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Client Alert

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New ESPP Green Track and Guidance on Performance Conditions

The ITA recently added two new "green track" rulings to its list of fast track rulings relevant to companies offering Israeli employees the opportunity to participate in an ESPP.

Prior to the new fast tracks, if a company allowed Israeli employees to participate in its ESPP, the company would have generally needed to obtain a ruling from the ITA. The past rulings provided either that (i) the ESPP would be subject to section 102 capital gains trustee track treatment upon sale of the shares; or (ii) the ESPP would be taxed under the "non-trustee" track in a manner that the company would only be required to withhold tax upon purchase and does not need to track the consideration paid to the employee when the shares are sold.

The two new fast track forms, still in draft form but already being issued by the ITA, obviate the need for a formal ruling. Instead, the template forms provide for the particular treatment along the lines of the two alternative tracks described above. The benefit of these new green tracks is the time saved relative to a formal ruling – since all of the conditions are already provided within the template form, the rulings should be granted shortly after submission. Furthermore, per the ITA's new policy of no longer requiring a meeting with the taxpayer for green track requests, the new ESPP green track rulings are now granted absent this requirement. Attached are English translations of the two new forms.

In another recent policy change the ITA is no longer requiring a ruling for grants which vest based on performance conditions. In an email sent to the major trustees last week, the ITA has notified that grants with predetermined performance conditions will automatically be qualified for section 102 capital gains track treatment so long as they comply with the terms of Ruling 51/07. Prior to this announcement, the ITA required each company granting performance-based awards obtain a ruling with respect to such grants.

For assistance with an ESPP green track or questions about the necessity for a ruling with respect to performance conditions, please contact us.

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