September.
2016

GORNITZKY&CO

Reportable Tax Acts in relation to Trusts

In 2006, special regulations were enacted, providing an exhaustive list of tax planning acts that must be reported to the Israel Tax Authority (Reportable Acts). These Reportable Acts include, *inter alia*, the sale of property to a "relative" that creates a deductible loss for the seller, waiving the debt of a "relative", acquisition of a company with carryforward losses and others, all in accordance with the conditions prescribed in the regulations. These Reportable Acts, including the parties involved and the amounts that were paid, are to be reported using a special form attached to the annual tax return. Failure to report is a criminal offense. Moreover, in a situation where a Reportable Act creates a tax shortfall in a final assessment exceeding 50% of the tax liability, a deficiency fine of up to 30% of the shortfall may be levied.

Recently, a draft bill was published to amend the regulations in respect of acts from 2017 onwards, and for the first time, the Tax Authority proposes to include a list of acts relating to trusts. It seems that the initiative to include acts related to the trusts was born *inter alia* in the wake of the amendment to the Israeli Income Tax Ordinance, which came into force in 2014. This amendment expands the Israeli tax basis regarding trusts, and eliminates certain exemptions and reliefs. *Inter alia*, the amendment stipulates that in circumstances where there is an Israeli beneficiary in a trust, the trust will be subject to tax and reporting in Israel, even if the settlor is a foreign resident. Consequently, Following these legislative amendments, many trusts were modified. With this regard, Israeli beneficiaries have been excluded from foreign trusts that were created by foreign residents. In order to trace these changes and deter trustees and beneficiaries from taking such actions, the Tax Authority now also seeks to amend the regulations and apply them to certain acts relating to trusts.

Below is a summary of acts that will be considered Reportable Acts according to the proposed amended regulations:

1. An Israeli resident that was a beneficiary of a trust and was excluded therefrom, received a loan or an asset from someone who was or is still a trustee or beneficiary in the trust, free of charge, and the person transferring the asset or granting the loan was a foreign resident at any time between the exclusion date and the date of the Reportable Act.
2. An Israeli resident beneficiary received a loan from the trust or, alternatively, a trust asset served as collateral for a loan taken by the beneficiary.
3. Abeneficiary provides management or consulting services to the trust or to companies held by the trust; acts in a managerial position of a company or an enterprise held by the trust or is part of the trust's investment committee or holds another administrative role in the trust.
4. The exclusion of an Israeli resident from being a beneficiary in a trust, whereas, if there was no exclusion, the trust would have been taxable in Israel.

The said Reportable Acts will require notification to the Tax Authority in Israel when filing the annual tax return, either by the beneficiary or the trustee, as determined in the regulations. It is important to emphasize that at this stage this is only an initial draft of of the amended regulations.

For further information please contact:

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

paserman@gornitzky.com

office: +972-3-7109191

fax: +972-3-5606555

GORNITZKY&CO