

# BASIC PRINCIPLES OF INTERNATIONAL TAX PLANNING

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# LEVELS OF TAX IMPACT

- ✦ TAXES WHERE PROFITS ARE EARNED
- ✦ WITHHOLDING TAXES ON REPATRIATION OF PROFITS OR CAPITAL FROM HOST COUNTRIES
- ✦ CORPORATE AND WITHHOLDING TAXES IN INTERMEDIARY (IF USED)
- ✦ TAXES ON PROFITS REPATRIATED TO HOME COUNTRY

# SOME BASIC CONCEPTS

- ★ ACHIEVE EFFECTIVE FOREIGN TAX RATE EQUAL OR LESS THAN HOME COUNTRY
- ★ MAXIMIZE AFTER-TAX RESULT (NOT JUST TAX)
- ★ COVER ENTIRE ROUTING OF MONEY FLOWS FROM HOST
- ★ NEED FOR FUNDS REPATRIATION OF RETENTIONS ABROAD
- ★ COST-BENEFIT ANALYSIS
- ★ LIMITLESS OPPORTUNITIES

# PLANNING OPPORTUNITIES

## ★ ARISE DUE TO

- ★ SCOPE OF TAXATION E.G. DEFINITIONS, TREATMENT OF FOREIGN EARNINGS, ETC.
- ★ DISTINCTION BETWEEN REVENUE AND CAPITAL AND TYPES OF INCOME
- ★ TAX TREATMENT AND RATES APPLICABLE ON VARIOUS PERSONS AND TYPES OF REVENUE OR CAPITAL

## ★ EXTENT OF BENEFIT DEPENDS ON HOME, HOST OR INTERMEDIARY TAXATION

# FIVE BASIC PLANNING OBJECTIVES

**TAX LIABILITY = TAX BASE x TAX RATE FOR A TAX YEAR**

**ALL TAX PLANNING IS BASED ON:**

- \* TAX EXEMPTION**
- \* TAX DEDUCTION**
- \* TAX RATE REDUCTION**
- \* TAX DEFERRAL**
- \* TAX CREDIT**

# HOW TO REDUCE TAXES

## ★ AVOID TAXES LEGALLY

- ★ INCENTIVES, TAX CONCESSIONS, ETC.

## ★ REDUCE TAX BASE

- ★ ALLOWANCES AND DEDUCTIONS, BASE EROSION, PROFIT DIVERSION, TAX LOSSES, DEBT/EQUITY, ETC.

## ★ REDUCE TAX RATE

- ★ TAX TREATIES, TREATY SHOPPING, ETC.

## ★ DEFER TAXES

- ★ LEGAL FORM, USE OF INTERMEDIARIES, ETC.

## ★ USE OF FOREIGN TAX CREDIT

*OVER TWENTY TECHNIQUES*

# TAX PLANNING CONSIDERATIONS

## BASED ON THE FOUR PILLARS

- DOMESTIC LAW AND PRACTICES
- BILATERAL TAX TREATIES
- USE OF INTERMEDIARY ENTITIES
- NON-TAX FACTORS

# GENERAL PLANNING CONSIDERATIONS

- FRONT END PLANNING
- ANALYSIS OF ENTIRE TRANSACTION FLOW
- CHECK ANTI AVOIDANCE RULES
- USE OF SPECIALIST PROFESSIONALS
- MUST HAVE COMMERCIAL SUBSTANCE
- ENSURE BENEFITS EXCEED COSTS
- AVOID COMPLEX STRUCTURES
- GET RELIABLE/CURRENT TAX DATA AND ASSISTANCE
- DO OWN RESEARCH



# TAX PLANNING TECHNIQUES (1)

- ✦ DOMESTIC LAW AND PRACTICES
- ✦ TAX DEDUCTIONS/ALLOWANCES
- ✦ TAX INCENTIVES
- ✦ TAX LOSSES
- ✦ ECONOMIC DOUBLE TAXATION
- ✦ PROFIT DIVERSION (PRE-TAX)

# TAX PLANNING TECHNIQUES (2)

- ✦ BASE EROSION (PRE-TAX)
- ✦ TAX DEFERRAL
- ✦ FOREIGN TAX CREDITS
- ✦ EXCHANGE RISKS
- ✦ CONNECTING FACTORS
- ✦ LEGAL FORM
- ✦ DEBT OR EQUITY
- ✦ TREATY PLANNING

# TAX PLANNING TECHNIQUES (3)

- ✦ TREATY SHOPPING
- ✦ ADVANCE RULINGS
- ✦ TAX ARBITRAGE
- ✦ HOLISTIC PLANNING
- ✦ TAX ADVISORS
- ✦ TAX AVOIDANCE
- ✦ EFFECTIVE TAX STRUCTURES

