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The International Comparative Legal Guide to:

Private Client 2016

5th Edition

A practical cross-border insight into private client work

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EDITORIAL

Welcome to the fifth edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Eight general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 29 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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Israel

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1 Pre-entry Tax Planning

1.1 In your jurisdiction, what pre-entry estate and gift tax planning can be undertaken?

There is currently no gift tax in Israel (except on gifting Israeli real estate). However, the gifting of certain assets located outside of Israel may trigger a CGT exposure.

1.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Effective from 1 January 2007, 'New Immigrants and Returning Residents' (Israeli citizens who have lived abroad for at least 10 years) are entitled to a package of tax benefits, the most valuable being a 10-year tax holiday (exemption) on all non-Israeli sourced income and capital gains, even if the foreign assets are acquired after immigrating to Israel.

1.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

If a new immigrant settles a trust during the 10-year tax holiday in favour of non-Israeli beneficiaries only (e.g. his children/grandchildren) then the trust continues to be exempt from tax in Israel in perpetuity, provided it is irrevocable within the meaning of Amendment 147 to our Income Tax Ordinance.

2 Connection Factors

2.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

There is a clear-cut distinction in Israel between obtaining Israeli citizenship and Israeli tax resident status. One could be an Israeli citizen but not deemed an Israeli tax resident if their habitual residence is not in Israel. The definition of an Israeli tax resident is set out in our Income Tax Ordinance.

2.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

Israeli tax residency is acquired on the basis of the "centre of life" tests.

The number of days spent in Israel also affects tax residence status and is deemed an important factor by the Israeli Tax Authority. An individual will be deemed to be resident for tax purposes if he spends 183 days or more in Israel in any given tax year (tax year commencing 1 January and ending 31 December), or if during the current tax year, he has spent at least 30 days in Israel and the total accumulated duration of his stay in Israel in the three preceding tax years is at least 425 days. The Israeli Tax Authority, having published several circulars on this issue, may determine someone to be a tax resident even if he spends less days in Israel. For the latter definition, specific advice should be sought.

2.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Once an individual is categorised as an Israeli tax resident under the terms and conditions set out in the Israeli Income Tax Ordinance, he immediately becomes subject to tax on his worldwide income, unless he is entitled to a 10-year tax holiday as described in question 1.2 hereinabove. In many cases it is advisable to obtain a legal opinion from Israeli tax counsel, on the tax residency status of an individual, which also takes into account case law precedents, rulings issued by the Israeli Tax Authority and Circulars published by them.

2.4 If residence is relevant, how is it defined for taxation purposes?

An Israeli resident is defined as an individual whose centre of life is in Israel, taking into account the person's family and economic and social links. Additionally, as mentioned in question 2.2 above, the number of days spent in Israel is an extremely important factor.

2.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

It is not relevant at all. One can be an Israeli national and not be deemed an Israeli tax resident and *vice versa*.

2.6 If nationality is relevant, how is it defined for taxation purposes?

It is not relevant as explained in question 2.5 hereinabove.

2.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

An Israeli tax resident is taxed on his worldwide income and a non-Israeli tax resident is taxed only on Israeli-sourced income.

3 General Taxation Regime

3.1 What gift or estate taxes apply that are relevant to persons becoming established in your jurisdiction?

In Israel there is no gift tax other than on gifting of real estate assets, in which case specific legal advice should be sought. As an example, under ordinary circumstances, the gifting of a residential property by a parent to a child over 18 will be subject to one third of the usual purchase tax and exempt from capital gains tax (CGT).

It should be noted that whilst there is no gift tax in Israel, if the asset gifted is located outside of Israel and is not liquid (e.g. cash) the gift may trigger a CGT exposure.

Estate tax in Israel was abolished in 1981.

3.2 How and to what extent are persons who become established in your jurisdiction liable to income tax?

An Israeli tax resident, as defined by our Income Tax Ordinance, is liable to report and pay taxes in Israel on his worldwide assets.

3.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

The direct taxes include: capital gains tax; dividend tax; tax on interest earned; tax on rental income; and tax on real estate transactions (purchase tax and land betterment tax).

3.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

There is VAT of 17% on products and professional services. Import duties apply at different rates depending on the product.

