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Handelskammer Schweiz-Israel
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Israeli Tax Implications of Doing Business in Switzerland

Israel Swiss Chamber of Commerce

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Topics

- Introduction: couple of words the about countries involved
- The use of Swiss companies by Israelis and the use of Israeli companies by Swiss clients
- Tax impact of Israeli companies operating in Switzerland and of Swiss companies operating in Israel
- Tax immigration of companies and individuals
- Using the Swiss-Israel double-tax treaty
- Use and abuse of structures
- Q&A

Introduction (1)

	Switzerland	Israel
Population (2008)	7.709 million	7.374 million
Land	41,285 km2	22,072 km2 (inc. Golan Heights and east Jerusalem)
GDP (2008)	CHF 541.8 million	US$ 201.9 million
GDP per capita (2008)	CHF 70,272	US$ 27,622
Inflation rate (2008)	1%	2.5%
Growth	?	**3.5%**

Introduction (2)

Bilateral Agreements

Air connection/transport (1952/5)
Trade (1956)
Extradition (1958)
Judicial Cooperation (1965)
Abolishment of Visas (1967)
Social Security (1984)
Double Tax Treaty (2003)

Multilateral Agreements:

EFTA Free Trade Agreement (1993)
Promotion of scientific cooperation (letter of intent 2005)

To date, Swiss investments in Israel exceed CHF 500,000,000 (e.g. Osem-Nestle, ABB, Roche, Novartis)

Still many options and opportunities (specially R&D; Law for the Encouragement of Capital Investments, 1959)

The Tax System in Israel

Origin – the British Mandate in Israel (Palestine) 1920-1948

1998 - Removal of the foreign exchange restrictions

2003 – Tax Reform

Taxable income is to be assessed on a worldwide income (personal basis) and not on a territorial/geographic basis.

2006 – New / ”Mini” Tax Reform

- Gradual reduction of marginal tax rates
- Taxation of trusts
- Change of tax rates on ordinary income and on investment income
- Real Estate Investment Trusts (“REIT”)
- Participation exemption
- Reporting of tax-planning measures
- Introduction of the Tax rulings institution

2008-2009

- Reporting duties on trusts are finalized; voluntary disclosure arrangement introduced
- Reform of taxation of new and returning residents
- Acceleration program

Residency for tax purposes - individuals

Refutable presumption (Income Tax Ordinance):
The number of days an individual stays in Israel - 183 days or more during the tax year; or 30 days or more during the tax year, and a total of 425 days or more during the tax year and the two previous years.

1) **Two tests ("Center of Life" principle)**

Objective (Physical)	Ordinance lists criteria to determine where are the majority of a person's affiliations located; e.g. permanent home, permanent place of business
Subjective	what is the person's ***intent*** and where does he consider to be the center of his life.

2) **In case of potential conflict with another county**

- tax treaty (52 countries)
- domestic laws

Taxation of resident / non resident individuals

General tax rates 2010**:

Tax bracket in NIS (per annum)	Tax rate
Up to 55,080	10%
55,081-97,920	14%
97,921-147,000	18%
147,001-240,000	24%
240,001-454,680	27%
Every additional shekel	45%

** The three first brackets merge if income is not from personal endeavor.

Exemptions for non-residents on certain capital transactions

- Sale of shares in a research & development company
- Sale of traded securities
- Sale of non-traded securities
- Participation Exemption

Acceleration Program - new benefits

- Full tax exemption on interest earned on listed bonds and paid to foreign residents.
- Full exemptions from capital gains tax for foreign investors who sell Israeli securities, whether traded or not.
- Gradual reduction of tax rates

Taxation of companies in Israel

Corporate tax rates (flat rate)
25% in 2010
24% in 2011
23% in 2012
22% in 2013
21% in 2014
20% in 2015
18% in 2016

Resident companies
- Companies incorporated in Israel; and/or
- foreign company business is managed and controlled from Israel

- will be taxed at the regular corporate tax rate.

VAT – 16% (as of 1/1/2010)

Controlled Foreign Corporation

primary purpose: to prevent resident shareholders of a private company from avoiding tax by leaving profits in foreign companies without distribution of dividends.

