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# Private Wealth 2021

Israel

Law & Practice

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## Law and Practice

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## CONTENTS

<b>1. Tax</b>	<b>p.3</b>	<b>6. Roles and Responsibilities of Fiduciaries</b>	<b>p.12</b>
1.1 Tax Regimes	p.3	6.1 Prevalence of Corporate Fiduciaries	p.12
1.2 Stability of the Estate and Transfer Tax Laws	p.6	6.2 Fiduciary Liabilities	p.13
1.3 Transparency and Increased Global Reporting	p.7	6.3 Fiduciary Regulation	p.13
<b>2. Succession</b>	<b>p.7</b>	6.4 Fiduciary Investment	p.13
2.1 Cultural Considerations in Succession Planning	p.7	<b>7. Citizenship and Residency</b>	<b>p.14</b>
2.2 International Planning	p.7	7.1 Requirements for Domicile, Residency and Citizenship	p.14
2.3 Forced Heirship Laws	p.8	7.2 Expeditious Citizenship	p.14
2.4 Marital Property	p.9	<b>8. Planning for Minors, Adults with Disabilities and Elders</b>	<b>p.14</b>
2.5 Transfer of Property	p.10	8.1 Special Planning Mechanisms	p.14
2.6 Transfer of Assets: Vehicle and Planning Mechanisms	p.10	8.2 Appointment of a Guardian	p.15
2.7 Transfer of Assets: Digital Assets	p.10	8.3 Elder Law	p.15
<b>3. Trusts, Foundations and Similar Entities</b>	<b>p.10</b>	<b>9. Planning for Non-traditional Families</b>	<b>p.15</b>
3.1 Types of Trusts, Foundations or Similar Entities	p.10	9.1 Children	p.15
3.2 Recognition of Trusts	p.11	9.2 Same-Sex Marriage	p.16
3.3 Tax Considerations: Fiduciary or Beneficiary Designation	p.11	<b>10. Charitable Planning</b>	<b>p.16</b>
3.4 Exercising Control over Irrevocable Planning Vehicles	p.11	10.1 Charitable Giving	p.16
<b>4. Family Business Planning</b>	<b>p.11</b>	10.2 Common Charitable Structures	p.17
4.1 Asset Protection	p.11		
4.2 Succession Planning	p.11		
4.3 Transfer of Partial Interest	p.12		
<b>5. Wealth Disputes</b>	<b>p.12</b>		
5.1 Trends Driving Disputes	p.12		
5.2 Mechanism for Compensation	p.12		

## 1. TAX

### 1.1 Tax Regimes

#### General Principles

The State of Israel taxes individual residents on a personal basis as per the taxpayer's centre of life. Once tax residency is determined, Israeli tax residents are taxed on their worldwide income. In contrast, non-Israeli tax residents are taxed only on their Israeli-sourced income.

The following are the applicable Israel tax rates applying to individual taxpayers.

#### Income tax

Israel levies personal income tax at a progressive rate, starting at 10% for a gross annual income of approximately USD22,800, and increasing up to a maximum of 47% for a gross annual income of approximately USD151,000 and above. In addition, a surtax of 3% is levied on certain types of income exceeding an annual income of approximately USD194,000. Certain types of passive income are subject to reduced tax rates; for example, rental income from residential properties is subject to a 10% flat tax rate, dividends are subject to a 25% tax rate (if received by a person holding less than 10% of the entity's shares; otherwise, a 30% tax rate applies) and interest income is subject to a 15%/25% tax rate.

#### Capital gains tax

Israel levies a capital gains tax at a 25% tax rate on capital gains not derived from inflationary increase in value, but when the capital gain is derived from the sale of shares by a person holding more than 10% of the entity shares, the rate increases to 30%.

#### National insurance

Israeli residents aged over 18 years old are also subject to obligatory national insurance contributions and health insurance contributions

from their monthly income (which includes the employee's salary and benefits, as well as in-kind benefits the employee receives from their employer, such as a car, meals and cell-phones) up to a ceiling of approximately USD13,000 a month, at the following rates:

- employees – 3.5%–12%;
- self-employed – 5.97%–17.83% (can be reduced to 15.62% for women above the age of 62 and men above the age of 67);
- household employees – 2%;
- non-working individual with income – 9.61%–12%; and
- early pension (women below the age of 62 and men below the age of 67) – 3.49%–11.79%.

Unemployed individuals with no income pay approximately USD50 a month.

It should be noted that, in addition to the national insurance contributions paid by the employees as detailed above, employers also pay national insurance contributions on behalf of each employee, as follows:

- employees generally – 3.55%–7.6%; and
- household employees – 5.25%.

#### Real estate taxes

In principle, the purchase of Israeli real estate is subject to a progressive purchase tax that can be as high as 10% for expensive residential properties and 6% for commercial real estate purchased by an individual. However, certain tax reductions and exemptions are available to Israeli tax residents who purchase a home which will be their single home.

The following are the applicable purchase tax rates applying to non-Israeli tax resident individuals purchasing residential real estate in Israel:

- 5% on the value of the real estate up to approximately USD388,880;
- 6% on the value of the real estate between approximately USD388,880 and up to approximately USD1.166 million;
- 7% on the value of the real estate between approximately USD1.166 million and up to approximately USD1.606 million;
- 8% on the value of the real estate between approximately USD1.606 million and up to approximately USD5.354 million; and
- 10% on the value of the real estate above approximately USD5.354 million.

