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7-1-1993

# The U.S.-Israel Tax Treaty, Bearing Two Protocols, Moves Toward Ratification

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4 J. Int'l Tax'n 292

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4 J. Int'l. Tax'n 292
Journal of International Taxation
Volume 4, Number 7
July, 1993
U.S.-Israel Treaty

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***292** Zeev Holender and Alan I. Appel[a]

# THE U.S.-ISRAEL TAX TREATY, BEARING TWO PROTOCOLS, MOVES TOWARD RATIFICATION

Due to the Lack of A Tax-Sparing Provision, the Treaty Does Not Reduce Taxes For U.S. Investors, and For Many, Operating Through A Branch Will Continue to be the Best Option.

Israel and the U.S. began negotiations on a tax treaty almost 30 years ago. Two treaties signed in the 1960s never entered into force, however, since they were not ratified. The current Treaty finds its roots in 1975, when its first version was signed, though again not ratified.[1] Five years later, the U.S. and Israel signed a protocol amending the original draft, which again was not ratified. One of the main reasons for this long process was Israel's fear that signing a treaty with a disclosure of information clause might deter U.S. investment in Israel.

In 1985, however, Israel and the U.S. signed a free trade area agreement to remove customs and non-customs barriers to trade between the two countries. This created an absurd situation where, on the one hand, there was an agreement encouraging trade without borders, but on the other hand, there was no treaty to eliminate double taxation. In addition, in the last few years, the U.S. made strong efforts to increase tax collection from foreign companies and individuals doing business in the U.S. These developments made it more important for the parties to sign a tax treaty. On 1/26/93, the parties signed a second protocol amending the original draft, signed on 11/20/75, as amended by the first protocol signed on 5/30/80. Though the treaty has still not been ratified, the Israeli tax commission has indicated that ratification is imminent. The principal issues involve whether the treaty will solve problems that American investors encounter in Israel and those Israeli investors face in the U.S.

## ISRAEL'S TAXATION OF BUSINESSES

The Israeli tax system is based on a territorial approach.[2] Generally speaking, only income ***293** derived, accrued, or received in Israel is subject to Israeli taxation. Thus, an Israeli resident with income from outside Israel and not receiving that income in Israel is not subject to Israeli taxation. Nevertheless, the Israeli Tax Ordinance provides that, in certain cases, income derived abroad is deemed derived in Israel and subject to Israeli taxation. Thus, a business outside Israel, managed and controlled by an Israeli resident, may still be subject to Israeli taxation. Foreign residents doing business in Israel are subject to taxation in Israel only on income derived or received in Israel.

### Israel's Tax Rates

The Israeli tax system distinguishes between individuals and corporations. Individuals are subject to graduated tax rates starting at 20% and going up to 48%. In 1993, there is also a levy at the rate of 5% of the tax due from each individual, which brings the total marginal tax on individuals to 50.4%. Companies are subject to company tax at the rate of 39%, starting from the first shekel of taxable income. This tax is not graduated. The company tax will be reduced by 1% each year to 36% by 1996.

Foreign individuals are thus subject in Israel to tax at a rate of up to 50.4% in 1993 on business and commercial income. Foreign investors that are incorporated are subject to only 39% company tax on business and commercial income derived from Israel.

Foreign investors (individuals or corporations) are subject to a withholding tax on dividends, interest, or royalties received from Israeli residents. The rate of withholding is 25%, plus a 1.25% levy in 1993 for an individual receiving such amounts. The withholding rate may be lower under a tax treaty. A foreign investor selling capital assets, such as shares of an Israeli corporation, is subject to capital gains tax in Israel, even if the sale occurred outside Israel or the buyer is a foreign resident. A foreign investor may sell shares of an Israeli corporation to another investor outside Israel and receive consideration outside Israel, but if no Israeli tax is paid, the buyer will not be able to get any dividends outside Israel.

Capital gain is divided into two components: the inflationary amount, which is subject to only 10% tax, and the real gain, which is subject to a full tax, depending on the identity of the seller --for a corporation, 39%, and for an individual, the highest marginal rate applicable. Foreign residents are not exempt from this tax, though they may elect to compute the gain on the basis of the foreign currency with which they purchase the asset and, in such case, they are exempt from the tax on the inflationary amount.