(As of 2003)

if the following conditions are fulfilled:

1. a shareholder/member holds at least 10% of the means of control in -a controlled foreign company (**CFC**), being a company where more than 50% of the means of control in that body are held by Israeli residents (or 40% by residents and more than 10% by non-resident relatives), and such company

2. has undistributed passive income, and

3. the rate of foreign tax on the passive income does not exceed 20%

→ deemed dividend

↓

25% tax (In general)

Note: Not applicable to publicly traded funds/companies

Tax Planning using Israeli companies (1)

Non-resident companies
As of December 31, 2008 - The tax rate on dividends that an Israeli company receives from a foreign company is reduced, from the rate of 25% to 5%, provided certain uses are made of the dividends proceeds in Israel.

Temporarily reduction of tax on dividends
For the tax years 2009-2011, the tax rate on dividends distributed to substantial shareholders who hold more than 10% the shares in a private company will be reduced from 25% to 12%. This reduction is applicable only to income accrued before December 31, 2002 that will be distributed as dividends between October 1, 2009 and September 30, 2010.

Holding Companies:

- Exemption from tax on dividends received from Participating Companies (12 months holding period minimum).
- Exemption from capital gains tax on the sale of shares of the Participating Companies.
- Exemption from tax on income from financial investments in capital markets in Israel.

Participation Exemption
Non-resident shareholders holding at least 10% of the shares with rights to dividends of an “Israeli Holding Company” –will be subject to a reduced withholding tax of 5% on dividends (instead of 25%)

Tax Planning using Israeli companies (2)

More ideas:

- Use of a transparent company (similar to a limited liability company (**LLC**)) - shareholders, instead of the company itself, are taxed on a flow-through basis (Only for Israeli residents shareholders).
- In a “House Property Company” (**HPC**) – a private company with five or less shareholders and no subsidiaries, all the assets and business of which is the holdings of buildings – the income of the company shall be deemed the income of its shareholders which may be apportioned as the Tax Authority shall direct. The buildings may be in Israel or abroad.
- The use of an Israeli limited partnership – having one or more foreign residents
- “shifting” residence using tax treaties
- In trust/foundation – use of an Israeli underlying company, especially if it has no asset/income gained/occurred in Israel

Tax immigration benefits (Israel)

Subject	Current benefits
Tax exemption on foreign passive income (not including capital gains)	10-year exemption, both for New Residents and Returning Residents (10-year absence)
Tax exemption on foreign business/vocational/salaried income	10-year exemption, both to New Residents and Returning Residents on all three types of income, without the existing restrictions.
Tax exemption on capital gains	10-year exemption, both for New Residents and Returning Residents (6-year absence)
Companies controlled by a New Resident or a Returning Resident	In the first 10 years the company will not be subject to the "management and control" residence test, and its income will be exempt.
Adaptation period	First year from the date of immigration to be a tax-exempt "adaptation period", for both New Residents and Returning Residents
Reporting duties	No reporting obligations, for both New Residents and Returning Residents

Tax immigration to Switzerland

- Good base for European trade
- Infrastructure
- Labor force
- Geographic location
- VAT
- Use of advantageous tax regime and tax ruling
- Applying tax treaty benefits
- Companies / individuals

Use of the Double Tax Treaty

- Signed with additional protocol on July 2, 2003; Valid as of January 1, 2002
- Generally complies with OECD Model Convention
- Pre-2009 exchange of information clause

Dividends paid by Israeli resident – to Switzerland	Interest inbound and outbound	Royalties inbound and outbound
5 % inter-company/ 10% if substantial SH is non-Israeli/ 15% general	**5% when paid on loan granted by bank in the other state/ 10% + 0% withholding tax**	**5%**

Note:

- Business profits – can be taxed in both countries if a permanent establishment is used, according to the remuneration which is attributed to such establishment rather than referring to profits realized (the Swiss "direct method")
- Capital Gains – if consists mainly of immovable property – shall be taxed were the assets are situated (Swiss Cantonal RE tax)
- Change of residency, while holding shares of a company in the other state - the resident is taxed in his old country on sell of shares for additional two years. Note: relevant mainly to companies, due to Exit Tax on individuals
- Benefits are not applicable if the person is not the beneficial owner of the particular item of income sourced in the other state