However, an individual who within two years from the date of purchase of the real estate returned to live in Israel after having lived continuously outside Israel for at least ten years, or immigrated to Israel for the first time, retrospectively enjoys the following reduced real estate purchase tax rates, provided, however, it is their only residential real estate in Israel:

- on the value of the real estate up to approximately USD525,000 – no tax is paid;
- 3.5% on the value of the real estate between approximately USD525,000 and up to approximately USD623,000;
- 5% on the value of the real estate between USD623,000 and up to approximately USD1.606 million;
- 8% on the value of the real estate between USD1.606 million and up to approximately USD5.354 million; and
- 10% on the value of the real estate above approximately USD5.354 million.

Furthermore, as per Article 12 of the Real Estate Taxation (Appreciation and Purchase) (Purchase Tax) Regulations, 1974, a new immigrant who purchases residential real estate for their permanent use, as well as a business place for themselves (or their relatives), during the period starting one year before their immigration and ending

seven years thereafter, enjoys special real estate purchasing tax rates:

- 0.5% on the value of the real estate up to approximately USD553,000; and
- 5% on the value of the real estate above approximately USD553,000.

In certain cases, the above special rates for new immigrants can also be applied to the purchase of land.

### *Corporate tax*

Currently, the corporate income tax rate is 23%. In certain cases, a reduced tax rate is available mainly to certain industrial companies defined as “approved enterprises”.

### *New Immigrants Relief*

New immigrants to Israel, as well as individuals who return to live in Israel after having lived continuously outside Israel for at least ten years, are only subject to income and capital gains taxes on their Israeli-sourced income during the first ten years of living in Israel. After the expiry of the said ten-year period, such persons continue to enjoy a reduced rate for capital gains tax, computed on a linear basis according to the period of time that has elapsed before and after the expiry of the ten-year exemption. They are also exempt for those first ten years from reporting to the Israeli tax authorities their tax-exempted foreign-source income (including business income, salaries, dividends, interest, rent, royalties and pensions generated by assets and/or activities held or conducted overseas, regardless of whether acquired or started before or after becoming an Israeli tax resident). New immigrants also benefit from a reduced purchase tax on real estate purchases as detailed above.

This “new immigrant” regime, with its exemptions from taxation and reporting, makes Israel a worthy jurisdiction to consider by wealthy for-

foreign tax residents wishing to relocate as part of their foreign income tax planning. Furthermore, the attraction is enhanced by the fact that Israel is a party to numerous double taxation treaties (with as many as 57 countries) and additional tax protocols; the combination of the ten-year exemption plus a tax treaty with the person's original home country creates a unique planning opportunity.

## Inheritance and Generation-Skipping Taxes

As of this date (August 2021), there are no estate, inheritance and generation-skipping taxes in Israel. In fact, a transfer of any asset by way of inheritance, including by will, is not a tax event in Israel. Moreover, except for real estate transfers, currently there is also no gift tax on bona fide gifts, provided the donee is an Israeli tax resident. Real estate gifts are only subject to a fraction of the ordinary purchase tax.

## Trusts

As for trusts (including foundations), a trust is subject to Israeli taxation and reporting obligations if it has at least one Israeli tax resident settlor or beneficiary, or if the trust has an Israeli asset.

Similar to the taxation of individuals, an Israeli tax resident trust is liable to tax on its worldwide income, whereas a non-Israeli tax resident trust (ie, a trust that has no Israeli tax resident settlor and/or Israeli tax resident beneficiaries, and never had any Israeli tax resident beneficiary) is only subject to tax on its Israeli-sourced income.

The following are the applicable tax regimes applying to trusts.

### *Israeli resident trust*

A trust qualifies as an Israeli resident trust if at the date of the trust's settlement there was at least one Israeli tax resident settlor and one Israeli tax resident beneficiary, and in the

assessed tax year there is one Israeli tax resident settlor, or one Israeli tax resident beneficiary; or all the trust's settlors have passed away and in the assessed tax year at least one beneficiary is an Israeli tax resident. An Israeli resident trust is subject to tax in Israel on its worldwide income.

### *Israeli beneficiary trust*

A trust qualifies as an Israeli beneficiary trust if it was settled by a non-Israeli tax resident who continued to be a foreign resident from the date of the trust's settlement until the date of tax assessment; and has at least one Israeli beneficiary. An Israeli beneficiary trust is subject to tax in Israel on its worldwide income.

### *Relatives Trust*

A trust qualifies as an Israeli relatives trust if:

- the settlor is each of the beneficiaries' parent, grandparent, spouse, child or grandchild;
- the settlor and the beneficiaries are relatives of second degree – including siblings, siblings' issues, or parents' siblings;
- the assessing officer has checked and confirmed that the trust and any contributions thereto were made in good faith and that no beneficiary has paid any consideration in order to be entitled to the trust's assets; and
- the settlor of the trust is still alive in the relevant tax year.

A relatives trust is subject to tax in Israel, at the trustee's irrevocable election, of either:

- 30% of all distributions sourced from income generated and produced outside Israel and distributed to Israeli beneficiaries, unless the distribution originates from the principal funds of the trust – which distribution is tax exempt; or
- 25% of all the trust's income generated or produced outside Israel, and in such a case

any distributions made therefrom are tax exempt.