**APPROVED ENTERPRISES.**

Israel provides special tax incentives to foreign investors investing in approved enterprises. These incentives are granted under the Encouragement of Capital Investment Law. To receive these benefits the investment must meet certain criteria such as export or location in a developing area in Israel. The main benefits of an approved enterprise are payment of a reduced company tax at the rate of 25%-10% (instead of 39%) and withholding tax on dividends at a reduced rate of 15% (instead of 25%).

Where the foreign investment in an approved enterprise is 49% or higher, the tax benefits are even greater. For example, if a foreign investment in an Israeli company is from 49% to 74%, the company tax is reduced to 20%. If the foreign investment is higher than 74% but less than 90%, the company tax is 15%, and if the foreign investment is 90% or higher, the company tax is 10%.

Investors may also elect an alternative course of benefits for investments in approved enterprises under which they may be completely exempt from company tax as long as the company does not distribute a dividend. This course, aimed at investors whose investment in equipment is minimal, offers complete exemption from company tax in lieu of a grant. These benefits are given to foreign investors for a period of ten years.

In 1991, a third option was added under which investors may receive a government guaranty for loans taken from a bank of up to 66% of the investment in the project.

**U.S. Investors in Israel**

There are a number of specific problems facing U.S. investors in Israel.

***294 INVESTMENT IN APPROVED ENTERPRISES.**

A U.S. investor receiving the benefits of investing in an approved enterprise loses the benefits of such investments because the tax rate in the U.S. is higher than the tax imposed on an approved enterprise in Israel. Thus, if a U.S. company invests in an Israeli company that owns an approved enterprise, and the U.S. investment is 90% or higher, the Israeli company pays only a 10% company tax. When the Israeli company distributes a dividend to its U.S. parent, it withholds 15% of the amount paid as a dividend ($13.25). Thus, out of $100 of profit, the U.S. company receives $76.25 in the U.S. There, however, the company pays additional tax of $10.75, making the total 34%, the U.S. corporate rate.

Thus, as long as the U.S. company does not withdraw profits, it benefits from the low tax rates accorded to the Israeli company by qualifying as an approved enterprise (though the Clinton proposals would repeal deferral in certain cases). When profits are taken out, however, the U.S. company loses the benefit since the U.S. does not recognize the benefits given by Israeli law and the U.S. company pays additional tax in the U.S.

## CAPITAL GAINS FOR U.S. INVESTORS.

In 1986, the U.S. enacted Section 865 and changed its rules on gain derived by U.S. residents from selling shares of foreign companies. Under Section 865(a), any gain derived by a U.S. person from selling shares of an Israeli company is U.S.-source income and, therefore, not entitled to a credit for foreign tax imposed on the gain. There are exceptions to this rule, the most important being Section 865(f). Under that section, for a U.S. company selling shares of an affiliated company, gain is foreign-source income if the company whose shares are sold is engaged in an active trade or business and at least 50% of its income is derived from the country in which it is situated. Unfortunately, this exception does not help most U.S. investors selling shares of Israeli companies, and such investors may be subject to double taxation: capital gain in Israel (up to 50% for individuals or 39% for corporations) and tax in the U.S. up to 28%. Capital gains tax is imposed on disposition of shares in an approved enterprise.

## PASSIVE INCOME.

A problem not exclusive to U.S. investors, but causing difficulties for them, comes from the high tax rates imposed on passive income received from Israel. For example, dividends, interest, and royalties are subject to a 25% withholding tax in Israel and a 30% withholding tax in the U.S.

### Effect of the Treaty

The following table indicates the withholding tax rates on dividends, interest, and royalties, without the treaty and under the treaty.

| | Without a Treaty | Under the Treaty |
|---|---|---|
| Dividends | 25% | 12.5% / 25% |
| Interest | 25% | 10% / 17.5% |
| Royalties | 25% | 10% / 15% |

The general rate is 25% without the treaty. If the person receiving a dividend is a company holding at least 10% of the voting rights of the company distributing the dividend during the whole year in which the dividend is distributed and during the year before it, the treaty would reduce the withholding rate to 12.5%, provided the company distributing the dividend did not receive dividends or interest during the preceding year exceeding 25% of its total revenues (unless the interest derives from banking, insurance, or financing, or the interest or dividend derives from a subsidiary in which at least 50% of the voting rights are held by the company paying the dividend).

