

the tax network concerning the income of foreigners too. A more just result would have been achievable using possible interpretation of the term "resident" in the tax treaty with the USA, whereby only the proportion of Israeli beneficiaries in the trust are to be considered as "a resident of Israel" for the purpose of the treaty, and applying this insight to the right of taxation in Israel, in which case only 1/3 of the dividend income would be taxable in Israel. On the other hand, it may be argued that the attribution of an Israeli residency only to a 1/3 of the trust's income is intended only for limiting the commitment of the USA to grant treaty benefits only to "the Israeli part" of the trust. Incidentally, were the shares of the American company held by a LLC, for example, which is not classified as a trust, the Israeli member might still be taxed as an Israeli individual and be entitled to the limited tax rate according to the treaty, and in Israel be taxed only for his share in the income from dividends (including receiving the foreign tax credit). Other solutions in this context may be achieved by "splitting" the trust, whether in practice or through the ITO relevant regulations, or through the implementation of sections from the trust chapter that allow for the attribution of income to beneficiaries, although these solutions are not without flaws and are not free from possible faults.

A major question that has arisen in the context of the taxation result is whether the foreign residents will receive the Israeli tax as credit (for their part) on income that was originally derived in the USA. This is not at all certain and it is certainly possible that those foreign residents would be subject to double taxation. In this context, one may possibly examine the taxation reduction in Israel under Section 16A of the ITO, whose purpose is to prevent these situations, by means of a tax refund, in part or in full, to a foreign resident in certain cases. It is also interesting whether the Decision and the spirit behind it will adversely affect the taxation settlements that have recently been announced concerning foreign trusts that have become an Israeli trusts following the recent amendment to the ITO.

(April 2015)

### **Residency relocation of a foreign company is not a tax event**

In June 2015, a taxation decision (No. 8326/15) was published, stating a number of provisions or positions related to residency relocation of a foreign company from one foreign country to another. Without going into detail concerning the factual basis, we should state that the taxation decision deals with a foreign company (hereinafter: the "**Foreign Company**") that resides in a country which has no tax treaty with Israel, which is owned by an Israeli company (the "**Israeli Company**"). The Foreign Company relocated to another foreign country, which is a treaty country, this for its future public offering. Decisions that have been given and