Nonetheless, income generated or produced in Israel is subject to full taxation in Israel.

#### **Foreign resident beneficiary trust**

A trust qualifies as a foreign resident beneficiary trust if:

- it is not an Israeli resident trust or a testamentary trust;
- it is deemed an irrevocable trust under the Israeli Income Tax Ordinance;
- all its beneficiaries are identified non-Israeli tax residents (in this respect, a yet-to-be-born beneficiary is deemed to be identified);
- at least one of its settlors is an Israeli tax resident (including a settlor who was an Israeli tax resident upon passing away); and
- the trust's terms specifically state that an Israeli beneficiary cannot be added to the class of beneficiaries.

A foreign resident beneficiary trust is tax exempt in Israel, except for income generated or produced in Israel.

#### **Testamentary trust**

A trust qualifies as a testamentary trust if:

- it was settled under a deceased's valid will; and
- all of the deceased settlors were Israeli tax residents when passing away.

A testamentary trust is subject to Israeli taxation depending on the beneficiaries' tax residency. Hence, if at least one beneficiary is an Israeli tax resident, the trust is subject to tax in Israel on its worldwide income; otherwise, it is tax exempt in Israel except for income generated or produced in Israel.

#### **Foreign residents trust**

A trust qualifies as a foreign residents trust if:

- all its settlors and beneficiaries are non-Israeli tax residents, and there were no Israeli tax resident beneficiaries since the settlement of the trust; or
- all its settlors passed away and there were no (and currently there are no) Israeli tax resident beneficiaries since the settlement of the trust.

A foreign settlor trust is tax exempt in Israel, except for income generated or produced in Israel.

#### **Tax rates**

The tax rates applicable to all the above types of trusts are those applicable to individual taxpayers.

#### **Taxation of distributions**

Distributions from an Israeli resident trust, Israeli beneficiary trust and a foreign residents trust are subject to Israeli taxation in the same manner as if the assets or funds were gifted directly from the settlor to the beneficiaries (currently, except for real estate transfers, there is no gift tax on bona fide gifts, provided the donee is an Israeli tax resident). However, distributions from a foreign resident beneficiary trust, as well as from a testamentary trust, are tax exempt in Israel.

## **1.2 Stability of the Estate and Transfer Tax Laws**

Israel had an estate tax regime until 1 April 1981, when it was abolished altogether, and currently, there are no official proposals to re-enact an estate tax regime. While levying an inheritance tax has sometimes been a campaign promise in Israeli national elections, but no legislative changes have actually taken place.

Nonetheless, due to the COVID-19 crisis, the Israeli government faces the inevitable task of

financing its increasing expenditure to support the health sector as well as local industry and businesses. Consequently, according to recent media publications, the Israeli Tax Authorities are discussing – once again – the possibility of levying either inheritance tax or estate tax, as well as limiting the New Immigrants Relief, broadening the definition of the Israeli tax resident (thus to include any person living in Israel for 100 days in a certain tax year, and 183 days in the two preceding years) and enforcing an exit tax.

### 1.3 Transparency and Increased Global Reporting

Israel implemented the OECD's Common Reporting Standard (CRS) and the Foreign Account Tax Compliance Act (FATCA) regimes in February 2019 and August 2016, respectively. As a result, Israel automatically exchanges information on an annual basis with the USA, Australia, the UK, Switzerland, Canada and over 90 additional countries.

In fact, just recently the Swiss Federal Tax Administration informed 120 Israelis and 150 entities connected to said Israelis, that as per the Israeli Tax Authorities' request, it shall exchange information about Swiss bank accounts beneficially owned by said Israelis.

Hence, Israeli tax residents who have held or still hold bank accounts or other financial accounts and assets in foreign countries, as well as foreign tax residents who have held or still hold bank accounts or other financial accounts and assets in Israel, are exposed to exchange of information between Israel and their home countries, and are strongly advised to settle any potential tax issues with both the Israeli and the foreign tax authorities; albeit the anonymous voluntary discovery procedure offered by the Israel Tax Authority (ITA) expired on 1 January 2020.

## 2. SUCCESSION

### 2.1 Cultural Considerations in Succession Planning

Israel is a relatively young country, existing for just over 70 years. Hence, wealthy families in general, and multi-generational wealth transfers in particular, do not play a major role in the country's economic reality.

In general, older first generations of means prefer to transfer their wealth to their children by way of a straightforward inheritance, due to their mistrust of the financial and legal systems which is the result of years of nomadism and exclusion of the Jewish people.

However, as Israel sees a rapid growth in major individual wealth, as a result of large-scale sales of companies and businesses to global corporations, especially in the hi-tech industry, younger first generations of means, with young children or in their second marriage, tend to prefer setting up trusts for the regulation of wealth transfers and for the protection of their children. These trusts, although discretionary and irrevocable, are often set up for a limited period of time, until the child has reached maturity and is able to cope with large amounts of funds.

### 2.2 International Planning

The Israeli Inheritance Law, 5725 – 1965 attempts to meet the increasing global challenges of international planning. It contains important rules on international private laws issues that balance between the rule of Israeli law over succession and the rule of foreign laws, by providing that Israeli courts have jurisdiction to deal with the inheritance of any person who was a resident of Israel at the time of their death, or whose estate includes assets situated in Israel.