The withholding rate on interest becomes 17.5% in most cases, but is 10% on loans taken from a bank, an insurance company, or a financial institution (but one can eliminate the withholding on interest by electing to have the interest treated as an industrial and commercial profit; however, it is unclear whether this would subject the interest to the branch profits tax, as well as corporate income tax). Industrial royalties become subject to withholding tax of 15%. Royalties for copyrights and films will be subject to a 10% withholding tax.

***295 RATES REMAIN HIGH.**

Thus, while the treaty substantially reduces the tax rates, compared to other tax treaties of the U.S., the rates are high. For example, the withholding rate on dividends is 25% unless the person receiving the dividend is a company that holds at least 10% of the voting rights of the company distributing the dividend. Thus, any U.S. individual receiving a dividend from an Israeli company remains subject to a 25% withholding tax even after the treaty is in effect.

The rate of withholding tax on interest under the treaty is also comparatively high. Though the treaty provides for a 17.5% withholding tax on interest paid by an Israeli to a U.S. resident, this can be compared to the zero withholding rate under the new treaty between the U.S. and the Netherlands. Similarly, the withholding tax on royalties is zero under the new U.S. treaty with the Netherlands.

These high rates of withholding should encourage U.S. investors to plan investments in Israel to minimize the withholding tax even after the treaty is signed and ratified. For example, for royalties, a Dutch company can be used to receive royalties from Israel, benefiting from the treaty between Israel and the Netherlands, which provides for a 5% withholding tax on industrial royalties.[3]

The following are the tax rates of business income, capital gains, and branch tax on U.S. investors without a treaty and under the treaty.

| | Without a Treaty | Under the Treaty |
| --- | --- | --- |
| Business and commercial profits | 39% / 48% | Exempted, unless derived by a permanent establishment |
| Capital gains | 39% / 48% | Exempted, subject to certain exceptions |
| Branch tax | 0 / 15% | 0 / 12.5% |

Companies are subject to a fixed company tax at a rate of 39% (reduced 1% each year to 36% in 1996). Individuals are subject to graduated tax rates starting from 20% and going up to 48%. The treaty provides U.S. investors with an exemption from Israeli taxation on business and commercial profits unless the U.S. investors have a permanent establishment in Israel. The term "permanent establishment" is broadly defined to include an office, a branch, a warehouse, and other fixed places in which one person is doing business in the other country. The U.S. person may have a permanent establishment, even with no fixed place for doing business in Israel, by selling goods in Israel that undergo substantial processing there (even if the goods were originally purchased outside Israel), or where the goods were bought in Israel (even if they did not undergo substantial processing there). In addition, a U.S. person may have a permanent establishment in Israel if represented there by an agent with the authority to sign contracts on its behalf, and if the agent frequently uses this authority. The same rules hold true for an Israeli who sells goods in the U.S.

The treaty provides that a U.S. person selling shares of an Israeli company will be exempt from taxation in Israel if, in the 12 months prior to the sale, the seller had less than 10% of the voting power of the company. Thus, the treaty solves the problem for U.S. investors selling shares of an Israeli company who may be subject to double taxation because the gain is U.S.-source income for U.S. tax purposes.

For U.S. investors holding at least 10% of the voting rights of the company whose shares are sold, however, the treaty allows Israel to impose tax on the gain derived from the sale of shares of an Israeli company, which may reach up to 50% in the case of a U.S. investor who is an individual, or 39% in the case of a company. The treaty provides, however, that the gain will be

foreign-source income for U.S. tax purposes. Although this provides some relief to U.S. investors, it may not be a satisfactory solution, because the U.S. tax rate is much lower than the Israeli tax rate, so U.S. investors will still be subject to comparatively high tax rates on disposition of investments in Israel. In this case, too, U.S. investors may consider using a Dutch company to invest in Israel, benefiting from the Israeli-Dutch tax treaty, which exempts Dutch residents from capital gains tax in Israel.

