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Income Tax Circular Draft: "Marketing-Related Intangible Asset"

עדכוני לקוחות

On February 26, 2026, the Israel Tax Authority published a draft Income Tax Circular (the "Draft Circular") on a "Marketing-Related Intangible Asset" (a "Marketing Asset"). The Draft Circular aims to establish criteria and indicators for identifying cases in which a portion of a company's income should be attributed to a Marketing Asset. Such attribution may cause that portion of the income to fall outside the definition of "Technological Income" eligible for tax benefits under the Law for the Encouragement of Capital Investments. The stated purpose is to increase certainty, set a consistent policy, and help ensure that tax is paid in Israel.

Background to the Draft Circular - Marketing Asset

In 2017, the Law for the Encouragement of Capital Investments was amended, introducing incentive regimes for "Preferred Technological Enterprises." In this framework, "Technological Income" was defined, and income derived from a Marketing Asset was expressly excluded and therefore is not entitled to the reduced tax rates granted under the law.

Following these amendments, dedicated regulations were issued providing that the attribution of income to a Marketing Asset is determined in accordance with the transfer pricing principles under Section 85A of the Income Tax Ordinance (with the necessary modifications). The regulations also set a "de minimis" threshold pursuant to which, if the income attributable to the Marketing Asset does not exceed 10% of the total Technological Income attributable to the same Preferred Intangible Asset, no attribution to a Marketing Asset is required and the entire income will be classified as Technological Income eligible for the incentives.

What is a Marketing Asset?

According to the Draft Circular, a Marketing Asset is an intangible asset that contributes to the commercial value of a product or service, or assists in promoting it in the market. These may include, inter alia, trademarks, trade names, customer lists and similar assets. Notably, the term "marketing-related intangible asset" is not defined in the law or the regulations.

In Income Tax Circular 09/2017, the Tax Authority addressed this issue and set out certain circumstances in which there is no need to attribute income to a Marketing Asset. In practice, however, many tax disputes have arisen on this topic. The Tax Authority therefore seeks to publish a new circular to clarify the circumstances in which, in its view, attribution of income to a Marketing Asset is not required.

Key Points of the Draft Circular - Criteria for a "Marketing Asset"

The Draft Circular clarifies that each case will be examined based on its specific facts and circumstances, but it presents indicative criteria (not an exhaustive list). Where these criteria are satisfied, the assessing officer is likely to conclude that a Marketing Asset does not make a material contribution to the company's revenues beyond the threshold set in the regulations, and therefore no income should be attributed to a Marketing Asset, as follows:

- **Business profile - B2B (Business-to-Business) sales:** The company sells its products to the institutional market, and purchasing decisions are based on the technical specifications of the product being sold.

The Draft Circular provides examples indicating that where the supply of products or services requires precise customization to the needs of an enterprise customer, and the sales process typically involves prolonged negotiations, assessment of economic feasibility, and long-term contractual engagements, the emphasis is on creating a comprehensive, tailored solution for the purchasing organization, such that the product's value is not derived from a material contribution of a Marketing Asset.

- **Component of an end product:** Where the company manufactures a component incorporated into another product of the customer, and that component is integrated into the customer's product and loses its independent "identity" during the manufacturing process, there is less basis for attributing income to a Marketing Asset arising from sales of the product to the end customer.
- **Subcontractor manufacturing model:** Where the company operates as a subcontractor of the customer, manufacturing to the customer's order and technical specification, without carrying the identifying marks/branding of the manufacturing company, income generally should not be attributed to a Marketing Asset.
- **Grant of a right of use to another marketing company:** Where the company develops a Preferred Intangible Asset and grants another company a long-term right to market the product, and the company's income derives from royalties for granting the right of use in the intellectual property, the inclination will be not to attribute the income to a Marketing Asset.
- **Lack of meaningful competition:** Where there is no meaningful competition in the relevant market due to the product's uniqueness, such that the Marketing Asset's contribution is marginal.

- **Low level and scope of marketing expenses relative to R&D expenses:** This review, if performed, will take into account the costs (both development and marketing) from the beginning of development of the Preferred Intangible Asset.

The Draft Circular further emphasizes that the mere existence of selling and marketing expenses does not necessarily lead to a conclusion that a Marketing Asset has been created. It also notes that one may draw on the definition of an "asset" in accounting standards, including, among other things, the ability to identify and control the resource and the existence of expected future economic benefits.

Internal Review and Approval Mechanism for "Marketing Asset Assessments" within the Tax Authority

The Draft Circular establishes an internal review and approval mechanism within the Tax Authority as a condition for issuing assessments that include attribution of income to a Marketing Asset. To ensure that "Marketing Asset" assessments are issued on a uniform, transparent and professional basis, the Draft Circular provides, inter alia, that examinations of issues related to attribution of income to a Marketing Asset will be carried out with the involvement of a liaison officer from the Tax Authority's professional division.

In addition, assessments involving a Marketing Asset require written approval by senior officials in the professional division: approvals from the heads of the Incentives Legislation Department and the Transfer Pricing Department for Stage A assessments, and approval by the head of the professional division for Stage B assessments.

This issue of a "Marketing Asset" is particularly relevant for Israeli and multinational companies that benefit from, or seek to benefit from, incentives under the Law for the Encouragement of Capital Investments in connection with technological activity, where significant marketing elements may be present. As noted, the Draft Circular was published following recent tax disputes concerning "Marketing Assets." It should be borne in mind that this is only a draft, subject to comments and potential updates.

This topic will also be discussed at the conference "Tax Challenges Facing Multinationals in Israel" to be held at Bar-Ilan University. Due to security considerations, the conference has been postponed. A new date will be announced in due course.

To register and receive updates, [click here.](#)

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