Income Tax Ordinance (New Version), 5721- 1961

Section 85a

a) In an international transaction in which special relationships exist between the parties to the transaction as the result of which a price for an asset, right, service or credit was determined, or other terms for the transaction were determined, in a manner whereby less profits were obtained than would have been obtained under the circumstances had the price or the terms been determined between parties between which no special relationships existed (hereinafter – market conditions), the transaction will be reported in accordance with the market conditions and will be taxed accordingly.

b) For the purpose of this paragraph –
  – "Means of control" – as defined in Paragraph 75b(a)(2);
  – "Together with another" – as defined in Paragraph 75b(a)(4) even if they are not residents of Israel;
  – "Special relationships" – including relationships between a person and his relative, as well as control of one party to a transaction over the other, or control of one person over the parties to the transaction, directly or indirectly, alone or together with another;
  – "Control" – a holding, directly or indirectly, of 50% or more in one of the means of control;
  – "Relative" – as defined in Paragraph 76(d).

c) (1) An assessee will be obliged to submit to the assessing officer, on his demand, all documents and data in his possession concerning a transaction or a party to a transaction who is a foreign resident and the manner in which the price of the transaction is determined.

  (2) Had the assessee provided the documents as said in sub-paragraph (1) and the documents determined in accordance with sub-paragraph (e), the burden of proof will apply to the assessing officer if he determined specifications different from the agreements between the parties.

d) (1) A party to a transaction is entitled to approach the director and request prior approval that the price of a particular transaction or of a series of similar transactions, as agreed between the parties between which special relationships exist, is in accordance with market conditions.

  (2) The request will contain all of the material facts and the details concerning the transaction as well as the manner in which its price is determined, and enclosed with it will be documents, approvals, statements of opinion, declarations, assessments, the transaction agreement or its draft and any other document or detail, all as determined by the director in the rules.

  (3) The director is entitled to demand any additional document or detail which he regards as necessary for the purpose of his decision on the request.

  (4) The director will send notification of his decision and his reasons within 120 days from the date on which he received the request and all the documents as said in sub-paragraphs (2) and (3). However, he is entitled, for reasons that will be recorded, to extend the said time up to 180 days, providing that he informed the applicant of the extension before the original time had passed.

  (5) Should the director not reply to the application within the time specified in sub-paragraph (4), this will be regarded as prima facie approval that the transaction was made in market conditions.

e) The Minister of Finance, with the approval of the Knesset Finance Committee, is authorized to determine:

  (1) With respect to all assessees or types of assessees, ways and methods of recognizing the price of a transaction or its terms as a market price or as market conditions, as relevant, as well as rules in the

matter of attribution of income, expenses, deductions, credits and exemptions, all these in cases to which the provisions of sub-paragraph (a) apply;

(2) The determination of a fee for a request for approval as said in sub-paragraph (d) at an amount that will be specified, and is authorized to determine that the fee will be a proportion of the value of the transaction;

(3) Rules in the matter of reports and documents that are to be submitted to the assessing officer, and recording and documentation rules.