

Expanding Documentation and Reporting Obligations in International Transactions

Reading Time: 4 minutes

On October 13, 2020, the Israeli Ministry of Finance published two Memoranda of Law to amend the Income Tax Ordinance (ITO) and regulations dealing with setting market prices in international transactions between related parties. The proposed amendments seek to expand the documentation and reporting obligations of multinational groups operating in Israel. This comes, inter alia, against the backdrop of the BEPS project; and, in particular, in view of the BEPS Action Plan 13, which discusses the rules of documentation and reporting that are required in transfer pricing.

One of the purposes of the proposed amendments is to implement the OECD's information exchange agreement - the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC) - which Israel signed in 2016, with respect to multinational groups.

According to the proposal, the parent company of a multinational group (or another company that has been defined for this purpose), which is an Israeli resident and a member of a group whose consolidated turnover exceeds ILS 3 billion (€750 million), will be subject to more onerous reporting requirements. The company will be required to submit a CbC Report, as defined in Action Plan 13. This will include comprehensive and detailed information about all of the entities of the group.

However, in the course of amending the ITO and the related regulations, in order to implement the CbC, the Israel Tax Authority is “quietly” seeking to significantly expand the obligations imposed on taxpayers who engage in international transactions, including taxpayers who are not part of large multinational groups.

Section 85A, which was added to the ITO almost two decades ago, regulates the manner of setting the transfer pricing in international transactions between related parties and the required documentation for such transactions. The Israeli legislature is now seeking to add additional requirements that would apply to such international transactions.

For example, under existing law, an Israeli taxpayer who is a party to an international transaction is required to submit a transfer pricing report (including a study of market conditions) within 60 days from the date of a request by the Israel Tax Authority. Until such request is made, the manner of the required documentation was not clear. According to the proposed legislation, such taxpayer will be required to document the transaction **on an**

ongoing basis in order to ascertain that the study of market conditions was conducted before the price of the transaction was set for tax purposes, and not with the wisdom of hindsight in order to justify the price.

The proposed amendments also make significant changes to the Income Tax Regulations (Determining Market Conditions), which specify additional reporting requirements. The proposed changes will require Israeli companies to report the following information:

- A description of the organizational structure of the Israeli company, which shall include a division into core areas of operations, and a detailed explanation with respect to the officers of the multinational group to whom the Israeli company is required to report, including their names, positions and the geographical location of their offices.
- A review of the multinational group of which the Israeli company is a member, including:
 - (i) an organizational chart with the geographical location of the entities and form of incorporation; (ii) a general description of the group's business, including its main growth drivers, details of the supply chain of key products and services, details of agreements between the entities within the group, a description of the main markets, and a description of the main contributions of each entity in the group; (iii) information with respect to intangible assets of the group, including details of the location of the main R&D centers and R&D management, a list of the intangible assets within the group and the entities that hold them, policies for determining the market conditions in transactions for the provision of R&D services, and a description of any transfer of intangible assets between entities within the group and the consideration for the transfer.
- Changes or expected changes to the ownership and control structure of the Israeli company.
- A list of the Israeli company's main competitors.
- The background and the amounts of the payments and receipts in respect of international transactions that have been entered into between entities within the group.

Furthermore, the proposed regulations formalize the manner of conducting the research of market conditions in each transaction. It is proposed that the economic study must include: the comparative characteristics that were used, including changes with respect to market research from previous years; the methods used for determining market conditions and the methods used for comparing profitability; a description of the similar transactions that were included in the comparison; a description of comparable companies, together with their financial results; and the reasons for determining that the transaction was conducted under market conditions.

For further information please contact:



Daniel Paserman
Adv. (CPA), TEP, Head of Tax
✉ paserman@gornitzky.com



Shlomo Aviad Zider
Adv. Partner
✉ shlomo@z@gornitzky.com