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In This Issue:

"The most complicated statute in the world. See pages 1.

A LOOPHOLE FOR FOREIGN INVESTORS. See page #3.

United States Real Property Holding Corporation (USRPHC) - defined. See page #5.

Low tax and no tax havens. See #6 to 7.

Barry Bonds has reportedly bought a \$2 million villa on Paradise Island in Nassau, Bahamas? See page #10.

Sell the Empire State Building Free of U.S. Capital Gains taxes with the guidance of the U.S. Treasury regulations

(from 1980 to 2002 and beyond).

Code-Section §897 of the Internal Revenue Code was added to US tax law way back in 1980. Back then, it was called the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA for short).

I ran into these seeming undecipherable Treasury Department regulations for Code-Section §897 while researching my own book on tax havens and the international transactions that apply to Americans and non-residents.

One law professor – Harvey P. Dale - once wrote the following about the U.S. tax code – back in 1983.

"The Internal Revenue Code is the most complicated statute in the world. It contains the excrescence of almost 85 years of conflict between government and taxpayer. Over that time many provisions have been added by Congress to deal with perceived abuses. Some of these are so complex that great effort is required to fathom them. Quite often, the most complex provisions are fairly predictable in application once deciphered. Indeed, that is often their principal justification - that they provide a relatively clear and certain result.

Other portions of the tax law, in the Code and elsewhere, are much simpler to comprehend. In contrast to some more complex provisions however, many of these simpler tax rules are quite difficult to apply and frequently produce results which are not easy to predict.

The marriage of these two sorts of provisions is probably inevitable. Predictability has a high value in

economic planning; complex provisions are perhaps unavoidable in attempting to deal precisely with the vast array of sophisticated transactions structured by taxpayers, lawyers, accountants, and investment bankers. On the other hand, even a statute which became mythically prolix could not hope to deal comprehensively with the infinite variety of taxpayers' behavior. Thus, the tax law is led irresistibly to incorporate at least some of the fundamental rules to protect the system from subversion, despite the cost of lessened predictability.

*Many of the Code provisions affecting foreign persons (companies, individuals, trusts, partnerships) or foreign income are of the first kind; complex, detailed, difficult to understand and grasp, but quite often fairly easy to apply in practice once the complexities are mastered. By contrast, many of the tax accounting notions applicable to foreign persons are often of the second kind, deceptively simple to understand, but often quite difficult to apply in practice. Yet accounting rules are the very earth upon which many of the most complex foreign tax towers rest."*¹

What Harvey P. Dale said in 1983 is just as appropriate today as it was back then.

But as complicated as the tax code is, it is at least precise enough to explain to most "folk" – provided they

1. **Professor Harvey P. Dale**, with the NYU School of Law, from an article titled "Tax Accounting for Foreign Persons", published by the Practising Law Institute in Manhattan, NY in their Thirteenth Annual Institute on International Taxation (1983).

can interpret the seemingly “unbreakable” verbiage the Treasury’s writers more often than not employ to make tax law simple. Sure. This stuff is right up Eric Clapton’s alley!

And the beat goes on.

Anyway - aside from this - there really are “loopholes” and tax breaks to find – if you dig around enough.

Moreover, the regulations that appear below are identical to what the Treasury’s tax writers wrote into law back in 1983. You can go on-line and read them – or find them at any good university/college law library!

Effectively, and not by accident, if you can understand these regulations, they will show you perhaps the only avenue for selling any piece of U.S. real estate TAX FREE.

Buy and sell the Empire State Building or Rockefeller Center or the Sears Tower, or even the Washington Memorial free of capital gains taxes. That’s right!

Regs. §897-2(e)(1) - Interests in Foreign Corporations

IRC §897 authorized the Treasury Department to issue regulations providing guidelines for the attribution of stock of a USRPHC (**U.S. Real Property Holding Corporation**) or USRPI (**U.S. Real Property Interest**) through intervening foreign or domestic entities (trusts, corporations, partnerships).

A foreign corporation can itself be classified as a USRPHC, but the sale or disposition of a foreign USRPHC is not treated as an effectively connected taxable sale if the seller is also a foreign corporation or nonresident alien.

