

A photograph of a modern office interior, featuring a long conference table with several chairs, and large windows in the background showing a cityscape. The image is slightly faded and serves as a background for the text.

Some Things You *May* Not Have Known About Israeli Taxation

Harry Kirsh, Advocate

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YIGAL ARNON & Co.

L A W F I R M

Israel – The Basics

Population: 7.8 million

GDP per capita: \$31,000

GDP growth (2011): 4.8%

Inflation (2011): 3.3%

Unemployment: 5.4%

Israeli Taxation: The Basics

Corporate tax rate: 25%

Marginal individual rate: 48%

VAT: 16%

Capital gains tax: 25% / 30%

Also: National Insurance; Land Acquisition Tax

No estate tax; no gift tax

Corporate Taxation

Basic rate: 25%

“Preferred Enterprise”:

- ❑ 6% or 12% (depending on location)
- ❑ applies to manufacturing and hi-tech sectors
- ❑ rates somewhat higher before 2015

No thin capitalization

No branch profits tax

Generally no group consolidation

Corporate residency based on “management and control”

Treatment of Losses

Unlimited loss carryforward

No loss carryback

NOL's may be used to offset capital gains from the sale of assets used in a business

Losses in change-of-control situation:

- no statutory restriction
- case law restricts where previous business activity has been discontinued

Distribution of Profits

- Dividends from one Israeli company to another: not taxable
- Dividends to individuals or to non-Israeli shareholders: 25% or 30% (subject to lower treaty rates)
- US-Israel treaty: dividend to US parent (10% control): 12.5% (does not apply to US LLC !)

Capital Gains

Broad charge to tax, even on non-residents, but subject to many exceptions, including:

- ❑ tax treaties (but US-Israel treaty only exempts holdings under 10%)
- ❑ shares in private companies – post 1.1.2009 acquisitions
- ❑ shares listed for trading on a stock exchange (if purchased post-IPO)
- ❑ VC fund rulings (even if PE in Israel)

Reorganizations

Deferred tax on:

- contributions of assets to 90% subsidiary
- contribution of jointly-held assets to jointly-held corporation (allows for “flip” transactions)
- share-for-share exchanges
- Mergers
- spin-offs (vertical;horizontal)

General conditions: continuity of share ownership, asset ownership and business activity for a two year period

M&A Tax Aspects

Share versus asset deal:

- ❑ capital gain versus dividend
- ❑ taxation of liquidation
- ❑ VAT on asset sale

Usually reverse triangular

Withholding at source on share purchase consideration

Employee options cash-out / assumption

Post-deal structuring:

- ❑ outbound IP transfer (!!)
- ❑ debt push-down
- ❑ founder retention payments – ordinary income versus capital gains

Tax Treaties

Network of over 50 treaties

US – Israel treaty:

- ❑ interest income: 17.5% WHT (10% for banks and financial institutions)
- ❑ royalties: 15% WHT

Aggressive ITA approach to perceived treaty shopping

Employee Options

- Section 102 capital gains track
- Two year tax lock-up
- Taxation upon sale of shares
- Trustee required
- Tax rate: 25%
- Plan must be submitted to ITA
- Not available for controlling shareholders (10% or more)

Real Estate Taxation

- Gains from sale subject tax at 25% rate
- Purchase subject to Acquisition Tax (generally 5% of value)
- Purchase may also be subject to VAT
- Shares in “real estate companies” assimilated to real property
- Remember: no branch profits tax
- Complex exemptions for privately-owned residential properties

Trust Taxation

New trust taxation regime since 2006

Non-resident Grantor Trust (NGT):

- ❑ may have Israeli resident beneficiaries
- ❑ no Israeli tax on foreign-sourced income
- ❑ no Israeli tax on distributions to Israeli beneficiaries
- ❑ (almost) no reporting requirements

New (and Returning) Residents

- 10 year tax holiday on all foreign-sourced income (including on post-arrival assets)
- Exemption from reporting on foreign-sourced income
- New resident may own or control foreign corporations without adverse consequences – planning opportunities

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Thanks !