



[View this email in your browser](#)



CLIENT UPDATE



New Circulars on Transfer Pricing in Connection with Marketing, Distribution and Sales and Low Value Services

05/09/2018

Yesterday, the Israeli tax authorities issued two new circulars in the area of transfer pricing applying to multinationals operating in Israel. **Circular 11/2018** titled **"Determination of the Appropriate Transfer Pricing Method for Activities relating to Distribution, Marketing and Sales of a Multinational Enterprise in the Local Market"** sets forth how to analyze for transfer pricing purposes and determination of the arm's length price and profitability, the cases of a full-fledged distributor, a low-risk distributor and marketing services. Generally, the Circular adheres to OECD guidelines in requiring a FAR (functions, assets, risks) analysis and in doing so reviews different relevant transfer pricing methods and profit ratios. For a full-fledged distributor the Circular suggests that the most appropriate transfer pricing methods are the resale price method, the transactional net margin method and the profit split method. For a low-risk distributor the Circular suggests the transactional net margin method and for marketing services the cost plus method or the transactional net margin method.

The second circular published yesterday, **Circular 12/2018** titled **"Transfer Pricing – Profitability Levels and Ranges in certain Transactions"**, provides for safe harbors for three types of services. Adhering to certain safe harbor profitability ranges would exempt taxpayers from the documentation requirement to prepare the analysis part of the transfer pricing study. In other words, such taxpayers will not have to document the comparables search, the comparability analysis and the adjustments, and the analysis of the best transfer pricing method. The safe harbors are at the election of the taxpayer and the taxpayer may still decide to prepare the full transfer pricing study to support a profitability that is outside the safe harbors. The Circular provides safe

harbors for three types of services. The first, low value services such as legal, HR or IT services, with respect to which the Circular refers to the OECD guidelines and suggests a safe harbor of cost +5%. The second, marketing services for which it provides a safe harbor of operational profitability of cost + margin of 10%-12%. The third, a low-risk distributor for which it establishes a safe harbor of operational profitability of 3%-4% of the sales with respect to which the Israeli entity renders distribution services.

Importantly, the Israeli tax authorities emphasize that the Circulars and safe harbors do not apply to the digital economy (internet activities) and to R&D services (the development centers in Israel) and do not impact the analysis whether the a foreign entity engaged in intercompany transactions with the Israeli affiliate might have a permanent establishment in Israel.

The takeaway - Multinationals active in Israel should review their relevant intercompany transactions and evaluate the applicability of the safe harbors to their circumstances and whether their transfer pricing documentation and selection of transfer pricing method is aligned with the position of the Israeli tax authorities albeit non-binding. **Israeli companies with outbound structures** should also consider whether their foreign based marketing, sales and distribution operations come within the safe harbors though the circulars apply only to activities in Israel.

Our firm has vast experience in advising on suitable fee structures for multinational companies, setting up the proper documentation and manuals to support it and in representing international and domestic clients in transfer pricing controversies with the ITA and at the Israeli courts.

We would like to take this opportunity to wish you and yours a very happy new year.

Contact Information

Eldar Ben-Ruby, Partner
Tax Group Leader

+972-6103615 | eldarb@meitar.com

Shaul Grossman, Partner
Tax group

+972-6103199 | sgrossman@meitar.com

Meir Akunis, Partner
Tax group

+972-6103100 | makunis@meitar.com

Keren Shitrit, Partner
Tax group

+972-6103890 | kerens@meitar.com

Dr. Michael Bricker
Tax group

+972-3-6103898 | michaelb@meitar.com

For additional information about our firm's Tax group, [click here](#)

This memorandum is provided solely for informational and educational purposes and should not be construed as a legal advice.



To join our newsletter click here

Meitar Liquornik Geva Leshem Tal, Law Offices. 16 Abba Hillel Rd. Ramat Gan, Israel, +972-3-6103100

[Unsubscribe](#) | [Report spam](#)