

Israel

International Estate Planning Guide

IBA Private Client Tax Committee

Contact

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Author's note

There are a few general principles that are relevant to the cross-border practitioner in the area of private client trusts and estates.

1. Israel is party to the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague Conference on Private International Law (HCCH) 1961 Apostille Convention). As a result, the foreign notary confirmation of documents together with the apostille authentication is accepted in Israel for all purposes.
2. An Israeli notary is an attorney admitted to the Israel Bar with at least ten years of practice experience and a special qualification as a notary required by the Israel Bar. An Israeli notary does not practice in the same manner as a notary in other countries, such as civil law European jurisdictions.
3. As of the date of writing, a legislative proposal to amend the Succession Law 1965 has been advanced, reflecting an effort to modernise the existing legal framework. The proposed amendments address, inter alia, the evolving structure of family units, including broader recognition of non-traditional relationships, as well as practical issues arising in contemporary estate planning, such as the treatment of digital assets and the management of increasingly complex asset structures.

In addition, the proposal seeks to improve the efficiency of inheritance proceedings by simplifying certain procedural aspects and expanding the scope of matters that may be handled by the Registrar for Matters of Succession, particularly in uncontested cases.

The proposal also reflects a broader policy trend towards reducing disputes between heirs by providing clearer default rules and greater flexibility in the implementation of testamentary intent.

While the proposal has not yet been enacted into law, it indicates a clear direction towards adapting Israeli succession law to current social, technological and economic realities.

I. Wills and disability planning documents

The Succession Law 1965 (the 'Succession Law') governs inheritances in Israel. The law is relevant for estate planning and governs forms of wills, the validity of foreign wills and inheritance rights, as well as estate administration, maintenance rights to dependent family members, a decedent's debts, executors, private international law issues in this area and various other issues.

A. *Will formalities and recognition of foreign wills*

1. WILL FORMALITIES

The fundamental principle under the Succession Law is freedom of testation. As a general rule, individuals are free to bequeath their assets as they wish, and there are no forced heirship rules. Under very limited circumstances, immediate family members may be entitled to maintenance payments from the estate if they can prove that they were financially dependent on the testator prior to their death.

There are a few forms of valid wills under Israeli law, as summarised below.

a. Witnessed will

A witnessed will must be in writing, certified by the testator to be their last will, and signed by the testator in front of, and together with, two adult competent witnesses who are not beneficiaries under the will.

b. Will before an authority

A will executed before an authority is one signed before a judge, religious tribunal judge, Registrar for Matters of Succession or notary.

The procedure for executing the will before the authority requires the testator to indicate their wishes to the authority, orally or in writing. If done orally, the authority records the testator's wishes in writing and certifies the testator's declaration of the document as their last will and testament.

The most common will before an authority is a will executed before a notary, whereby the notary confirms the testator's signature on a written document.

c. Oral will

An oral will can only be made by an individual who believes that their death is imminent. Under such circumstances, the individual may recite their testamentary wishes before two witnesses, who must put the testator's oral testamentary wishes in writing and file the relevant document with the Registrar for Matters of Succession. Such an oral will shall be void after 30 days from the circumstances warranting the oral will if the testator is still alive.

In a case that reached the court, a woman died in Argentina and left an oral will. The law in Argentina does not recognise oral wills. In the judgment, the court examined the validity of the will according to Israeli law and applied Argentinian law (see 8991/04).

d. Handwritten will

A handwritten will is valid if the complete document is in the testator's handwriting, and signed and dated by the testator.

2. FOREIGN WILLS

A foreign will is valid under the Succession Law if it is valid as set forth below:

- under the laws of the country where it was executed;
- under the laws of the country of residence or citizenship of the testator at the time of execution of the will or at the time of their death; and
- if the will bequeaths real property under the laws of the country where the real property is located.

In the case of *Mastora Kahana v Meir Kahana*,¹ the court found that, while it possessed jurisdiction over the worldwide assets of the estate, the governing law with respect to the assets located in France was French law to be applied by the Israeli probate court.

