



Income Tax Circular No. 01/2023

**Subject: Mutual Agreement Procedures in Treaties for Preventing Double Taxation –
Procedure for Filing a Request and the Treatment Thereof**

This circular replaces Income Tax Operative Instruction 23/2001

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1. Introduction

- 1.1 Each term in this circular shall have the meaning ascribed to it in the Israeli income tax ordinance 1961 (the **"Income tax ordinance"**), unless stated otherwise.
- 1.2 One of the purposes for which states enter tax treaties is to avoid double taxation. Tax treaties are international agreements between two states (hereinafter: **"the contracting states"**), that reflect their agreement to split taxation rights with respect to various types of income and sometimes even regarding the classification of income. In the tax treaty the contracting states agree that the right to impose tax on a certain type of income will be awarded to one of the contracting states, whereas the other contracting state commits to relinquish, fully or partly, its right to impose tax on that income or to provide a relief or benefit in some other way.
- 1.3 The tax treaties to which Israel is a party include a "mutual agreement procedure" section. This section provides a unique and exclusive procedure whose purpose is to avoid taxation that is not in accordance with the provisions of the treaty. Furthermore, the purpose of this procedure is to enable the contracting states to resolve by mutual agreement difficulties or doubt regarding the interpretation or scope of the treaty, as well as cases for which there are no instructions in the treaty. Every treaty describes the types of disputes and matters that can be resolved or decided via a mutual agreement. Sometimes the treaty contains other provisions by which a resolution or decision regarding a certain matter can be made only with mutual agreement of the authorities or after consultations between them.

The purpose of all these instructions is to create a channel for talk between the contracting states on any matter related to the treaty, and they reflect the wish of the contracting states to resolve disputes by means of cooperation and agreement.
- 1.4 Instructions regarding mutual agreement procedures appear in article 25 of the OECD model tax convention. A large part of Israel's tax treaties contain instructions similar to those of the model tax convention. The language of the article in the model tax convention was updated in 2017 following the "BEPS" project that decided that the procedure for resolving disputes should be improved to make it more accessible and



effective¹. Therefore, from 2019, changes will be made in some of Israel's tax treaties in the section regarding mutual agreement procedures. Some of the changes will apply in light of Israel joining the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting².

- 1.5 The mutual agreement procedure can be split into several types: the first and most common type is a mutual agreement procedure regarding a specific case that raises an argument by which the action of one of the states, or both, causes or may potentially cause a taxpayer to be charged tax contrary not in accordance with the provisions of the treaty; the second type is a procedure that its purpose is to reach an agreement regarding interpretation of the treaty's instructions, with respect to its implementation or scope in general and with no connection to any specific case; the third type is a consultation procedure regarding cases that were not specifically arranged in the treaty, for the purpose of avoiding double taxation. Each of these types of procedures will be held with respect to taxes to which the relevant treaty applies, subject to its instructions.
- 1.6 Mutual agreement procedures are held between the contracting states, by means of the competent authorities.
- 1.7 The purpose of this circular is to clarify the nature of the mutual agreement procedures and to establish a procedure for requesting the competent authority to open a mutual agreement procedure in a specific case ("hereinafter: **the request**").

2. The competent authority

- 2.1 The tax treaties establish a "competent authority" for each of the contracting states (hereinafter: **the competent authority**), inter alia, for the purpose of implementing the mutual agreement mechanism. The responsibilities and authorities of the competent authority regarding each type of mutual agreement procedures are set forth in the treaty

¹ BEPS Action 14: Making Dispute Resolutions Mechanism More Effective.

² <http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.pdf>

See also MLI circular



and may be different from one treaty to the other. The competent authority will not act on a matter for which it did not receive authorization in the relevant treaty.

- 2.2 The competent authority of each of the contracting states is the body that is authorized to initiate mutual agreement procedures with the other contracting state, to participate in them and to reach an agreement on any matter under its authority.
- 2.3 The international tax unit of the tax authority is the competent authority in the State of Israel with respect to the tax treaties of Israel. In appropriate cases the director of the tax authority will bring in additional people to handle a specific matter³ while protecting the independence of the competent authority's work. The competent authority will consult with the legal bureau of the tax authority particularly on matters relating to the interpretation and scope of the tax treaty's instructions. The competent authority will act separately and independently from the assessing officer and whoever prepared the assessment. (Unless stated otherwise, in this circular "assessing officer" means the assessing officer in Israel and the "competent authority" means the competent authority in Israel.)

