

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 OF 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