Not covered within the treaty's capital gains tax exemption are (1) gain from the sale of real estate, and (2) gain from the sale of shares if the seller held, ***296** on any date during the 12 months before the sale, at least 10% of the voting power of the company whose shares were sold.

Israel does not have a branch tax except in the case of an approved enterprise, in which case the tax is 15%.

This makes the total tax imposed on the foreign company owning an approved enterprise through a branch in Israel identical to the tax imposed on a foreign company owning an approved enterprise through an Israeli subsidiary. The treaty would reduce the branch tax to 12.5%, thus unintentionally creating a difference between a subsidiary and a branch since, under the treaty, dividends paid by an Israeli company owning an approved enterprise will be subject to a withholding tax of 15%, while a branch will be subject only to the 12.5% branch tax.

### Comparison of Business Forms

Exhibit I, above, compares the current tax consequences of a U.S. investor doing business in Israel through a company, through a branch, or as an individual. The comparison demonstrates that the lowest tax exposure is achieved when the U.S. investor does business in Israel through a branch of a U.S. company. If a U.S. company doing business in Israel holds less than 10% of the shares in an Israeli company, the total Israeli and U.S. tax imposed on profits distributed as a dividend can reach to almost 60%. This is because the Israeli company is subject to 39% company tax in Israel and the dividends paid out are subject to additional 25% withholding. In the U.S., no credit is given for the company tax paid in Israel, because the U.S. company holds less than 10% of the Israeli company.

***297** If the U.S. company holds more than 10% of the Israeli company, the total Israeli and U.S. tax reaches almost 55%, the total tax imposed in Israel. In the U.S., no additional tax is paid, because the U.S. company receives a credit for the Israeli company tax paid by the distributing corporation. Since Israel has no branch tax, operating as a branch may save the U.S. company the tax imposed in Israel on dividends, thus reducing the total U.S. and Israeli tax to only 39%.

Exhibit II, above, compares the tax consequences of a U.S. investor doing business in Israel through a subsidiary, through a branch, or as an individual, after the treaty enters into force. The tax consequences for a U.S. company holding less than 10% of an Israeli company or for a person doing business in Israel through a branch, or, as an individual, are identical to those before the treaty is in effect. The only case where there is a change is for a U.S. company holding at least 10% of an Israeli company. There, the total Israeli and U.S. tax will go down to almost 47% from 54%. The reason is the reduction of the withholding tax from 25% to 12.5% under the treaty.

Even after the treaty enters into force, however, it may be more advantageous to operate a business in Israel as a branch rather than as a subsidiary of a U.S. company, because the total U.S. and Israeli tax of a branch is still only 39%. On the other hand, a branch will be taxed each year on its profits in the U.S., while operating through a subsidiary may delay the tax on the dividend until it is distributed.

Exhibit III on p. 298 describes the tax consequences of an investment in an approved enterprise. The benefits granted to an approved ***298** enterprise under Israeli law are lost when the approved enterprise distributes a dividend to its U.S. shareholders, since the total Israeli and U.S. tax comes to 34%. The treaty will not affect the results, as it does not have a tax-sparing clause.[4] Therefore, the benefits given by Israel to an approved enterprise are eliminated when a dividend is distributed to U.S. investors.

## ISRAELI INVESTORS IN THE U.S.

The most common problems faced by Israeli companies operating in the U.S. relate to transfer pricing practices (Section 482) and the branch profits tax (Section 884). If the IRS determines that the price charged a U.S. subsidiary is higher than arm's length, it may increase the taxable income of the subsidiary and charge it with U.S. tax for the additional income. In addition, since the funds are in the hands of the parent, the U.S. tax authorities may argue that these funds reflect a constructive dividend out of which there should have been paid a withholding tax of 30%. As a result, the Israeli exporter may find itself in a difficult situation, since it may have no resources to pay the additional tax required in the U.S., while it is unclear whether the Israeli tax authorities will allow a credit on the tax resulting from the adjustment. The result may be a double tax.

