

801.40
801.50
802.50

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, June 24, 2008 11:18 AM
To: Verne, B. Michael
Subject: Unincorporated Joint Venture--Tenants in Common

Mike, in analyzing whether the formation of a Canadian unincorporated joint venture is reportable, I am trying to determine if it should be analyzed under 801.50 or if it should be analyzed as an acquisition of assets.

My understanding is that the joint venture will not be a corporation, partnership or LLC but will have a name with "joint venture" in it and under Canadian law the contributors will be tenants in common with respect to the assets in the joint venture. Clearly, if the JV was a partnership or LLC 801.50 would apply. In looking at the definition of "entity" in 801.1, it simply refers to a "joint venture." Would this include this type of joint venture? If so, then it appears that analysis under 801.50 would be appropriate.

I think here that regardless the formation will be exempt under a foreign exemption, but I want to make sure the analysis is correct.

Regards,

[REDACTED]

CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by U.S. Treasury Regulations, [REDACTED] informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

If there is no legal entity formed as the JV, it is not analyzed under 801.40 or 801.50.

As I understand tenancy in common, the contributors each get an undivided interest in the assets. For HSR purposes, an undivided interest in an asset(s) is an asset itself (see PNPM 4th edition, #57). So each contributor would have to determine a fair market value for its undivided interest and if reportable it would be filed as an asset acquisition.

In determining whether the foreign exemption applies you would look to the underlying assets and apply the percentage of the assets owned by each contributor. For example, in a tenancy in common "joint venture" where A has a 60% undivided interest and B has 40%, for A's acquisition of the undivided interest 60% of the fair market value of any US assets and 60% of any US sales would be attributed to the interest, and likewise for B's 40% interest. 802.50 would then be applied to determine whether the acquisition is exempt.

Bj

6/29/08

K. WALSH CONCURS