

Trusts and Estates

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Trusts and Estate Planning In Israel

Israel has long been a "home" for many international families who have found a "sense of belonging," as well as business opportunities, in the country. It is well known as the "Start-up Nation", as it attracts large companies such as Intel, Google, Apple and Facebook. These sentiments and business opportunities make Israel a preferable investment jurisdiction, mainly in the areas of private equity, high-tech, technology and real estate.

International families in the modern era of globalization and movement of people and assets require adequate planning for the holding of assets, investments, cross-generational transfer of assets, cross-border succession issues and similar areas.

Private trusts were utilized by Zionist organizations and Jewish families who immigrated to Israel from Europe, the United States, Canada and South Africa, as these were jurisdictions in which individuals and professionals were familiar with the trust regime.

Trusts under Israeli Law

Trusts remain a legitimate planning option for various international families and cross-border issues in Israel. Israel's Trust Law (1979) governs the creation of a trust similar to common law trusts, which are increasingly popular among non-residents.

The first trust law was legislated in 1923 by the British Mandate (1922-1948) relating to public charities and was based on the common law trust. Private trusts were utilized by Zionist organizations and Jewish families who immigrated to Israel from Europe, the United States, Canada and South Africa, as these were jurisdictions in which individuals and professionals were familiar with the trust regime. Following the establishment of the State of Israel in 1948, court precedents were established in the areas of inheritance, gifts and trusts.

The Trust Law featured several innovations that created interesting practical possibilities: it permitted the creation of trusts without the settlor transferring official legal title of the assets to the trustee; and it set no limit for the duration of trusts and it permitted non-charitable purpose trusts.

Israeli practitioners sometimes chose to create trusts for their clients under foreign trust regimes, with such trusts being recognized in Israel.

Trusts governed by the Trust Law may be settled by contract or by deed. Those settled by contract are governed by an agreement that does not require a formal written document (although proving the terms of the trust may be difficult where there is no written agreement). Contractual trusts do not permit generational transfer of assets upon the settlor's demise, as they do not satisfy the certain provisions of the Succession Law.

Trusts created by deed, defined as "*hekdes*" under the Trust Law, require a deed signed before an Israeli notary. The trust is established upon the trustee obtaining control of the trust assets. The trust, upon settlement and management in accordance with the legal requirements, removes the assets from the settlor's estate, and therefore, probate or inheritance proceedings are not required upon the settlor's demise.

Testamentary trusts may be settled within an individual's last will and testament. Such trusts must be in writing, executed in accordance with the legal formalities required by the Succession Law, and are valid upon the issuance of a probate court order by an Israeli court.

A valid last will and testament can be made in one of the following forms: a handwritten will; a will signed in the presence of witnesses; a will in the presence of an authority, while the definition of "authority" includes a court judge and a notary. In certain circumstances, a deathbed will is also recognized as a manner to create a valid last will and testament.

Under Section 8(b) of the Succession Law, "a gift granted by a donor during the donor's lifetime, when such gift is to be effectively provided to the donee subsequent to the donor's demise, is null and void, unless such gift was included within a valid will." Therefore, it is recommended to create an *inter-vivos* trust and transfer control over the assets to the trustee during the lifetime of the settlor.

The Use of Real Estate Trust for Investments and Holding of Property in Israel

Real Estate Trusts (RET) have been used in Israel for many years and for various purposes, including legitimate tax planning, asset protection and commercial transactions. RET is a legal structure under which real estate is purchased by a trustee, or is transferred to a trustee, and the trustee acts as a nominee or "Bare Trustee" for an identifiable beneficiary. Israeli law, namely the Real Property Taxation Law and the Trust Law, provide the legal structure for such an RET. These laws allow the registration of the trustee as the legal owner of the real estate while the beneficiary of the real estate is considered as the real owner, similar to a beneficiary of a bare trust in the common law.

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Under the Real Property Taxation Law, two main taxes are imposed upon a sale of real estate: a Capital Gains Tax on the seller, and a Purchase Tax on the purchaser. The Capital Gains Tax is calculated in accordance with the increase in the value of

the property since its purchase; the time period during which the seller owned the property and the existence of other real properties owned by the seller. The Purchase Tax represents a certain percentage of the purchase price. This percentage is set in accordance with other real properties owned by the purchaser.

The real estate market in Israel is in great demand by both Israeli and foreign investors. Some investors choose to hold properties they purchase in the name of a trustee. This structure may be found particularly useful and efficient for non-Israeli families that decide to invest in real estate in Israel or have a second home in Israel.

Conclusion

Immigration to Israel over the years has brought with it a diverse population from various countries in the world that requires the special services of trusts, estates and succession planning. These services require expert advice relating to international taxation aspects.

Recent developments in the field of Anti-Money Laundering, including exchange of information, FATCA and CRS, require professionals to pay special attention to details when providing such services.

The matters discussed in this article present a bird’s eye view of the issues that should be considered when engaging in trusts, estates and succession planning in Israel. It is recommended to broaden one’s knowledge more about the subject through professional literature, such as *Trusts in Prime Jurisdictions* and *Trusts and Estate Planning in Israel*. It is also highly recommended to consult with experts in the field.

In the past 10 years, there has been a positive development in the use of trusts under Israeli law, by both Israeli residents and foreign residents.



Alon Kaplan,
Advocate & Notary

Dr. Alon Kaplan, Founder & Managing Partner
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Established in 1975, Alon Kaplan Advocate & Notary offers services in the fields of commercial law, international trusts and estates, real estate, tax and international transactions. The firm has extensive activity in Europe in the areas of trusts and estates, private banking and international transactions.

Alon Kaplan Advocate & Notary advises overseas and Israeli clients on foreign and Israeli trust and cross-border succession. Trusts are structured to meet the client’s particular needs, including succession planning, asset protection and forced heirship issues.

The firm advises on all matters of estate planning, trusts, probate and inheritance proceedings. This includes services relating to probate and inheritance procedures, administration of estates and cross-border inheritance matters.

Alon Kaplan Advocate & Notary also provides legal advice to family offices in matters of structuring and organizing family businesses, the creation of trusts and estate planning for family-owned businesses.

Another facet of the firm is providing legal and tax advice to overseas companies and individuals wanting to establish a foreign-owned business in Israel. This includes tax-planning advice involving personal tax law and international tax issues. To provide these comprehensive services, the firm works closely with lawyers, tax experts and accountants in several jurisdictions and maintains close relationships with reputable banks in Israel and overseas, as well as with numerous law firms and trust companies.

Dr. Alon Kaplan is a member of the Israel, New York State and German Bars and also the chairman of the Israel Bar Association's private international law committee. Alon is a member of the Society of Trusts and Estates Practitioners (STEP) and President of STEP Israel. He is an Academician at the International Academy of Estate and Trust Law and a Fellow of the American College of Trust and Estate Counsel. Alon publishes regularly in distinguished professional publications and speaks at seminars and conferences internationally. He is the general editor of *Trusts in Prime Jurisdictions* (4th Edition) and author of *Trust and Estate Practice in Israel*.

Meytal Liberman is a graduate of Bar-Ilan University (LLB) and of Tel Aviv University (LLM). She was admitted to the Israel Bar in 2013 and practices law as an Associate Advocate at the firm, where she also completed her legal internship. Meytal earned her Diploma in International Trust Management in 2015, and has been a member of the STEP since then. Her main practice areas include trusts and estates, inheritance, and real estate.

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