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Client-Attorney Privilege in the Context of Trusts Does Not Apply with Respect to the Beneficiaries

Recently, the decision of the Tel Aviv District Court was published in the case of Tax Assessor - Investigations, Tel Aviv v. Levy et al. In that case, a criminal investigation was conducted against two Israeli residents brothers, based on the claim that the assets that they owned were presented as the assets of a foreign trust, in which a citizen and resident of France is the settlor and the trustee, and they are the beneficiaries.

In the course of the criminal investigation, documents were seized from the attorney of the trust. It was claimed, in respect of these documents, that they are privileged by virtue of attorney-client privilege. The Israel Tax Authority argued that the privilege applies solely with respect to the trust and the trustee; however, it does not apply with respect to others who were involved in the trust, including not with respect to the beneficiaries. In other words, according to the Israel Tax Authority, the privilege applies solely to documents that the trustee forwarded to or received from an attorney (provided that these were not intended for the purpose of the commission of a criminal offense).

The Court accepted the Israel Tax Authority's position, and ruled that the privilege in all aspects pertaining to tax matters is narrower than the general privilege with respect to the evidence law. In other words, while the general law confers privilege also on things and on documents that have been exchanged between an attorney and another person on behalf of the client, nevertheless, in matters pertaining to taxes, the privilege applies solely with respect to documents that have been exchanged between the attorney and the client directly.

The Court rejected the claim made by the attorney for the trust, that in the case of a trust, the beneficiaries are also entitled to benefit from the attorney-client privilege.

The Court ruled that the trust is the taxpayer and, therefore, only the trust is the client who is entitled to benefit from the privilege, as distinct from the beneficiaries of the trust.

Therefore, documents that have been exchanged with the various representatives of the trust, including consultants, accountants and, as aforesaid, the beneficiaries - are not protected under the protection of attorney-client privilege.

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