Read the Treasury’s examples below – right from today’s tax code.

The US government really is telling you how to avoid capital gains taxes in their regulations. Funny, most people think the tax code is just for collecting revenue! Not so.

If it was not for two examples provided in the U.S. Treasury Department’s own regulations, few investors would realize or believe it legally possible to dispose of U.S. real estate free from U.S. capital gains taxes.

Regs. 897-2(e)(1) outlines how it is done:

(e) Special rules regarding assets held by a corporation - (1) Interests in foreign corporations. For purposes only of determining whether any corporation is a **U.S. real property holding corporation (USRPHC)**, an interest in a foreign corporation shall be treated as a **U.S. real property interest (USRPI)** unless it is established that the interest was not a U.S. real property interest under the rules of this section on the applicable determination date. However, regardless of whether an interest in a foreign corporation is treated as a U.S. real property interest for this purpose, gain or loss from the disposition of an interest in such corporation **will not** be treated as effectively connected with the conduct of a U.S. trade or business by reason of 897(a). The rules of this paragraph (e)(1) are illustrated by the following examples. In each example, the fair market value is determined as of the applicable determination dates under paragraph (d)(4)(i) of this section.

Example (1). Nonresident alien individual F holds all the stock of domestic corporation DC. DC's only assets are 40% of the stock of foreign corporation FC, with a fair market value of \$500,000, and a parcel of country W real estate with a fair market value of \$400,000. Foreign corporation FP, unrelated to DC, holds 60% of the stock of FC. FC's only asset is a parcel of U.S. real estate with a fair market value of \$1,250,000. FC is a U.S. **Real Property Holding Corporation (USRPHC)** because the fair market value of its U.S. real property interests (\$1,250,000) exceeds 50% (\$625,000) of the sum of the fair market value of its U.S. Real Property interests (\$1,250,000), its interests in real property located outside the United States (zero), plus its other assets used or held for use in a trade or business (zero). Consequently, DC's interest in FC is treated as a U.S. real property interest under the rules of this paragraph (e)(1). DC is a USRPHC because the fair market value (\$500,000) of its U.S. real property interest (the stock of FC) exceeds 50% (\$450,000) of the sum (\$900,000) of the fair market value of its U.S. Real Property interests (\$500,000), its interest in real property located outside the United States (\$400,000), plus its other assets used or held for use in a trade or business (zero). If F disposes of her stock within five years of the current determination date, her gain or loss on the disposition of her stock in DC will be treated as effectively connected with a U.S. trade or business under section 897(a). **However, FP's gain on the disposition of its stock in FC would not be subject to the provisions of section 897(a) because the stock of FC is a USRPI only for purposes of determining whether DC is a USRPHC.**

Example (2). Nonresident alien individual B holds all the stock of domestic corporation US. US's only assets are

40% of the stock of foreign corporation FC1. Nonresident alien individual N, unrelated to US, holds the other 60% of FC1's stock. FC1's only assets are 40% of the stock in foreign corporation FC2. The remaining 60% of the stock of FC2 is owned by nonresident alien individual X, who is unrelated to FC1. FC2's only asset is a parcel of U.S. real estate with a fair market value of \$1,000,000. FC2, therefore, is a USRPHC, and the stock of FC2 held by FC1 is a USRPI for purposes of determining whether FC1 is a USRPHC (but not for purposes of treating FC1's gain from the disposition of FC2 stock as effectively connected with a U.S. trade or business under section 897(a). As all of FC1's assets are USRPIs, the stock of FC1 held by US is a USRPI for purposes of determining whether US is a USRPHC (**but not for purposes of subjecting N's gain on the disposition of FC1 to the provisions of section 897(a)**). As US is a domestic corporation and as all of its assets are USRPIs, US is a USRPHC, and the stock of US held by B is a USRPI for purposes of section 897(a). Therefore, B's gain or loss upon the disposition of the stock of US within 5 years of the most recent determination date is subject to the provisions of section 897(a).

The above U.S. Treasury Department examples were copied *word for word* from the Treasury's own Regulations. Because they are a bit difficult to follow, we'll provide our own examples, which we believe are much simpler to follow.

