

Atlanta

Charlotte

New York

Research Triangle

Washington, D.C.

Moving Offshore

Lazard Ltd SEC Form S-1A (5/2/2005)

Lazard Ltd, a Bermuda company, filed a SEC Form S-1 on December 17, 2004 to register and sell the initial issuance of its common stock. Lazard Ltd was formed to be the controlling indirect holding company for Lazard LLC, a Delaware company, that operated or held the various businesses historically known as Lazard Freres. The final S-1/A was filed May 2, 2005 in connection with the consummation of the transaction. The transaction is an interesting example of how transactions allowing an existing business to move offshore are still possible.

The Three Businesses

The historic Lazard businesses were financial advisory, asset management and capital markets (the latter being trading for its own account, and certain other businesses, including research and underwriting). The IPO occurred in conjunction with a reorganization of Lazard LLC in which its members would acquire sole ownership of the capital markets business, would retain a minority ownership in Lazard LLC that would be exchangeable for common stock of Lazard Ltd, and would control Lazard Ltd through a special class of voting stock. Also a substantial part of the IPO proceeds (actually, 100% plus some more) will be used to redeem some of the capital interests of the Lazard LLC members.

The Tax Planning

Lazard Ltd plans to be treated as a non-publicly traded partnership for U.S. tax purposes, and Lazard LLC would continue to be treated as a partnership for U.S. tax purposes.

The S-1 states that the owners of Lazard Ltd will not be imputed any income except upon receipt of distributions. That would not be true if a partnership owns a partnership, so the result is effected by Lazard Ltd owning Lazard LLC through multiple foreign and domestic corporate subsidiaries, which apparently were formed in connection with the transaction. Lazard Ltd. expects those foreign subsidiaries to pay tax on pass-through effectively connected income of Lazard LLC. It also expects to avoid the 30% U.S. branch profits tax by virtue of being ultimately owned at least 50% by U.S. citizens, which normally would qualify the subsidiaries for treaty benefits yielding a 5% tax rate.

Under §7704(b) a publicly traded partnership like Lazard Ltd may avoid being treated as a corporation if 90% of its income is passive, such as dividends. Lazard Ltd. plans to own mostly stock of corporate subsidiaries, whose income will not pass through to it, and which will pay dividends, thus qualifying Lazard Ltd for the 90% exception and preventing its taxation as a corporation. Evidently it avoided the exception for investment companies by having the historic members as a group own a controlling interest in Lazard Ltd.

Jack Cummings
Editor

601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, D.C. 20004-2601
202-756-3300
Fax: 202-756-3333

www.alston.com

The Expatriation Issue and other Possible Hurdles

The classification of Lazard Ltd as a tax partnership is critical to avoiding application of section 7874, the anti-corporate inversion statute, which applies only if a foreign corporation acquires substantially all of the assets of a domestic partnership or corporation. Apparently here no single foreign corporation among the subsidiaries of Lazard Ltd acquired direct or indirect control of substantially all of the assets of the domestic operating partnership.

Due to a section 754 election, the Lazard LLC asset basis will increase due to the redemptions of the historical members and the future conversion of the members' retained interests for Lazard Ltd stock. Under a Tax Receivable Agreement, Lazard will pay to the members 85% of the cash savings in taxes from the basis step up.

Lazard Ltd contemplates that five or fewer individuals will own more than half of the value of its shares and so U.S. subsidiaries could be personal holding companies. For that reason it plans to manage their income to avoid the 60% test. Lazard also contemplates that the intermediate foreign subsidiaries will not be treated as passive foreign investment companies.

Practice Application

A primary tax benefit of the transaction is to remove from the U.S. income tax base the foreign income earned by Lazard LLC and previously included in the taxable worldwide income of the historic Lazard members that are U.S. residents. Going forward, to the extent Lazard LLC is owned by the foreign intermediate holding corporations, that foreign income of Lazard LLC will not be effectively connected with a U.S. trade or business and will not be taxed by the U.S.

This in addition to all of the other advantages of the deal to the historic owners means there is much to recommend this deal to others. The operating company needs to be a U.S. tax partnership, which will limit the appeal of this structure to service and closely held companies. Of course, as illustrated by Lazard, the closely held company need not remain closely held, but can become publicly traded.

For additional information, call Kevin Rowe (212) 210 9505 or Jack Cummings (919) 862 2302.

Federal Tax Group

Sam K. Kaywood, Jr.
Cochair
404-881-7481

Edward Tanenbaum
Cochair
212-210-9425

Pinney L. Allen
404-881-7485

Gideon T. J. Alpert
212-210-9403

J. Bradford Anwyll
202-756-3432

Saba Ashraf
404-881-7648

John F. Baron
704-444-1434

Henry J. Birkrant
202-756-3319

Robert T. Cole
202-756-3306

Philip C. Cook
404-881-7491

James E. Croker, Jr.
202-756-3309

Jasper L. Cummings, Jr.
202-756-3386

Eva Farkas-DiNardo
212-210-9592

Jennifer L. Dowell
404-881-4491

Tim L. Fallaw
404-881-7836

Terence J. Greene
404-881-7493

Michelle M. Henkel
404-881-7633

L. Andrew Immerman
404-881-7532

Andrea Lane
202-756-3354

Brian E. Lebowitz
202-756-3394

Clay Littlefield
704-444-1440

Edgar McClellan
202-756-3462

Nicki N. Nelson
404-881-4288

Timothy J. Peadar
404-881-7475

Kevin M. Rowe
212-210-9505

Gerald V. Thomas II
404-881-4716

Charles W. Wheeler
202-756-3308

All regular monthly and "Special Alert" issues of the *Federal Tax Advisory* can be viewed on our Website at www.alston.com (click Services, then Publications, then Legal Advisories & Articles) or contact us at taxgroup@alston.com.

This *Federal Tax Advisory* is published by Alston & Bird to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered advertising under the applicable court rules.