



Corporate Tax

2020

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Contributing Editor:
Sandy Bhogal

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PREFACE

This is the eighth edition of *Global Legal Insights – Corporate Tax*. It represents the views of a group of leading tax practitioners from around the world.

One consistent trend across each jurisdiction is the evolving nature of tax rules which impact cross-border arrangements, and the ongoing uncertainty that this creates. BEPS implementation is now well into the domestic implementation phase and transfer pricing is now a mainstream aspect of tax planning.

We also see renewed effort to reach an international consensus on taxation of the digital economy, with increasing concern that further delay will prompt unilateral domestic action across the OECD. This has prompted reaction from the US government in particular, and it was recently announced that the US would not be taking part in negotiations relating to ‘Pillar One’ – which broadly proposes changes to traditional nexus rules for allocating taxing rights, enabling a portion of the revenue generated from digital services to be taxed in the jurisdiction in which they are used. The US stated that they were stepping away from talks as the OECD was not making headway on a multilateral deal on digital services taxation. In addition, tax compliance and information reporting are entering a new phase, as DAC 6 will be implemented across the EU.

The impact of COVID-19 will inevitably add to the complex international tax landscape. The long-term impact of the lockdown restrictions and the fiscal measures taken by governments worldwide remains to be seen; however, it is likely that tax policy will play an important role in revitalising the economy.

Authors were invited to offer their own perspective on the tax topics of interest in their own jurisdictions, explaining technical developments as well as any trends in tax policy. The aim is to provide tax directors, advisers and revenue authorities with analysis and comment on the chosen jurisdictions. I would like to thank each of the authors for their excellent contributions.

Sandy Bhogal
Gibson, Dunn & Crutcher UK LLP

Israel

Boaz Feinberg
Tadmor Levy & Co.

Overview of corporate tax work over last year

Types of corporate tax work

Our tax department engages in various types of corporate tax work, including the following:

- Representation of corporations and shareholders in front of the Israeli Tax Authorities (ITA) and tax courts regarding international taxation issues, corporate tax, income tax, indirect taxes and real estate tax.
- Drafting tax legal opinions and memorandums.
- Obtaining tax rulings and pre-rulings, including regarding withholding exemptions.
- Tax assistance on M&A transactions.
- Preparation of tax due diligence before acquisitions or investment rounds.

Significant deals and themes

M&A

Our team secured a favourable ruling from the ITA regarding the taxation of a contingent value right issued to existing minority shareholders in a publicly traded company on NASDAQ.

Our team represented numerous privately held companies in Israel to secure a valuable reorganisation ruling from the ITA.

Corporate migration

Our team represented several Israeli companies in successful corporate inversions while transferring their shares to a new US holding company.

Real estate transactions

Our team represented a US investment company with regard to tax issues relating to a USD 80 million real estate investment in Israel.

Tax disputes

Our team represents numerous Israeli corporations and shareholders before the assessment officers and state attorneys regarding various tax disputes.

Withholding certificates

Our team represents numerous foreign investors in pursuit of exemptions/reduced tax rates on withholding requirements.

Employee benefits and executive comps

Our team represents many domestic and foreign companies with employees in Israel regarding equity-based incentives, including tax planning and representation with the ITA.

Key developments affecting corporate tax law and practice

Domestic – cases and legislation

In the matter of **Sakmesky** held on February 26, 2019, the Jerusalem District Court determined that the shareholders of several “Family Companies” (flow-through entities for tax purposes) are not entitled to offset losses of one limited liability company against profits of another.

In the matter of **Rizman** held on December 15, 2018, the Central District Court determined that in extreme cases, where there is a sale of shares of the company, the sale of reputation attached to the shareholder, the actual engine behind the success of the company, would also be taxed separately from the gain on the shares, which may bring about a reduction in the overall taxes levied on the shareholder for the sale.

BEPS

The BEPS rules are intended to bring a closer cooperation between countries in the field of international taxation, such as in BEPS Action 14: Making Dispute Resolution Mechanisms More Effective, which contains a Minimum Standard that seeks to improve the resolution of tax-related disputes between jurisdictions.

BEPS Action 13: Guidance on Transfer Pricing Documentation and Country-by-Country Reporting takes a similar approach.

