

amending the VAT law on the subject of charging service providers in the digital and Internet field VAT was published.

In a circular that has just been published, the ITA is trying to implement the law applying to VAT taxation in the context of corporate tax and income tax too. In other words, if the transaction is subject to VAT, then why should it not be subject to corporate/income tax? To this day, traditionally, as expressed in legislative acts, the professional interpretation of the ITA and the interpretation of the OECD treaty model, the place of where the income from services was generated has been determined as the place where the services were provided! For example, if a resident of Israel consumes a legal service from a foreign attorney (such as giving a legal opinion), which is given by that foreign attorney from abroad, the foreign attorney is not subject to income tax because it was not generated in Israel, even if the said service is liable for VAT (apart from the question of who must actually pay the VAT). In the circular that has just been published, the ITA is "updating" its worldview concerning the place where the income from internet-based services are generated, by establishing a concept of "significant economic presence", i.e., "virtual" presence in a place in which there are Israeli customers or in which the service provided or the product sold has Israeli contexts - **even without any physical presence in Israel!** By doing so, the ITA is aligning the concept of taxation and the transaction place to the existing VAT law. However, because the circular relates only to digital transactions, there is variance between transactions that are performed using a digital platform, on which the new approach is based, for which the supplier of the product or provider of the service will be subject to tax, and transactions that are performed through other means, for example by telephone transaction, in which case the supplier of the product/provider of the service will not be subject to tax. In our opinion, there is a lack of a legal basis to distinguish between the two different platforms, meaning that the legislation must be updated in this regard. In the case of a corporation residing in a treaty country, the principle of the permanent establishment requirement is maintained, but the ITA states that certain activities that were considered to this day as activities of a preparatory or auxiliary character are considered in the modern digital era as significant activities that may constitute a permanent establishment (finding customers, customer relation management, etc.). However, at the stage of attribution of incomes to that permanent establishment, the ITA states that the "significant people functions" approach must be implemented and the presence and contribution of the key people operating the permanent establishment must be identified.