



Goldfarb Seligman
Law Offices | Established 1930

Issue 2

Customs & Trade in Israel

A Legal Newsletter

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

Covering Import Taxes As Well: A New Voluntary Disclosure Procedure

Adv. Gill Nadel, Adv. Tina Kaplan

On the 7th of September 2014, the Israel Tax Authority published a new procedure for the voluntary disclosure of previously undisclosed income, as well as a temporary order, to replace the previous procedure that was in effect from 2005 and the temporary order that was in effect from 2011.

As we know, the objective of the voluntary disclosure procedure that was implemented in Israel from 2005 was to encourage taxpayers that had violated various tax laws to correct their tax reports and report accurate figures, by granting certain exemptions related to the extent of the taxes paid on the one hand, and immunity from legal proceedings against the taxpayer on the other.

As part of the new procedure, Israeli taxpayers will be able to report the entirety of their unreported income and assets, whether their source is in Israel or abroad. As for Israeli importers, this means that they will be able to report to the Israel Tax Authority taxes that went unpaid at the time of importing various goods to Israel, among other reasons because of the incorrect customs classification of the goods upon importation, the omission of certain amounts of the value of the goods for customs purposes, non-compliance with the source condition to import goods according to the trade agreements, etc. The procedure will also apply to manufacturers who must pay sales taxes on certain goods when they sell them in Israel.

We emphasize that, similarly to the previous procedure, the new procedure does not allow taxpayers whose incomes or assets are derived from illegal sources (that is, income gained by violating the law, other than tax laws) to submit applications for voluntary disclosure. Also, submitting applications according to the procedure will not be possible for taxpayers against whom the Israel Tax Authority had already opened an investigation at the time of submitting the application. On the other hand, those who submit applications and meet the criteria set in the procedure will have immunity from criminal procedures and criminal prosecution.

A New Procedure for All Taxpayers

The new procedure replaces, as mentioned above, the previous procedure which was in effect from 2005 and applied to income and assets derived while violating various tax laws, including the law related to income taxes, and also including violations of the Customs Ordinance (New Version); the Customs and Excise Duties (Variation of Tariff) Law, 1949; the Value Added Tax (VAT) Law, 1975; the Purchase Tax (Goods and Services) Law, 1952; and the Income Tax Ordinance (New Version), 1961.

The objective of the new procedure is, in part, to simplify the process of submitting an application for voluntary disclosure and getting it approved. For this purpose, the procedure sets out, for the first time, a clear and orderly process for submitting and approving the applications, which includes the details of the bodies to which the applications must be submitted, the forms and the data that must be submitted and the timetables for processing the applications.

According to the new procedure, the applications for voluntary disclosure will be submitted on a special form (which is appended to the procedure) that includes the details of the applicant, the facts of the case and the amount of the unreported income or the assets that should have been reported and taxed. The application will be submitted to the relevant civil authority (importers refer to the Customs Collector or to the VAT Officer) in connection with which the procedure to determine the amount of taxes owed by the taxpayer will be conducted. We emphasize that as part of the submission of the application, the applicant declares that the money involved in the application does not originate in income derived from illegal activities.

The new procedure will be in effect until the 31st of December 2016, but we expect this period to be extended in the future.

As mentioned above, a condition for the implementation of the procedure is that at the time of submitting the application, no investigation against the applicant was underway.

A Temporary Order - Anonymous Applications for One Year

In addition to the new procedure, the Israel Tax Authority published a temporary order that will be in effect for a period of one year, that is, until the 7th of September 2015.

The temporary order enables taxpayers, including importers, to submit applications for voluntary disclosure according to the new procedure but on an anonymous basis, and to arrive at an agreement regarding the amount of taxes to be paid before revealing their identities to the authorities. In practical terms, this means that it will be possible to describe the facts of the case to the Israel Tax Authority (including the tax years in which income went unreported, the source of the capital, the amounts omitted and the estimated amount of taxes to be paid) without providing identifying details about the importer.

The application itself will be addressed to the investigations department at the Israel Tax Authority by the applicant's representative, and from there the application will be forwarded to the relevant civil authority in order to determine the amount of taxes owed. Only after the amount of taxes to be paid is agreed upon between the representative and the Israel Tax Authority, will the taxpayer's name be revealed and the investigations department at the Israel Tax Authority will be asked to examine the application and confirm that no investigation against the taxpayer was underway at the time the when application was submitted.

Therefore, from the moment the applicant submits his application for voluntary disclosure on an anonymous basis and until the moment his name is revealed, the applicant can, in principle, change his mind and decide not to reveal his personal details to the Israel Tax Authority.

According to the temporary order, too, just like the new procedure, if it turns out that at the time the application was submitted, an investigation or examination of the applicant was underway, the applicant's application for voluntary disclosure will be denied and the agreements regarding the amount of taxes to be paid will be void.

Temporary Order - "Short Route"

In parallel to the anonymous route, the temporary order allows, under certain circumstances, the submission of an application by way of a short and fairly simple route, without the need to negotiate with the Israel Tax Authority regarding the amount of taxes to be paid.

An application by way of the short route cannot be made anonymously, and will include the name of the applicant. In this route, the applicant can fill out a standard form with a revised self-assessment for the relevant years and submit it to the investigations department at the Israel Tax Authority along with his annual reports or other relevant reports.

We emphasize that the revised reporting in this route is subject to the principle conditions of the voluntary disclosure procedure, in particular the conditions that the income and assets reported were not derived from illegal activities and that no investigation or examination of the applicant is underway. After the investigations department at the Israel Tax Authority confirms that these conditions are met, the application will be forwarded to the appropriate civil authority which will issue a payment voucher to the applicant, for the applicable tax according to the application.

It should be noted that the revised assessments will be examined by the Israel Tax Authority in the same way as any other self-assessment, and therefore negotiation with the Israel Tax Authority is unnecessary.

However, taxpayers can implement this route only in cases where the extent of the unreported income and assets is relatively small: the amount of capital that went unreported that is included in the application must be no more than NIS 2 million, of which the unreported taxable income is up to NIS 500,000.

This route, too, will be open to taxpayers for a period of one year, until the 7th of September 2015.

* * *

The content in this communication is provided for informational purposes only and is not intended to be comprehensive. It does not serve to replace professional legal advice required on a case by case basis.

The firm does not undertake to update the information in this communication or its recipients about any normative, legal or other changes that may impact the subject matter of this communication. If you are interested in obtaining further information or wish to follow the legal developments in this matter, please contact Adv. Gill Nadel - Chair of the firm's Import, Export and International Trade Law Practice, Tax Department. Email: Gill.Nadel@goldfarb.com, phone: +972-3-6089979.