Even in the case of a will written in Israel, foreign law must be examined according to the place of residence of the testator (see 594/04).

3. MUTUAL WILLS

Section 8 of the Succession Law refers to mutual wills, defined as wills that are executed by spouses in reliance on each other. For example, a mutual will is one in which the spouses bequeath their entire estate to each other and thereafter to their joint children.

As the spouses sign said wills in reliance on each other, a mutual will may be revised as follows: in the event of a separation or divorce, any revisions/cancellations require notice by one spouse to the other of the revision or cancellation of the mutual will that automatically cancels both wills.

Upon the death of the first spouse, a mutual will may be cancelled or revised by the surviving spouse either upon the renunciation of their share of the predeceased spouse's estate, or to return the assets inherited or the cash value thereof from the surviving spouse to the estate of the predeceased spouse and thereafter revise the surviving spouse's will.

In a case that reached the family court in Nazareth, a couple signed a mutual will, after which the woman changed her will unilaterally. In this case, the court determined that the new will of the woman, who suffered harsh treatment from her husband, was valid. This is also because the husband's reliance on the mutual will did not stand. The court's ruling was that the submission of a divorce petition, a writ of a claim for the dissolution of a partnership, an exchange of drafts, a meeting at the welfare unit, and the filing of protection and physical separation orders between the parties amounted to a written notice that was brought to the attention of the husband. It should be noted that the court asked to examine whether the same mutual will was signed as part of undue influence on the part of the husband and concluded that this was not the case (see *LB v ES* (52005-08-18)).

Undue influence was discussed in a case of the family court in Tel Aviv. A divorced woman who was the mother of a daughter chose to bequeath her estate to the medical team that treated her in the last years of her life. The deceased's daughter wished to uphold a previous will in which the mother bequeathed her estate to her daughter. The daughter relied on her claims that the will should be cancelled due to defects in it, the deceased's unfitness to make a will, undue influence on the deceased, and that the will was devoid of reasonableness and did not reflect the wishes of the deceased. The court did not find undue influence and clarified that the fear of it is not enough; a solid evidentiary foundation for its existence must be presented. The court upheld the execution of the last will (see *MN v DD* (21509-05-21)).

In recent years, Israeli courts have continued to emphasise the importance of the reliance principle underlying mutual wills, particularly in cases where the relationship between the spouses deteriorated prior to the death of the first spouse.

The courts have shown a willingness, in appropriate circumstances, to recognise conduct such as prolonged separation, legal proceedings between the spouses, or a clear breakdown of the marital relationship, as satisfying the requirement of notice under Section 8A of the Succession Law, even where no formal written notice was delivered.

4. WILL SUBSTITUTES (REVOCABLE TRUSTS OR ENTITIES)

Trusts are recognised in Israel, whether settled under the Israeli Trust Law 1979 (the 'Trust Law') or under the laws of foreign jurisdictions. A trust duly executed before an Israeli notary under section

17 of the Trust Law is a will substitute, as the assets transferred to the trust during the settlor's lifetime are owned by the trustee and do not form part of the settlor's estate upon their demise. A detailed discussion on trusts is included in the relevant section below.

II. Powers of attorney, directives and similar disability documents

A. Powers of attorney

Powers of attorney are governed by the Agency Law 1965 (the 'Agency Law') and allow an agent to act on behalf of a principal in the same manner as the principal could act. Although not provided for in the Agency Law, in practice, except for the irrevocable power of attorney referred to below and certain irrevocable powers of attorney granted in real estate transactions, powers of attorney are valid for a period of ten years. There are a number of commonly used powers of attorney set forth below.

As a general rule, the execution of a power of attorney requires the identification of the principal by the attorney.

In recent years, and particularly following regulatory developments introduced during the Covid-19 period, it has become possible in certain circumstances for an attorney to verify a client's identity and witness the execution of documents through real-time video conference.