The succession rules that are applied by the courts are those in force in the country of resi-



dence of the deceased at the time of their death but, when a will is to be examined, the person's capacity to testate is governed by the laws of their country of residence at the time the will was made and, as to the requirements for certain form and formal features of a valid will, Israeli law is flexible and it recognises the validity of the will if the formal requirements of any of the following countries are met: Israel, the country where the will was made, or the country of residence or usual abode or citizenship of the deceased either upon their death or when the will was made, and (when real estate is involved) the country where the real estate is situated.

In practice, families putting in place succession plans using trusts or similar vehicles should be aware of the complex and strict taxation rules of trusts in Israel, which, inter alia, subject the trust's worldwide income to full Israeli taxation in the event that there is even one Israeli tax resident beneficiary. Such taxation exists even where the trust's settlor has not been an Israeli tax resident ever since the settlement of the trust, or has passed away, regardless of the settlor's tax residency, the situs of the trust's assets, the trust's revocability, the number of foreign beneficiaries and the beneficiaries' right to claim a distribution.

Also, as in most European jurisdictions, families with US persons, companies with US shareholders and trusts with US beneficiaries encounter various difficulties in opening bank and financial accounts in Israel, and sometimes even in conducting ordinary bank transactions such as sending or receiving transfers of funds.

### **2.3 Forced Heirship Laws**

There are no forced heirship laws in Israel.

In the absence of a valid will, the following default heirship rules apply.

- If the deceased is survived by children and a spouse, the deceased's spouse receives all joint household belongings (such as the family's car, furniture, housewares, electrical appliances, etc) and half of the estate, while the remaining half is divided among the children, equally.
- If there are children, but no spouse, the deceased's children share, equally, the entire estate.
- If there are no children, but there is a spouse and the deceased's parents, the spouse receives all joint household belongings (such as the family's car, furniture, housewares, electrical appliance, etc) and half of the estate, while the remaining half is inherited by the deceased's parents.
- If there are no children, grandchildren or the deceased's parents, but there is a spouse, the spouse receives all joint household belongings (such as the family's car, furniture, housewares, electrical appliance, etc) and two thirds of the estate, while the remaining third is inherited by the deceased's siblings (or if there are no siblings, then the deceased's grandparents and their offspring). In addition, if the spouse was married to the deceased for at least three years, and has lived with the deceased in his or her apartment, the spouse receives also the entire deceased's share in the said apartment.
- If there are no children nor a spouse, the deceased's parents and siblings share the entire estate.
- If there are no children, parents, siblings, or grandparents but there is a spouse, the spouse inherits 100% of the estate.
- If there are no children, parents or siblings and no spouse, the estate is divided equally between the deceased's grandparents and their offspring.



- If a deceased's child is not alive, said child share of the estate is divided between the deceased's grandchildren from said child.
- If an heir stated above is not alive, their share of the estate passes on to their legal heirs.

## 2.4 Marital Property

Under Israeli legislation, each spouse is free to transfer, during their life and upon death, without restrictions, all their property, which includes any and all prenuptial property, any and all postnuptial property inherited or received as a gift, as well as their part of the marital property acquired together with the spouse during the marriage.

Nevertheless, if there is an evident contribution by one spouse to the other spouse's property, the courts tend to regard the assets as joint property, as if it had been acquired together and owned jointly with the spouse during marriage. For example, a wife can claim 50% of her husband's prenuptial apartment, if she can prove that she contributed to the purchase of the apartment by having paid a certain percentage of a loan taken to finance the purchase of the apartment, and/or by having paid for the apartment's renovation or maintenance.

Thus, in order to ensure the protection of assets in wealthy Israeli families, it is quite common for couples getting married to enter into prenuptial agreements, although sometimes these agreements are entered into postnuptially; the Israeli Property Relations Between Spouses Law, 5733 – 1973 recognises the validity and enforceability of such agreements, as long as certain procedural requirements are adhered to.

### The Property Relations Between Spouses Law

This law regulates the two different cases of property status of spouses: those having a property agreement (either prenuptial or postnuptial) and those who do not.

For spouses who do not enter into an agreement, the principle adopted by the law is that of "property equalisation". In essence this principle means that while the mere existence of marriage does not change the status of ownership of properties and the obligations of each spouse, upon termination of the marriage, due to death of one of the spouses or separation, each spouse becomes entitled to 50% of the value of the spouses' entire property (including future pension rights, retirement compensation, study funds, pension funds and other savings), with the exception of:

- properties owned by a spouse prior to the marriage;
- properties gifted to or inherited by a spouse during the marriage; and
- payments paid to a spouse by the Israeli National Insurance Agency or in accordance with any law relating to compensation for corporal damage or death.

As long as the marriage has not terminated, due to death of one of the spouses or separation, a spouse's right to property equalisation cannot be transferred, mortgaged or foreclosed.

For spouses who do enter into a property agreement, the law allows freedom of contract. However, in order for such an agreement to be valid and enforceable, the agreement (and any change thereof) ought to be approved by the competent court, after the court has been convinced that both spouses entered into the agreement of their own free will and that they understand its meaning and implications. In the case of a prenuptial agreement, a notary may replace the court, if the spouses so wish, and if executed during the marriage ceremony, the marrying person, if authorised to do so, can approve the agreement.

## 2.5 Transfer of Property

Property transferred as a tax-free gift among individuals, or upon inheritance, will retain its original cost basis for purposes of future sale as well as for purposes of depreciation. It is possible to request a pre-ruling from the Israeli tax authorities for a step-up of the original cost, when an Israeli tax resident receives (whether as a gift or inheritance) a property from abroad.

