

Legislation Alert – Taxation of Immigrants and Repatriates

The Ministry of Finance has recently published its White Paper (draft proposal for legislation) regarding changes to the rules of taxation of immigrants and returning Israelis. The paper has been circulated to those with a statutory or customary right of response. There may be changes before a final draft is tabled, and further changes in committee, between hearings. Nevertheless, the general gist is likely to remain largely the same. There certainly appears to be a political will to carry the amendments.

The new rules (will) apply to anyone who became or becomes resident as of January 1st, 2008. They apply to immigrants and returning residents who have been abroad for ten years, eight of which have been as foreign residents for the purposes of the Income Tax Ordinance (this the only indication ever of the Revenue's position as to the time it takes to "lose" residence status). Regarding returnees in 2008 and 2009, the requirement is reduced to five years away, of which three are as a non-resident. Certain of the existing (more limited) exemptions will continue to apply, after 2009, to returnees who have not been away for ten years.

In brief, the following rules have been proposed:

1. An immigrant or long-term expatriate (to both of which I shall refer as "immigrants") shall be exempt from tax on *all* foreign-source income, for a period of ten years. This applies to earned, as well as passive income, and to income from a source or an asset not yet held at the time of immigration (neither of which are presently the case).
2. Foreign pensions will be subject to the same exemption, and, beyond the first ten years, will also receive special treatment. This resolves the present difficulty of determining a theoretical foreign tax rate, but does not address the existing question as to the types of pension covered.
3. Where a foreign company is controlled and managed by an immigrant in Israel, that company will not, by virtue of the control and management in Israel alone, be considered resident in Israel. Thus, such a company will not become subject to Israeli taxation.
4. Similarly, shares held by immigrants will not be taken into account when determining whether foreign corporations are to be treated as a "Foreign Professional Company" or a "Controlled Foreign Corporation", both of which are anti-avoidance devices that effectively tax the share due to the Israeli resident shareholder.
5. All capital gains realised by an immigrant for the first ten years will be exempt, and not just gains arising upon sale of an asset held before immigration. This will now allow turnover of assets without loss of the exemption.
6. The proposal allows an immigrant to elect to have a one year grace period in which, for *all* purposes he will not be treated as resident in Israel. If he decides to stay, then the subsequent exemption period will be reduced by a year.

7. The proposal includes a wide exemption from reporting requirements where an immigrant's income and gains are entirely exempt.

The information contained herein is of a general, informational nature and is not intended as specific advice. It must be treated accordingly. In all cases, specific advice must sought from competent professionals in all relevant jurisdiction.

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