Our Example #3: On January 1, 1991, Bahamas company X purchases all 10,000 shares in Barbados Company Y for \$100,000,000. Company Y then purchases all 10,000 shares in U.S. company Z. Z purchases a hotel in Miami for \$100,000,000. Z is a USRPHC under IRC §897(a).

If Barbados company Y sells all its stock in U.S. company Z to foreign investor Q in 1995 for \$200,000,000, Y will have to pay Federal capital gains taxes on the \$100,000,000 profit under IRC §897(a) because Z is a USRPHC. However, if Bahamas company X sells all the shares it owns in Y to Q, no capital gains taxes are owed. See T.Regs. 897-2(e)(1) above. Effectively, Bahamas company X can trade \$200,000,000 in U.S. real estate tax free.

A LOOPHOLE FOR FOREIGN INVESTORS IRC §897(c)(3) Exception for publicly traded stock

Prior to 1980, offshore holding companies, trusts and nonresident aliens could sell their U.S. holdings (whether

raw land and buildings or company stock) free of capital gains taxes, because the U.S. did not tax the transaction unless the nonresident was doing business through an office or permanent establishment within the United States. FIRPTA stopped most of this by treating the gain or loss of a nonresident alien individual or foreign corporation as effectively connected with United States trade or business, regardless of whether the foreigner had a presence in the U.S.

A few exceptions (a.k.a. loopholes) were provided for in the FIRPTA law. IRC §897(c)(3) excepted shares of *publicly traded* U.S. companies, if the foreign shareholder did not own more than 5% of the entire outstanding stock available to all investors (float). Consequently, foreign companies and other nonresident alien entities domiciled in tax havens that do not levy any capital gains taxes were still permitted to trade U.S. stocks tax free if the company's stock was traded on one of the U.S. Stock Exchanges, and the total shareholding did not exceed the 5% limit.

Dispositions of shareholdings in privately held non-public U.S. companies, and holdings described under IRC §897(c) as *U.S. Real Property interests* (i.e., raw land, buildings), did become subject to U.S. capital gains taxes under FIRPTA. Dispositions of these assets are taxable at substantially the same tax rates that apply to dispositions by U.S. persons.

Dividend and Interest stripping via Treaty Shopping

One widespread practice used by foreign investors investing in the U.S. involves the exploitation one of the U.S. Income Tax Treaties to strip dividends and interest income offshore where they can be reinvested tax free (often right back into the U.S. stock and bond markets).

Our Example #4: Under Article 11 of the current U.S.-Barbados Income Tax Treaty, interest income paid by a U.S. subsidiary to its Barbados parent is subject to a reduced interest withholding tax of 12-1/2% (reduced from 30%). Dividends paid to a Barbados parent company that owns at least 10% of the voting stock of the U.S. subsidiary are subject to a reduced U.S. withholding tax of 5% (normally 30%) under Article 10 of the Treaty. Capital gains go tax free in Barbados under the **Barbados Income Tax Act** and the **IBC Act**, whereas dividends and interest incomes are taxable at rates ranging from 1% to 2-1/2% if the company organizes under the Barbados IBC Act.

Suppose in January, 1991 Barbados IBC Y capitalizes U.S. subsidiary Z with \$50,000,000 paid in capital in return for all the outstanding stock of Z. Suppose Y lends Z another

\$50,000,000 at an interest rate of 10% pa. U.S. subsidiary Z thereafter purchases a Miami hotel for \$100,000,000.

Assuming the Miami hotel has a positive annual cash flow of \$10,000,000 after expenses, U.S. subsidiary Z will need to pay Federal income taxes on net income of \$5,000,000 (\$10,000,000 minus \$5,000,000 interest expense to Y). This would result in about \$1,600,000 in federal taxes. U.S. withholding taxes on the \$5,000,000 interest paid to the Barbados parent Y would amount to \$625,000, putting Subsidiary Z in an overall U.S. tax bracket of approximately 22%.

If Z repatriates its profits back to Y as a dividend, a 5% dividend withholding tax on the \$2,800,000 profits repatriated would add another \$140,000 in U.S. taxes. The Barbados profits tax on the \$2.66 million dollar dividend and the \$5,000,000 interest payment would amount to another \$90,000 in taxes, bringing the total taxes paid to approximately \$2,455,000.

