

September 16, 1999

Dear Clients, Colleagues and Business Associates:

My yearly client letter is being sent to you early this year in order to give you a number of corporate and tax planning suggestions and to clarify certain misconceptions which many clients have in regard to U.S. tax law. It is also designed to provide you a list of our upcoming immigration and tax seminars for October 1999-June 2000, information on the Visa Lottery, and to announce and publicize the publication in September, 1999 of my wife's five year book project by Konrad Theiss Verlag in Stuttgart: Als Moises Kaz seine Stadt vor Napoleon rettete. The book will also appear in English in the late summer 2000 with the Jewish Publication Society in Philadelphia: "Portraits of a Nineteenth Century Rural German-Jewish Family". The content is essentially the same, only the titles are different in German and English.

1. Visa Lottery: the visa lottery this year is October 1-31. This is a reasonable way to obtain a green card - your chances if single are 1/128, and if married and both of you apply, 1/64. Send Wayne Levine a fax at 001-561-586-0071 or an E-mail at WMLINSLaw@aol.com to obtain more information or assistance. I meet 10-15 winners each year so you should not think that no one wins. Many of them applied four or five times before they won.
2. Off-Shore Companies: Many clients who have offshore companies (Bahamas, British Virgin Islands, etc.), which were established to hold U.S. real estate and avoid U.S. estate tax, have the shares issued in one name or jointly in the case of most married individuals. It has always been a concern how the shares would be transferred to their heirs if both of them died at once, without a legal proceeding either in the offshore jurisdiction or in their home country. Solution: under Florida law you can execute a will to transfer your property located in Florida to your heirs. If you keep the shares of your offshore company in Florida (in your condo or house, or in a bank lock box), and execute a Florida will, the shares will clearly pass to your heirs upon death upon Probate of the will in Florida. This does not alter the non-U.S. estate taxation of the shares. They would still not be estate taxable in the U.S. Consider a Florida Will for this reason.
3. Florida Companies: Other clients have established Florida corporations to conduct business in the U.S., or to hold real estate in Florida, in order to limit their liability, and in the case of certain citizens of favorable estate tax treaty countries (for example, Germany, Austria, the United Kingdom, but not Switzerland), to have the value of the shares upon their death be estate taxed in their home country, and not in the U.S. The transfer of these shares to the appropriate heirs is usually done by the execution of a Florida will, or in certain cases, by adding the heirs as owners of the shares. The former results in the probate of the will, and the latter could have unintended income tax and ownership consequences. Solution: under the Florida Uniform Transfer-On-Death Security Registration Act, you can designate the beneficiary or beneficiaries of the shares upon your death (you can change this designation until you die) by appointing a Transfer Agent and executing a Shareholder Letter designating the beneficiary. The Share Certificate will have an annotation made on it [TOD - Transfer on Death to:] and the same notations will be made in the corporation's share registry. This is easy to do. Consider registering the shares of your Florida Corporation, which are in your name or your and your spouse's name, in beneficiary form under the Florida Uniform Transfer-On-Death Security Registration Act.
4. Individual Tax Numbers (Non-Residents): If you own real estate in your own name, and rent it, or sell it, you need a U.S. income tax number (ITIN) to comply with the requirements of the new form W-8EBI which you must give the person who collects your rental income to avoid a 30% tax on gross rental income, and to file a U.S. income tax return to report the rental income or the sale proceeds. Solution: when you visit the U.S. the next time, call me the day you arrive to discuss how to file a W-7 to get a tax number. The IRS is tightening its grip on the rental agents, and you must protect yourself by complying with this simple legal requirement. Bear in mind that each person listed on the real estate deed must get an ITIN. Note that similar requirements exist for off-shore companies renting or selling real estate.
5. Individual Tax Numbers (Individual Taxpayer Identification Number [ITIN] versus Social Security Number [SS#]): This area has been very unclear in the last several years. The ITIN (see 4. above) is designed for those persons who are not eligible to obtain a social security number, and includes the non-working spouse and dependent children of those persons on a visa in the U.S. which permits them to work (for example, an E, an L or an H). The working spouse - the person holding the visa itself - should obtain and use a Social Security Number both for income tax and social security law purposes. All green card holders, their spouses and dependents must get a social security number. Solution:

Verify your situation and obtain the correct number in order to be registered correctly in the system.

