May
2017

GORNITZKY&CO

Israeli Banks are Increasing Enforcement of US Estate Tax on Israeli Investors

US estate tax is imposed on U.S situs assets of a decedent, who is a non-resident, non-citizen of the U.S ("NRA"), including real estate assets in the U.S and certain securities of U.S corporations (unless the estate tax will be repealed as currently suggested). As opposed to US citizens and domiciliaries who are exempt from federal estate tax on estates up to an amount of USD 5,490,000, the NRAs' exemption amount is merely 60,000 USD. The tax rates on taxable estates can reach up to more than 40% (depending on state estate tax as well).

Since many Israeli tax residents invest in US real estate and securities of US corporations, estate tax exposure regarding their US investments may exist. In addition, although an investment in securities of US corporations by NRAs may be exempt from capital gain taxation in the US, such an investment may be subject to US estate tax.

Until recently, as a matter of practice, Israeli banks have not enforced the US estate tax liability. However, it seems that a policy change has recently taken place, deriving, inter alia, from the Foreign Account Tax Compliant Act ("FATCA"), which requires Israeli banks to disclose financial information regarding their US clients to the US tax authorities. As a result, Israeli banks have increased enforcement on tax matters, including non-Israeli related tax matters. Recently, several Israeli banks have informed their clients that in order to inherit bank accounts that include US assets, an approval from the US Tax Authority for a tax exemption or payment of taxes may be required.

There are in fact several different alternatives for mitigating US estate tax exposure on NRAs' investments in US real estate and securities of US corporations. Among the various alternatives, we note the use of trusts, life insurance, investing in ADRs and investing through foreign corporations.

A relatively simple and inexpensive solution for investing in securities of US corporations is through the use of an Israeli Family Company. An Israeli Family Company is treated for Israeli tax purposes as a "Transparent Entity" and therefore its taxable income is regarded as the income of the company's individual shareholder. Notwithstanding, from a US tax perspective, as a default matter, an Israeli family company is regarded as a corporation under "Check the Box" regulations (unless the corporation has elected to be treated differently). Thus, the investment in securities of US corporations will be excluded from the Israeli investor's estate from a US estate tax perspective, as he holds shares in an Israeli corporation (as opposed to holding securities directly in the US corporations), while for Israeli tax purposes the taxation remains substantially similar, since the taxable income of the Israeli Family Company is attributed to the individual shareholder.

For further information please contact:

Daniel Paserman, Adv. (CPA), Head of Tax

paserman@gornitzky.com

office: +972-3-7109191

fax: +972-3-5606555

Ofer Levy , Adv. (CPA)

oferl@gornitzky.com

office: +972-3-7109191

fax: +972-3-5606555

GORNITZKY&CO

* This brief memorandum provides general information and does not constitute or substitute any legal advice. As these issues are complex and of a circumstantial nature, which involve different tax and legal aspects, each case should be examined according to its individual circumstances.