

November 20, 2023

Israel Tax Authority Provides Relief for Certain Section 102 Administrative Requirements

Client Updates

On November 19, 2023, in light of the current state of emergency in Israel, the Israel Tax Authority (ITA) provided relief with respect to two administrative requirements concerning the tax preferential 'capital gains track' for stock-based compensation granted under Section 102 of the Israeli Income Tax Ordinance ("Capital Gains Track"). ☒

In general, if certain conditions are met, the Capital Gains Track allows Israeli residents who are employees (as such term is defined under Section 102) to receive favorable tax treatment with respect to certain stock-based compensation, including options to purchase shares, which generally includes (i) a deferral of the taxable event until the sale of the underlying shares; and (ii) being subject to capital gains tax rate (as opposed to ordinary income tax rate). ☒

The ITA provided the following relief, assisting taxpayers to comply with some of the administrative requirements that need to be met under the Capital Gains Track:☒

- **Extension of the Depositing Period with the Trustee.** ☒

Background: Generally, to comply with the Capital Gains Track, the shares (including options) must be deposited with, and registered under the name of, a trustee ("102 Trustee"), at the date of grant. According to ITA guidance from 2012, companies shall be considered deemed compliant with such requirement if they deposit with the 102 Trustee the board resolution approving such grants and the related grant letters (or certain other documents in case shares are granted) within 45 days and 90 days, respectively, from the date of grant ("Depositing Periods"). ☒

Relief: According to the ITA's statement from November 19, 2023, if, with respect to any grant, a Depositing Period ends on a date that falls between October 1, 2023, and December 31, 2023, such Depositing Period shall be extended until December 31, 2023, and the deposit of the board resolution or grant letter, as applicable, during such extended period shall not be considered a violation of the above depositing requirements and the benefits of the Capital Gains Track. ☒

- **Submission of the Plan for Approval.**☒

Background: Generally, in order to comply with the Capital Gains Track, the incentive plan under which

shares (including options) are granted, must be submitted for the approval of the ITA, and grants can be made thereunder only upon the lapse of 30 days from such submission date. Customarily, the 102 Trustee submits the incentive plan to the ITA in hard copy. ☒

Relief: According to the ITA's statement from November 19, 2023, the incentive plan may be submitted online (in either the ITA's system for registered representatives, or the ITA's website for public inquiries), in which case the 30-day waiting period shall commence on the date of such online submission. ☒

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Our tax group assists foreign and local clients in all legal aspects related to adopting stock-based compensation plans under Section 102. Please feel free to contact us with any questions that you have on this matter.

Key Contacts



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