Such remote verification is typically subject to specific conditions, including that:

- both the attorney and the client are located in Israel;
- the client is identified through reliable identification documents;
- the interaction is conducted in real time; and
- the process is properly documented and retained.

Notwithstanding the above, remote verification is not uniformly accepted in all contexts, and certain authorities and third parties may still require physical presence.

1. GENERAL POWER OF ATTORNEY

A general power of attorney is signed on a set form that grants the agent the widest possible powers and therefore, careful consideration should be given prior to executing this document.

A general power of attorney can be signed before any attorney if said attorney is appointed as an agent under the general power of attorney. Where the attorney is not the appointed agent, the general power of attorney needs to be signed before a notary.

A general power of attorney terminates upon, among other circumstances, as provided by the Agency Law, the incapacity or death of the principal. A durable power of attorney, discussed in greater detail below, allows an agent to act on behalf of the principal in the event of incapacity.

2. SPECIAL POWER OF ATTORNEY

A special power of attorney is not usually executed on a set form but drafted to meet the specific needs necessary to allow the agent to act on behalf of the principal. It is advisable to coordinate

with the party requiring the power of attorney to ensure that the draft meets such a third party's requirements.

As with a general power of attorney, if the attorney is the appointed agent, said attorney may confirm the principal's signature. Otherwise, the principal is to sign the special power of attorney before a notary.

Also, similar to the general power of attorney, the special power of attorney will not be valid in the event of the incapacity or death of the principal.

3. NOTARISED POWER OF ATTORNEY

This power of attorney is any power of attorney signed before an Israeli notary. For real estate transactions where third parties, such as banks, are involved, the power of attorney must be signed before a notary. The cancellation of a notarised power of attorney, except for an irrevocable power of attorney described below, may be achieved in coordination with the notary who confirmed the signature on the document.

4. IRREVOCABLE POWER OF ATTORNEY

Where the rights of a third party depend on and rely on the power of attorney, it cannot be cancelled, as provided in section 14b of the Agency Law. It is common practice for parties to a real estate transaction to execute irrevocable notarised powers of attorney that will remain valid in the event of the principal's incapacity or death. This is important in order to ensure the parties' rights in the real estate transaction once the agreements are signed and prior to the finalisation of the sale transaction.

B. Durable powers of attorney

Durable powers of attorney (DPAs) are governed by the Legal Capacity and Guardianship Law 1962 (the 'Guardianship Law'), which was amended in 2017 to allow for DPAs. The Guardianship Law allows a competent adult to appoint an agent based on instructions included in the DPA form and the provisions of the Guardianship Law, but without subjecting the agent to supervision by any governmental agency, unless the principal requests such supervision. The execution, e-filing and enforcement of the DPA requires following strict administrative and technological processes. Depending on the principal's wishes, the DPA may govern personal matters, such as wellbeing, residence, daily needs, physical, mental or social issues, as well as financial matters and certain health/medical matters. The DPA is initially executed and e-filed in a database managed by the Guardian General's Office, and is valid upon the principal losing legal capacity, by default, based on a medical opinion determining said incapacity.

The agent under the DPA is, in most cases, an immediate family member of the principal: that is, a spouse or child. The Guardianship Law provides the criteria for the appointment of an agent, including being a competent adult, being financially solvent (if appointed for financial matters), and not providing medical treatments to the principal or residence for a fee, unless a family member. In addition, the agent is not to be the attorney confirming the DPA. An agent cannot act for more than three principals, unless they are the agent's family members.

Based on the Guardianship Law, the agent under a DPA may not act on behalf of the principal in the following matters:

- change of religion;

- actions of the principal on behalf of others (eg, guardianship);
- adoption;
- voting;
- healthcare directives under the Deathbed Patient Law 2005; and
- execution of a last will and testament.

In addition, in connection with financial matters, the principal must specifically authorise the agent, in the DPA, to act within the limitations below. If no reference is made in the DPA form, any such actions will require the agent to obtain court approval:

- granting charitable donations, gifts and loans in amounts of up to ILS100,000 (about US\$32,000);
- other legal actions involving amounts between ILS100,000–500,000 (about US\$32,000–US\$156,000); and
- actions relating to certain pension funds.