## 2.6 Transfer of Assets: Vehicle and Planning Mechanisms

The major vehicles for transferring assets within an Israeli family are gifts, inheritances and trusts. Sometimes, a combination of these tools is used. For example, a will can provide for the creation of a trust under its terms, certain shares in a family holding company can be gifted during the lifetime of the donor, while others can be transferred into a trust for the benefit of future generations, and children can be included as co-owners of family bank accounts. Unless the younger generation are not Israeli tax residents, taxes are not a factor in choosing the most suitable mechanism, as there are currently no gift, estate or generation-skipping taxes in Israel.

## 2.7 Transfer of Assets: Digital Assets

Israel has not legally addressed the issue of digital assets inheritance. Thus, it is claimed that the Israeli Inheritance Law, 5725 – 1965 does not apply to digital assets lacking real monetary value such as email accounts, unless specifically addressed in a valid will. Hence, if a deceased has not left a will, or has left a will without mentioning their digital assets, it is questionable if they will be subject to or affected by an order of probate.

In 2012, in the case of *Schwartzman v Psagot Pension Funds*, the Tel Aviv District Court recognised that the ownership right of the deceased's heirs override the deceased's right to privacy. It is therefore considered that the courts would

most likely uphold the heirs' rights to receive control over digital assets, if such a case were brought before the courts'. Thus, in practice, most Israeli communication companies allow the heirs access to the deceased's email accounts, subject to their internal procedures.

As for cryptocurrency assets, the Lod District Court in the case of *Kopel v Rehovot Income Tax Assessor*, recognised Bitcoin as a financial asset, subject to capital gains tax on profits derived from its sale. Hence, the Israeli Inheritance Law should apply in regard to cryptocurrency, as to any other valuable asset.

In any case, it is recommended to detail any digital and cryptocurrency assets, including usernames and passwords, in the will.

## 3. TRUSTS, FOUNDATIONS AND SIMILAR ENTITIES

### 3.1 Types of Trusts, Foundations or Similar Entities

Israel, being a common law country based upon the English law system, recognises the validity of trusts and foundations.

Israel's Trust Law, 5739 – 1979 (Israel's Trust Law), which is the main law regulating trusts, recognises four main types of trusts: a private trust, a private trust dedicated by a deed or a will in favour of one or more third-party beneficiaries (also known as a *hekdesh*), a testamentary trust and a charitable trust called a public *hekdesh*.

For estate planning purposes, Israelis tend to use either a private trust for the benefit of third parties – a *hekdesh* – or a testamentary trust regulated by Israel's Trust Law. Nonetheless, due to the fact that the legal structures available under Israel's Trust Law are insufficient, underdeveloped and under-protected from creditors'

and beneficiaries' claims, wealthy Israeli families prefer to use foreign common law trust structures to ensure asset protection.

### 3.2 Recognition of Trusts

Israel's Trust Law legally recognises and regulates the establishment and administration of trusts, whereas the Israeli Income Tax Ordinance (New Version), 5721 – 1961 (Israeli Income Tax Ordinance) regulates the taxation of trusts, including foundations and establishments under foreign laws.

### 3.3 Tax Considerations: Fiduciary or Beneficiary Designation

While a trustee's tax residency is irrelevant to the question of a trust's taxation under the Israeli Income Tax Ordinance, the location of tax residency of each of the trust's beneficiaries and settlors is crucial. Even one Israeli tax resident beneficiary is sufficient for levying Israeli taxes on the trust's worldwide income, unrelated to other foreign laws that may govern the establishment and taxation of the same trust. Furthermore, in the event that a trust's settlor, who is an Israeli tax resident, serves also as the trustee and/or the protector of that same trust, the trust shall be deemed a revocable trust for purpose of the Israeli Income Tax Ordinance and shall thus be subject to full Israeli taxation, even if all its beneficiaries are foreign tax residents. In fact, a trust shall also be deemed a revocable trust for purposes of the Israeli Income Tax Ordinance if the settlor is also a beneficiary.

### 3.4 Exercising Control over Irrevocable Planning Vehicles

The Israeli legislature has not taken any steps to amend Israel's Trust Law and/or the Israeli Income Tax Ordinance to allow settlors to retain extensive powers. In fact, in a trust dedicated in favour of a beneficiary (ie, a private *hekdes*), unless the trust deed specifically permits changes to be made (regardless if by settlor, trustee

or beneficiary), a change can be made only if all beneficiaries have consented, or a court order has been issued; thus, resulting in the trust being deemed revocable for tax purposes.

## 4. FAMILY BUSINESS PLANNING

### 4.1 Asset Protection

Israeli businesses' main asset protection method is the use of a corporate shield; namely, limited companies and limited partnerships, which protect the shareholders/limited partners from the risks involved with the underlying business.

Protecting the ownership of businesses from creditors' risks is usually achieved through the use of irrevocable and discretionary trusts. In the event that the owner of the business is reluctant to hand over control to an independent trustee, it is common to use offshore holding structures that make it difficult (although not impossible in today's transparent legal environment) for creditors to track and locate the assets and link them to the ultimate owner.

