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What can you do when the bank decides that you are a tax resident of a foreign country?

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In a recent decision, given in a petition which was filed against the Bank of Israel and a series of Israeli banks, the Israeli Supreme Court ruled that the Bank of Israel should not be obliged to set rules and procedures for implementing the CRS regulations. This means that the banks will be able to continue to operate to a great extent independently in the implementation of the regulations, especially while classifying bank accounts as accounts reportable to foreign tax authorities.

The Regulations, came into effect at the beginning of 2019 and they affect the conduct of financial institutions in Israel concerning the provision of information to the tax authority about foreign residents holding financial assets in Israel. The Regulations also determines the possibility of the tax authority to obtain information about Israeli residents holding financial assets outside of Israel. The financial institutions that will be required to transfer information to the tax authority includes entities such as banks, insurance companies, investment funds and more.

An examination of the Regulations reveals that they leave a considerable margin for discretion on the part of the financial institutions, which are required to classify certain accounts as "reportable" - accounts owned by a person or entity who is liable to pay tax in a foreign country.

For example, in relation to accounts opened after the Regulations came into effect, the financial institution is required to classify an account, while using information obtained from the client. However, in accordance with the Regulations, to the extent that the financial institution knows or has reason to believe that the self-documentation or documentary evidence is incorrect or unreliable, it may not rely on them, which may lead to the transfer of account information to foreign tax authorities.

The Regulations do not give indications that guide the bank's discretion as to the reliability of the documentation provided by the account holder. Thus, theoretically (and, as the petition argues, even in practice) different banks may classify similar accounts differently. Furthermore, as alleged in the petition, following their determination that the account is "reportable" under the Regulations, banks often resort to the severe sanction of account closure despite the lack of any reference within the Regulations to this matter.

Let's go back to the question in the title. What would a person do, after providing the bank with documentation that he is not a tax resident of a foreign country, but the bank chose not to rely on the documentation for its reasons? As discussed above, the bank's decision can have significant consequences.

In light of the Supreme Court's decision, the clients seem to be largely at the mercy of the banks, which do not always rush to provide proper solutions to clients.

It would appear that there will be no escape, and that in suitable cases, a petition to the courts will be required when a dispute arises between the bank and the client on the matter.

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