



Duke Law Firm, P.C.-in the News

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Seminars/Conferences

Demystifying Asset Protection Vehicles, National Business Institute, July 9, 2007, 8:30 AM to 4:40 PM, Wynfrey Hotel, 1000 Riverchase Galleria, Birmingham, AL

<http://www.nbi-sems.com/seminfo/nbi-moreinfo.asp?session-id=38457>

Controlled Foreign Corporation Tax Guide, Third Edition

The updated Controlled Foreign Corporation Tax Guide, Third Edition, by Vernon K. Jacobs and J. Richard Duke, is in the final editing stages and will soon be available for purchase by either hard copy or Internet.

Sociedad Anonima

As this newsletter has previously reported in several issues, it appears that some Americans are purchasing real estate in countries outside the U.S. through an international business company, called a Sociedad Anonima. This is a serious mistake. Please read the following material written by Vernon K. Jacobs, CPA, from one of his Internet list serve groups:

QUESTION: I've just discovered that a Panama corporation that I formed is treated as a controlled foreign corporation and that I have to file a Form 5471 for that corporation. The corporation has incurred a loss but I've been told I can't deduct the loss on my taxes. It will probably be a few years before the corporation begins to have

a profit. Can I make an S corporation election to be able to pass through the losses to my personal return?

REPLY: An S corporation can't be a foreign corporation, but there is a way to eliminate the tax treatment of a controlled foreign corporation. It is called an entity classification election, which many tax people refer to as a "check-the-box" election. By filing Form 8832, you can convert the foreign corporation into a disregarded entity for U.S. tax purposes. If you are the only owner, the income and losses of the entity will be reported on Schedule C of your personal tax return. If there are multiple owners, you will have to file a foreign partnership Form 8865, which is more difficult and more expensive than the Form 5471, but it does provide pass-through tax treatment.

But there is a catch. The election to be treated as a disregarded entity is only available for "eligible entities." Entities that are not eligible to make the election are listed in IRS Regulation 301.7701-2 and in the instructions to the Form 8832. In Panama, a corporation that is called an S.A. corporation (Sociedad Anonima) is NOT an eligible entity and can't

be treated as a disregarded entity.

It would, therefore, be necessary to liquidate the corporation and to form a limited liability company or a Panama SRL (Società a responsabilità limitata), which is the Panama equivalent of a limited liability company.

When the corporation is liquidated, the U.S. stock holders will realize a capital gain or loss on their investment in the corporation.

For further details see:

<http://www.offshorepress.com/vkicpa/disclosure/rules.htm>

For information about *The Jacobs Report*, see:

<http://www.offshorepress.com/jacobsreport/>

Send email comments to:

Jacobs@offshorepress.com

The New Frontier: Mideast Stocks in Persian Gulf Outpace Other Markets; 'Off the Radar Screen'

The Wall Street Journal

By Joanna Slater

April 4, 2007; Page C1

Even as many of the world's markets climbed last year, stock prices in the Persian Gulf tanked. Now, with global markets unsettled, some shares in the Middle East are looking steadier.

The Morgan Stanley Capital International Arabian Markets stock index (excluding Saudi Arabia) increased by 3.3% in dollar terms

since the start of 2007. The MSCI Emerging Markets Index, which includes China and India, has risen 2.7% since the start of 2007. The Dow Jones Industrial Average is reported as flat.

Foreign investors are looking at companies in Kuwait, Oman, Qatar and the United Arab Emirates. These nations have significant wealth from oil and natural gas, and are spending greatly on infrastructure. It is reported that markets in Egypt and Jordan are also up.

The article also states the realities that political turmoil is prevalent in some of these regions, and the recent detaining of British military personnel by Iran drove share prices lower in the UAE and Saudi Arabia.

There is comparatively little analysis on companies in these various regions but this will most likely change as awareness increases.

Former IRS Aide Cota Pleads Guilty

Jesse Ayala Cota pleaded guilty in the Federal District Court of Kansas City, Missouri, for conspiring to defraud the U.S., which cost the government \$1.3 million and he is required to pay \$300,000, the U.S. Justice Department stated. The Wall Street Journal reports:

He and his co-conspirators marketed illegal tax shelters through a business called "Renaissance, The Tax People Inc."

"Mr. Cota was the director of Renaissance's so-called 'Tax Dream Team,'" said Eric Melgren, U.S. attorney for Kansas. "Renaissance used Cota's credentials as a former district director for the Internal Revenue Service to lend the tax-fraud scheme legitimacy and to induce people to join and to remain members."

Mr. Cota admitted that he and his co-conspirators falsely assured their clients and others that Renaissance's tax system was legal.

He faces as much as five years in prison followed by up to three years of supervised release, a \$250,000 fine, and liability for the costs of prosecution. His co-conspirators previously pleaded guilty.

See: *Former IRS Aide Cota Pleads Guilty, The Wall Street Journal April 27, 2007; Page A6*

Former Milberg Partner Seeks Dismissal of Kickback Charge

*Anthony Lin
New York Law Journal
April 30, 2007*

One of the indicted former name partners of New York's Milberg Weiss Bershad & Schulman has moved to dismiss federal criminal charges against him.

Steven G. Schulman, along with the firm and fellow name partner David J. Bershad, was indicted last May by Los Angeles federal prosecutors for allegedly paying illegal kickbacks to individuals serving as lead plaintiffs in securities class actions lawsuits brought by the firm. All three have pleaded not guilty.

In motion papers filed [April 27, 2007], Schulman took issue with the government's characterization of the payments.

"A true 'kickback' is a payment to a party that has power and control over the outcome or terms of a transaction, in order to induce that party to use its power and control for the benefit of the 'kickback' payor," Schulman argued. "Here, the named plaintiffs in the class action lawsuits exercised no such power or control, as the Government well knows."

Schulman also claimed the government's case is deficient because it fails to demonstrate how the interests of the lead plaintiffs diverged from those of other class members. He also argues that the government's case improperly conflated allegations concerning three former lead plaintiffs, two of whom are cooperating with prosecutors, into a single scheme.

ABN Amro Negotiations with U.S. Department of Justice

ABN Amro Holding NV is negotiating with the U.S. Justice Department in a criminal investigation of the bank of activities in the U.S. by paying a record fine of as much as \$500 million.

The criminal investigation in the U.S. is for improperly handling money transfers from countries under U.S. terrorism sanctions. If the bank pays the sum of \$500 million, it will be, by far, the largest U.S. penalty imposed on a bank for money laundering or sanctions-related offenses.

See: *Investors Rebuke ABN on Bidding Process—Revolt Could Benefit RBS; Dutch Bank Is in U.S. Talks On Fine up to \$500 Million, The Wall Street Journal by CARRICK MOLLENKAMP in London, GLENN R. SIMPSON in Brussels and EDWARD TAYLOR in The Hague April 27, 2007; Page A3*

Texas Lawyers Fought the IRS and Won

Texas Lawyer

Married lawyers Alan and Jean Brown of San Antonio have received their check for a \$1.34 million settlement in a suit the couple filed three years ago. The couple got caught up in a complicated tax prosecution in which Alan Brown, a criminal defense attorney with Brown & Norton, and Jean Brown, a family law solo, allege they were targeted by overzealous IRS agents, which led to the Browns being indicted in

2003 by a federal grand jury for allegedly filing false personal tax returns between 1994 and 1997.

<http://www.law.com/jsp/article.jsp?id=1176282246546>

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