Goldfarb Seligman
Law Offices | Established 1930

Issue 3

Customs & Trade in Israel

A Legal Newsletter

Adv. Gill Nadel, Chair of the firm's Import, Export and International Trade Law Practice, Tax Department

Legal Advise Relating to International Trade Must Now be Reported to the Tax Authority

Adv. Gill Nadel, Adv. Moran Oz

Background:

Professional entities, such as lawyers, CPAs and tax advisers are routinely asked to provide written opinions to their clients regarding the classification of transactions for tax purposes, whether the client is liable to tax as a result of his actions, and more.

Clients of the international trade sector (importers, exporters) also routinely consult with professional entities, such as lawyers, customs agents, international forwarders, international trade advisors, and more, in relation to a wide variety of subjects, such as: classification of goods for customs purposes, eligibility for tax exemption due to free trade agreements, and excluding certain costs from the transaction value reported to the Customs Authority.

As of February 2016 - new legislation requires such counsel be reported to the Israel Tax Authority (ITA).

This past November, the Knesset (the Israeli parliament) passed new legislation amending the Customs Order, the Purchase Tax Law, and other laws. The amendment, which came into effect in February, 2016, requires companies and individuals to report certain opinions or tax strategies drafted for them regarding VAT, customs, purchase tax and excise tax.

Another change brought upon by the amendment is that taxpayers will be required to report to the ITA every instance in which they take a tax position with certain tax ramifications, even if they did not receive an opinion on the matter.

[Tax Benefits and Tax Advisory Law (Amendment), 2015]

An entity which adopts a tax position contrary to a position published by the ITA or that will provide it with a tax advantage amount greater than 2 million ILS in one year, or greater than 5 million ILS in four years, will be required to report the position to the ITA (even if the entity received no opinion on the matter from professional entities).

A taxpayer is also obligated to report an opinion he received if it is an "off-the-shelf" opinion provided to at least three unrelated parties (companies or individuals). In such cases, the entity providing the opinion (such as a lawyer, a CPA, or a tax adviser) must inform the client that it is an "off-the-shelf" opinion, or the providing entity may become subject to criminal sanctions.

The new law also applies when the agreed fees for the opinion are at least 100,000 ILS, and depend on the amount of tax advantage created for the receiving party.

Companies with an annual return of less than 3 million ILS are exempt from reporting obligations.

Another case exempt from reporting obligations is counsel relating to customs and purchase tax deficits. The new law states that opinions relating to deficits, as defined by the Indirect Tax (Over Paid or Short Paid Tax) Law, 1968, will be exempt from reporting obligations as long as they were given while there are proceedings taking place, and apply to the same deficit.

Does the new legislation apply to customs agents providing an opinion?

In the indirect taxes field, it is common for importers to seek an opinion regarding the classification of goods and their tax liability, be it from a lawyer, a customs agent or an imports adviser.

The law does not actually define the identity of the professional entity providing the opinion to the taxpayer, and it therefore may apply to customs agents as well. Consequently, if a customs agent provides an opinion as defined by the law - an "off-the-shelf" opinion or a tax position contrary to a position published by the ITA - the opinion will be subject to the provisions of the law.

An interesting question that arises as a result of this conclusion relates to cases in which a customs agent is of an opinion contrary to the Customs Authority's opinion regarding the classification of certain goods. Do such cases fall under the definition of a tax position contrary to a position published by the ITA, as defined by the new law?

This question was debated as part of the deliberations in the Knesset's (the Israeli parliament) Finance Committee. The difficulty was presented by the CPA Association's representative:

"Another matter - it should be noted that in customs, the subject of import is usually handled by customs agents. They are the ones handling imports. It is unfathomable that professionals (*lawyers, CPAs*) will be criminally responsible, when they in fact transfer responsibility in many cases - regarding classification, regarding payments - to customs agents. They are the ones who should be responsible for knowing the rules, understanding the guidelines. There is something clearly unreasonable in this conduct. They will have to report in the entry, add the fact that they know of the guideline and position of the ITA to the entry, and may be subject to a year in prison."

The head of the ITA responded by saying:

"True. The customs agents, if they provide an opinion for their clients, will have to understand that if that opinion is contrary (*to the ITA's position*), they will have to note that fact."

It is clear from the above that although the matter of reporting a classification which is contrary to the ITA's position is not specifically detailed by the law, customs agents which adopt such an opinion will be required to notify the authorities of the fact.

* * *

The above review is a summary. The information presented is for informative purposes only, and does not constitute legal advice.

For more information, please contact Adv. Gill Nadel, Chair of the Import, Export and Trade Law Practice

Email: Gill.Nadel@goldfarb.com Phone: 03-6089979.