Use and Abuse of Structures

Company (on/off shore)	Trust / Foundation	Insurance
• Flexible • Assets are immune from claims against shareholders / directors • use of tax treaties But note: • It is possible to lift the "corporate veil" • CFC rules	• Trust Law as of 1979, based on common law trust. • legitimate and acceptable planning tool •residence of the trustee is irrelevant • Definition: a relationship to any property that binds a trustee to hold and act in respect of the property in the interest of a beneficiary or for some other purpose	• During the lifetime of the policy, taxed only in the hand of the insurer. • Proceeds – risk element is exempt; savings component is taxed like interest. • need to find the right insurer and have the policy carefully checked

"sham" trust/foundation

Reporting (1)

- individuals
- Foreign Company that has asset or income in Israel
- “branches” of foreign companies in Israel, especially when no gains occur
- “aggressive” tax planning regulations; actions which require reporting as such
- Foreign residents who accrue or derive income in Israel may enjoy an exemption from filing Israeli tax returns if tax is withheld at source (at the general rate of 25%) and if the income is derived either from a business or profession conducted for no longer than 180 days in a tax year or from salary, dividends, interest or royalties.

Reporting Duties - Trusts and Foundations (2)

Who?	What?	When?
Settlor (or contributor) (if resident at time of settlement/contribution or thereafter)	Notice of creation / contribution	90 days from creation / contribution
	Change of trust status to IRT or if settlor become Israeli resident	Within 90 days
Trustee of an IRT, or a TT with at least one Israeli resident beneficiary, or of any other trust which has Israeli sourced income or assets (even if no tax is payable)	Annual tax return	by April 30th of the following tax year
	Notice of Inception of TT	90 days from the inception
	Notice upon • change of the status of the Trust, • termination of IRT or TT, • termination of any other trust that has assets in Israel at the time of termination,	by April 30th of the following tax year
Beneficiary	Notice upon receipt of a non-cash distribution	by April 30th of the tax year following the distribution

(As of 1.1.2006, deadline for 2006-2008: 31.12.09; deadline for 2009: 30.04.10)

Definitions

Definitions and tax liability

Settlor/Contributor	Beneficiary	Definition	Tax liability on current income
Israeli resident *inter vivos*	At least one Israeli resident	Israel Resident Trust - IRT	Fully taxed in Israel on world wide income
Israeli resident *inter vivos*	Non-residents only	Foreign Beneficiary Trust - FBT	Only Israeli-sourced income
Israeli resident *mortis causa*	At least one Israeli resident	Testamentary Trust - TT	Fully taxed in Israel as in IRT
Israeli resident *mortis causa*	Non-residents only	TT	Only Israeli-sourced income as in FBT
Non- resident	Non and/or Israeli residents	Foreign Settlor Trust - FST	Only Israeli-sourced income

Potential Liabilities (1)

- civil fine of NIS 280 for each month - for delay in filing a tax return.
- one year imprisonment, or to a fine of NIS 26,100, or to both the imprisonment and the fine - a person, who without sufficient cause does not file a tax return in time.
- Instead of an indictment, an administrative fine may be imposed, once such administrative fine is paid, the offense is struck.
- Where a body of persons is liable - its organs can be deemed guilty of the offense
- seven years imprisonment or to a fine of NIS 202,000 plus double the amount of income which such person concealed, intended to conceal, or helped conceal, or to both the imprisonment and the fine - for a person who willfully, with the intention of evading payment of tax, omits from a tax return any reportable income, or makes a false statement or entry in a tax return.
- two years imprisonment, or a fine of NIS 67,300 plus the amount of income missing in consequence of the incorrect tax return or information for a person, who files an incorrect tax return by omitting or understating reportable income, or provides incorrect information in relation to any matter affecting his own tax liability or the tax liability of another person.

Potential Liabilities (2)

- partial report affect the tax liability of the trustee or the tax liability of another person, this may result in criminal liability for the trustee
- criminal action for omission or making false statement may be instituted up to <u>ten</u> years from the end of the tax year in which the offense was committed
- Criminal action cannot be instituted later than <u>six</u> years from the end of the tax year in which the offense was committed
- ITA may accept monetary composition that does not exceed double the highest fine that can be imposed for that offense

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Questions?

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Thanks for your attention!