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International Taxation NEWS

CELEBRATING 2015 YEARS

Refund of input VAT in danger for holding companies?

… and further information from the international tax sector

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India exceeds INR 100 million and comprises at least 50% of the value of total assets of the company as on the valuation date (without reduction of any liabilities).

(ii) Valuation date shall be the last day of the accounting period preceding the date of transfer or the date of transfer if valuation has increased by 15% or more since then.

(iii) The manner for determining the fair market value of the Indian assets vis-à-vis global assets shall be prescribed in the rules.

(iv) The taxation of gains will be on a proportionate basis and the method for determining this proportionality is proposed to be provided in the rules.

Exceptions are provided to non-residents who directly or indirectly hold fewer than 5% of the shares in the foreign entity being transferred and to cases of amalgamation and demergers if these are not taxable in the foreign country as well.

The new provision also casts an obligation on the Indian entity to furnish information failing which penalty can be levied, as under:

(i) 2% of the value of the transaction in respect of which such failure has taken place, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian entity;

(ii) INR 500,000 in any other case.

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PeriGrow brings pace, agility and results to its clients and is committed to make "doing business in India" a better experience, not only for Indian companies but also for global companies with an Indian footprint. The firm partners with clients and provides strategy, growth, compliance and assurance services to develop "Actionable strategies. sustainable results", as it supports them through the journey of perennial growth.

Ashish is a Director of PeriGrow Consulting Private Limited and specialises in Global Tax Advisory, M&A and Growth Strategy.

U.S. holiday homes – top 10 tax issues to remember

By Kenneth Lobo

- The gross estate of a non-resident, non-citizen individual (NRNCI) consists of U.S. situs assets included in an estate under general tax rules
- Assets deemed situated in the USA include U.S. real estate, tangible property located in the USA, and stock of U.S. corporations
- The estate tax exemption for NRNCIs is USD 60,000, but tax treaties can increase this exemption
- The U.S. estate tax rate reaches 40% at USD 1,000,000
- Mortgages on property may not reduce estate tax
- Owning U.S. holiday property in individual name is preferred when the NRNCI's U.S. estate tax is funded by term life insurance
- If a corporation is used, rent-free use may result in income tax for the NRNCI in the country of residence

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- Capital gains recognised by the corporation are subject to the U.S. corporate tax (up to 35%) and possible state and local tax. These rates are higher than tax rates for individuals or trusts
- An LLC is a disregarded entity in the U.S., but not elsewhere. It may not be possible for the NRNCI to claim foreign tax credits in their country of residence when the LLC sells property and the NRNCI pays U.S. tax
- A properly drafted trust will for an NRNCI and spouse may exclude the trust's assets from U.S. estate tax. If the non-contributing spouse dies first, the surviving contributing spouse must pay fair market value rent to the trust if they continue to occupy the property. Otherwise, the property will be included in a taxable estate

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The Ruchelman Law Firm is a full service U.S. law firm headquartered in New York City with an emphasis on cross-border transactions. It services clients from all continents. The Ruchelman Law Firm also maintains an office in Toronto, Canada. Further information is available at the website.

Kenneth Lobo is a U.S. attorney in the Toronto Office of the Ruchelman Law Firm. His practice concentrates on cross-border investments and corporate re-organisations. He also advises clients on the application of U.S. estate and gift tax regime to U.S. citizens, U.S. residents, and persons owning U.S. real property. He is admitted to practice in Florida and New York. Kenneth is fluent in French.

Tax-optimised profit repatriation within multinational groups

German fiscal unity taxation: with a sub-subsidiary

By Bernhard Schwechel

Multinational groups often hold their domestic and foreign sub-subsidiaries by an intermediary holding company, which is resident in a different country (e.g. Luxembourg) to its parent company (Germany).

In this case, a tax-optimised profit repatriation from the sub-subsidiaries to their grandparent company depends on the conditions of the double tax treaties (DTA). But often, due to anti-treaty shopping rules, the foreign intermediary holding is not able to benefit from a reduced withholding tax rate stipulated in the DTA.

To improve this structure, a fiscal unity between the domestic grandparent company in Germany and its domestic sub-subsidiaries can be used for a consolidation of profits and losses, which will in this case avoid a distribution of dividends and potential withholding taxes.

Compared with several other EU countries, a fiscal unity between a German grandparent company and its German sub-subsidiaries has been accepted by the authorities in Germany for many decades, even when the holding company is resident in another country.

By comparison: in France and the Netherlands, a fiscal unity between

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