3.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

We are not aware of such provisions, however, the banking institutions in Israel will not allow funds to enter the country from abroad unless the new immigrant can prove they were taxed in the jurisdiction he emigrated from, prior to arriving in Israel.

3.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Yes, there are various anti-avoidance rules, for example: Clause 196 of our Income Tax Ordinance states that a trust holding company, even if incorporated, managed and controlled in Israel, will not be deemed as an "Israeli Resident" for the purpose of double taxation treaties Israel is signed on.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

There is capital gains tax at 30% on disposal of assets (the equivalent is land betterment tax for real estate). There is a 25% dividend tax and 25% income tax on interest earned. The CGT exposure may be reduced or eliminated in certain circumstances, especially on the disposal of real estate, where certain statutory relief is granted.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

There are various rates of importation and excise taxes depending on the product imported. Each product has its own rate of tax.

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

Yes, the rule is that any purchase of real estate is subject to Purchase Tax (to be paid by the purchaser).

Under certain conditions one may be tax exempt or may be entitled to a reduced tax levy.

For example:

Purchase tax on residential homes is calculated on a sliding scale. One scale applies to purchasers buying a residential apartment or house when the property purchased is the purchaser's sole residential home in Israel (single home-purchaser) and another significantly higher scale applies to those buying additional home/s beyond their first one (multiple home purchaser). Purchase tax for a single home purchaser starts at 0% whereas the tax rate for a second home starts at 5%.

Please note that: non-Israeli residents will not be entitled to this exemption unless they prove that they do not own a home in their home country.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Any corporation is deemed to be resident in Israel if its activities are managed and controlled from Israel and/or if it is organised and incorporated under the laws of the State of Israel.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Israeli resident companies are subject to tax on worldwide profits and gains.

Corporate tax is currently 26.5%.

5.3 How are branches of foreign corporations taxed in your jurisdiction?

A non-resident company is subject to tax only on Israeli-sourced profits, which includes income derived from an Israeli permanent

establishment or income accrued and generated in Israel, as well as capital gains from the sale of Israeli assets.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Israel has entered into many Tax Treaties (52 in total) and such Treaties are highly enforced by the Tax Authority and courts of law and are taken into consideration by professionals when giving advice and when producing written legal opinions.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

The Treaties generally follow the OECD model.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

No, because there is no estate or gift tax for Israeli residents' recipients.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

In general there is no estate tax or gift tax. However, the Tax Authority does usually recognise gift or inheritance tax paid in another jurisdiction for the purpose of stepping-up on the value of assets held abroad by Israeli tax residents.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

According to the Succession Law, the courts in Israel have the authority to judge in matters of inheritance of any person who resided in Israel at the time of their death or a person who lived abroad but has an estate in Israel.

The choice of law is also set out in the Succession Law: the Israeli court will apply the succession laws of the place of domicile of the deceased at the time of death. This is the basic rule where there is a conflict of laws.

There are three exceptions to the said basic domicile rule:

- (a) Certain assets that fall under Section 138 of the Succession Law will be subject to the laws of their location if the "*lex situs*" expressly excludes the application of any foreign law on these assets. In these specific cases, the Israeli court will apply the foreign laws presented to it by an appropriate legal report.
- (b) The capacity to make a Will – the laws applicable when dealing with questions of capacity are those of the place of domicile of testator at the time of making the Will.

- (c) The form of the Will – a Will with international aspects is valid under Israeli Succession Law if it is deemed valid, by the law of the country where it was written, by the law of the country of residence, ordinary place of domicile or citizenship of the testator at the time of signing the Will or at the time of death, and if the Will relates to real estate – also by the laws of the jurisdiction where the real estate is located (*lex situs*).

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

According to the Succession Law, the courts in Israel have authority to judge in matters of inheritance of every person who resided in Israel at the time of their death or a person who left property in Israel at the time of their death.

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

Yes. Although there are no rules of equity in Israeli law, trusts are indeed recognised under the provisions of the Israeli Trust Law (the Trust Law 1979).

8.2 How are trusts taxed in your jurisdiction?

All Trusts, including foreign trusts, are subject to taxes in Israel unless there are no Israel-resident beneficiaries.