Example #5: Barbados company Y reinvests the interest and dividend remittances (~ \$7,545,000) from subsidiary Z in U.S. Treasury bonds paying 8% pa. No U.S. withholding tax is payable on the \$603,600 annual interest income generated by the bonds. The *Tax Reform Act of 1984* repealed the interest withholding tax on bonds issued after July 18, 1984. The 2-1/2% Barbados profits tax on interest income would add an additional \$15,000 in taxes.

Definitions:

United States Real Property Holding Corporation (USRPHC). Any U.S. corporation whose USRPI's equals or exceeds 50% or the combined total of (1) its interests in real property located outside the U.S. (2) its United States real property interests, and (3) any other of its assets held for the use of a trade or business.

Example 6: Occidental Petroleum's assets include \$1,000,000,000 in U.S. real estate and oil wells + \$2,000,000,000 in Peruvian oil fields and other minerals. Occidental is not a USRPHC because Occidental's USRPIs account for only 33% of its worldwide assets. Shares of Occidental can be sold by a nonresident alien free of capital gains taxes. Note, only a very few U.S. corporations can avoid the USRPHC classification.

United States Real Property Interest (USRPI). Under IRC §897(c) this term means an interest in real property (including a mine, well or other natural deposit) located in the U.S. or Virgin Islands, and any interest (other than an interest solely as creditor) in a domestic corporation,

unless it can be shown that the corporation was at no time a USRPHC.

Real Property includes movable walls, furnishings, and other personal property associated with the real property.

Capital Gains Taxes Gone Berserk

In 1996, resident taxpayers of New York and California faced combined federal and state capital gains tax rates that approach 40%, and individuals of New York City could actually incur a combined capital gains tax rate of 41%. The chart below shows the combined capital gains tax rates for the 10 most populous states. Although State taxes are deductible on federal returns, the tax rates are nearly double what they were before the **Tax Reform Act of 1986**.

How States Compare				Maximum
				capital gains taxes in 10 most populous states for a married couple filing joint return with taxable income between \$71,000 and \$171,090
State	Federal Tax	State Tax	Combined Rate	
California	33%			
New York	33%	9.3%	39.2%	
Texas	33%	8.4%	38.2%	
Florida	33%	0%	33%	
Pennsylvania	33%	0%	33%	2.1%
Illinois	33%	34.4%		2.5%
Ohio	33%	34.6%		6.9%
Michigan	33%	37.6%		4.6%
New Jersey	33%	37.6%		3.5%
N. Carolina	33%	36.5%		7.0%
		37.7%		

Sources: National Conference of State Legislatures; Smith Barney, Harris, Upham & Co. research division.

Tax havens are used by many thousands of American and foreign businessmen alike. Often, they are used in complete disregard for the U.S. tax law, i.e., income tax evasion. Other times, they are used legitimately to legally avoid U.S. income taxes. For example, under the U.S. tax Code, there are no income taxes owed on the offshore rents accruing to an American owned foreign company, even if the American owns all the shares in the company. Manufacturing profits, and consulting profits - when the services are performed in the tax haven itself - are 100% tax free under U.S. tax law too.

Other legal tax loopholes

Offshore banks and companies are not subject to U.S. capital gains taxes on their publicly traded Wall Street type stock, bond, and commodity trades. The United States has never taxed the capital gains of the non-resident alien, unless the foreigner was "doing business within the U.S.". "Doing business within the United States", generally means operating through a U.S. office or permanent establishment from within the U.S. However, the U.S. tax code even exempts a non-resident company from U.S. capital gains taxes even when it does have an office and staff inside the U.S., if all the company's business amounts to merely trading in the Stock Market. From his home or office on Fifth Avenue in New York, or the Sears Tower in Chicago, or from Beverly Hills, any person working for an offshore company could call his broker at Merrill Lynch or Paine Webber and day trade NYSE, NASDAQ or AMEX listed securities 1,000 times a week, and no tax on the profits would be owed the U.S. Treasury.

