

New Israeli Legislation requiring disclosure of certain tax opinions and tax positions

On December 2015, the Israeli Parliament has enacted a significant amendment to the Income Tax Ordinance, which includes the requirement of disclosure of certain written tax advice received after January 2016 and the disclosure of tax positions adopted contrary to a position published by the Israeli Tax Authority. Similar provisions were included with respect to value-added tax, excise tax, customs, and purchase tax.

The amendments may make it easier for the Israeli Tax Authorities to select taxpayers with major tax planning schemes where the taxpayers obtained a tax opinion or adopted a tax position contrary to that of the tax authorities. The amendments supplement existing income tax regulations regarding “reportable tax planning” for specific transactions.

Disclosure requirements for receipt of tax opinion

Taxpayers have to disclose with their filing of their tax returns the fact, whether they have received a written tax opinion, which was intended to allow a tax advantage, whereby the term “tax advantage” includes for example a tax reduction or relief, deferral of a taxable event, the avoidance of an obligation to withhold tax or expenses or the deferral of the tax payment date. It is not quite clear whether the list in the law is inclusive.

The disclosure only applies to tax advice which is given either for agreed fees of at least NIS 100,000 and is contingent, partly or wholly on the tax advantage generated for the taxpayer or to tax advice which is called “shelf-planning opinions”.

Shelf-planning opinions are thereby either an opinion with mainly uniform content on the same subject or topic to at least three unrelated parties within a period of two years, or simply an opinion, which has been provided under the condition of secrecy, meaning the recipient taxpayer is committed not to disclose parts or all the content of the opinion. In case the provider of the opinion does not notify the recipient that it is a reportable shelf opinion the taxpayer is not held responsible for not reporting the opinion.

In addition, any opinions regarding any issues being discussed in the assessment process, or objection or appeal procedures are excluded from the disclosure requirement. Furthermore these rules only apply to individual taxpayers or entities with annual income, other than capital gains, exceeding NIS 3 million, or with income from capital transactions of more than NIS 1.5 million. Finally these rules do not apply to public institutions (charities).

Disclosure requirement for tax position contrary to that of the tax authority

Not only the use of written opinions or shelf-planning opinions have to be revealed, but also a tax position taken, which is contrary to that of the Israeli tax authorities, if the tax position so taken generates a tax advantage exceeding NIS 5 million or NIS 10 million over a period of up to four years.

To determine whether a tax position is contrary to the position of the Israeli tax authority, the authority is allowed to publish on its website up to 100 positions per year in 2016 and 2017, and up to 50 positions per year thereafter.

It has to be emphasized that opinions do not have to be handed over to the authority.

Non-compliance

Non-compliance with the new disclosure requirements will have the effect that the annual tax filing by the taxpayer will be deemed not to have occurred and trigger interest and penalties. In case of the use of “shelf-opinions” the provider has the obligation to notify the recipient that the opinion is reportable, otherwise the provider will be subject to a penalty.

The new disclosure requirements apply to opinions given from January 1, 2016 and to contrary positions in tax returns for 2016 onwards. The Israeli tax authority has already published Form 1345 according to which the taxpayer has to indicate whether he has followed a written opinion for the preparation of the tax return or not, or whether he has received a written opinion after the filing of the tax return. The disclosure requirements may require a careful planning of tax returns for individuals and companies and a careful review of tax positions and potential reporting for individuals and companies doing business in Israel.