

# 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