in the family office being subject to the regular corporate income tax regime.

3.5. Transfer pricing issues

Turning back to the Law 89/1967 framework, Law 89/1967 companies – the mark-up of which (not less than 5%) is determined on a case-by-case basis following an application for a ruling (in the form of a decision by the Greek Ministry of Finance), supported by a relevant benchmarking study – are exempt from transfer pricing documentation requirements.³⁷ In the author's opinion, a similar

exemption should be extended a fortiori to family offices, since they are taxed on a predetermined mark-up basis.

3.6. Deductibility of expenses

Depending on the scope of services offered, family office expenses generally fall into the following categories: (a) internal operating costs – salaries, benefits, overhead, technology and telecommunication; (b) direct family expenses – residences, art or other collections, travel, personal consumption and taxes; (c) external professional service fees – accounting, tax, legal, consultants, insurance and security; and (d) investment advisory fees – manager fees, custody, research/data and aggregated reporting.³⁸

Article 71G(5) of the ITC provides that expenses used in the calculation of gross income are deductible if properly documented, as per the Greek accounting standards.³⁹ The law makes no reference to the application of the other conditions for the deductibility of business expenses set out in articles 22-23 of the ITC. However, the position taken in Decision A. 1043/2022 is that the tests of articles 22-23 do not apply if the following two conditions are met: (i) all expenses are paid through the family office's bank account; and (ii) they are not paid to tax residents of non-cooperative jurisdictions or jurisdictions with preferential tax regimes, as per article 23(m) of the ITC.⁴⁰

3.7. Controlled foreign company (CFC) rules

The Greek legislator has chosen to extend the application of the Greek CFC rules, which are set out in article 66 of the ITC, to the undistributed CFC income of individuals. It is therefore understood that the Greek CFC rules would apply to individuals that control the foreign entities whose assets are managed by the family office. This is another stumbling block in the family office regime, as CFC rules would effectively lead to the taxation of the foreign entities' undistributed worldwide income. Since the ATAD CFC rules provide for a minimum level of protection against tax avoidance⁴¹ and do not extend to individual taxpayers,⁴² it is the author's view that an exemption from the CFC rules for individuals that control foreign entities whose assets are managed by the family

34. Arts. 23(m) and 65 ITC, respectively.

35. *Supra* n. 8.

36. Fifteen years for the regimes of arts. 5A and 5B (as per art. 5A(4) and 5B(4) ITC) and seven years for the regime of art. 5C (as per art. 5C(4) ITC).

37. GR: Tax Administration circular, POL. 1093/2015, available at http://www.publicrevenue.gr/kpi/static/doc/egkuglioi_n4172/pol1093_2015.pdf.

38. See S. Campbell, *A Guide to Establishing a Family Office*, Citi Private Capital Group, p. 12 (2021), available at <https://www.privatebank.citi.com/ivc/docs/A-guide-to-establishing-a-family-office.pdf>.

39. It should be noted that the Explanatory Memorandum only refers to payroll and operating expenses, and not broadly to all expenses included in the calculation of gross income.

40. Art. 6(2) Decision A. 1043/2022.

It is noted that, with regard to the deductibility of re-invoiced expenses, the Greek tax administration has taken the position that re-invoicing does not per se entail that those expenses are deductible. Such deductibility is subject to the conditions of articles 22-23 of the ITC. GR: Tax Administration Circular, DEAFB 1111174 EX 2017, available at <https://www.aade.gr/egkykliai-kai-apofaseis/deaf-b-1111174-ex-2017>.

41. See art. 3 ATAD, which stipulates that the Directive shall not preclude the application of domestic or agreement-based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases.

42. Art. 1 ATAD specifies that the directive applies to all taxpayers that are subject to corporate tax in one or more Member States.

office could have been provided for in the law.⁴³ Under the current framework, the solution, at least for EU/EEA entities, could again⁴⁴ be sufficient substance abroad for the foreign entities, since the substance carve-out in article 66(8) of the ITC⁴⁵ would apply.

3.8. VAT considerations

Article 25(2) of Law 2778/2021 introduced an amendment to article 3(1) of the VAT Code that defines the transactions carried out between the family office and its members as “single entity” transactions that are considered as outside the scope of VAT. The rationale provided for the VAT treatment in the Explanatory Memorandum is that the transactions between the family office and its members do not constitute a supply of services for consideration but internal transactions within the family office structure, to serve its own purposes; hence they fall outside the scope of VAT. Regardless of possible considerations as to the compatibility of such a position with the VAT Directive (2006/112),⁴⁶ clarifications as to the definition of “internal transactions” and the (non-) deductibility

43. It should be noted that, as regards the application of CFC rules, the Greek tax administration has taken the position that CFC rules do not apply to shipping companies that have been established and operate under Law 27/1995 and Law Decree 2687/1953: see GR: Tax Administration Circulars E. 2018/2022, available at <https://www.aade.gr/egkykli-oi-kai-apofaseis/e-2018-23-02-2022> and POL. 1211/2014, available at <http://www.publicrevenue.gr/elib/view?d=/gr/egk/2014/1211/>.

44. See sec. 3.3.

45. Transposing art. 7(2) ATAD I. Greece has adopted the option to apply the substance carve-out only to EU/EEA entities.

46. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347 (2006), Primary Sources IBFD. This note does not examine the VAT treatment in terms of compatibility with the VAT Directive.

of input VAT may be required. On the latter, it is understood that since the transactions fall outside the scope of VAT, the family office will not have the right to deduct input VAT in respect of any expenses incurred.

4. Conclusions

Is the family office regime attractive enough? Does it provide a tax framework that ensures certainty? Regardless of policy considerations that relate to the attractiveness of the regime (for example, the single-family office structure, the restriction to two generations or the amount of annual expenses that must be incurred in Greece), clarity is needed on the issues outlined in this article to establish a clear and comprehensive tax framework that will provide certainty on the tax treatment of family offices.

The recently issued Decision A. 1043/2022 offers guidance on various operational aspects of the family office regime, including compliance issues⁴⁷ (on which the Law is silent). However, as outlined in this article, there are still significant issues pertaining to the tax framework that should be addressed. The author remains hopeful that this important initial step in the establishment of a family office framework in Greece will lead to a tax-certain path forward.

47. Arts. 5(a) and 7 Decision A. 1043/2022.