Unfortunately, the treaty does not deal with transfer pricing adjustments in a clear-cut manner. It provides ***299** that the other country may adjust the income of the taxpayer in the event that one country redetermines the income of such taxpayer. This adjustment is not mandatory, however. If no agreement is reached between the two countries, the treaty provides that they should try to reach an agreement under a procedure described in Article 28 of the treaty. This procedure, however, does not ensure that a taxpayer will not suffer double taxation.

Israeli companies face another problem in the U.S. resulting from not knowing when a foreign resident is, under U.S. tax law, engaged in a trade or business in the U.S. For example, an Israeli company having an agent in the U.S. that is selling its goods on a consignment basis may be treated as engaged in business in the U.S. and thus subject to U.S. taxation. Besides being required to pay income tax, the Israeli company also will be subject to a branch profits tax, which together could reach 55%.

The treaty provides some relief for this, since Israeli companies will not be subject to U.S. taxation unless they have a permanent establishment in the U.S. In addition, the treaty reduces the branch profits tax to 12.5% from 30%. Nevertheless, Israeli companies doing business in the U.S. should examine their situations carefully to avoid audits and civil and criminal penalties for not reporting activities in the U.S.

### Comparison of Business Forms

Exhibit IV, above, compares the current tax consequences of Israelis doing business in the U.S. through a subsidiary, branch, or as an individual. Before the treaty enters into force it may be more advantageous for an Israeli company to operate in the U.S. as a branch than as a subsidiary. The reason is that when operating as a branch, it may receive full credit in Israel for the tax paid in the U.S., while if operating through a subsidiary, no credit is given for the corporation tax paid in the U.S. On the other hand, the tax imposed on dividends in the U.S. may be delayed until a dividend is distributed, while a branch is subject to tax in Israel each year.

***300** After the treaty enters into force, Exhibit V, above, demonstrates that the difference between the tax rates of operating through a branch and those of operating through a subsidiary may be eliminated (in a case where the Israeli company holds at least 10% of the U.S. company shares), because under the treaty the Israeli company receives a credit for the tax paid by the company in the U.S. Thus, total Israeli and U.S. tax after the treaty is ratified will be 42.25%, equal to the tax imposed in the U.S. since, as a result of the credit, no additional tax will be imposed in Israel.

## EFFECTIVE DATES

The Treaty is to be effective on January 1 of the year in which it is ratified, provided ratification takes place prior to July 1 of any calendar year. Withholding provisions, however, will not apply until the first day of the second month following the date on which the convention is entered into. If ratification takes place after July 1 then the treaty is to be effective for January 1 of the year following the date on which the treaty is ratified.

## CONCLUSION

The Treaty may eliminate the current double taxation on capital gains of U.S. residents and on persons engaged in trade or business without a permanent establishment. Due to the lack of a tax-sparing provision, the treaty does not reduce taxes at all for U.S. investors who invest in an approved enterprise in Israel. For U.S. investors considering an investment in Israel, the

same results can be achieved without a treaty by having the U.S. investors form an S corporation to open a branch in Israel.

## Exhibit I

**Current (Pre-Treaty) Tax Costs of Doing Business in Israel Through a Company or Branch, or as an Individual.**

| | *Company holding less than 10%* | *Company holding 10% or more* | *Branch* | *Individual* |
|---|---|---|---|---|
| **Computation of Israeli tax** | | | | |
| *Taxable income* | $100 | $100 | $100 | $100 |
| *Tax* | | | | |
| *39%-company* | | | | |
| *48%-individual* | 39 | 39 | 39 | 48 |
| *Net after-tax profit* | 61 | 61 | 61 | 52 |
| *Withholding tax (25% in case of dividend)* | 15.25 | 15.25 | 0 | 0 |
| *Net income received in U.S.* | 45.75 | 45.75 | 61 | 52 |
| **Computation of the U.S. tax** | | | | |
| *U.S. taxable income* | 61 | 100 | 100 | 100 |
| *U.S. tax* | | | | |
| *34%-company* | | | | |
| *31%-individual* | 20.74 | 34 | 34 | 31 |
| *Credit for Israeli tax* | 15.25 | 54.25 | 39 | 48 |
| *Net U.S. tax* | 5.49 | 0 | 0 | 0 |
| **Total Israeli and U.S. taxes** | | | | |

| | | | | |
|---|---|---|---|---|
| *Israel* | 54.25 | 54.25 | 39 | 48 |
| *U.S.* | 5.49 | 0 | 0 | 0 |
| *Total* | 59.74 | 54.25 | 39 | 48 |