### 4.2 Succession Planning

As Israel has no estate taxes, inheritance taxes, or even a gift tax (other than a partial purchase tax in regard to gifts of real estate), straightforward gifts are the most common means of transfer of wealth and control to younger generations. Second in popularity would be to transfer only upon death, by way of a well-planned and structured will. Many wealthy families use a combination of both methods, thus allowing training as shareholders to the younger generation, while maintaining the control of the family business within the older and more experienced generation.

As an intermediate step, some families choose to separate voting rights from property rights,

thus bestowing wealth in the hands of the younger generation without burdening them with the responsibility of managing a business, with the aim of passing on control and responsibility at a later point, after having gone through the necessary business training and mentoring.

More sophisticated families use trusts as a means for executing a measured and regulated transfer of wealth and control to younger generations. Sometimes a trust is combined with strategies originating in the Israeli Companies Law, 5759 – 1999: mainly, the transferring owners would create a holding entity (company or partnership) distinguishing between property rights and control rights; while the property rights are settled into a trust, the controlling interests are either left with the transferring owners or granted to the more suitable next generation member(s), thus retaining equality in the property rights.

### **4.3 Transfer of Partial Interest**

Property transferred as a tax-free gift among individuals, or upon inheritance, retains its original tax cost basis for purposes of the taxation of future sale as well as for purposes of depreciation. However, in the event that an Israeli tax resident receives (whether as a gift or inheritance) a property from abroad, regardless if partial or whole, a pre-ruling can be requested from the Israeli tax authorities allowing for a step-up of the original cost to the fair market value of the property transferred. The Israeli tax authorities would most likely impose certain conditions on the set-up, including by limiting the set-off of depreciation, losses, and foreign gifts and inheritance taxes.

## **5. WEALTH DISPUTES**

### **5.1 Trends Driving Disputes**

Being a relatively young country, the Israeli judicial system does not see a great number of sub-

stantial wealth disputes (other than in the case of divorce proceedings). There are hardly any known disputes regarding trusts, foundations, or similar entities, conducted under Israeli law in Israeli courts.

More common are disputes relating to the validity of wills: wills made at old age or by an unhealthy testator are sometimes attacked as being staged by interested parties while not representing the testator's true will due to their unsound mind at such time, or as being affected by undue influence.

In order to reduce interested party claims, the Israeli legislature strictly stated in the Inheritance Law, 5725 – 1965 that any provision of a will that benefits a party who has been a witness to, or has participated in any way in the making of (including by mere co-ordination of travel arrangement), such will is null; hence, this provision of law is used as grounds for abundant disputes aiming to disqualify wills.

### **5.2 Mechanism for Compensation**

Under Israeli Trust Law, if damage is caused to assets or beneficiaries of a trust as a result of an act, omission, or negligence of a trustee, the trustee is personally liable to monetarily compensate for the decrease in value of an asset, as well as for any lost profit (in the amount equalling the difference between the value of the asset at the day of compensation and the value of the asset had the trustee not breached their duty).

## **6. ROLES AND RESPONSIBILITIES OF FIDUCIARIES**

### **6.1 Prevalence of Corporate Fiduciaries**

While Israeli law does recognise the concept of a trust, trusts are not recognised in Israel as a

separate legal entity, and all rights and liabilities of the trust rest with its trustee or trustees.

As a trust is not recognised as a separate legal entity, it is common practice to use either a corporate trustee or a “trust holding company”, a designated legal entity fully owned by the trust and acting on behalf of the trustee to hold all or some of the trust’s assets. This structure operates to facilitate the administration of the trust and its assets and activities, and to protect the trustee’s personal assets from blending into the trust.

## 6.2 Fiduciary Liabilities

In Israel, a trustee is personally liable for any damage caused to the trust’s assets and/or beneficiaries as a result of a breach of their duty as trustee. Hence, a trustee that acted as per the trust’s terms shall normally not be personally liable if they acted in good faith and diligence as a reasonable person would have acted under the same circumstances.

The trust’s terms cannot discharge a trustee from liability, including from the obligation to act in good faith and diligence as a reasonable person, nor provide for an exemption from liability due to negligence. However, a trustee may request the court to exempt them from liability, provided that the trustee acted in good faith and, in performing their act or omission, the trustee had meant to fulfil their role as trustee.

As the trustee’s liability for damages means that the trustee is personally liable to compensate for the damages caused to the trust’s assets and/or to the beneficiaries as a result of a breach of their duty as trustee, it is highly recommended to insure the risks associated with the activity of trustees, or at the very least to receive an indemnification obligation from the settlor and/or beneficiary.

The aforesaid provisions of the Israeli Trust Law are obviously very conservative and under-developed, and pose significant exposures and risks to trustees acting under them. Therefore, more sophisticated trusts use other legal systems as the governing law of the trust.

## 6.3 Fiduciary Regulation

Israel’s Trust Law requires a trustee to efficiently invest funds that are not required for the daily needs of the trust, thus to preserve the capital and to produce income to the trust. “Efficiently invest” is interpreted as investing in a manner that does not entail unnecessary risk, allows quick realisation if and when funds are required by the trust, and ensures at least either monetary income or an increase in the investment’s value; all while using the reasonable person test as a scale. Nonetheless, if the trust’s terms specifically state how funds should be invested, the trustee is required to act accordingly.

## 6.4 Fiduciary Investment

The Israeli investment standard relies upon the “reasonable person” test. As a result, and unless the terms of the trust state otherwise, diversification is customary in the industry as it is the diligent act to be done by a reasonable person.

