

Global Residence and Citizenship Review - Israel

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Preamble

Israel, a very young and geographically small nation on its 68th anniversary. The population is approximately 8.5 million individuals, approximately 75% Jewish population, 21% Arab population and 4% other populations. The majority of the Israeli nation is a people of immigrants commencing back to the Bible times when Abraham was the first immigrant on a return trip from the land of Canaan to Egypt, Joseph was sold as a slave to Egypt and was then followed by his father Jacob and his brothers, the Exodus from Egypt during King Pharaoh's rule, included approximately 3,000,000 people and around 70 BC, following the destruction of the First Temple, there was a large exile to Babylon and a return to Canaan 70 years thereafter.

In more modern times, around 586 AD, after the destruction of the Second Temple, the people were exiled by the Roman Empire, around 1490 exiled from Spain and Portugal and during the years 1893-1948 approximately 500,000 individuals immigrated to the land that later formed the State of Israel, specifically in the years 1933-1939 from Germany.

Since the founding of the State of Israel in 1948, there have been a number of immigration 'waves' to the State mainly from European countries, the United States, Canada and South Africa. In 1948, the Jewish population was approximately 630,000 individuals and today reaches approximately 6,000,000 people. It is a globally oriented society economically based in areas such as the high-tech industry, biotechnology and foreign trade.

The Law of Return

The State of Israel was established as a State for the Jewish people in 1948. The Law of Return 1950 grants every Jew wishing to immigrate to Israel¹, a right to do so and receive an immigration certificate thereby obtaining Israeli citizenship. Israeli citizenship may be obtained without a requirement of relinquishing the foreign citizenship, unless such a requirement exists in the foreign country. The immigration certificate grants an individual the legal status of a new immigrant ('Oleh Chadash') and permits residence in Israel with no Visa requirements while

¹ With the exception of an individual (1) acting against the Jewish people; or (2) one posing a medical or security threat; or (3) one holding a criminal record and a security threat.

formal citizenship, such as obtaining an Israeli passport requires a procedure of approximately 1 year to 18 months.

Israeli Residence

Under Israeli law, an individual is presumed to be an Israeli resident if the individual is present in Israel for:

- At least 183 days in a tax year; or
- At least 30 days in a tax year and a total of at least 425 days during a relevant tax year and the immediately preceding two tax years.

The day count is a rebuttable presumption for both the individual or the Tax Authority in accordance with the center of life test, irrespective of the days present in Israel. An individual may be considered an Israeli resident where the individual's center of life is in Israel (irrespective of the day count). The test is a subjective one taking into consideration factor such as the place of residence of the individual's immediate family members, his/her economic and social ties, including, without limitation, factors such as those listed below:

- location of the individual's permanent home.
- location of the individual's actual home and that of his immediate family members.
- location of the individual's business or place of employment.
- location of the individual's economic interests.
- location of the individual's activity in organisations, associations and institutions.

An important court decision on the issue of residence is the case of Kfar Saba Assessing Officer v. Michael Sapir, Civil Appeal 4862/13 (the 'Sapir Decision') where the Court found that it is possible for an individual to be considered a resident of another country even where he has significant ties to Israel, including his wife and children as residents of Israel. In its decision, the court reviewed many facts and circumstances presented by Mr. Sapir as evidence of his residence in Singapore, including, without limitation, apartment rental, social ties, participation and attendance at religious affairs and volunteering activities.

New Immigrants and Returning Israeli Residents

For its 60th anniversary in 2008, legislation was passed amending the Income Tax Ordinance granting greater tax benefits to new immigrants and returning Israeli residents than those valid prior to the amendment.

Pursuant to the amendment, the Tax Ordinance defines three classes of immigrants:

- a. New immigrants, i.e., those who become residents of Israel for the first time.
- b. Returning residents, i.e., those who resided abroad for a period of at least six consecutive years and return to reside in Israel.
- c. Long-term returning residents, i.e., those who resided abroad for a period of at least ten consecutive years and return to reside in Israel.