3. Mutual agreement procedures in specific case

- 3.1 An Israeli resident who believes that an action of one of the contracting states of the tax treaty, or both, causes or may potentially cause the Israeli resident to be subject to taxation not in accordance with the provisions of that treaty, may bring the case before the competent authority of the contracting state of which he is a resident (hereinafter: "**the applicant**"). In certain situations, the treaty enables reaching out to the country of residence citing residence-based prejudicial treatment. This right exists in addition to the remedies an applicant has according to the domestic law of the State of Israel, or of the other state, it thus indicated in the relevant treaty.
- 3.2 Typical examples of cases in which the competent authority will be requested to hold mutual agreement procedures: (this is not a closed list)

³ Such as, representatives of other professional departments (transfer pricing, valuations, etc.).



- Situations where a question arises regarding allocation of income between the two states (transfer pricing issue);
- Existence of a permanent establishment in a contracting state, and allocation of income and expenses;
- Resolution concerning "residency" when double taxation is created as the result of residency being established in both contracting states;
- Different classification of income (for example: classification in State A as a dividend and in State B as interest);
- Double taxation situation deriving from exit tax.

3.3 Conversely, the calculation of a foreign tax credit (e.g., 'baskets' method, credit surplus etc.) is subject to domestic law even according to the provisions of the treaties and therefore there is no justification to discuss the credit calculation method in the mutual agreement procedure. Furthermore, there is no justification to discuss the taxation of an Israeli resident according to the domestic law in Israel in mutual agreement procedures unless the taxation is not in accordance with a specific provision in the tax treaty.

It is also noted that mutual agreement procedures are not a substitute for fulfilling administrative requirements imposed in the contracting state in order to receive treaty benefits (such as filing a request for relief or request for refund). Administrative requirements that are not discriminatory, are not an action not in accordance with the treaty and therefore there is no justifiable reason for mutual agreement procedures. If the taxpayer has taken the necessary steps in the contracting state for applying the provisions of the treaty but was rejected not in accordance with the provisions of the treaty, the request for mutual agreement procedures will be justified.

3.4 The competent authority, at the request of an Israeli resident taxpayer, may initiate a mutual agreement procedure with competent authorities in several contracting states where the issue under question relates to application of a treaty between Israel and each of the other contracting states (hereinafter: "**multilateral procedure**").



3.5 The request will be submitted to the competent authority within the timeframe stated in the relevant treaty. A request submitted after that timeframe will not be accepted. It is noted that the timeframes stated in the treaty usually begin on "the date of the first notification of the action which gives rise to taxation not in accordance with the provisions of this treaty". The date of the first notification is the date on which the taxpayer was required to pay tax either in an assessment or by some other means (for example: a withholding of tax). This date is not necessarily the date of issuing the final assessment and it can be earlier than the date of the final assessment. "Notification" as regards withholding tax is not necessarily a withholding tax notice of the tax authority and the timeframe will begin on the date on which taxpayer became aware in the ordinary course of business of the taxation not in accordance with the treaty. (For example, receiving a bank statement that includes the withheld taxes). It is noted that a timeframe of 3 years from the date of the first notification as mentioned above, appears in most of Israel's tax treaties and in the OECD model tax convention. In a treaty that does not state a timeframe for submitting a request for a mutual agreement procedure, the competent authority will agree to accept a request submitted within 3 years from the date of the first notification of the action which gives rise to taxation not in accordance with the provisions of the treaty.

It is clarified that the timeframe for submitting a request does not depend on the applicant exhausting the remedies due to him according to the domestic law of the State of Israel. The timeframe for submitting a request for mutual agreement procedures may be earlier than the determining date for submitting an objection or request for legal relief.

