

USVI EXEMPT COMPANIES

MEMORANDUM

Subject: United States Virgin Islands Exempt Companies as Investment Vehicles

From: William L. Blum, Esq.¹

The United States Virgin Islands Exempt Company

The United States Virgin Islands is an unincorporated territory of the United States located in the Caribbean Sea near the island of Puerto Rico. Even though it is not a state of the United States, most U.S. federal laws apply in the United States Virgin Islands. While the federal tax law applies in the United States Virgin Islands, it is not administered by the Internal Revenue Service. Rather, it applies as separate local tax code known as the "mirror system" and it is exclusively administered by the local Virgin Islands Bureau of Internal Revenue ("BIR"). In 1986, the U.S. Congress granted the U.S. Virgin Islands legislature authority to allow the establishment of tax free companies in the territory. Implementing legislation was immediately enacted to provide for a tax- free entity known as a U.S. Virgin Islands exempt company.

A U.S. Virgin Islands exempt company pays no U.S. or U.S. Virgin Islands taxes of any kind with respect to income earned anywhere in the world (other than in the United States or the U.S. Virgin Islands) except for a \$1,000 annual franchise fee to the U.S. Virgin Islands government. Also, the stock of such a company is not subject to any U.S. federal or U.S. Virgin Islands estate, gift, or inheritance taxes if the donor/decedent is a non-resident non-citizen of the United States.

For most U.S. source passive income earned by a U.S. Virgin Islands exempt company, such as dividends, most types of interest, royalties, and the like, the United States would impose a 30% withholding tax at the source. This is the same rate as would be imposed with respect to payments of such income made to companies incorporated in other countries with which the United States has no tax treaty. The U.S. Virgin Islands imposes no such withholding tax on passive income of a U.S. Virgin Islands exempt company. Capital gains earned by a U.S. Virgin Islands exempt company from the sale of U.S. stocks or other securities are not subject to tax in either jurisdiction.

Requirements

U.S. Virgin Islands exempt companies may be formed swiftly and inexpensively. The government

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incorporation fee is \$400 and service providers' fees are reasonable. Incorporation can usually be accomplished within 24 to 48 hours.

An exempt company must have three officers. None of the directors or officers need to be residents of the U.S. Virgin Islands. There must be at least a president, a secretary, and a treasurer. The president must be a director but the other officers do not need to be directors. The president and the secretary may not be the same person. One person may hold no more than two offices. If the beneficial owner does not wish to provide directors or officers, service providers can usually provide nominees. An exempt company must appoint a local resident agent for service of process.

A U.S. Virgin Islands exempt company must have a minimum capital of \$1,000 and a typical capital structure consists of 1,000 shares without par value. No bearer shares are allowed. U.S. Virgin Islands exempt companies are generally inappropriate for U.S. persons as such persons may not own, directly or indirectly, ten percent or more of the stock of the exempt company measured by either vote or value.

Annual filing requirements are minimal. No tax return is required but a simple franchise tax return must be filed by June 30 of each year. The return requires the signature of the resident agent or an officer or director. The current officers and directors must be listed on the return but the shareholder's identity need not be revealed.

Redomiciliation

It is possible to relocate the domicile of a company formed in another jurisdiction to the United States Virgin Islands. This is usually accomplished by filing with the U.S. Virgin Islands a certificate of domestication and amended articles of incorporation, which will serve as the company's articles after the change of domicile, along with a copy of the memorandum and articles of association or similar document that created the corporation in its jurisdiction of origin. After filing these documents, along with a \$500 filing fee, the foreign corporation is treated for U.S. Virgin Islands purposes as if it were established there. This technique is particularly useful for clients who have an existing offshore company in a jurisdiction, such as the British Virgin Islands, which permits outbound redomiciliations and who desire to take advantage of the benefits of a U.S. Virgin Islands exempt company without having to transfer ownership of assets from the existing company.

Secrecy

The only information on the public record for a U.S. Virgin Islands exempt company is the names and addresses of its officers and directors. The identity of the shareholders is not part of the public record. The U.S. Virgin Islands tax authorities may inquire as to the identity of the beneficial owner of an exempt company; however, such an inquiry would generally be for the purpose of determining whether the owner is a United States person and proof that the owner is not such a person can often be provided without revealing the owner's identity. Should a foreign government desire information about an exempt company which is not on the public record, its inquiry must be directed to the sovereign authority, that is, the United States government. (It should be noted in this regard that the U.S. Virgin Islands is specifically excluded from every U.S. tax treaty and nearly every tax exchange of

information agreement to which the United States is a party. Also, the U.S. Virgin Islands does not have any tax treaties of its own). The United States government, in turn, would have to request the information from the U.S. Virgin Islands government pursuant to the administrative agreements which are in place between the two governments. The release of any information would be limited to the types that are covered by the agreements. While this arrangement by no means prevents the release of information to a foreign government, the information is not nearly so accessible as it would be in the case of two countries which have in effect a tax treaty or a tax exchange of information agreement. Of course, however, there can be no assurance of absolute secrecy and a U.S. Virgin Islands exempt company is not recommended if such an assurance is required.

Further Information

For further information on the use of U.S. Virgin Islands exempt companies as investment vehicles, general information on exempt companies, or advice or assistance with respect to the formation of a U.S. Virgin Islands exempt company, please contact the author as follows: William L. Blum, Esq., Solomon Blum Heymann LLP, 40 Wall Street, 35th Floor, New York, NY 10005; e-mail: wblum@solblum.com; telephone: 1-212-267-7600; fax: 1-212-267-2030.

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