Benefits to New Immigrants and Returning Israeli Residents

- a. New Immigrants and Long-Term Returning Residents

The Tax Ordinance provides an exemption from tax and reporting obligations to new immigrants and long-term returning residents on all forms of income, active or passive, earned income and capital gains or derived from sources outside Israel for a period of ten years. The exemption applies even if the assets are purchased after the individuals change their residency to Israel during the ten year period.

- b. Returning residents

Returning residents are entitled to tax benefits relating to assets purchased by such residents during their residency abroad after they are no longer considered residents of Israel for tax purposes. These include the following:

- (i) Passive income derived from said assets (those purchased while a resident of another country) are exempt from taxes in Israel for a five year period.

- (ii) Capital gains derived from the sale of said assets are exempt from taxes in Israel for a period of ten years as long as there is no right via the asset, directly or indirectly, to assets located in Israel.

- c. Accommodation Year

A new immigrant or a long-term returning resident may be entitled to a one year accommodation period in which they will not be considered residents of Israel for the purpose of its tax laws. This enables individuals to get settled and decide whether they wish to change their jurisdiction of residency to Israel. In order to enforce this benefit, certain procedures and formalities must be followed with various offices of the Israeli Government, including the Ministry of Absorption. In the event that the individual has applied for the accommodation year and remains an Israeli resident thereafter, the one year period will be part of his ten year exemption period. In the event that the individual returns to his original home country, during or upon the termination of the accommodation period, he/she will not be considered an Israeli resident during the period of residing in Israel.

- d. Management and Control

Under Israeli law, a corporation is an Israeli resident for tax purposes if it is incorporated in Israel or if the management and control of the corporation incorporated abroad is conducted from Israel. Where a

new immigrant or Long term returning resident owning and managing a foreign corporation move to reside in Israel, such residence in Israel by the owner does not subject the foreign corporation to Israeli taxes solely due to the residence of the owner for a period of 10 years.

Conclusion

Israel encourages immigration and has taken legislative action to stand behind its encouragement. Over the 68 years of statehood, the country has absorbed waves of immigrants from around the world, including from Western countries and societies as well as third world countries. The advantageous legislation granting tax benefits is relevant to the high net worth individuals with significant assets abroad. There have been waves of protest over the past few years during governmental budget discussions to have the benefits abolished but these have been suppressed to date. In the event that the legislation will be revised or abolished, it will likely apply to individuals who immigrate after the legislation is revised.

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BIOGRAPHIES:

Alon Kaplan was admitted to the Israel Bar in 1970 and appointed notary in 1989. He was admitted to the New York Bar in 1990, was licensed in Germany in 1991 and became a Member of the Frankfurt Bar Association in 2010. He has been an Adjunct Lecturer at the Law Faculty of Tel Aviv University and lectured in its LLM program. Alon was the founder of STEP Israel in

1998, currently serves as its President, and is Academic Coordinator and Lecturer of the STEP Diploma Course at the Institute of Advanced Studies at Tel Aviv University Faculty of Law. Alon is an Academician of the International Academy of Estate and Trust Law and a member of the American College of Trust and Estate Counsel, and has advised the Israeli Tax Authority on trust legislation.

Lyat Eyal was admitted to the New York State Bar in 1998 and practiced law in the New York law firm of Faust Oppenheim, LLP. Lyat was admitted to the Israel Bar in 2005 when she joined Alon Kaplan Law Firm. In 2015, Lyat established a new law firm in which she is one of the founding partners. Lyat is a member of STEP, the New York State Bar Association International Section and Trusts and Estates Section. Lyat is an Academician at the International Academy of Estate and Trust Law and a Fellow of the American College of Trust and Estate Counsel (ACTEC). Lyat publishes regularly in distinguished professional publications and speaks at seminars and conferences internationally.