6. The German Estate Tax Treaty Protocol: On December 14, 1998, the governments of the United States and Germany agreed to a Protocol which amends in a very favorable manner the estate tax treatment accorded German citizens with property in the U.S. subject to U.S. estate tax. This Protocol is not yet in force; it must be approved by the U.S. Congress and the German Parliament in order to go into force. There may be some resistance on the German side to approve the Protocol because it appears as "too favorable to the rich". Solution: do what you can to get approval. This is an amendment which is beneficial to everyone and can help even those Germans with a small \$100,000 vacation home in the U.S. The Protocol appears to grant the most liberal tax treaty concessions in recent years and will be helpful to many German citizens.
7. Gifts or Inheritance received by a resident in the U.S. from a Non-Resident: A little known IRS Form 3520 must be filed to report certain gifts from non-residents to residents or U.S. citizens, and certain amounts of property inherited from foreign sources by residents or U.S. citizens. Persons working in the U.S. on a visa or a green card, or U.S. citizen relatives of non-resident donors (by gift or death) may be affected. Solution: if you receive foreign source property through gift or inheritance (cash or otherwise), consider asking some questions whether you need to report these amounts to the IRS. This is not an income tax problem, but the filing is required so as to verify the receipt of the property as a gift or inheritance, and not as disguised income.
8. Contribution rules: There is widespread misunderstanding by both resident and non-resident aliens that property owned in the name of husband and wife, tenants by the entirety, or joint tenants, right of survivorship, will be, upon death, considered to be owned 50% by each spouse, and only 50% of the value of the property subject to U.S. estate tax upon the first death. This particular ownership vehicle is subject to exceedingly complex joint ownership rules which vary depending on whether the joint ownership was created before January 1, 1982, between January 1, 1982 and July 13, 1988, or on or after July 14, 1988. In all these cases, a requirement to provide proof of contribution to the purchase of the property is enforced by the Internal Revenue Service to ascertain whether the surviving spouse effectively contributed to the property, or whether more than 50%, up to the entire 100%, should be included in the estate of the deceased spouse. It will not be enough that the survivor proves that the funds originated from a joint bank account. The survivor must be able to prove individual ownership of the funds prior to the investment, for example, sourced from their own individual income, investments or inheritance. Certain relief from these provisions flows to married couples from community property jurisdictions; however, this rule is not absolute and the law of the married couple's home country must be meticulously analyzed. Solution: get good tax advice before investing in joint name.
9. New 1996 Expatriation Rules: In an effort to penalize certain high profile U.S. citizens who renounced their U.S. citizenship (for tax and other reasons), Congress tightened the expatriation tax rules in 1996, and included in their purview individuals who were lawful permanent residents in the U.S. (Green card holders) for at least eight of the last fifteen years. The effective date of the legislation was made retroactive to February 6, 1995. This legislation may have unintended and bizarre effects on such individuals, especially a number of those who may have returned to their home or other country prior to February 6, 1995, but who only affirmatively surrendered their green card to the Immigration and Naturalization Service (INS) on or after that date, or who have never taken such action (they lost the card, stuck it in their desk drawer, considered it invalid for all, including tax purposes, etc.). Solution: If you have a green card, or had a green card and fall into these categories, get specialized tax advice on this matter.

If you have any questions, fax, e-mail or call me. We are in Germany September 24-October 24 to support my wife's book. Let me know how to reach you and we will be in contact.

Sincerely yours,

Stanley F. Rose

SFR/psf
Enclosures