## Exhibit II

**Tax Costs After Treaty of Doing Business in Israel Through a Company or Branch, or as an Individual.**

| | *Company holding 10% or more* | *Company holding less than 10%* | *Branc h* | *Individual* |
|---|---|---|---|---|
| **Computation of Israeli tax** | | | | |
| *Taxable income* | $100 | $100 | $100 | $100 |
| *Tax* | | | | |
| *39%-company* | | | | |
| *48%-individual* | 39 | 39 | 39 | 48 |
| *Net after-tax profit* | 61 | 61 | 61 | 52 |
| *Withholding tax (12.5% in case of dividend)* | 7.625 (12.5%) | 15.25 (25%) | 0 | 0 |
| *Net income received in U.S.* | 53.375 | 45.75 | 61 | 52 |
| **Computation of the U.S. tax** | | | | |
| *U.S. taxable income* | 100 | 61 | 100 | 100 |
| *U.S. tax* | | | | |
| *34%-company* | | | | |
| *31%-individual* | 34 | 20.74 | 34 | 31 |

| | | | | |
|---|---|---|---|---|
| *Credit for Israeli tax* | 46.625 | 15.25 | 39.00 | 48.00 |
| *Net U.S. tax* | 0 | 5.49 | 0 | 0 |
| **Total Israeli and U.S. taxes** | | | | |
| *Israel* | 46.625 | 54.25 | 39 | 48 |
| *U.S.* | 0 | 5.49 | 0 | 0 |
| *Total* | 46.625 | 59.74 | 39 | 48 |

## Exhibit III

**Tax Consequences of an Investment in an Approved Enterprise (Before or After the Treaty).**

| | ***A*** | ***B*** | ***C*** | ***D*** |
|---|---|---|---|---|
| **Computation of Israeli tax** | | | | |
| *Size of foreign investment* | 1%-48% | 49%-74% | 75%-89% | 90%-100% |
| *Rate of company tax* | 25% | 20% | 15% | 10% |
| *Taxable income* | 100 | 100 | 100 | 100 |
| *Company tax* | 25 | 20 | 15 | 10 |
| *Net after-tax profit* | 75 | 80 | 85 | 90 |
| *Dividend* | 75 | 80 | 85 | 90 |
| *Withholding tax (15%)* | 11.25 | 12 | 12.75 | 13.50 |
| *Net income received in U.S.* | 63.75 | 68 | 72.25 | 76.50 |

| **Computation of the U.S. tax** | | | | |
|---|---|---|---|---|
| *U.S. taxable income* | 100 | 100 | 100 | 100 |
| *U.S. tax* | 34 | 34 | 34 | 34 |
| *Credit for Israeli tax* | 36.25 | 32 | 27.75 | 23.50 |
| *Net U.S. tax* | 0 | 2 | 6.25 | 10.50 |
| **Total Israeli and U.S. taxes** | | | | |
| *Israel* | 36.25 | 32 | 27.75 | 23.50 |
| *U.S.* | 0 | 2 | 6.25 | 10.50 |
| *Total* | 36.25 | 34 | 34 | 34 |

**Exhibit IV**

**Current (Pre-treaty) Tax Costs of Israelis Doing Business in the U.S.**

| | ***Individual*** | ***Branch*** | ***Company*** |
|---|---|---|---|
| **U.S. tax** | | | |
| *Taxable income* | $100 | $100 | $100 |
| *U.S. tax* | 31 | 34 | 34 |
| *Net after-tax* | 69 | 66 | 66 |