Acquiring or holding an active business not only brings with it an intrinsic risk, but also does not necessarily allow for a quick realisation when funds are required by the trust. Thus, although technically permitted, holding an active business is not a common practice for a trustee in Israel.

The trustee would, however, not be at risk of being blamed for acting in a breach of their duties where a trust has originally been created with a purpose to hold an active business and ensure its smooth succession. In such cases it is strongly recommended to specifically state this purpose of the trust in the trust deed, and if not possible - at the settlor’s letter of wishes.

## 7. CITIZENSHIP AND RESIDENCY

### 7.1 Requirements for Domicile, Residency and Citizenship

**Citizenship**  
The Law of Return, 5710 – 1950 grants every Jewish person the right to immigrate to Israel and to become (if they wish) an Israeli citizen. In this respect, a “Jew” means a person who was born to a Jewish mother, or has converted to Judaism and is not a member of another religion, including a child and the grandchild of a Jew, the spouse of a child of a Jew and the spouse of the grandchild of a Jew, but excluding any person who:

- had been a Jew and has voluntarily converted their religion;
- had been engaged in an activity against the Jewish people;
- may endanger public health in Israel or the security of the State of Israel; or
- has a criminal record, likely to endanger public welfare in Israel.

A non-Jew adult may acquire Israeli citizenship by naturalisation subject to a number of requirements, all being at the discretion of the Israeli Minister of the Interior, including:

- they have resided in Israel for at least three out of the five preceding years; and
- they have legally settled in Israel.

It may be also required that the person’s prior nationality be renounced.

#### **Residency**

A Jew eligible to citizenship is also eligible to permanent residency. A non-Jew may apply for residency (temporary or permanent) under certain circumstances, which is a fairly long process, imposing different requirements.

#### **Domicile**

Israeli law does not recognise the concept of domicile.

### 7.2 Expeditious Citizenship

Israeli citizenship of a Jew becomes effective on the later of the day of arrival into Israel, or receipt of a new immigrant’s certificate. However, a Jewish person may declare, within three months, that they do not wish to become a citizen.

There are no expeditious means for a non-Jewish individual to obtain citizenship.

## 8. PLANNING FOR MINORS, ADULTS WITH DISABILITIES AND ELDERLY

### 8.1 Special Planning Mechanisms

Although the Israeli Trust Law does not specifically provide for a special needs trust, such a trust can indeed be set up. It is customary to define in such a trust the standard of care to be granted to the disabled person as well as the means for the treatment of the disabled person, including their right to use family assets such as family homes.

Any adult person can prepare for the unfortunate event they may become disabled, by signing a Durable Power of Attorney appointing one or more agents to act on their behalf in financial, medical and personal affairs when said person shall no longer be able to make decisions and act in such matters. The Durable Power of Attorney may include explicit instructions as to the extent of authority of each agent and the standard of care the person wishes to receive, as well as other preliminary instructions. Unless instructed otherwise in the Durable Power of Attorney, in implementing the Durable Power of Attorney the mandatory supervision of the Government Administrator General is not required.



## 8.2 Appointment of a Guardian

A request for guardianship is submitted to a competent court by a spouse, parent, or any other family member of the ward, or by the Israeli Attorney General.

Upon receiving a guardianship request, the court will examine whether a Durable Power of Attorney, instructions for the appointment of a guardian, or any other expression of wish, have been prepared or registered by the intended ward in any registry. If a Durable Power of Attorney has been granted then consent is needed from the appointed person for this appointment, and if there are instructions for the appointment of a guardian, or any other document expressing a relevant wish, the guardian mentioned in those documents should be included in the process as well.

As of the date of the appointment, the guardian is subject to the Administrator General's supervision. However, each of the following requires prior approval of the competent court:

- sale, transfer, or charge of a real estate property;
- a rental of a real property subject to the Tenants Protection Laws;
- any act the validity of which is conditioned upon registration in a register kept by law;
- making non-customary gifts;
- provision of a guarantee;
- any act that imposes a liability on the ward, such as a loan, a pledge or a guarantee;
- mode of investment of ward's funds exceeding ILS500,000; and
- collection of the guardian's remuneration.

## 8.3 Elder Law

The ageing of the Israeli population was defined as a national, social and financial challenge by the Israeli government as far back as 2015.

As part of addressing the challenge, the Israeli government has enforced a gradual mandatory pension provision (which includes a severance pay component), to be paid by all employers and employees from their monthly salaries. Currently, the mandatory contribution is 6% by employees and 12.5% by employers; however, it is also customary for employers to offer study fund savings to their employees.

In addition, the Israeli government issues each Israeli resident who has reached the retiring age (currently, 62 for women (although expected to raise to 65) and 67 for men; with the exception of bereaved parents for whom the age is 71) a Senior Citizen status and certificate granting discounts in relation to public transportation, museums and cultural centres, public parks, bank fees, municipal property taxes (up to a 25% discount, and subject to certain conditions) and other benefits.

In parallel, in order to ensure that every elderly person shall receive at least a minimum level of financial support during their later years, the National Insurance Agency provides, under certain conditions, an old age pension annuity, welfare annuity and income annuity.

Furthermore, Israeli tax laws provide to elderly or retired people reduced income tax rates for certain amounts of income from designated sources such as financial income, pension income and more.