Today, nearby tax havens like the Cayman Islands, Panama, Barbados, Anguilla and The Bahamas rival the industrial cities including London, Tokyo and New York for business. The pint sized Cayman Islands now boast more commercial banks (600+) in the commercial registrar than in all California. The dollars on deposit in these Cayman banks exceeds \$800 billion, which is also more than all the commercial banks in California. The Bahamas, just 50 miles off the coast of Florida, was once the third largest financial center in the world next to New York and London. Today, the Bahamas ranks in the top ten as a financial center, just behind the Cayman Islands. There are more than 390 banks and trust companies registered here in Nassau.

The Bahamas, the Cayman Islands, Turks & Caicos Islands, **Anguilla** and Bermuda have no personal income taxes, no corporate income taxes, no capital gains taxes, no withholding taxes, no estate, gift or inheritance taxes, no sales taxes, no employment taxes, no death duties, and no probate fees. Guarantees against future taxes are provided by these governments for periods up to 50 years. Exempt trusts can receive guarantee up to 100 years.

Unfortunately, the American taxpayer cannot qualify very easily for the aforementioned tax exemptions allowed nonresidents; unless, he can avoid both the **Controlled Foreign Corporation** provisions enacted during the Kennedy Administration and the **Passive Foreign Investment Company** provisions enacted in 1986. Most tax attorneys and big 8 accounting firms will probably tell you that is not possible. This is not to imply that U.S. taxpayers don't attempt to secure the above tax exemption afforded foreigners anyway. They do.

The bottom line is, while the foreign investor can get a complete tax exemption from U.S. capital gains taxes from the U.S. government on its publicly traded stock, bond and commodity transactions, the U.S. person operating in an almost identical manner is taking risk.

The investment banking firm of Warburg, Dillion Read (on Park Ave. N.Y.) have offices in 39 foreign countries - including the Bahamas, the tiny Cayman Islands, Hong Kong and the Channel Islands. Makes you wonder why, doesn't it? And, Warburg, Dillion Read are not the only large U.S. investment firms offshore. The list of U.S. companies with operations in the tax havens is too long to name here, but include Brown Brothers/Harriman & Company (Cayman), Solomon Brothers (Bahamas), CitiCorp Bank & Trust (Bahamas), Chase Manhattan (Cayman Islands).

Types of tax havens

Tax havens (also called *financial centers* and *fiscal paradises*) are independent countries with very low or no tax rates.¹ With the exception of the United States Virgin Islands (USVI), all these countries are located outside the Continental United States and outside the USA's tax jurisdiction. Many tax havens are members of the British Commonwealth of Nations, thus favorite tax shelters for British businessmen. These include the Bahamas, **Anguilla**, Cayman Islands, Bermuda, the Channel Islands, Mauritius (Indian Ocean), Isle of Man (also called Manx), Hong Kong, Vanuatu (South Pacific), Cook Islands, Gibraltar, Montserrat, and Barbados.

You may be surprised to learn that although these nations fall under British domain, some of these tax havens are more geared to attract the U.S. businessman. The Cayman Islands and the Bahamas, because of their close proximity to the United States, are actually the home of more U.S. corporate concerns than British. In fact, it can be said that only three of the above thirteen havens are in the main British financial centers - those being Gibraltar, the Isle of Man and the Channel Islands (Sark, Jersey, Guernsey and Alderney). The rest are used by citizens from all the industrial nations - anywhere high taxes are imposed.

"Low-tax" and "No-tax" Havens

1. Some tax havens (including the Cayman Islands, Isle of Man and the Channel Islands) are "colonies" or "possessions" (not independent nations) of the United Kingdom while others are neo-havens and "territories" of the United States.

The Caribbean has an abundance of what writers call "no-tax" and "low-tax" haven nations. The governments of these countries have lowered or eliminated their tax rates for corporations or individuals doing business there. Countries like The Caymans, Anguilla, The Bahamas, Bermuda, Panama, the Netherlands Antilles, Barbados and the British Virgin Islands (B.V.I.s) derive substantial revenues from their tax haven status. 2. Start-up incorporation fees, annual filing fees, the issuing of bank and insurance licenses, and stamp duties add up to big bucks for these under-industrialized countries in rather remote places.