3.6 It is important to note that submitting a request for mutual agreement procedures does not stop the count of the periods for submitting an objection and appeal. Therefore, the competent authority may not reach an agreement contrary to the period of limitation provisions of the domestic law unless the treaty includes a provision by which any agreement reached by the competent authorities will be applied regardless of any period of limitation restriction in the domestic law of the contracting states. The competent authority will notify the other competent authority regarding a request for mutual agreement procedures according to a treaty that does not have any such provision that was submitted proximate to or after the end of the limitation period. In addition, a mutual



agreement procedure can be requested in order to reach an agreement regarding a matter that repeats every year. The competent authority may agree to apply the outcome of the mutual agreement procedure to a number of years as indicated in the decision. A competent authority agreement regarding a number of years constitutes a binding agreement. In order to apply the agreement, the assessing officer may examine, in the framework of the assessment procedure, existence of the underlying factual assumptions of the agreement that were determined by the competent authorities.

- 3.7 A request submitted to the competent authority by whomever is not eligible to do so according to the treaty will not be accepted nor discussed as part of the mutual agreement procedures (for example, not an Israeli resident, or a request regarding years that predated the treaty's scope).
- 3.8 Should the competent authority find that the request is justified, and a satisfactory solution cannot be unilaterally reached, it will try to resolve the matter by reaching a mutual agreement with the competent authority of the other contracting state in order to avoid taxation not in accordance with the treaty.

4. Mutual agreement procedures for request of contracting state

- 4.1 When a contracting state requests from the competent authority in Israel to hold a mutual agreement procedure on a matter concerning a resident of the contracting state, the competent authority shall examine the request and act according to paragraph 6 hereunder, mutatis mutandis.
- 4.2 Where such a request may have an effect on the tax liability of a taxpayer in Israel, the competent authority will notify the Israeli taxpayer of the request to hold mutual agreement procedures on his case.
- 4.2 The competent authority will notify the Israeli assessing officer of the request that was made and its subject.



5. Procedure for submitting a request to hold mutual agreement procedures in specific case

- 5.1 The request to hold mutual agreement procedures shall be submitted to the offices of the international taxation unit of the tax authority professional affairs department (125 Menahem Begin Rd., Tel Aviv) and a digital copy (including annexes) shall be sent by email to MAP@taxes.gov.il. If the applicant files reports to the Israel tax authority he will submit a copy of the request also to the office of the assessing officer handling his file. If the subject of the request is related to a procedure being held before a court, the applicant will submit a copy also to the tax authority legal bureau.
- 5.2 The request will be made in writing and be signed by the applicant or his legal representative. The request will be made in Hebrew and translated into English. Documents that are not in Hebrew or English will be translated into English or Hebrew. At the request of the competent authority, documents in Hebrew will be translated into English and documents in English will be translated into Hebrew.
- 5.3 The request will specify that the assistance of the competent authority is being requested and will include all the details and information indicated hereunder⁴:
1. Names and addresses of the applicant/s, identification number of each Israeli or foreign entity related to the matter and other identifying information as applicable.
 2. The tax years for which mutual agreement is being requested.
 3. Description of the control, holdings, and relations between the applicant and all the entities relevant to the request in the tax years in question and in the preceding two years.
 4. Reference to the treaty, the mutual agreement procedure section under which the request is being made, the sections in the treaty that are the basis for the applicant's request.

⁴ A list of the details requested in order to initiate a mutual agreement proceeding may be examined in the future if updated recommendations are issued by the OECD and/or in the framework of the BEPS.



5. A brief description of the matter in respect of which the competent authority's assistance is being requested.
6. Proof of the action that is argued as having caused or may potentially cause taxation not in accordance with the provisions of the treaty.
7. A full description of the facts including a description of the related circumstances and documents supporting the facts.
8. An analysis of the issue included in the request and an interpretation of the treaty's sections that it is argued were not applied correctly.
9. An explanation of the nature of the requested relief.
10. The Israeli and foreign tax amounts related to the matter, in NIS and in the relevant currency.
11. An assessment, adjustment, decision, or resolution of the assessing officer in Israel, to the extent one exists.
12. Letters and audit documents that were provided to the applicant and are related to the action that caused taxation not in accordance with the treaty.
13. In a request concerning transfer pricing:
 - a. Documents required according to Israeli law including financial reports for the year in dispute, transfer pricing studies available to the requestor, and work papers regarding implementation of the transfer pricing studies in the financial reports;
 - b. Transfer pricing adjustments made in Israel or abroad;
 - c. A list of the documents and information requests required by the assessing officer, as well as detailing which were provided, and which were not⁵;
 - d. Documents that were submitted to a foreign tax authority for establishing transfer pricing of the matter in the request.
14. Notification whether the limitation period in Israel or in the other state has expired with respect to the benefit being requested.
15. Whether the matter included in the request is related in any way to a matter that was ruled upon by someone else in the Israel tax authority (including regarding

