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Israel Lacks Road Map for Cross-Border Tax Disputes

By Matthew Kalman

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- *Israel's multinational tax dispute resolution rules not yet formalized in regulations and legislation*
- *Lack of formal mutual agreement procedure (MAP) rules adversely impacts investment decisions*

Israel lacks legally binding regulations for resolving multinational cross-border tax disputes, a gap the OECD and practitioners hope will be addressed in guidance coming next year.

Enhancing the effectiveness of mutual agreement procedures (MAPs) is part of the OECD's base erosion and profit shifting reforms. MAPs under bilateral tax treaties are meant to help solve double-taxation disputes between two countries involving transfer pricing and permanent establishment disputes.

Israel doesn't yet have any formal MAP regulations, Daniel Paserman, head of tax at Gornitzky and Co. law firm in Tel Aviv told Bloomberg Tax.

The Israel Tax Authority issued a non-binding circular governing MAP procedures in 2001—and gaps in that document mean Israel is out of compliance with the OECD's reforms on dispute resolution, practitioners said.

Tax Uncertainty

Israel's lack of comprehensive rules for resolving a dispute with a tax treaty partner over which country has the right to tax the income of a multinational company has created a lack of confidence in the Israel Tax Authority's ability to resolve such a dispute. Thus, foreign companies are wary about investing in Israel, and Israeli companies cautious about investing abroad.

Israeli companies may not even know if their MAP applications are rejected by the Israel Tax Authority, because Israel lacks a documented notification process, practitioners said.

A smooth process for resolving MAPs is critical in a country like Israel, said Henriette Fuchs, chair of the international tax group at Pearl Cohen law firm in Tel Aviv. Fuchs has participated in BEPS tax discussions of the OECD Business and Industry Advisory Committee in Paris.

“Many foreign investors come in and large numbers of Israeli companies develop activities out of the borders of Israel,” Fuchs said in a Sept. 26 email. “From experience, we know that the tax authorities in Israel are not keen to have the tax man of another country in the kitchen.”

The Israel Tax Authority did not respond to requests for comment.

Not Binding

Israel’s MAP procedures operate quite efficiently but they have never been enshrined in law, said Daniel Paserman, head of tax at Gornitzky and Co. law firm in Tel Aviv.

Common practice and court judgments have established that tax collection is frozen during a MAP, but the reference to this possibility in the 2001 circular isn’t binding, he said Sept. 27. He added that adopting legislation is critical as countries move forward with the multilateral instrument, which will alter more than 1,200 bilateral tax treaties to bring them in line with OECD international standards.

“It makes sense that these type of things will be properly regulated by the legislature and not just by the tax authority as common practice,” he said.

Israel should do a better job of telling taxpayers that they have the right to request a MAP, said Boaz Feinberg, a partner at Zysman, Aharoni, Gayer and Co. law firm in Tel Aviv.

While “not letting taxpayers know that he’s entitled to do so is something that usually is problematic,” the practical effect is minimal, he said. “Operationally, for most taxpayers dealing with international taxation issues, their advisers would probably be well aware of their ability to do so.”

Still, Israel does abide by OECD law, he said.

These gaps and others were highlighted in an OECD peer review report issued issued Aug. 30. The report said Israel’s MAP procedures were generally compliant with OECD recommendations, but Israel’s procedures lacked clarity and proper documentation.

“Where it has deficiencies, Israel is working to address most of them,” including amending and updating some of its treaties, the report said.

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