While figures are not always published, the Dutch "Antilles" government derived over \$90 million dollars in revenue as a result of their tax haven status in 1986. These dollars could not have been attracted otherwise. Moreover, the revenue that passes onto the private sector - to lawyers, hostlers, accountants, banks, businessmen for office rental space, and the tourist trade - becomes a larger part of the Antilles local economy. Most knowledgeable professionals familiar with these fiscal paradises say the chances of these nations imposing taxes anytime soon is highly unlikely.

The strategies for successful offshore tax planning are complex and involved. There is a mountain of legislation (both foreign and U.S.) that must be dealt with. Making matters even more inane, some authors have written books suggesting there is "nothing" to be gained from using tax havens unless you like flirting with the law. This view is not correct because tax havens can and are being used successfully every day. Professor Marshall J. Langer, in his book *Practical International Tax Planning* (\$225/copy), wrote there are over 100 incorporations a month in the Cayman Islands alone. Only a few fail because of mismanagement.

Australia	46%	33%
Source: Revised Data based on National Tax Journal September 1987 and Price Waterhouse Corporate Taxes (1999).		

Corporate Tax Rates		
	1985	2003
Bermuda	0%	0%
Cayman Islands *	0%	0%
Channel Islands *	0%	0%
Isle of Man *	0%	0%
Barbados **	1% to 2-1/2%	1% to 2-1/2%
Vanuatu *	0%	0%
Bahamas **	0%	0%
B.V.I. **	0%	0%
Anguilla **	0%	0%
Nevis **	0%	0%
Hong Kong Σ	0%	0%
Panama Σ	0%	0%
Gibraltar Σ*	0%	0%
* "Exempted Companies"		
** "International Business Corporations" (IBC)		
Σ no tax on "foreign source incomes"		
Source: Tax Haven Reporter (2002)		

Tax Havens like to be called financial centers

The Central Banks and governments of the world's tax havens agree on one thing - they much prefer to be called *financial centers* than *tax havens*. The word *tax haven* conjures up the notion of tax evasion, money laundering, and illegal drug profits, none of which a respectable tax haven wants to be associated with. But, by whatever name you choose to call them, tax havens, financial centers or fiscal paradises are a part of the economic scene we live, work and hopefully prosper in.

Even some of the foremost scholars writing about the world's fiscal paradises have had to redo their thinking on occasion. Marshall J. Langer (adjunct professor of law at Miami University, graduate *summa cum laude* from the Wharton School of Finance and Syracuse Law School) changed the title of his much acclaimed book, *Practical International Tax Planning* at least once. Formerly, Langer's memoir was titled "*How to use tax havens*", obviously a much too venturesome title for an American law professor's textbook. What might Congress, the U.S. Treasury Department, and the IRS have to say about a U.S. law professor whose book prompts and promotes legal tax avoidance? Marshall Langer's publisher - the **Practicing Law Institute** (Manhattan, N.Y.) - might be running a real reputation risk too. The **PLI** is the oldest publisher of legal works in the United States, dating back to the time when Thomas Jefferson was President.

Corporate Tax Rates		
	1985	1999
Canada	46%	38%
France	50%	33%
Germany	56%	36%
Italy	46%	36%
Japan	43%	37.5%
United Kingdom	45%	34%
United States	46%	34%

2. The Cayman Islands, Bermuda, the Bahamas are "no tax havens". Panama and Hong Kong do not tax "foreign source incomes". International Business Companies incorporated in the Netherlands Antilles, Barbados and the BVI pay some tax, but rates are very low - under 3%.

The Paradox

What we have is a paradox. For while industrial nations like the U.S., Canada, West Germany and the UK continually cry foul the abusive use of the fiscal paradises by their own citizenry (along with the loss in tax revenues), their own tax laws perpetuate and foster the colossal growth of these fiscal haciendas.

By its nomenclature, a *tax haven* is a location which offers a low-tax or no-tax environment for which businessmen can operate. Falling into this category are such recognizable havens as Bermuda, the Cayman Islands, the Bahamas, Anguilla, Liechtenstein, and Switzerland, to name a few. Additionally, high tax nations like the U.S. and UK offer tax haven benefits to foreign investors to attract funds into London and New York. The English, with urbane euphemism, class these as *invisible earnings*.