⁵ Without derogating from what is stated in Section 5.4, the competent authority may request the provision of documents from this list while treating the request.



land taxation and VAT), or for which a request is pending with someone else in the Israel tax authority.

16. Whether a request for mutual agreement procedures on the same matter was made or is going to be made to the competent authorities in the other state by the applicant or a body related to the applicant.
A copy (including annexes) of the request submitted in the other state should be attached that indicates the date it was submitted, the body and the person to whom the request was sent.
17. Whether any procedures on the matter included in the request were held in the other state with respect to the applicant and the parties related to it including assessment procedures, an assessment agreement, a transfer pricing or other agreement, an administrative or legal procedure. Any decision, adjustment, resolution, assessment documents or agreement relating to the matter included in the request should be explained and attached and details of the office and persons in the other state that are involved in the procedure should be indicated.
18. Details of legal procedures that were held before or are pending, in Israel or another state, and are related in some way to the matter included in the request. Copies of decisions or agreements should be attached.
19. A declaration of the applicant that it waives confidentiality and allows the competent authority to disclose to the competent authority of the other state and its representatives all the information relating to the matter included in the request, including to disclose information regarding entities related to the matter included in the request.
20. A declaration of the applicant addressed to the competent authority of the other state that allows it to disclose to the competent authority all the information relating to the matter included in the request, including to disclose information regarding entities related to the matter included in the request.
21. A commitment of the applicant to notify the competent authority of any error, change or development that occurred in the details the applicant had provided, immediately after they become known.
22. A commitment of the applicant to assist the competent authority to reach a solution by providing any document required within a reasonable time and fully.



23. In a request for a multilateral procedure as mentioned in paragraph 3.4 above, the required information should be presented in respect of each of the states and the applicant will declare that he agrees to all the information provided in the framework of the procedure begin transferred to each of the involved states.
24. Power of attorney to a representative if the request was prepared by the representative.

The aforesaid information will be included in a statement of the applicant or an officer of the applicant, stating that he has personal knowledge of the information, and will be approved by an attorney. If the applicant is represented in the request procedure, all regulations will apply regarding the documents submitted by the recorded representative.

- 5.4 The competent authority may request from the applicant, at any time, to provide it any information, details, or other documents it may require in order to handle the request. The applicant must provide the additional material fully within 21 workdays or within the time requested to do so. If necessary, a reasoned request to extend the date for providing the additional material can be submitted. Documents prepared in a language other than Hebrew will be submitted in the source language together with a certified translation into English or Hebrew.
- 5.5 If the applicant did not provide information, details and documents as required, the competent authority may deny the request or discontinue treatment of the request.

6. Procedure for treating a request

- 6.1 The competent authority will examine the request and the extent to which it is justified. A request will be justified if taxation has occurred or may potentially occur in Israel or in the other contracting state not in accordance with the treaty. A request will be considered unjustified if its examination does not indicate taxation not in accordance with a treaty or if information required for examining the request is missing.



