

CLIENT MEMO

THE BARBADOS OPTION FOR VENEZUELAN S

As many international tax advisors are aware, effective January 1, 2000, the Venezuelan tax system changed from a territorial system of taxation to a system of taxing the income of Venezuelans on a worldwide basis. With the change in the tax system, the Venezuelan government established a so-called “blacklist” of jurisdictions in conjunction with its controlled foreign corporation (“CFC”) rules. The use of a listed jurisdiction by Venezuelan taxpayers for purposes of international structuring will result in adverse tax consequences under the new Venezuelan regime.

In response to the changes in the Venezuelan tax regime international advisors have developed multijurisdictional structures involving non-listed jurisdictions for the purpose of ensuring that Venezuelan residents with worldwide assets and businesses remain in compliance with the new rules. A number of the multi-jurisdictional structures relate to the interplay of sophisticated rules involving transparent or disregarded entities in the foreign non-listed jurisdiction and the non-transparent treatment under Venezuelan fiscal rules. Frequently encountered problems with these structures are their high cost, complexity and the requirement for their ongoing administration in more than one jurisdiction. Also, given the complexity of the structures, it is difficult for the individual Venezuelan layperson to understand easily the nuances of the structure. This means that the risks are great that the interested parties in the long run may fail to maintain the administrative integrity of the structure.

THE BARBADOS OPTION

Barbados today offers an attractive option for international structuring for Venezuelans in that Barbados is not a listed jurisdiction and has a tax treaty with Venezuela. The use of a Barbados International Business Company (IBC) in conjunction with the treaty will provide the simplicity of using only one jurisdiction and a well recognised legal entity (a company) – a combination of elements which frequently is lacking with the multi-jurisdictional structures.

The Venezuelan income tax law contains specific provisions that determine when and under what circumstances income of a CFC is required to be included in the income of a Venezuelan resident on a current basis. There are statutory exceptions to this rule which may benefit Venezuelan corporates which are able to situate an active business in a low tax jurisdiction even if it is in one of the listed jurisdictions. However, for many Venezuelans with assets external to Venezuela the critical question that arises is whether passive income earned by a CFC in a treaty jurisdiction like Barbados is taxable in the hands of a Venezuelan resident on a current basis.

Professional opinion in Barbados and Venezuela is that, for the following principal reasons, the passive income earned by a Barbados IBC should not be included in the income of a Venezuelan resident on a current basis:

- The provisions in the Income Tax Law (ITL) of Venezuela that stipulate that the provisions of an income tax treaty take precedence over the ITL.
- The provisions in the Venezuela-Barbados Income Treaty that provide that any income from non-Venezuelan sources earned by a Barbados entity (even if subject to a low tax in Barbados) is not taxable in Venezuela. Note: Dividends paid by the Barbados company to the Venezuelan shareholders is likely to be subject to tax in the hands of the Venezuelan shareholders.

CLIENT MEMO

THE BARBADOS IBC'S UNIQUE ATTRACTION

What distinguishes the Barbados IBC in the Venezuelan planning context from companies domiciled in other non-listed jurisdictions is the low tax (2.5%) levied by Barbados on the income of the IBC and the absence of any Barbados withholding tax on the payment of dividends, interest or royalties by the IBC. The existence of an income tax in Barbados, albeit at a low rate, and the requirement that the IBC prepares financial statements, may be viewed as comparing unfavourably with the multi-jurisdiction structures that have been used. On the other hand, based on the number of IBCs currently being established by us for Venezuelans in Barbados, the additional substance which these requirements add to the structure is seen by these shareholders as an advantage which outweighs the payment of the local tax.

Trident Trust in Barbados provides an IBC formation and administration service which can assist your clients in obtaining the benefits of the structuring discussed in this memorandum. For more information on our Barbados services please contact:

Lourdes Segovia
Tel 0-800-100-4232
lsegovia@tridenttrust.com