Notwithstanding the actions requiring specific authorisation in the DPA form, the actions listed below require that the agent receive court approval to act irrespective of authorisation in the document:

- real estate transactions;
- renunciation of an inheritance in estate proceedings;
- charitable donations, gifts or loans in amounts exceeding ILS100,000 (about US\$32,000);
- legal actions in an amount exceeding ILS500,000 (about US\$156,000); and
- transactions in provident funds.

A DPA may be terminated:

- upon the death of the principal or the agent;
- if no successors are appointed;
- on an event determined by the principal in the DPA to terminate the appointment;
- on notification by the agent; or
- if a spouse is the appointed agent and the spouses divorce.

In practice, there has been a noticeable shift in recent years towards facilitating the use of DPAs as a practical alternative to guardianship proceedings. Administrative guidelines issued by the Guardian General have clarified certain aspects of implementation, and in some cases, financial

institutions have become more familiar with DPAs, although practical challenges in their recognition and implementation still arise.

C. Healthcare directives

An agent under a DPA is authorised to make any 'routine' medical decisions if the principal authorises an agent to act for medical matters. These include all medical decisions other than those governed by the Deathbed Patient Law 2005 described below. Also included under the DPA is authority for the agent to act on behalf of the principal in mental health issues.

Living wills and advanced healthcare directives are forms provided by the Ministry of Health for terminal illnesses under the Deathbed Patient Law and are relevant where a patient has a life expectancy of up to six months as determined by their physician. These are signed before medical professionals (not attorneys) and are filed with the Ministry of Health.

III. Estate administration

A. Overview of administration procedures

For foreign residents, foreign probate court orders are not recognised in Israel. Upon the death of a non-resident owning assets in Israel, local probate or inheritance proceedings are required in order to transfer the assets located in Israel to the beneficiaries under a will or to legal heirs.

The process is initiated by filing an application with the Registrar for Matters of Succession, supported by the original will (or a duly authenticated copy), a death certificate, and identification documents of the testator and the heirs. Foreign documents must generally be authenticated by apostille and, where required, translated into Hebrew.

In uncontested cases, the application may be reviewed and decided by the Registrar for Matters of Succession. In more complex cases, or where objections are filed, the matter is transferred to the Family Court for adjudication.

Where the deceased was a foreign resident, the law governing the distribution of the Israeli estate is the law of the deceased's place of residence, and therefore the submission of a legal opinion regarding the applicable foreign law may be required as part of the proceedings.

In recent years, and following procedural developments, a greater number of straightforward cases are handled at the Registrar level, contributing to a more efficient process in practice.

B. Administration of the estate

1. PROOF OF INHERITANCE: INTESTATE SUCCESSION

The Succession Law governs intestate succession and provides that a decedent's legal heirs are as follows:

- the decedent's spouse is entitled to all tangible personal property of the estate and, in addition:
- one-half of the estate, if the decedent is survived by children or their descendants, or by parents; or

- two-thirds of the estate, if the decedent is survived by siblings, their descendants, or grandparents.

In addition, where the decedent is not survived by children, and the spouses were married for at least three years and maintained a common household, and the estate includes the marital residence, the surviving spouse is entitled to the deceased's full interest in such residence, as well as two-thirds of the remainder of the estate.

In recent years, there has been a gradual expansion in the practical authority exercised by the Registrar for Matters of Succession, particularly in uncontested matters.

As a result, many applications that were previously transferred automatically to the Family Court are now handled and decided by the Registrar for Matters of Succession, contributing to a more efficient process in straightforward cases.