- 6.2 When the competent authority examines issues concerning interpretation of a treaty, its position will be based on the provisions of the relevant treaty on the basis of principles for interpretation of treaties, the OECD commentaries and the domestic law in Israel. The position of the competent authority will be determined with respect to each specific case.
- 6.3 When the competent authority examines allocation of income between an Israeli taxpayer and a related party, its position will be based on the market value principle such that the allocation will be made according to the situation that would have existed if the parties were not related parties, taking into consideration the treaty's purpose of avoiding double taxation and in view of all the circumstances in the particular case.
- 6.4 Furthermore, the competent authority will agree to accept a request when the taxpayer and the tax authority that prepared the assessment disagree on whether the conditions for existence of an anti-planning provision (in a treaty or in the domestic law) are met to the extent the request meets all the other conditions for being accepted.
- 6.5 Should the competent authority find that the request is not justified, the competent authority will notify the competent authority of the other state of its decision. The competent authority of the contracting state may express its position on the matter. Without derogating from the aforesaid, the competent authority has discretion regarding continuation of the procedure.
- 6.6 Should the competent authority find that the request is not justified, it will notify the applicant of its decision in writing while indicating the reasons for its decision. Furthermore, in the appropriate cases it will notify the assessment office of its decision.
- 6.7 Should the competent authority find that the request is justified, and that the taxation in Israel, all or part, is not in accordance with the provisions of the treaty, the competent authority will notify the assessing officer of its decision and explain the action that should be taken to appropriately apply the provisions of the treaty. The competent authority will notify the other competent authority of its decision. In the appropriate



cases, the competent authority will make its decision after coordinating or consulting with the other competent authority.

- 6.8 Should the competent authority believe that the request is justified, and the taxation in the other state is not in accordance with the provisions of the treaty, fully or partly, it will contact the competent authority of the other contracting state and try to resolve the matter with it with mutual agreement.
- 6.9 The competent authority will hold the procedures together with the competent authority of the other contracting state. The applicant is not entitled to take part in these procedures. The competent authority may, at its sole discretion, allow the applicant to put down in writing his arguments concerning taxation not in accordance with the provisions of the treaty (without derogating from his duties according to section 5 of the circular). The arguments in writing will be submitted to the competent authority and at its sole discretion will be transferred by it to the competent authority of the other state. The arguments will be written in English and translated per a request upon request by the competent authority.
- 6.10 The competent authority will notify the applicant and the assessing officer of the outcome of the mutual agreement procedure. It is emphasized that if after reasonable efforts on the part of the competent authority there was no cooperation on the part of the competent authority in the other state, or the two authorities were not able to reach an agreed solution, the competent authority will notify the applicant in writing of the procedure's outcome. It is hereby clarified that in any case where the reasonable efforts of the competent authority to hold mutual agreement procedures have failed or of the procedures ending without an agreed solution, the competent authority of Israel is not obligated to unilaterally avoid double taxation, if it had found that the taxation in Israel corresponds with the provisions of Israeli law and the relevant tax treaty.
- 6.11 Should the competent authorities reach an agreement the competent authority will notify the applicant of the outcome of the mutual agreement procedures. The applicant will be requested to notify whether he accepts the mutual agreement's outcome or not within 30 days if no other date is indicated in the notice. Should the applicant inform



that he accepts the agreement reached in the mutual agreement procedures, this decision will be final, and may not be contested or appealed. If the applicant had filed an appeal with the court on the issue deliberated in the mutual agreement procedure and the applicant expresses his agreement to the outcome of the mutual agreement procedures, the applicant will be required to provide his consent to concluding the legal procedures as required in the circumstances of the matter. If the applicant notifies that he does not accept the agreement reached in the mutual agreement procedures, or did not provide a notification of acceptance within the required timeframe, the agreement between the competent authorities will not be binding, and the countries are allowed not to implement it.

- 6.12 Implementing the mutual agreement procedures will be executed according to Israeli law, subject to the provisions of the relevant treaty. The competent authority of the State of Israel is in no way responsible for implementation of the agreement by the other contracting state. If there are any concerns that pursuant to the domestic law of the other state the applicant may be damaged (for example because of period of limitation provisions), it must act to arrange the matter with the tax authorities of the other state.

7. Effect of mutual agreement procedures on assessment, objection, appeal, and collection procedures

- 7.1 Submitting a request to hold mutual agreement procedures does not stop the count of the dates provided in the law for submitting reports, an objection, and an appeal. In the appropriate cases the competent authority may condition treatment of the request on the applicant consenting in advance to hold procedures that will prevent expiration of the limitation period (for example, filing with the court an objection and appeal). In certain cases, where a legal procedure is being held on a matter for which a mutual agreement procedure was requested, the competent authority will recommend to the taxpayer, in coordination with the state attorney office, the legal bureau and the assessing officer, to suspend the procedures. The tax authority will usually support/consent to suspension of the legal procedure in two situations: the first, before the assessing office has submitted a notice interpreting the reasons of the assessment and the second, after