# A TAX PLANNING METHODOLOGY

- ✦ ANALYZE EXISTING DATA BASE
- ✦ DESIGN TAX PLANNING OPTIONS
- ✦ EVALUATE THE PLAN
  - ✦ THE PLAN IS NOT ADOPTED
  - ✦ THE PLAN IS ADOPTED AND SUCCEEDS
  - ✦ THE PLAN IS ADOPTED AND FAILS
- ✦ DEBUG THE PLAN
- ✦ UPDATE THE PLAN

# A PLANNING APPROACH

- ★ **PLANNING MUST BE HOLISTIC I.E. INCLUDE ENTIRE TRANSACTION FROM HOST TO HOME WITH**
  - ★ **KNOWLEDGE OF TAX LAW AND PRACTICES IN ALL JURISDICTIONS**
  - ★ **KNOWLEDGE AND INTERPRETATION OF TREATIES**
  - ★ **KNOWLEDGE OG NON-TAX FACTORS**
  - ★ **REVENUE INTERPRETATIONS**
  - ★ **COMMERCIAL AND TAX OBJECTIVES**

# INTERNATIONAL TAX STRUCTURES

- ✦ DISTRIBUTION OF GLOBAL ACTIVITIES AND FUNCTIONS
- ✦ SUITABLE LEGAL FORM
- ✦ DEBT OR EQUITY
- ✦ EXTENT OF OWNERSHIP
- ✦ USE OF TAX HAVENS
- ✦ RESIDENCE/SOURCE RULES
- ✦ AVOID COMPLEX STRUCTURES

# SOME TAX BENEFICIAL STRUCTURES

- ★ FRACTURE THE CONNECTING FACTORS
  - ★ BE A NONRESIDENT
  - ★ ENSURE NO TAXABLE SOURCE
  - ★ BE TAX EXEMPT
  - ★ FOREIGN PRESENCE WITHOUT FOREIGN TAXES
- ★ USE OF INTERMEDIARY ENTITIES IN TAX HAVENS
  - ★ BASE HAVENS
  - ★ TREATY HAVENS
  - ★ SPECIAL CONCESSION HAVENS

# TAX PLANNING EXAMPLES

## ★ HIGH TAX SOURCE

- ★ DIVERT PROFITS THROUGH CHARGES
- ★ USE DEDUCTIONS AND ALLOWANCES
- ★ USE INCENTIVES

## ★ BASE HAVEN

- ★ ACCUMULATE PROFITS AND LEND
- ★ DEFER CAPITAL GAINS

## ★ TREATY HAVEN

- ★ REDUCE WITHHOLDING TAX
- ★ CHANGE NATURE OF INCOME
- ★ MIX DIVIDENDS



# INTERNATIONAL TRANSACTIONS

- ✦ INTERNATIONAL TRADE AND FINANCE
- ✦ TRANSFER OF TECHNOLOGY
- ✦ INWARD INVESTMENTS
- ✦ OUTWARD INVESTMENTS
- ✦ MERGERS AND ACQUISITIONS
- ✦ DISPOSALS OF FOREIGN ASSETS

# SOME ISSUES IN INTERNATIONAL TAX PLANNING

- ★ FORMS OF FINANCING OF THE BUSINESS
  - ★ EQUITY OR DEBT(SOURCE OF FUNDS)
  - ★ BACK TO BACK LOANS
- ★ TYPE OF ENTITY
  - ★ COMPANY V BRANCH
  - ★ USE OF HOLDING COMPANY
- ★ INTERNATIONAL CASHFLOWS
  - ★ REPATRIATION OF PROFITS AND CAPITAL
- ★ ACQUISITION AND MERGERS
  - ★ ASSET OR SHARES

# INTERNATIONAL TAX PLANNING – SOME CONCLUSIONS

- ★ REQUIRES DETAILED KNOWLEDGE OF LAWS AND PRACTICES
  - ★ COMPLEX BUT FLEXIBLE
  - ★ RISKY AND COSTLY
    - ★ MATCH RISKS WITH REWARDS
    - ★ CAN BE VERY COST EFFECTIVE AND WORTHWHILE
    - ★ NECESSARY TO BE COMPETITIVE

# FORM OF LEGAL ENTITY

- ✦ DIRECT SALE
- ✦ AGENCY
- ✦ REPRESENTATIVE OFFICE
- ✦ BRANCH
- ✦ COMPANY
- ✦ SERVICE COMPANY
- ✦ PARTNERSHIP
- ✦ LICENSING OR FRANCHISE

# FINANCING OF OVERSEAS ENTITY

- ★ DEBT OR EQUITY? HYBRIDS?
- ★ DEBT-EQUITY RATIO
- ★ IF DEBT -
  - ★ OFFSET AGAINST RELATED INCOME FLOWS
  - ★ WHO SHOULD PROVIDE THE DEBT?
  - ★ CURRENCY OF DEBT? FEGLs?
  - ★ WITHHOLDING TAXES
  - ★ ANTI-AVOIDANCE RULES
- ★ IS DEBT PREFERABLE ALWAYS?