2. PROOF OF INHERITANCE: TESTATE SUCCESSION

The local probate/inheritance proceedings for an estate of a non-resident decedent requires filing the original will. Any documentation issued by a foreign authority or signed abroad are to be duly authenticated by apostille, including, without limitation, the death certificate and identification documents of the testator and the heirs. Where the original will admitted to probate in Israel has been filed for probate or is held by a notary in a foreign country, there is a special procedure to request the court in Israel to provide a probate order based on an exemplified, duly authenticated copy of the will. In addition, certain documents may need to be translated to Hebrew for the court to review.

Further, Section 137 of the Succession Law provides, as a general rule, that the law governing the distribution of a foreign resident's assets in Israel is the law of the decedent's country of residence. This rule has also been supported by decisions of the Supreme Court.

As the governing law for the distribution of the estate assets in Israel is the law of the jurisdiction of residence of the testator at the time of their death, a legal opinion is required for the Israeli procedure to ensure the distribution of the assets in Israel is in accordance with the laws of the country of residence of the testator.

3. EXECUTORS

Upon appointment, an executor is subject to the supervision of the Guardian General and is generally required to report on the assets of the estate and the income derived therefrom.

Historically, the supervision exercised by the Guardian General constituted the primary oversight mechanism in estate administration, with executors being required to submit periodic reports and obtain court approval for certain actions, including, inter alia, the sale of real estate or the distribution of assets to the heirs.

In recent years, there has been an increasing emphasis on transparency towards the beneficiaries themselves. In practice, executors are expected to provide beneficiaries with information regarding the status of the estate and the actions taken in its administration.

Beneficiaries may apply to the court for directions, challenge actions taken by the executor, or seek the executor's removal in appropriate circumstances. This reflects a broader development towards

enhanced accountability and a more active role of beneficiaries in overseeing the administration process.

Notwithstanding the above, substantive actions in the administration of the estate – particularly the sale of real estate or the distribution of assets – continue to require court approval, and the formal supervisory role of the Guardian General remains in place.

4. MARITAL PROPERTY REGIME

As a general rule, the issue of marriage in Israel is not simple. As there is no separation of 'church and state', there are a number of issues, including marriages, which are governed solely by religious laws and the relevant religious tribunals in the country depending on the individuals' religious affiliation.

The Spouses Property Law 1973 provides that the financial arrangement of a valid marriage after 1974 is, as a general rule, that assets accumulated during the marriage are community property and subject to the balancing of resources upon divorce.

Exceptions to the general rule are any gifts or inheritances to one spouse during the marriage or assets owned by one spouse prior to the marriage.

Court precedents vary significantly in this area and include some extreme decisions, mainly surrounding the questions of whether assets that by law should be kept as separate assets per the exceptions mentioned above, have been commingled and/or intended to be considered marital assets.

IV. Trusts, foundations and other planning structures

A. Common techniques

The Trust Law defines a trust as an arrangement where a trustee has the power to hold or have control over property for the benefit of beneficiaries or for a specified purpose. While various legal relationships may also be defined as trusts, such as statutory fiduciaries, guardians, liquidators and executors, the private trust is not a separate legal entity and assets are held directly by the trustee or indirectly via an underlying company.

The creation of a private trust may be by contract, Hekdesh deed, or a last will and testament.

A trust created by contract requires the settlor and trustee to execute a written agreement reflecting the terms of the trust, although it is likely that the validity of said agreement will lapse upon the settlor's death.

A trust created by Hekdesh deed requires the execution of the deed by the settlor before an Israeli notary. Only the Hekdesh deed will act as a will substitute, under the condition that the assets are transferred from the settlor to the trustee during the settlor's lifetime resulting in the assets not forming part of the settlor's estate at death.

A testamentary trust is included in a last will and testament, which is executed in accordance with the requirements of the Succession Law as listed above.

Recent legislative proposals to amend Section 8 of the Succession Law have further clarified the interaction between inheritance law and trust structures. Under the proposed amendment, while

agreements relating to future inheritance remain generally prohibited, certain arrangements are expressly excluded from this prohibition, including, inter alia, the creation of a trust in writing.

These proposals indicate an increased recognition of trusts as a potential estate planning tool, even where they may have implications for the disposition of assets upon death, and reflect a more flexible approach compared to the traditional restrictions under Israeli succession law.