the appellant has submitted the reasons for the appeal. The tax authority will object to suspension of the legal procedure after the reasons for the assessment have been submitted and before the reasons for the appeal have been submitted. It is noted that several court rulings determined that it is better to exploit the mutual agreement procedure before exploiting the legal procedure. Nevertheless, it is important to emphasize that the decision regarding a suspension of procedures is in the hands of the court and that the position of the competent authority and assessing officer depends on the circumstances of the case. It should be noted that should the mutual agreement procedures are occurring in parallel to a judicial procedure, the competent authority will be prevented from actively conducting the mutual agreement procedures as long as the procedure is taking place in a court in Israel. Furthermore, it is important to note that following a ruling by a court in Israel on the matter being addressed in the mutual agreement procedures, these mutual agreement procedures may continue to take place, however, in this framework the Israel competent authority will ask the other competent authority to accept the Israel court ruling and will not swerve as part of the mutual agreement procedures from the court's decision.

- 7.2 It is clarified that the existence of a mutual agreement procedure will have no effect on the execution of a tax collection procedure including, tax collection in special cases within their meaning in section 194 of the income tax ordinance and under special circumstances within their meaning in section 119A of the ordinance. Should the competent authority decide to open mutual agreement procedures with respect to the applicant's case, it will be allowed to request from the applicant security for the tax payment before the procedure begins and in certain circumstances even after the procedure has begun. Furthermore, assessment or collection procedures regarding the relevant years or which may affect the treatment in other years (for example: a decision regarding transfer pricing or residency) will take place after being coordinated with the competent authority in advance. In all the other years not included in the mutual agreement procedure and not affected by it, normal assessment and collection procedures can continue. In case of any doubt, the competent authority should be consulted with.



- 7.3 The existence of an assessment agreement or an understanding on a matter relating to an assessment does not negate the right of the taxpayer to request mutual agreement if he believes that taxation occurred not in accordance with the treaty. Even so, in the framework of the procedure, weight will be given to the existence of an agreement and the circumstances in which it was made, and these will be taken into consideration when examining whether the request for mutual agreement procedures is justified and also as part of the considerations of the competent authority in its handling of the mutual agreement procedure. In a mutual agreement procedure taking place after a tax audit agreement has been reached, the Israel competent authority will ask the other competent authority to accept the tax audit agreement and will not swerve as part of the mutual agreement procedures except in exceptional cases which will be examined based on the facts of the matter by the competent authority. As from the date of submitting a request for a mutual agreement procedure, no assessment by agreement will be made and there will be no compromise regarding the issue being examined in the framework of the procedure other than in coordination with the competent authority.
- 7.4 The competent authority's denial of a request to hold mutual agreement procedures, does not bar the applicant from raising the matter in ordinary assessment procedures within the timeframes specified in the law.

8. Implementation of competent authorities' agreement

- 8.1 Should the competent authorities reach an agreement, their agreement will be conveyed to the applicant and to the assessing officer as mentioned in paragraph 6 above. If the assessment or tax liability in Israel should be lowered, the applicant will request from the assessing officer to implement the decision and will provide the documents needed for doing so (such as a revising report, or necessary calculations as applicable).
- 8.2 A competent authorities' agreement will apply according to the relevant treaty. It should be examined whether the treaty contains provisions regarding implementation of the decision regardless of the timeframes indicated in the domestic law.



- 8.3 Upon completing implementation of the decision, the assessing officer will notify the competent authority that the agreement was implemented. In case of any difficulty in the implementation, the competent authority should be notified as soon as possible.

9. Sundry instructions

- 9.1 The applicant is required to voluntarily notify the competent authority of any error, change or development relating to the information, details or documents that were submitted by him in the framework of the request, immediately after becoming aware of such.
- 9.2 Examination and audits that were held by the competent authority on a certain matter, in the framework of handling the request, do not prevent the assessing officer from holding additional examinations and audits on the same matter in the framework of handling an assessment in the file of the applicant.
- 9.3 It is clarified that it is prohibited to require from the taxpayer to sign an agreement that denies him the right to request mutual agreement procedures in Israel or in a contracting state.