Some Foreign Entities Can't Open Israel Bank Account to Pay Tax

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By

WILLIAM HOKE
Contact Author

The Israel Tax Authority (ITA) reportedly is unable to collect around ILS 1 billion (about $283 million) from some foreign entities because Israeli banks won't allow them to open accounts to pay their tax liabilities.

Globes, an Israeli financial newspaper, reported November 3 that Israeli banks are blocking some tax payments from abroad out of fear that they could contravene the country's anti-money-laundering (AML) regulations. The newspaper quoted an unnamed senior official at the ITA as saying that one taxpayer is unable to pay a tax liability of ILS 200 million.

The article said that while the Bank of Israel previously had an account that foreign entities could use to deposit funds for making tax payments, the central bank started returning the money at the beginning of 2019, reportedly on grounds that the ITA was unable to identify the parties that made the payments.

Daniel Paserman, a tax lawyer for Gornitzy & Co., told *Tax Notes* that although the Bank of Israel instructed the ITA not to use the account "a few years ago," companies continued to make payments through it that were accepted by the tax authority. "The money was already in the bank, so the ITA received it," Paserman said. "Then, at the beginning of this year, they started wiring the money back."

Paserman said trusts set up in a foreign jurisdiction that have a settlor or beneficiaries in Israel are most likely to be ensnared by the Catch-22. "They're more likely to run into the problem because they probably won't have a bank account or assets in Israel because they don't operate here," he said.

Foreign companies such as construction firms that perform services in Israel for a short time can also be caught up in the problem, Paserman said. "The company wants to comply with its obligations but can't because it doesn't have an account here," he said.

Henriette Fuchs, a tax lawyer with Pearl Cohen Zedek Latzer Baratz, said the payment of a tax debt of a foreign trust or a foreign internet company with a deemed permanent establishment in Israel might be attempted by a different party, such as a beneficiary of the trust or a party affiliated with the corporate debtor. "Or [it could be] a completely alien payor — not the actual assessee — and [have] a high likelihood of AML complications," she said.

In such cases, it might be difficult to identify either the party paying the tax debt or which taxpayer's liability the payment is meant to satisfy, Fuchs said. It might also be difficult to establish that a payment is being made by a party that is clear from an AML perspective, she said. "Even when the foreign payor is the actual debtor of the tax debt, its nature and activities abroad may disqualify the company from successfully passing through the AML compliance of any bank, not only that of Bank of Israel," Fuchs said.

Fuchs dismissed a suggestion that the ITA set up an account in its own name in a foreign bank in order to accept the problematic tax payments offshore. "The basic laws of Israel and the regulatory framework of governmental financing and finance management . . . generally prevent the maintenance of bank accounts by the authorities in other countries," she said. "The Bank of Israel is by law the government's only banker for its activity in Israel's domestic currency. The government may, with the consent of the Bank of Israel, obtain services from other banks or financial entities only for purposes of its debt management and its fiscal activity. The Bank of Israel also provides the government with banking services in foreign currency."

Fuchs said banks in many countries have become skittish about opening bank accounts for foreign residents or companies under the control of foreign beneficiaries because of the risk of liability.

She said complications caused by the combination of banking regulations, know-your-client compliance requirements, and a bank's "quite exclusive" discretion in deciding whether to open an account for a foreign entity or accept payments from abroad are not limited to Israel. "A number of international trade-dependent countries . . . have also found that [the requirements] have become so cumbersome that they actually negatively affect the country's ease of doing business and/or the country's international trade ranking/status," she said in an email. "Some of these countries have invoked legislation and committees that supervise the ultimate decision whether a foreign company or foreign-held company may open and activate a bank account and thus [have broken] through the impasse created when banking officers are left alone to decide, under threat of sanctions against the banks for breach of AML or other compliance rules."

Paserman said it appears that the issue is less likely to occur elsewhere because foreign banks are generally not as cautious as their Israeli counterparts. "The anti-money-laundering compliance here is more severe than abroad because of scandals that have happened in the past," he said. "The inspectors of Israel's banks have issued many internal instructions putting responsibility on them to do a lot of due diligence. The banks have become reluctant to do business with foreign entities."

Several Israeli banks have settled investigations by U.S. authorities into allegations that they helped clients evade federal taxes — most recently Mizrahi-Tefahot Bank Ltd., which agreed in March to pay $195 million as part of a deferred prosecution agreement with the Justice Department.

Paserman said companies affected by the problem face late-payment penalties and additional interest even though they are ready and willing to pay their tax bills. "We write a letter [for them] saying they are unable to pay and we request abatements," he said. "We haven't received any answers."

Fuchs said once a tax debt in the ITA's system goes unpaid, companies are exposed to penalties and additional interest, "including the risk of criminal charges for the nonpayment of tax debts."

The ITA didn't respond to a request for comment, but a Bank of Israel spokesman said that while a claim in the *Globes* article that it is blocking transfers to the ITA "is not correct overall or in principle," he was unable to comment further for reasons of confidentiality. "The banks in Israel are subject to accepted international standards and regulations and everything regarding money laundering rules," he said.

Both Paserman and Fuchs said the authorities are aware of the issue and are considering solutions to the problem.

Haaretz, a Tel Aviv-based newspaper, reported in August that concerns about money laundering and terrorist financing had prompted some Israeli banks to refuse to accept proceeds of cryptocurrency sales, making it impossible for some sellers to pay taxes on the resulting gains.

The paper said approximately ILS 300 million of unpaid taxes from cryptocurrency sales could not be paid because of the problem.

WAS THIS ARTICLE HELPFUL? YES

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