1. IRREVOCABLE *INTER VIVOS* TRUST: HEKDESH

As mentioned above, the Hekdesh deed requires a specific manner of execution in order to be a will substitution. No rule against perpetuities is valid in Israel.

The trustee of a trust settled under a Hekdesh deed may be an individual or a corporate entity; the beneficiaries may be named beneficiaries, a class of beneficiaries or a specified purpose.

While the Trust Law makes no reference to protectors, such a reference is included in the Income Tax Ordinance [New Version] (the 'Tax Ordinance'),² defining a protector as the individual who has the authority to appoint or remove a trustee, instruct the trustee or provide approval to actions by the trustee, as provided in the Hekdesh deed.

B. Trusts and real estate

Trusts holding real property in Israel raise complex tax considerations.

As a general rule, real estate transactions are taxed under the Real Estate Taxation Law (Gain and Purchase) 1963 (the 'Real Estate Taxation Law'), while trusts are generally governed for tax purposes by the Income Tax Ordinance.

The Israeli Supreme Court, in *Gelis v Director of Real Estate Taxation Tel Aviv*,³ held that the transfer of Israeli real estate to a trustee may constitute a taxable event under the Real Estate Taxation Law, even where such transfer is made without consideration and within the framework of a trust arrangement.

The Court emphasised that the mere use of a trust structure does not, in itself, exclude the application of the Real Estate Taxation Law, and that such transactions should be examined in light of their legal and economic substance.

Accordingly, the transfer of real estate into a trust during the settlor's lifetime may give rise to liability for capital gains tax (on the part of the settlor) and purchase tax (on the part of the trustee), notwithstanding the estate planning context of the arrangement.

At the same time, the use of trusts remains a viable legal and planning tool, subject to careful structuring and compliance with the applicable tax framework.

C. Treatment of foreign trusts/foundations

Foreign trusts and foundations are generally recognised in Israel. The Income Tax Ordinance, First Schedule, lists the legal entities recognised as follows: a Liechtenstein foundation, Liechtenstein establishment and Liechtenstein Registered Trust, as well as foundations under the laws of the Bahamas, Panama and the Netherlands Antilles. Notwithstanding the listed structures and jurisdictions, trusts/foundations formed under the laws of other foreign jurisdictions will usually be recognised in Israel.

D. Public trusts/endowments

The Trust Law governs trusts for a public purpose that are for charitable public purposes in the areas of science, education, health, religion, sports and security. The beneficiary of a public trust would usually be a purpose from the above list rather than individuals or institutions.

In addition to the public trust, non-profit organisations include non-profit companies incorporated pursuant to the Companies Law 1999 or associations incorporated under the Law of Associations 1980.

E. Lifetime gifts

Gifts are recognised in Israel by the Gift Law 1968, and permit assets of all types to be gifted by a donor to a donee evidenced by a written document.

V. Taxation

The following tax rules refer to the taxation of trusts regardless of the jurisdictions of their settlement. As a general rule, all reporting and tax obligations are imposed on trustees, even if foreign residents. There are also reporting obligations for beneficiaries over the age of 25 where the trust holds over about US\$150,000.

The Income Tax Ordinance defines five trust categories:

- Israeli residents trust;
- foreign resident trust;
- Israeli resident beneficiary trust;
- foreign beneficiary trust; and
- testamentary trust.

A. Israeli residents trust

The Israeli residents trust is a trust in which:

- at least one settlor and one beneficiary are residents of Israel on the settlement date; and
- during the current tax year at least one settlor or one beneficiary are Israeli residents; or
- all settlors are deceased and in the current tax year there is at least one Israeli resident beneficiary.

The Israeli residents trust is subject to annual reporting to the Israeli Tax Authority and is taxable on its worldwide income with tax credits in Israel for foreign taxes paid, where applicable. Distributions to beneficiaries are not subject to additional tax payments once the relevant tax payments have been made by the trustee.

