

**Meori Ampeli, Adv. (CPA) (LL.M)**

Shai Erez, Adv. (Acct.)

Anna Tsabari, Adv. (LL.M)

Raphael Boussidan, Adv. (MBA)

Moshe Aviv Tower, 39th Floor,  
7 Jabotinsky st., Ramat-Gan 5252007, Israel

E-mail: [meori@ampeli-tax.co.il](mailto:meori@ampeli-tax.co.il) דוא"ל:

Mobile: +972-54-2651516 ★ פקס: +972-722-405101 ★ טל: +972-722-405100

**מאורי עמפלי, עו"ד (רו"ח) (מוסמך במשפטים)**

שי ארז, עו"ד (חשבונאות)

אנה צברי, עו"ד (מוסמכת במשפטים)

רפאל בוסידאן, עו"ד (מנהל עסקים)

מגדל משה אביב, קומה 39,

רח' ז'בוטינסקי 7, רמת-גן 5252007

**Re: The Activity of Foreign Corporation in Israel via the Internet subsequent to  
Circular 4/16 of the Israeli Tax Authority**

On April 11, 2016 the Israeli tax Authority has published Circular **4/16** whose title is "**The Activity of Foreign Corporation in Israel via the Internet**" (the "**Circular**").

**The Circular** main targets is to explain under what conditions it will be possible to attribute foreign corporation revenues from the sale of goods or provision of services via the internet, to a "permanent establishment" in Israel. In addition, the **Circular** sets out the conditions to classify the activity of the foreign corporation as subject to Israeli Vat.

In this short Article we ask to assist our foreign clients to better understand the influence of the **Circular**. In order to do so, it should be emphasized that the Circular itself is influenced from the International Project of the BEPS. The BEPS (Base Erosion and Profit Shifting) Project is an action plan of the OECD and G-20 countries (developed countries), which aims to combat the artificial erosion of the tax base and the shifting of profits from countries where economic activity is carried out to countries with lower tax rates. The OECD has published on October 2015, 15 action reports, each of which deals with a different aspect of the BEPS, and includes operational recommendations to correct the OECD Model Tax Convention. One of those reports is **Action 7**, whose title is "Preventing the Artificial Avoidance of Permanent Establishment Status".

In this regard, **Action 7** recommends to expand the definition of "dependent agent", so that a person who is acting in a contracting State on behalf of a foreign enterprise, and in doing so, habitually concludes contracts, or habitually plays the principal role in the conclusion of contracts, shall be considered a "dependent agent" that indicates the existence of a permanent establishment.

**Action 7** also recommends to minimize the "preparatory or auxiliary activities" exception. According to Action 7, a "preparatory activity" will often be carried on during a relatively

short period, and an "auxiliary activity" generally corresponds to an activity that is carried on to support, without being part of, the essential and significant part of the activity of the enterprise as a whole. According to **Action 7** It is unlikely that an activity that requires a significant proportion of the assets or employees of the enterprise could be considered as having an auxiliary character.

Based on those recommendations, **The Circular** describes cases where a permanent establishment exists in Israel, as Following:

- A branch, an office or another facility used for the activities of the foreign corporation in Israel;
- A fixed place of business in Israel that deals with carrying out market surveys for foreign corporation, if the activity of market surveys is one of the main activities of the foreign corporation, and not subordinate to his goal;
- Representatives of the foreign corporation in Israel, engaged in marketing activity, via a fixed place of business in Israel;
- An ongoing relationship between the representatives of the foreign corporation in Israel and the Israeli customer, using a fixed place of business in Israel (for example, organizing conferences for customers, creating opportunities to display new products, developing and improving the service provided to the customer);
- A "significant digital presence" in Israel (for example, signing a significant number of contracts for the provision of digital services with Israeli residents, consuming online services offered by the foreign corporation by a vast amount of customers in Israel, provision of online services tailored to customers in Israel; activities of multinational corporations operating in Israel through the internet with the assistance of Israeli corporations or subcontractors related to other Israelis etc.).

From the Israeli Vat aspect, the **Circular** states that once the activity of the foreign corporation is considered as a permanent establishment in Israel, then the foreign corporation should also registered in the Vat Authorities and pay vat on its transactions with the Israeli customers.

**Given the above, it is recommended to foreign corporation who make transaction with Israeli clients, in particular via the internet, to reassess their tax exposures in Israel.**

-3-

However, It appears that the **Circular** does not apply in cases the foreign corporation has neither offices nor clients in Israel, and in general, the services provided by the Israeli service provider to the foreign company are in connection to the activities of the Foreign Company outside of Israel.

**This publication provides general information only and does not have a pretention to be a full and complete guide to the Circular. As such, it should not be used or taken as a legal advice for specific situations. For further information please contact us by e-mail: [Office@ampeli-tax.co.il](mailto:Office@ampeli-tax.co.il), or by phone: 972-722- 405100#1. We will be happy to be of service to you with these matters.**

Sincerely,

**Meori Ampeli, ADV. (CPA) and ADV. Shai Erez**  
**Ampeli Tax Law Offices.**