| | | | |
|---|---|---|---|
| *30% branch/withholding tax* | 0 | 19.80 | 19.80 |
| | ........ | ........ | ........ |
| *Income received in Israel* | 69 | 46.20 | 46.20 |
| Israeli tax | | | |
| *25% tax per relief order (46.2 X 25%)* | | | 11.55 |
| Israeli tax credit | | | |
| *Income* | 100 | 100 | 66 |
| *Israeli tax* | 48 | 39 | 25.74 |
| *Credit for U.S. tax* | 31 | 53.80 | 19.80 |
| | ........ | ........ | ........ |
| *Net tax* | 17 | 0 | 5.94 |
| *Lower of relief or credit* | -- | -- | 5.94 |
| *Israeli tax* | 17 | 0 | 5.94 |
| *Net profit* | 52 | 53.80 | 40.26 |
| **Total tax** | | | |
| *U.S.* | 31 | 53.80 | 53.80 |
| *Israel* | 17 | 0 | 5.94 |
| *Total* | 48 | 53.80 | 59.74 |

# Exhibit V

**Israelis Doing Business in the U.S. After the Treaty.**

| | | ***Company holding 10% or more*** | | ***Company holding less than 10%*** | | |
|---|---|---|---|---|---|---|
| | *Individual* | | *Branch* | *Treaty* | *Order* | *Treaty* / *Order* |
| **Computation of U.S. tax** | | | | | | |
| *Taxable income* | $100 | $100 | $100 | $100 | $100 | $100 |
| *U.S. Tax* | 31 | 34 | 34 | 34 | 34 | 34 |
| *Net after-tax* | 69 | 66 | 66 | 66 | 66 | 66 |
| *Branch/withholding tax* | 0 | 8.25 | 16.50 | 16.50 | 8.25 | 8.25 |
| *Income received in Israel* | 69 | 57.75 | 49.50 | 49.50 | 57.75 | 57.75 |
| **Computation of the Israeli tax** | | | | | | |
| *25% tax per relief order* | -- | -- | - | 12.37 | -- | 14.43 |
| *OR* | | | | | | |
| **Credit under treaty:** | | | | | | |
| *Income* | 100 | 100 | 66 | 0 | 100 | 0 |
| *Israeli tax* | 48 | 39 | 25.74 | 0 | 39 | 0 |
| **Credit for U.S. tax:** | | | | | | |
| *Federal tax* | | 34 | | | 34 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Withholding/branch* | 31 | 8.25 | 16.50 | | 8.25 | |
| *Total tax* | 0 | 42.25 | 16.50 | 0 | 42.25 | 0 |
| *Additional tax in Israel* | 17 | 0 | 9.24 | 12.37 | 0 | 14.43 |
| *Net profit* | 52 | 57.75 | 40.26 | 37.13 | 57.75 | 43.32 |
| **Total taxes** | | | | | | |
| *U.S.* | 31 | 42.25 | 50.50 | 50.50 | 42.25 | 42.25 |
| *Israel* | 17 | 0 | 9.24 | 12.37 | 0 | 14.43 |
| *Total* | 48 | 42.25 | 59.74 | 62.87 | 42.25 | 56.68 |

## Footnotes

[a] Dr. ZEEV HOLENDER is a partner in the Tel Aviv office of Shiboleth, Yisraeli, Roberts, Yerushalmi & Zisman and was an advisor to the Israeli government in negotiating the tax treaty. ALAN I. APPEL is special tax counsel to the law firm of Yerushalmi, Shiboleth, Yisraeli & Roberts in New York, and is a member of the tax faculty of Baruch College of the City University of New York.

[1] Convention Between The Government Of The United States Of America And The Government Of The State Of Israel With Respect To Taxes On Income, 2 Tax Treaties (WGL) ¶52,102, 2 Tax Treaties (CCH) ¶4603 ("the Treaty").

[2] For an overview of Israel's incentive system, see Appel, "Israel Combines Tax and Economic Incentives to Lure Investors," 4 JOIT 175 (April 1993).

[3] The U. S. and the Netherlands recently signed a new income tax treaty which, if ratified, might limit the value of this approach.

[4] The U.S. has consistently refused to enter into tax treaties with any country if such treaty contains a tax-sparing clause. The exchange of notes appended to the third protocol states that if the U.S. ever changes its policy, the treaty will be amended.

End of Document