The Israeli residents trust is the default trust definition for any trust that does not meet the definition of any other trust defined by the Ordinance.

B. Foreign resident trust

The foreign resident trust is settled by a non-resident for the benefit of non-resident beneficiaries or registered Israeli charities. The trust must not have had any Israeli resident beneficiaries at any time since its settlement. This trust is subject to reporting and tax obligations in Israel only to the extent that it holds Israeli assets or receives Israeli source income. As of 1 January 2026, an Israeli resident trustee of a foreign resident trust is required to report to the Israeli Tax Authority with information on the controlling persons (settlor, trustee, protector, beneficiaries).

C. Israeli resident beneficiary trust

The Israeli resident beneficiary trust is a trust: (1) settled by an individual non-resident of Israel from the settlement date up to the current tax year and (2) during the current tax year at least one beneficiary is an Israeli resident. Two requirements must be met for the Israeli resident beneficiary trust to qualify as a relatives trust:

- the settlor is an immediate family member of the beneficiary (ie, parent, grandparent, spouse, child or grandchild). A broader family relationship (ie, siblings, nieces, nephews, aunts and uncles) will only permit classification as an Israeli resident beneficiary trust upon the submission of evidence to the tax assessment officer of the tax authority that such a trust was settled in good faith and that the beneficiary did not provide consideration for such settlement in their favour; and
- all settlors are living.

If any one of these additional criteria is not met, the trust is not a relatives trust; it is classified as an Israeli resident beneficiary trust and taxed as an Israeli resident trust.

The Israeli resident beneficiary trust/relatives trust is subject to tax as follows based on the trustee's irreversible decision: distributions to Israeli resident beneficiaries will be taxed at the rate of 30 per cent of the distribution amount unless the trustee provides evidence of the income and capital portions of the distribution. Where the distribution is comprised solely of capital and not of income, it is not taxable although there is an irrebuttable presumption that principal is distributed last. The trustee may opt, under certain circumstances, to subject the trust income allocated to an Israeli resident beneficiary to tax at the rate of 25 per cent in the tax year in which the income accrued. Upon annual tax payments on income by the trust, distributions to the beneficiary are not subject to additional taxes.

D. Foreign beneficiary trust

A foreign beneficiary trust is a trust settled by an Israeli resident for the benefit of an individual foreign resident beneficiary. The trust is entitled to tax as listed below but is subject to reporting obligations upon its settlement as well as annually, as confirmation of the beneficiaries' residence abroad.

Such a trust must meet all of the following conditions:

- it does not fall within the definition of an Israeli residents trust;
- it is irrevocable as such term is defined in the Income Tax Ordinance;
- all of the beneficiaries are identified and are foreign residents; and

- at least one settlor is an Israeli resident.

A foreign beneficiary trust is regarded as a foreign resident individual and is taxed in the same manner in which an individual foreign resident is taxed in Israel. If the assets and the income derived therefrom are derived from sources outside of Israel, there is no taxation in Israel. If the assets or the income derived therefrom are derived from sources within Israel, they are subject to Israeli taxation. Taxes may be applicable upon the settlement of the trust.

E. Testamentary trust

This trust is settled by a last will and testament of an Israeli resident. It is treated for tax purposes as an Israeli resident trust if it has at least one Israeli resident beneficiary or as a foreign beneficiary trust if there are no Israeli resident beneficiaries, as the case may be.

VI. Residence

The Income Tax Ordinance defines an Israeli resident as 'an individual whose centre of life is in Israel'. If an individual is present in Israel for a period of 183 days or more in one tax year, or 30 days or more in one tax year and 425 days in total in that year and in the immediately preceding two tax years, the individual is presumed to be an Israeli resident. However, the day count is a rebuttable presumption by either an individual or the tax authority based on the individual's centre of life.

