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Bio

Previously, Ms. Roberts was in private practice in London and Washington, D.C. with the law firm of Gibson, Dunn & Crutcher (1981-1985), served as an attorney-advisor in the U.S. Treasury Department's Office of Tax Policy in Washington, D.C. (1985-1988), was Chief Counsel to the U.S. Virgin Islands Bureau of Internal Revenue (1988-1995), and was General Counsel, Vice President, and Director for Globalvest Management Company, LP, a St. Thomas-based investment company managing investments in Central and South America and Russia through offshore funds (1995-1999).

Ms. Roberts has written a number of articles on international taxation and offshore and mutual funds and has spoken at conferences on taxation in Central America and the Caribbean, Virgin Islands investment laws, captive insurance companies, international estate planning, offshore and mutual funds, residency, and other tax matters. Ms. Roberts is admitted to practice law in California, Washington, D.C. (inactive), the U.S. Virgin Islands, before the Third Circuit Court of Appeals and the U.S. Tax Court, and is licensed as a solicitor in England and Wales and in the British Virgin Islands. Her law firm is rated AV by Martindale-Hubbell. Ms. Roberts was the featured member of the American Bar Association Section of Taxation in the December, 2010, eNEWS, which highlighted Ms. Roberts for her commitment to the Section of Taxation and its work. She also authored a chapter titled "A Harbor View" in the 2009 American Bar Association publication Careers in Tax Law. Ms. Roberts currently serves on the Board of the Reichhold Center for the Arts at the University of the Virgin Islands, the Board of Fonkoze USA (microfinance in Haiti), and the Board of the Community Foundation of the Virgin Islands. Ms. Roberts is also a member of the Travelers Century Club, having visited 161 countries on the Club's list.

The Firm

Marjorie Rawls Roberts, P.C., is composed of six attorneys specializing in tax, corporate/securities, estate planning, and business law in the U.S. Virgin Islands. The firm specializes in tax planning and representation of businesses seeking to participate in one of the territory's economic development programs, with a focus on fund managers, family offices, management consultants, and internet marketing companies. The firm's clients include financial services companies, hotels, marinas, fund managers, jewelry designers, and venture capital investment companies, among others.

U.S. Virgin Islands Economic Incentive Programs

The U.S. Virgin Islands (USVI) is an unincorporated U.S. territory acquired from Denmark in 1917. As a U.S. territory, the USVI occupies a unique status; although part of the U.S., it has been granted the authority by the U.S. Congress to enact special tax laws to encourage investment in business operations and to develop a financial services industry.

The USVI has enacted targeted tax incentives to certain types of businesses that enhance the economic well-being of the territory and its people. These benefits, administered by the Economic Development Commission (EDC), are available for financial services companies, including investment managers and advisors, business and management consultants, family offices, investment banking and financial services, call centers, venture capital management and investment, and other businesses serving clients outside the USVI. Benefits also are available for hotels/guesthouses, recreation and retirement facilities, manufacturers, health care, medical laboratories (and specialty medical services), utilities (including alternative energy), transportation, businesses in the marine and aircraft industries, agriculture, and food processing.

Businesses can also qualify for tax benefits under the University of the Virgin Islands Research and Technology Park (RTPark), which is an autonomous instrumentality of the USVI government and was created to foster the development and expansion of a technology sector in the USVI. RTPark applicants must qualify as an Electronic Commerce Business or a Knowledge-Based Business. Businesses that use highly skilled or highly educated personnel and a high level of research and development to create intellectual assets and property, and to be innovative in their products, services or processes as a significant source of value and competitive advantage can qualify under the RTPark Program. Such businesses include research businesses, information technology businesses, e-commerce businesses, electronic hosting facilities, agricultural research, and electronics businesses.

Tax Benefits

Benefits under the EDC and RTPark Programs include a credit equal to 90% of the otherwise applicable income tax, which applies both to the income from the benefited business and to the bona fide USVI resident owners on their allocations or dividends. Hence a USVI corporation pays an effective tax rate of approximately 4% on its eligible income. (Salaries and other forms of compensation such as guaranteed payments are fully taxable.) Beneficiaries are also exempt from the territory's 5% tax on gross receipts, and from USVI property tax for the property occupied by the beneficiary for its approved business activities. No withholding tax is imposed on payments to U.S. corporations. Beneficiary companies with foreign owners are exempt from withholding tax on interest payments and are subject to a reduced withholding tax rate of 4.4% on dividend payments overseas. Similarly, no income tax is payable on interest paid to nonresident alien individuals, and the tax rate on dividends paid to nonresident individuals is 4%. Businesses in the RTPark also receive reduced withholding tax rates on royalty payments to foreign (non-U.S.) corporations and individuals. Finally, a beneficiary's customs duties are reduced from 6% to 1% on raw materials and component parts imported from outside the U.S. No local customs duties are imposed on U.S. made products.