# INTERNATIONAL TAX PLANNING PITFALLS

- ★ PRACTICAL AND COMMERCIAL CONSIDERATIONS
  - ★ COSTS
  - ★ JURISDICTION CHANGE IN FUTURE
  - ★ NON-TAX FACTORS
  - ★ FRONT-END PLANNING
  - ★ RELIABLE TAX DATA
  - ★ PROFESSIONAL ADVICE
- ★ RESIDENCE AND SOURCE RULES
- ★ ANTI-AVOIDANCE RULES

# CROSSBORDER TRANSACTIONS

- ★ INTERNATIONAL TRADE
- ★ TRANSFER OF TECHNOLOGY
- ★ CROSSBORDER INVESTMENTS
- ★ MERGERS AND ACQUISITIONS
- ★ DISPOSALS OF ASSETS/COMPANY
- ★ PROFITS/CAPITAL REPATRIATION
- ★ BRANCH INTO COMPANY

# TAX PLANNING FOR INDIVIDUALS

## ★ EXPATRIATES

- ★ DEPENDENT PERSONAL SERVICES
- ★ INDEPENDENT PERSONAL SERVICES
- ★ IMMIGRANT/EMIGRANT
- ★ OTHERS E.G. HNW OR RETIREES

## ★ TAX ISSUES

## ★ NON TAX ISSUES

## ★ TAX PLANNING TECHNIQUES

## ★ SPECIAL TAX CONCESSIONS



# POSSIBILITIES IN TAX PLANNING

## ★ EXEMPTION

- ★ PROFIT DIVERSION
- ★ UPSTREAMING

## ★ DEDUCTIONS

- ★ PROFITS EXTRACTION
- ★ DOWN STREAMING

## ★ REDUCE THE TAX RATE

## ★ DEFER THE TAX LIABILITY

# COORDINATION CENTRE EXPENSES (i)

- \* PLANNING
- \* COORDINATION OF GROUP ACTIVITIES
- \* BUDGETARY CONTROL AND FINANCIAL  
ADVICE
- \* ACCOUNTING, AUDITING TAX AND  
LEGAL
- \* FACTORING
- \* COMPUTER SERVICES
- \* CENTRAL BUYING OFFICE
- \* DISTRIBUTION AND MARKETING
- \* RECRUITMENT AND TRAINING

# COORDINATION CENTRE EXPENSES (ii)

- ✦ RESEARCH AND DEVELOPMENT
- ✦ ADMINISTER AND PROTECT INTANGIBLES
- ✦ FINANCIAL SERVICES
  - ✦ TREASURY MANAGEMENT
  - ✦ SUPERVISION OF CASH FLOWS
  - ✦ CAPITAL INCREASES
  - ✦ LOAN CONTRACTS
  - ✦ SWAPPING INTERCOMPANY DEBT
  - ✦ SOLVENCY NORMS

# COORDINATION CENTRE EXPENSES (iii)

- ✦ OTHER SERVICES
  - ✦ TRANSPORT
  - ✦ MANAGEMENT
  - ✦ ADVERTISING
  - ✦ ARCHITECTURAL SERVICES
  - ✦ QUANTITY SURVEYOR
  - ✦ MARKETING

# CONSOLIDATION OF TAX RETURNS

- ★ LEVEL OF CONSOLIDATION
  - ★ NATIONAL
  - ★ INTERNATIONAL
- ★ MOVE ASSETS WITHOUT CAPITAL GAINS TAX
- ★ BALANCE PROFITS AND LOSSES
- ★ EXAMPLES: UK, US, DENMARK, SPAIN

# METHODS FOR AVOIDING DOUBLE TAX

- ★ EXEMPTION
  - ★ FULL
  - ★ WITH PROGRESSION
- ★ CREDIT
  - ★ FULL
  - ★ ORDINARY
  - ★ TAX SPARING
  - ★ INDIRECT
- ★ DEDUCTION
  - ★ TAXABLE INCOME
  - ★ TAX PAID

# SOME COMMON TAX PLANNING TECHNIQUES

- ★ AVOIDANCE OF ECONOMIC DOUBLE TAXATION
  - ★ PARTICIPATION EXEMPTION RULES
  - ★ IMPUTATION SYSTEM
  - ★ INDIRECT TAX CREDIT
- ★ HOLDING COMPANIES/FLOW THOROUGH COMPANIES
- ★ HEADQUARTERS COMPANIES
- ★ GROUP MANAGEMENT SERVICES
- ★ HYBRID ENTITIES/HYBRID INSTRUMENTS
- ★ ADVANCE RULINGS