In order to establish an individual's centre of life, the individual's family, economic and social ties require review and evaluation. Among other factors, these ties may be evidenced by the following:

- the location of the individual's permanent home;
- the location of the individual's place of residence and the place of residence of their family members;
- the location of the individual's business activities, place of employment or business dealings;
- the location of the individual's economic interests, including, without limitation, location of assets and/or investments; and
- the location of the individual's activity in organisations, associations and institutions.

In addition, the courts, in several rulings, established the 'subjective test', that is, where the individual views their centre of life.

This is an area that is expected to be revised, based on day counts that will be conclusive and binding to determine residence, instead of the rebuttable presumptions relevant today that have created many arguments between taxpayers and the tax authority, and resulted in a few significant court decisions.

A public committee in the field of international taxation was appointed by the Israel Tax Commissioner in 2021. The purpose of the committee was to provide recommendations in an attempt to simplify and grant certainty and efficacy to the Israeli tax system in the context of international taxation. The committee's report was submitted to the Tax Commissioner in November 2021 (the 'Committee's Report') and covered various areas including residence.

The Committee's Report includes the recommendations set forth below. While a number of years have passed since the Committee's Report, it is expected that the Income Tax Ordinance will be amended to reflect these recommendations. These are each, as a standalone, conclusive evidence of Israeli residence.

- An individual is present in Israel at least 183 days per tax year during two consecutive tax years. Residence will commence in the first year in which the individual was present at least 183 days.
- An individual is present in Israel at least 100 days in any tax year and a total of at least 450 days cumulatively together with the immediately preceding two tax years. This presumption will not result in the individual being an Israeli resident if the individual was present in a treaty country at least 183 days in each of the relevant tax years reviewed, subject to providing a residence certificate for tax purposes in the treaty country for the relevant tax years.
- An individual is present in Israel at least 100 days in any tax year and the individual's spouse or cohabiting partner is an Israeli resident.

In addition, the Committee's Recommendations include the presumptions listed below, which will be irrebuttable/conclusive evidence of the individual's residence abroad.

1. An individual present in Israel less than 30 days in every tax year during the last four consecutive tax years will be considered a foreign resident from the first tax year.
2. An individual present in Israel less than 30 days in every tax year during the last three consecutive tax years will be considered a foreign resident from the second tax year.

These irrebuttable presumptions ((1) and (2)) will apply if the individual is not present in Israel at least 15 days in the first month of the first tax year or the last month in the final tax year.

3. An individual and their spouse that are present in Israel less than 60 days in each tax year during a period of four consecutive tax years will be considered foreign residents from the first tax year.
4. An individual and their spouse that are present in Israel less than 60 days in each tax year during a period of three consecutive tax years will be considered foreign residents from the second tax year.

These irrebuttable presumptions ((3) and (4)) will apply if the individual and their spouse are not present in Israel at least 30 days in the first two months of the first tax year or the last two months in the final tax year.

5. An individual and their spouse that are present in Israel less than 100 days in each tax year during a period of four consecutive tax years will be considered foreign residents from the first tax year, provided that the individual and their spouse were present in a treaty country in each tax year at least 183 days and provided a residence certificate for tax purposes in the treaty country for the relevant tax years.
6. An individual and their spouse that are present in Israel less than 100 days in each tax year during a period of three consecutive tax years will be considered foreign residents from the second tax year, provided that the individual and their spouse were present in a treaty

country in each tax year at least 183 days and provided a residence certificate for tax purposes in the treaty country for the relevant tax years.

These irrebuttable presumptions ((5) and (6)) will apply if the individual and their spouse are not present in Israel at least 50 days during the first 100 days of the first tax year or the last 100 days of the final tax year.

VII. Gift, estate and inheritance taxes

As a general rule, no estate or gift taxes are imposed under Israeli laws. An exception to this rule is where an Israeli resident gifts any assets in kind to a foreign resident.

In addition, as no estate taxes are imposed, for estate administration purposes, no step-up in basis is granted to date of death, which may create some complexities for cross-border estates.

¹ CA 598/85.

² S 75c.

³ *Samuel Gelis and others v Capital Gains on Land Director*, Tel Aviv 1; 49026-07-17.