## 9. PLANNING FOR NON-TRADITIONAL FAMILIES

### 9.1 Children

Children born out of wedlock, legally adopted children and legally recognised surrogate children are all considered as legal issue of the deceased parent and grandparent, and are thus



eligible to inherit, subject to the terms and conditions of the Inheritance Law, 5725 – 1965. In fact, a child born up to 300 days after the deceased has died is eligible to inherit from them as well as if born out of wedlock, adopted, surrogate, or otherwise.

It must be noted, however, that under Jewish law, which to a large extent controls legal marriages of Jewish people in Israel, as it is adopted by the country's civil law, a child born out of a married Jewish woman's adultery, although legally considered the child of its biological father (and thus entitled to inherit from him), will be defined as a "*mamzer*", meaning the child and their issue (up to ten generations onward) would not be able to legally marry in Israel. Because of these severe impediments, Israeli courts have taken the position that the paternity of a child born out of marriage cannot be easily legally challenged, in order to avoid creating a body of evidence that might be used to declare the child a *mamzer*.

### Surrogate Pregnancy Arrangements

Israel permits surrogate pregnancy arrangements only for infertile heterosexual couples and single women, provided, inter alia, that:

- all parties are Israeli residents;
- the surrogate is an unmarried woman, meaning single, widowed, or divorced, who has already has a child of her own (although certain exemptions apply), is above the age of 22 but younger than 39; and
- the surrogate is not related to either of the designated parents.

It is also required that the designated parents and the surrogate be of the same religion, to ensure that the child's religious status would be clear (although certain exemptions apply in the case of non-Jewish couples). As a condition to the surrogate pregnancy procedure to take place, the designated parents and the surrogate

must sign a surrogate pregnancy agreement, which ought to be pre-approved by an Israeli government committee.

It should be noted that surrogacy is not legal in Israel for convenience or career considerations, but only due to infertility or health reasons.

## 9.2 Same-Sex Marriage

Same-sex marriage is not legal in Israel, although the Israeli Ministry of the Interior registers same-sex marriages performed abroad in the Israeli population registration.

As the registration in the Israeli population register is not legally valid, and does not automatically grant same-sex couples with all rights of married couples, many same-sex couples choose not to marry abroad, but rather choose to enter into common law relationships (through contractual marriage), providing them with equal access to many of the rights of married couples (such as tax credits, the right to litigate in front of the Family Courts, etc).

## 10. CHARITABLE PLANNING

### 10.1 Charitable Giving

As is customary worldwide, the Israeli Income Tax Ordinance provides for a tax deduction for charitable donations to an Israeli not-for-profit organisation recognised under Section 46 of the Israeli Income Tax Ordinance (up to 35% of the donation if donor is an individual, otherwise 23%), provided the donation, which must be higher than ILS190, does not exceed the lower of ILS9.35 million or 30% of the donor's chargeable income for the same year.

In addition, the income of a not-for-profit organisation that has at least seven unrelated members, acting in the areas of religion, culture,

education, science, health, welfare, sports, or encouragement of populating rural areas, is exempted from income tax and value-added tax (VAT), provided that its income does not constitute business income.

## 10.2 Common Charitable Structures

There are four legally recognised structures for charitable planning in Israel:

- an *amutah* (a traditional not-for-profit organisation);
- a charitable company (a non-profit organisation registered as an Israeli corporation);
- a public *hekdesh* (similar to a charitable trust); and
- a charitable fund (a not-for-profit Israeli corporation aimed at providing grants).

All are regulated by the Israeli Registrar of Associations – Non-Profit Organisations, and are subject to the same taxation regulations and to an extensive filing and audits regime. In addition, all four structures cannot distribute any profits, directly or indirectly, to their members/shareholders/trustees, including their founders/settlers.

Thus, the actual structure of incorporation depends upon the selected source of law governing the creation of the structure, namely:

- an *amutah* has a separate legal personality and is governed by the Amutot Law, 5740 – 1980;

- a charitable company has a separate legal personality similarly to a corporation and is governed by the Companies Law, 5759 – 1999;
- a public *hekdesh*, which is a form of charitable trust, does not have a separate legal personality and is governed by the Israeli Trust Law; and
- a charitable fund has a separate legal personality as a corporation and is governed by the Companies Law, 5759 – 1999.

In fact, sophisticated donors usually prefer to incorporate a charitable company or charitable fund, as both of these structures provide more flexibility in terms of ability to retain control and allow for the use of up-to-date solutions. However, if the not-for-profit organisation is intended to include many members of the public, it is recommended to use an *amutah*, which is easier to manage with a large number of members and benefits from a better public image (although for no good reason).

Nonetheless, as all said structures require extensive reporting and are subject to extensive scrutiny by the Registrar and the public, a donor that only wishes to provide grants to other not-for-profit organisations may wish to refrain from incorporating or forming any charitable structure while they are alive, and to set up a testamentary charitable trust (ie, a public *hekdesh*) in their will.

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**Eitan Mehulal Sadot, Advocates & Patent Attorneys** (EMS) is a leading Israeli firm specialising in all key areas of commercial law, including private wealth and trusts. EMS offers discreet and cutting-edge legal, tax and trusts services to HNW individuals and families, not-for-profit organisations, trusts and family offices worldwide. EMS' services range from planning, setting up and managing complex holding and wealth transfer structures, to personal, family and business assets planning and inter-generational asset transference, along with struc-

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