

STEP Israel Annual Conference

Competition and Cooperation Amongst Nations The Israeli Perspective

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Intl' Taxation – Recent Developments

- **BEPS** - Base Erosion and Profit Shifting
- **MLI** - Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
- **FATCA**
- **CRS** – Common Reporting Standard
- **MCMAA** - Multilateral Convention on Mutual Administrative Assistance in Tax Matters



Global Cooperation

The Israeli Aspect

- **BEPS**
- **MLI**
 - Israel signed the MLI on June 7, 2017.
 - Minimum Standard; Optional Provisions
 - Reservations
- **Exchange of Information:**
 - MCMAA
 - Implementation of FATCA and CRS

Tax Competition

- Tax benefits for New Immigrants
- Trusts
- Exemption from capital gain tax for foreign investors
- VC and PE funds
- Estate and Gift Tax
- Tax treaty network
- Corporate Taxpayers
- Enforcement?



Cooperation and Competition

- Certain implication of tax cooperation
 - Qualification for treaty benefits
 - Article 3 of the MLI - Transparent Entities
 - Article 6 of the MLI - Purpose of a Covered Tax Agreement
 - Article 7 of the MLI - Prevention of Treaty Abuse
 - Article 11 of the MLI - Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents
 - Exchange of information



Cooperation and Competition Treaty Benefits

- Beneficial owner – ITA interpretation (Circular 22/2004):
 - Only “beneficial owner” qualifies for treaty benefits
 - Conduit arrangements cannot qualify
 - Substantive requirements
 - Advance approval for treaty benefits

Competition V. Cooperation

- Ability to obtain treaty benefits
 - New immigrant as a “resident” for treaty purposes
 - The term “resident” is defined under certain tax treaties:

*“For the purposes of this Convention, the term “resident of Contracting State“ means any person who, under the laws of that State, **is liable to tax therein** by reason of the person's domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. **This term, however, does not include any person ,who is liable to tax in that State in respect only of income from sources in that State.**”*

Competition V. Cooperation

Treaty Benefits for Israeli Residents

- Article 6 of the MLI - Purpose of a Covered Tax Agreement
 - Minimum Standard: 6(1) *“Intending to eliminate double taxation with respect to the taxes covered by this agreement **without creating opportunities for non-taxation** or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this agreement for the indirect benefit of residents of third jurisdictions).”*
- Israel Position: no reservation.
- Implications for new immigrants ?

Competition V. Cooperation

Treaty Benefits for Israeli Residents

- Article 7 of the MLI – Prevention of Treaty Abuse
 - Minimum Standard: 7(1) *“Notwithstanding any provisions of a Covered Tax Agreement, a benefit under the Covered Tax Agreement shall not be granted in respect of an item of income or capital **if it is reasonable to conclude**, having regard to all relevant facts and circumstances, that obtaining that benefit was **one of the principal purposes** of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Covered Tax Agreement.”*
 - Israel Position: no reservation.

Competition V. Cooperation

Treaty Benefits for Israeli Residents

- Article 3 of the MLI – Transparent Entities
 - 3(1) *“For the purposes of a Covered Tax Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of **either** Contracting Jurisdiction shall be considered to be income of a **resident of a Contracting Jurisdiction** but only to the extent that the income is treated, **for purposes of taxation** by that Contracting Jurisdiction, as the income of a resident of that Contracting Jurisdiction.”*
- Israel Position: no reservations
- Implication to trusts other entities?

Competition V. Cooperation

Treaty Benefits for Israeli Residents

- Article 11 of the MLI – Application of Tax Agreements to Restrict a Party’s Right to Tax its Own Residents
 - 11(1) – “A Covered Tax Agreement shall not affect the taxation by a Contracting Jurisdiction of its residents, **except** with respect to the benefits granted under provisions of the Covered Tax Agreement:…
 - d) which require that Contracting Jurisdiction to provide a tax credit or tax exemption to residents of that Contracting Jurisdiction with respect to the income that the other Contracting Jurisdiction may tax in accordance with the Covered Tax Agreement (including profits that are attributable to a permanent establishment situated in that other Contracting Jurisdiction in accordance with the Covered Tax Agreement);”
 - Israel : full reservation.

Cooperation and Exchange of Information

- The Conflicting Rights:
 - International cooperation among nations to introduce effective tax enforcement.
 - Protecting taxpayers' rights.
- Conflict with the regime for new immigrants

Cooperation and Exchange of Information

- Israel signed the MCMAA in 2015.
- Chapter III of the MCMAA provides for five ways of providing information:
 1. Exchange of information based on request.
 2. Automatic exchange of information.
 3. Spontaneous exchange of information.
 4. Simultaneous tax examinations.
 5. Tax examinations abroad.

Cooperation and Exchange of Information

- In the domestic setting there are limitations on the type and scope of information that can be used by the tax authority.
- National laws provide for certain taxpayers' rights.
- How taxpayers' rights that are protected under domestic law will be reserved at the international level.



Cooperation and Exchange of Information

In November 2015, the Israeli income tax ordinance was amended and a new chapter was added to allow Israel to provide information under international agreement for exchange of information (such as the MCMAA).

- Under the new amendment, the information can be provided only **pursuant to an international agreement** and in addition, the following conditions need to be met:
 1. The information is **necessary** for the enforcement of the other State's tax laws.
 2. The Israel Tax Authority could have used the requested information for the enforcement of Israeli tax laws.
 3. The other State **is required** to keep the information confidential and secured.
 4. The information will be used **solely** for the purpose of enforcing the other state's tax laws, and the information will not be provided to other agencies within such state or to any other states.
- In addition, Information will not be provided if it may harm: state security, public safety, pending investigation, public policy, or any other vital interest of Israel.

Cooperation and Exchange of Information

- In case another state requested information for the purposes of enforcing its tax laws on an Israeli resident, the Israel Tax Authority will inform the Israeli resident about the intention to transfer such information request at least 14 days prior to the transfer of such information.
- Unless, the other state requested not to give such a notification to the taxpayer

Cooperation and Exchange of Information

- Information can be provided to foreign governments only pursuant to an international agreement for exchange of information.
- How will the tax authority check itself that no exception applies?
 - Any procedures for securing taxpayers' rights?



Cooperation v. Competition

- Global cooperation to address weaknesses of the international tax system
 - Uncertainty with respect to application of tax treaties?
- Nations still compete to attract HNWI and multinationals
 - Incentive to enforce taxation rights?



Thank you

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