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## Israel

### **eBay Shows Rare Glimpse of Israeli Finances, Cash Reserves in Suit**



By Matthew Kalman

eBay is disputing an Israeli tax demand for an additional 156.6 million shekels (\$43.3 million) from its Israel subsidiary for 2010-15.

Details of eBay Inc.'s dispute are within court papers filed April 15, which provide a rare glimpse into the finances of its Israel-based operations. The company's accounts aren't generally available since its Israeli subsidiaries are closely held.

The papers have raised questions about the extra demand from the Israel Tax Authority and eBay's sudden April 18 decision to repatriate almost its entire cash reserves to its parent company.

The U.S. cut its corporate tax rate to 21 percent from 35 percent as part of the 2017 tax act, and lowered tax on repatriated profits to encourage companies to bring their cash reserves onshore. The reforms will force American companies with Israeli subsidiaries to pay more in tax, while reducing rates for those based in the U.S.

The tax dispute was revealed when eBay Israel Marketplace Ltd. petitioned the Lod District Court for permission to pay a dividend of up to \$230 million to its parent from a cash pile that has accrued since at least 2010.

The company needs court permission because its recent profits don't meet the required threshold for making dividend payments under Section 302 of the Israeli Companies Law. Dividends must be no more than the company's profits of the previous two years.

Because the company is compensated by its parent using a "cost plus" transfer pricing method, it's automatically profitable and so "there is no reasonable concern that the Distribution will prevent the Company from meeting its existing and foreseeable liabilities," the board stated April 11.

The company intends to appeal its 2010 Israel tax assessment of 131 million shekels, and disputes the tax authority's demand for an additional payment for 2010-15, according to an opinion written by Yuval Zilberstein of Prometheus Financial Advisory, contained within a report from the Tel Aviv firm.

"According to the tax authority, the company should have recorded additional taxable income from companies in the global eBay group of about 903 million shekels, and pay tax of about 156.6 million shekels (including interest and linkage) in respect of these theoretical revenues," Prometheus said in its report.

#### **Cash Pile**

By the end of 2017, eBay Israel was sitting on a cash pile of 840 million shekels, according to the Prometheus' report.

Company accounts included in the court filing show eBay Israel has 220 employees and sales which grew from 75.4 million shekels in 2010 to 203.8 million shekels in 2017. In 2010, the company raised 337.1 million shekels from the sale of its subsidiaries to companies in the global eBay group. Net losses in 2016 and 2017 totaled 66.2 million shekels mainly due to foreign currency fluctuations, Prometheus reported.

The outcome of negotiations between eBay Israel and the tax authority for 2010-15, which are at an "advanced stage," are unknown. However, even if the company's appeal fails, it has ample resources to meet this and any future liabilities. These would include an additional 35 million shekels in cash, about 30 million shekels owed by debtors, and regular annual profits which in 2017 were 24.15 million shekels (EBITDA), according to Prometheus.

"They say they are solvent and they have the ability to pay all their debts—in fact, they have almost no debt," Harel Perlmutter, head of tax at Barnea law firm in Tel Aviv, said by phone May 1. "Although they think they have a very good chance of winning this case, even if they lose they have enough cash to pay the tax authority."

#### **U.S. Tax Changes**

#### **Snapshot**

- Israel Tax Authority says company owes additional \$43.3 million for 2010-15
- Sudden dividend payment could be sign of Trump effect

The cost-plus method became popular at a time when Israel's corporate tax rate was significantly lower than the U.S. rate.

"It shows you the effect of Trump, that eBay is now repatriating its profits," said Gil Raveh, a partner at Raveh Haber and Co. law firm in Ramat Gan. "That's precisely what he wanted. The motivation is very clear."

Multinationals will be watching the outcome of eBay's discussions with the ITA, Raveh told Bloomberg Tax May 1. While the court papers don't explain the source of eBay's extra 903 million shekels in profit, it appears to be a transfer pricing issue, Raveh said.

"eBay Israel is not unique in the R&D services it provides, so if the tax authority wins with eBay it's going to be fairly easy for them to apply the same methodology used to determine the plus on the cost-plus to many other companies," he said.

"It could have a huge effect," he said. "Any company that has R&D in Israel will now need to meet the guidelines of Israeli transfer pricing. If the judge rules in favor of the ITA, that means that many companies will face audits."

The Israel Tax Authority, eBay and Prometheus declined to comment.

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