The United States is a tax haven for the foreign investor trading shares on any one of the U.S. stock exchanges because U.S. tax law allows trades by non-resident individuals, foreign corporations and foreign trusts to be executed free from U.S. capital gains taxes. And while the foreign investor is limited in his trading position to no more than 5% of the outstanding float of the publicly traded U.S. company, there is no exemption or relief for the U.S. citizen at all.³

Moreover, foreign investors can trade directly U.S. corporate and Treasury bonds free from capital gains taxes in any quantity, from \$100,000 to \$1,000,000,000,000 (1 trillion). And if this wasn't incentive enough to buy United States bonds, Congress recently repealed the 30% interest withholding tax on bonds issued after July 18, 1984. Today, the foreign investor can receive his U.S. bond interest free from U.S. income, withholding and estate taxes, if he lives in a tax haven or organizes a holding company in one. A W-8BEN is all that is required to be filed with the US broker or "intermediary".

According to the London *Times*, half the world's money now moves around in an *offshore environment*. It's a simple fact that penal taxation by the host nation encourages its citizenry to trade in their neighbor's houses to gain a more favorable tax climate. Today, all the industrial nations offer tax incentives similar to those offered foreign investors investing in the U.S. The trend to

export money will continue so long as home country tax rules remain favorable.

Yet the paradox continues. The U.S. and the other industrial nations simply cannot advertise the fact that they are a splendid tax haven for foreigners. Such revelations would cause dissent among the local citizenry.

Anguilla on the rise

(150 miles from Puerto Rico and 100 miles east of the USVI)

Anguilla is a **no tax haven** and a UK "Overseas Territory". Anguilla enjoys the same Commonwealth status as Bermuda, BVI, and the Cayman Islands.

In the last 13 years, I've incorporated over 1,350 International Business Companies here in Nassau and in Anguilla - a United Kingdom "Overseas Territory" like the Cayman Islands and the British Virgin Islands.

Beginning in 2,001, we began forming IBCs almost exclusively out of the Crown Overseas Territory and no tax haven of Anguilla - 150 miles east of Puerto Rico.

We had a total of over 400 IBC's (in-house) that were mostly Bahamian in origin, but most all have moved to a better jurisdiction - in our opinion.

We've formed more than 250 Anguillan IBCs since the beginning of this 2003. There are approximately 18,000 International Business companies (IBCs) registered in Anguilla today.

Anguilla has become a popular place to incorporate. On our visit in July 2001, reputable sources told us that Michael S. Dell (Dell computer founder and Chairman)(estimated net worth \$30 billion dollars), Arnold Swartzneggar and Chuck Norris were building in this island get-a-way/hide-a-way.

It takes less than one day to get the company documents and the IBC registered in Anguilla, and on the way back to client the next day.

In January, 2001, I became an "Overseas Agent" for the Anguilla Government Registrar of Companies, and as such, have a signed "official" Agreement with them.

I have the banking application forms for a top bank in Anguilla in my office here in Nassau. This bank recently built a new \$25 million dollar bank building in the middle of town (The Valley).

³. See IRC §897(c)(3) - Exception for Stock Regularly Traded on Established Securities Markets.

In July 2001, I visited the bank, the government registrar, and my office – staffed by barristers, etc. The government of Anguilla has accounts at this bank too, and also owns shares in this bank – incorporated back in 1984. The bank was brought public by PriceWaterhouse/Coopers in early 2001, and its shares are listed on several stock exchanges. While it not as large as the Bank of Bermuda, it is growing at a faster pace, and its fee structure is more competitive than the giant banks offshore.

I also provide clients with bank contacts and application form information for good banks in the following jurisdictions: Isle of Man (a major institution) + Anguilla (2 banks there - one used by the Anguilla government) + Bermuda (one of oldest banking institutions in offshore world).

NOTE: All offshore banks today have tough "due diligence" rules and procedures. More stringent screening of their clients and his activities is now the norm. If you can't tell your bankers what you do and who you are, you can forget about banking offshore.