EDC Requirements

To qualify under the EDC Program, an applicant must make a minimum capital investment of USD 100,000 (exclusive of inventory), and must meet certain minimum employment requirements. Typically, a business must employ ten full-time employees, and a full-time employee is someone who works at least 32 hours a week. However, only five employees (exclusive of the owners) are required for designated service businesses engaged in "non-labor intensive financial services." At least 80% of the beneficiary's employees must be USVI residents unless a waiver is granted. Beneficiaries must purchase goods and services locally when available, make certain contributions to scholarships and public education, and provide a plan for civic participation. Beneficiaries must also provide employee benefits and enact a management training program. The application process requires submission of a detailed application including details of the beneficiary's ownership, financial information and a background check for beneficial owners with more than a five percent interest. Submission of the application is followed by the application's presentation at a public hearing before the EDC commissioners. EDC applications are then reviewed by the EDC commissioners and, upon receipt of a favorable recommendation, are forwarded to the USVI Governor for final review. With the Governor's approval, benefits are available for initial periods of 20 years for investments on the islands of St. Thomas and St. John, and for 30 years on St. Croix. In addition, beneficiaries that invest more than USD 10 million are eligible to receive an additional ten years of benefits, and beneficiaries that invest between USD 1 million and USD 10 million are eligible for an additional five-year term of benefits. Benefits packages may be extended upon proper application and review. However, benefits packages may not be extended for more than ten years at 100% of benefits.

RTPark Requirements

Each RTPark applicant must provide the RTPark with an ownership interest in the business, must submit a proposal setting out the applicant's proposed interactions with the University of the Virgin Islands (such as scholarships) and will also be required to pay upfront and/or ongoing fees which are separately negotiated for each applicant. The Governor of the USVI has final approval of RTPark Program beneficiaries that previously have been in operation for over one year, but does not review or approve applicants that are new to the USVI.

RTPark applications (including due diligence) are reviewed by the RTPark Board. Benefits are available for a 15-year period regardless of where the beneficiary operates within the USVI, and may be renewed for an initial period of ten years, followed by subsequent renewal periods of five years.

Legal Requirements for Tax Incentives

The Internal Revenue Code of 1986, as amended (Code), applies in the USVI under a "mirror" system whereby "USVI" is substituted for "United States" wherever the latter appears. Also, the Code contains several sections – notably sections 932, 934, and 937 – that deal specifically with the USVI and govern the extent to which the USVI can grant tax incentives and how USVI residents file their tax returns.

The USVI can grant tax benefits on any USVI source income and on certain income that is effectively connected with a USVI trade or business. Income is USVI source if it is fee income for services performed in the USVI. Capital gains derived by a USVI business may also be eligible if certain requirements are met (although gains from the sale of assets contributed by a U.S. resident who then moves to the USVI must typically be allocated). Certain dividend and interest income from a USVI payor is USVI source income. Income may be effectively connected with a USVI trade or business if it consists of non-U.S. source dividends or interest derived in the active conduct of a banking, financing, or similar business. The USVI cannot reduce or rebate tax on income from U.S. sources, except for sales of inventory manufactured in the USVI where title passes in the U.S. Of course, income must be earned in the conduct of the business activities approved by the EDC and the RTPark.

Bona Fide Residency in the USVI

Owners of eligible businesses can receive EDC or RTPark benefits on their dividends or distributions if they are bona fide USVI residents. The test for determining bona fide residency in the USVI for income tax purposes requires a taxpayer to (i) be present in the USVI for at least 183 days or meet one of four additional tests established by Treasury Regulation; (ii) not have a tax home outside the USVI for the taxable year; and (iii) not have a closer connection to the United States or a foreign country than to the USVI. An individual must meet all three tests in order to be a bona fide resident of the USVI for income tax purposes. Each person who is a bona fide resident of the USVI during the entire taxable year as provided under the Code must file an income tax return – Federal Form 1040 – for the taxable year with the Virgin Islands Bureau of Internal Revenue and pay tax on his or her worldwide income to the USVI.