The rule is that a trust is subject to tax in Israel on its worldwide income and it is the trustee, including any foreign trustee, who is under the obligation to report the trust annually to the Israeli Tax Authority.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

Trusts are generally not affected by our Succession Law. It is arguable that Israeli Trusts terminate after the death of the settlor and that the assets of the trust form part of his personal Estate. This would not be the case when a foreign trust is used.

There are no forced heirship rules in Israel.

8.4 Are foundations recognised in your jurisdiction?

Yes, foreign foundations are recognised. However, this type of entity cannot be formed under local Israeli law.

8.5 How are foundations taxed in your jurisdiction?

Please see question 8.2 hereinabove, since a foundation is defined as a trust for taxation purposes.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

There are no forced heirship rules in Israel.

The foundations are not affected by succession rules.

9 Matrimonial Issues

9.1 Are civil partnerships/same sex marriages permitted/recognised in your jurisdiction?

Same sex partnerships/marriages are not permitted and not recognised in Israel.

9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

In Israel, the Property Relations Between Spouses Law, 5733-1973 provides that in the case of divorce or termination of the marriage by the death of a spouse, the assets are divided equally. The exception to this equal division is where there is a gift and/or inheritance received during the marriage and/or any property is agreed in writing specifically to be excluded.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Yes, such agreements are fully recognised so long as they have been entered into before the marriage, the agreement is signed before a Notary Public and if during the marriage, are signed and sealed before a Family Court Judge.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

In Israel, the Property Relations Between Spouses Law, 5733-1973 applies and relates to all couples married after 1 January 1974, whereby if the couple have not entered into a specific property arrangement as described in question 9.3 hereinabove, then they shall be deemed to have agreed to the equal division of assets.

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Israel has visa exemption agreements with many countries. The exemption applies only to visas for visits (not to *laissez passer*/travel document).

In other cases, those who are not an Israeli citizen must obtain an immigrant visa or other visa under the Entry Into Israel Law, 5712-1952:

1. A/1 Temporary Resident visa

An A/1 Temporary Resident visa is given to a person who is eligible for immigration under the law of return (*aliyah*) and has completed the examination process with the *aliyah* representative of the Jewish Agency, and whose application has been examined and approved by the Israeli diplomatic / consular representative.

2. B/2 Visitor's visa

A B/2 visa is granted to someone who wishes to stay in Israel for only a short time (for a visit, tourism, a business meeting or Hebrew studies). A person who enters Israel on a B/2 visa is not allowed to work in the State of Israel.

A B/2 visa is valid for up to three months from the date of issue.

3. A/2 Student visa

This visa is granted to those who want to study in Israel. The visa is valid for up to one year and for multiple entrances and exits. Recipients of this visa are not permitted to work in Israel.

4. A/3 Clergy visa

This visa is granted to clergymen or women for the purpose of fulfilling their clerical duties among their religious communities in Israel, pursuant to the invitation of a recognised religious institution in Israel.

A clergyman or women who goes to Israel for a visit and requires an entry visa will receive the regular B/2 visa. The mission will only issue the visa with the prior approval of the Ministry of the Interior. The validity of the visa will be in accordance with Ministry of Interior guidelines, with the option of renewal only in Israel.

5. A/4 visa for the spouses and children of recipients of A/2 or A/3 visas

6. B/1 Work visa

This visa is for a person whose stay in Israel is approved for a limited period of time for the purpose of work. This visa is given to experts and artists, among others, and is granted solely with the approval of the Ministry of the Interior.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

Only the Entry into Israel Law No. 5712-1952, described in question 10.1 hereinabove.

10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Israeli Nationality law defines the categories under which a person can be granted citizenship:

1. **Citizenship by residence** – is intended for a non-Jewish resident of the British Mandate of Palestine (Arabs, Druze, Bedouins, etc.) who were considered to be associated with Palestine during the period immediately prior to the 1948 Arab-Israeli War. If they were still within the territorial confines of Israel after the war, they were granted full Israeli citizenship.
2. **Citizenship by descent** – a child of an Israeli citizen (including children born outside of Israel as first generation out of Israel) is considered an Israeli citizen. Persons born outside Israel are Israeli citizens if their father or mother holds Israeli citizenship, acquired either by birth in Israel, according to the Law of Return, by residence, or by naturalisation. This type of citizenship is limited to only one generation born abroad.
3. **Naturalisation** – adults may acquire Israeli citizenship through naturalisation, except in the case of enemy nationals. For this a person must have resided in Israel for three years out of the previous five years. In addition, the applicant must have a right to reside in Israel on a permanent basis. All the requests are, however, at the discretion of the Minister of the Interior.
4. **Citizenship by marriage** – traditionally, Israel automatically granted citizenship to spouses of Jewish Israeli citizens by virtue of the Law of Return.
5. **The Law of Return** – grants all Jews the right to immigrate to Israel, the right to live in Israel and to gain Israeli citizenship. The Israeli nationality law, formally grants the Israeli citizenship. In the 1970s the Law of Return was expanded to grant the same rights to the spouse of a Jew, the children of a Jew and their spouses, and the grandchildren of a Jew and their spouses, provided that the Jew did not willingly practise a religion other than Judaism.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

No, there are not.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

The policy of the Israeli government is to encourage immigration of Jews to Israel, by granting tax breaks to Jewish new immigrants under the provisions of the Immigration law which entitles Jewish new immigrants the enjoyment of income tax and capitals gains tax benefits.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Under current legislation, the Israeli tax law allows only the signing of bilateral treaties for avoiding double taxation. This is going to change soon.

The new legislation will implement the new Automatic Exchange of Information agreements, on a Reporting Standard.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

Certain reporting requirements are imposed in Israel on foreign trusts (including irrevocable and discretionary trusts), depending on the tax resident status of the settlors and/or beneficiaries and/or the location of the trust assets.

In accordance with the Israeli Income Tax Ordinance, the trustees (including foreign resident trustees) are obligated by law to open a tax file with the Israeli Tax Authorities and file a report on the relevant trust in the following circumstances:

1. if at least one of the settlors is an Israeli resident; or
2. if at least one of the beneficiaries is an Israeli resident; or
3. if all beneficiaries and settlors are non-Israeli residents but the trust holds assets in Israel.

Prior to 31 December 2013, a trust created by a foreign settlor with at least one Israeli beneficiary was exempt from reporting requirements in Israel. As of 1 January 2014, all such trusts must be reported to the Israeli Tax Authorities before 31 December 2015.

If, however, the settlor is classified as a New Immigrant or a Senior Returning Resident in accordance with Israeli law, then the trust is exempt from the above reporting requirements and taxes for the duration of the 10-year tax holiday (exemption), so long as the trust assets and income derived are outside of Israel.

Expert advice should be sought by the trustees for each and every situation to confirm the trustees' reporting obligations and to ensure that the report is submitted correctly and in the correct timeframe.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

There is no public register for trusts and foundations.

There is a public registry for companies, i.e. the Company's Registrar – all shareholders and directors appear on the company's extract.

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Furthermore, Marina consults on all aspects of the establishment and administration of trusts and multi-national family asset protection.

MICHAEL SHINE & PARTNERS
ADVOCATES AND NOTARIES

Michael Shine & Partners is one of the leading and most well-established law firms in Israel in the Private Client sector, specialising in international tax planning, the establishment and administration of trusts, trust taxation and the appropriate reporting to the tax authorities, multi-national asset protection, and family wealth preservation. The firm acts as general legal counsel for multi-national families.

The firm also specialises in asset management and the establishment of family structures for the purposes of wealth and family business planning. For these purposes the firm permanently retains foreign trust companies in a number of alternative jurisdictions, which are fully licensed and provide exclusive services to the firm's clients in this connection, Alphen Trust Company AG, a self-regulated Swiss trust company situated in Zurich, serves the firm's clients exclusively. Furthermore, the firm has extensive practices in the areas of commercial law, real estate (with a specialisation in representing foreign residents), foreign investments and transactions, and inheritance and estate matters.

In addition to representing private clients from all over the world, including high net worth individuals and families, as well as family wealth funds, the firm's clients include many international companies, international financial institutions and foreign trade risk insurers, as well as a large number of real estate companies controlled by foreign residents that hold commercial properties in Israel.

A number of years ago, the partners of the firm established a professional Family Office, 'M.S.A. Shine Global Family Office Ltd.', which has in excess of 30 employees. The partners of the firm likewise established the independent Asset Management Company, and the company 'Alphen Asset Management A.G.', which is situated in Zurich, Switzerland and which holds a Swiss licence for the management of investment portfolios.

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