Tax climate in Israel

- The corporate income tax rate is 23%.
- Capital gains tax for corporations is 23%.
- The dividend tax rate is 30% for controlling shareholders and 25% for other shareholders.
- Preferred income derived by preferred industrial and tech enterprises is subject to a corporate tax rate of 6–7.5% in development area A, and elsewhere in Israel 6–16%, with no time limit. Dividends are taxed at 4–20%.
- The VAT standard rate is 17%.

Developments affecting attractiveness of Israel for holding companies

Legislative changes affecting holding companies in particular

As a result of the political crisis in Israel during 2019, there were no major legislative changes regarding taxes.

The year ahead

The Israeli government plans to pass several major legislative amendments to the Income Tax Ordinance and other tax-related legislation, which are long overdue and have not been pursued due to the political crisis in Israel during 2019.

Payment of disputed taxes as a condition to allow an appeal on the tax decision

The ITA has issued a draft amendment of legislation, subjecting a taxpayer to disputed taxes as a condition for allowing him to file an appeal against a tax determination given by the assessment officer. This is similar to rules applicable in Italy. Under the current law, filing an appeal by a taxpayer prevents the ITA from collecting a tax debt until a final verdict has been provided by the Court of Appeals. The ITA claims that the current situation allows many taxpayers, who do not necessarily have a valid claim against the tax determination, to defer the tax payment *de facto* for a considerable amount of time until the Court of Appeals

renders its verdict. Representatives of the professional bodies (the Israel Bar Association and the Institute of Certified Public Accountants in Israel) have vehemently objected the ITA's intent to change the current situation, claiming it would be unconstitutional, as it causes disproportionate harm the property rights of taxpayers.

Reform of the existing “Residency Tests”

The ITA also intends to pass a major reform to the current Residency Test. Under the current law, there is an assumption (which may be refuted both by the taxpayer and the ITA) that an individual's centre of life is in Israel if he/she has spent 183 days or more in Israel during the tax year, or if he/she has spent 30 days in Israel during a tax year and a total of 425 days during the tax year and the two earlier consecutive tax years. The material determination whether a person is an Israeli resident is based on the centre of life test.

The ITA proposes a reform that would turn the “days test” into an irreconcilable assumption, which may include additional criteria (such as the existence of a permanent residence in Israel, the actual residency of the taxpayers' family, etc).

Reform of the existing tax holidays provided for new immigrants and senior returning residents

The ITA plans a major reform of the existing law regarding new immigrants and senior returning residents. Currently, the law provides new immigrants and senior returning residents (Israelis considered “foreign residents” for at least 10 consecutive years) a 10-year tax holiday on business and passive income that is generated or derived outside Israel. This includes a 10-year tax holiday from reporting to the ITA on any income or assets located outside Israel. The ITA is yet to decide the extent of the reform, but the most likely scenario would include the abolishment of 10-year tax holiday on income reporting on assets and income outside Israel. It is indeed possible that the reform may also affect the duration of the tax holiday, or involve additional criteria in order to be eligible for the tax holiday, including the possibility of requiring that immigrants reside in Israel for a specified period following the tax holiday period.

Reform in the “Angel Law” – encouragement of hi-tech investments by individuals

The government has suggested incentivising and encouraging investments in the Israeli hi-tech industry. This includes reforming the existing rules (better known as the “Angel Law” rules), which allow for individual investors to use the investment as a deductible business expense on the tax year of the investment. The government is seeking to ease the eligibility criteria for the tax benefit.

**Boaz Feinberg****Tel: +972 3 684 6000 / Email: boaz.f@tadmor-levy.com**

Adv. Boaz Feinberg heads the firm's Tax practice group. With extensive experience of close to 19 years in his fields of practice, Boaz provides comprehensive services to the firm's clients on a wide range of subjects relating to taxation and financial regulation on both administrative and regulative levels, as well as in litigation. His representation includes:

- advising and acting on behalf of corporations and high-net-worth individuals;
- advice and tax planning for M&A transactions and other complex international transactions. Boaz provides sophisticated opinions and pre-ruling applications on direct and indirect tax branches, international tax and trusts, and leads negotiations before the various authorities; and
- advising trusts throughout their establishment and ongoing activities, representing clients before the Israeli Tax Authorities and various judicial instances, including in the Israeli Voluntary Disclosure Program.

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