Once bank accounts are opened, your confidentiality is usually protected under the jurisdiction's "statute" - within a Confidentiality "Ordinance" or an "Act"

Bank confidentiality seems to play an important role offshore. It remains good in Anguilla, the British Virgin Islands, and in most all of the other tax havens. The IRS and other revenue agents cannot seize, lien on, freeze or investigate offshore bank accounts or the assets of an offshore companies registered in offshore jurisdictions like Anguilla, Bermuda, Caymans, the Bahamas, Panama and the other tax havens.

In the thirteen years I've lived on this island, I've never seen this happen. However, beginning in 2004, the IRS will have access to tax information under the TIEA it has recently signed with many of the tax havens.

One Swiss banker with banks in Cayman and Switzerland told me two summers ago that they always do their companies in a different jurisdiction from where the company does its banking. This is good advice, but illegal activities will not be tolerated by any reputable offshore banks.

If you need a company incorporated quickly, contact me at the address below. Go to my website: www.bahamasbahamas.com for more details.

Call me at 242-327-7359 with your questions. - 9AM to 5PM - New York time zone is best.

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Baseball Star Bonds buys \$2 million home on PI

Top Baseball home-run slugger Barry Bonds has reportedly bought a \$2 million villa on Paradise Island in Nassau, Bahamas, the *Punch* can reveal.

The luxury villa is one of many being built on the golf course by Sol Kerzner, owner of the \$1.5 billion Sun Atlantis resort of PI.

Bonds will have top celebrity neighbors on PI. Tiger Woods, Michael Jordan and Oprah Winfrey reportedly also own golf course villas. Ownership of the villa should help Bonds recover from the recent disappointment of his San Francisco Giants team's failure to win the World Series. They were beaten by the Anaheim Angels.

Source: *The Punch*, November 4, 2002 (Nassau)

US Academics Study Causes & Consequences of Corporate Expatriations,

by Mike Godfrey, Tax-News.com, Washington 29 October 2002

Reporting on the results of a study on corporate inversions recently released by researchers from the Harvard and Michigan Business Schools, the Bermuda-based Royal Gazette observed that the conclusions would 'only surprise those outside Bermuda'.

With Congress in recess for the November elections, the US debate over corporate inversions - whereby a company based onshore, but with an offshore subsidiary, decides to 'invert' its corporate structure, so that the foreign subsidiary becomes the parent company and vice versa - has temporarily stalled, but no-one in the jurisdictions which have recently undergone such rigorous scrutiny from US lawmakers, is prepared to bet that the furore over the issue of offshore relocations is likely to die down any time soon.

However, a study conducted by Professor James R. Hines Jr, and Professor Mihir A. Desai (of Michigan and Harvard respectively), has suggested that the view currently taken of the process in the United States is excessively simplistic, according to the Royal Gazette.

The newspaper reported on Monday Hines and Desai's observations that: 'The decision to invert the corporate structure...is influenced by interest expense allocation rules associated with lost tax shields, and the forced capital gains realization and consequent tax burden imposed on shareholders.'

The academics found that stock price reactions can sometimes play a large part in the decision to relocate corporate headquarters, as they tend to react positively to such news. The Royal Gazette revealed that Hines and Desai found that prices tended to rise: 'by an average of 1.7% over a five-day window centered on the announcement to expatriate'. However, this means that shareholders incur sizeable capital gains liabilities when required to exchange their old shares for new ones as part of the inversion process.

'The fact that embedded shareholder capital gains discourage inversions suggests a natural counterweight to the rush to expatriate, one that supplements any costs associated with being subject to the corporate laws of new host countries, and the public relations impact of abandoning the United States,' the report - soon to be published in the National Tax Journal - observed.

The Royal Gazette concluded by expressing the hope that although the observations contained within the research 'were considered obvious by those looking at inversions from a non-US

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perspective', they may help the House and Senate to take a more balanced view of the situation when they return to the debate after the Congressional elections.

Transparency says Swiss in urgent need of "whistleblower" laws (swissinfo / SRI)

Switzerland has for the second year running failed to reach the top ten of the world's least corrupt nations, prompting calls for a fresh offensive against corruption.

August 28, 2002 3:46 PM

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