# Doing Business in the U.S.

## Accounting and Tax Overview

November 8, 2016

# Agenda

- Introductions
- Initial entry considerations
- Overview of U.S. financial reporting regime
- Introduction to fundraising in the U.S.
- Overview of U.S. tax regime
- Other key topics
- Summary of significant differences
- Questions

# Introductions

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# Initial Entry Considerations

- Service provider landscape
  - Less “one-stop shopping”
  - More a la carte
    - Attorneys
      - General corporate
      - IP
    - CPA
    - Bookkeeping
    - Payroll
    - Insurance
      - Property & Casualty
      - Health and benefits

# Initial Entry Considerations

- Complex tax system

- U.S. tax jurisdictions
  - Federal
  - State
  - Local

- U.S. tax types
  - Business
    - Income
    - Sales / use
    - Withholding obligations
  - Personal

# Initial Entry Considerations

**U.S. resident individuals and corporations**

- Subject to worldwide taxation regime regardless of nexus and presence in the U.S.
- All income subject to corporate tax rate up to 35%.

**Non-U.S. resident individuals and corporations**

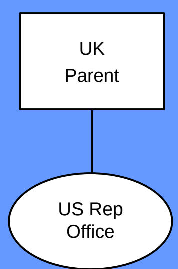
- Depends on level of nexus with the U.S. and extent of presence in the U.S.
  - Double Tax Treaty between U.S. and U.K. defines thresholds for nexus (permanent establishment).
  - Need to confirm qualification for treaty benefits.
- Only subject to tax on their income effectively connected to a U.S. trade or business (ECI), or fixed, determinable, annual, periodical (FDAP) income.
  - ECI subject to corporate tax rate up to 35%.
  - FDAP subject to 30% tax subject to reduction under treaty.

# Initial Entry Considerations

- The structure of your operations in the US determines how you will be taxed, so the choice can have a potentially significant impact on profitability.

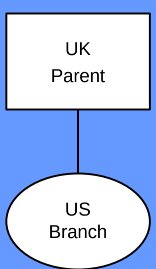
- In general, businesses can choose classification as a corporation, partnership, or entity disregarded from its parent. Typical inbound business models include a representative office, branch office, or a stand-alone subsidiary.

### Representative Office



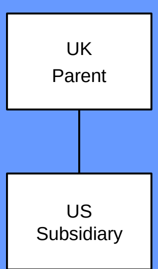

- No separate legal entity
- No corporate income tax as long as the activities are limited in nature
- Ancillary and support activities such as advertising and promotional activities, market research, and purchase of goods on behalf of the headquarters office
- Very early stages of business presence in US

### Branch Office




- No separate legal entity required
- Likely create taxable presence in the US requiring annual accounting for and filing US corporate income tax on the branch's profits (transfer pricing considerations)
- Generally subject to corporate tax rate up to 35%
- Subject to branch profits tax and branch-level interest tax
- Limited legal liability available

### US Subsidiary




- Separate legal entity established
- Taxable presence in the US requiring annual accounting for and filing US corporate income tax
- Subject to corporate tax rate up to 35%, and repatriation of profits potentially subject to dividend withholding tax
- Limited legal liability available

# Initial Entry Considerations

- Financing your U.S. operations
  - Debt vs. equity funding
    - In general, interest on debt incurred by a U.S. corporation is deductible, creating an incentive for debt financed operations
  - Highly contentious area with taxing authorities given incentive for debt arrangements.
    - No bright-line test in the Internal Revenue Code or in case law to distinguish debt from equity
  - Even if an instrument is considered debt, the deduction of associated interest may still be limited as follows:
    - Transfer pricing considerations (i.e., adequate interest rate)
    - Earnings stripping rule (section 163(j))
    - Matching rule (section 267)

# Initial Entry Considerations

- Banking in the U.S.
  - In general, look to minimize commingling of funds
  - Similar to banking in the UK
    - Stringent regulatory environment
  - What to know
    - Start early – process will take some time
    - Pick a banker who works with inbound international companies
    - Utilize your network to get referrals/introductions

# U.S. Financial Reporting Regime

- Statutory audits
  - Requirement does not exist!

- Why might you need/want audited financial statements for U.S. entity?
  - Raising U.S. debt or equity
  - U.S. results need to be included in UK consolidated audited financial statements
  - Preparing for an exit event

- There are differences between US Generally Accepted Accounting Principles (GAAP), UK GAAP and IFRS

# Fundraising in the U.S.

- Who?
  - Who do they invest in?
- What?
  - What do they expect in return?
- When?
  - At what stages do different funding sources invest?
- Why?
  - What are the expectations of U.S. investors?

# Overview of U.S. Tax Regime

- U.S. uses a "pay as you go" approach
  - Corporate taxes are paid quarterly
  - Taxes on wages paid to an individual are deducted and sent directly to the taxing authorities

- Tax year-end date
  - Corporation – flexibility
  - Individuals – December 31st

- Annual filing requirements
  - Corporation – 15th day of fourth month after close of the company's fiscal year unless June 30th year-end (15th day of third month)
  - Individuals – April 15th
  - Automatic extensions to file returns (not pay tax) available

# Overview of U.S. Tax Regime

## Federal

- Specific tax issues for inbound operations
  - Form of legal entity structure and resulting tax implications
  - Transfer pricing
    - Clear definition and documentation of business operations performed within the U.S.
    - Consider contemporaneous documentation requirements.
  - Intercompany financing and interest deductibility
  - Repatriation considerations

# Overview of U.S. Tax Regime

## State and local

- In addition to the federal tax regime, U.S. income can also be taxed at the state and local levels.
  - Separate states, and certain cities and regions, have specific regulations within their owning taxing jurisdiction.
- Tax due based on the state's taxable base and the state's share of the Company's income (apportionment methodology).
- State tax rates vary from 0% to 13%
  - State income tax is deductible at the federal level.
- Results in common effective tax rate on U.S. operations of 37% to 40%.

# Overview of U.S. Tax Regime

## Sales and Use tax

- The US does not impose a federal sales tax or value-added tax (VAT)
- However, 45 states and the District of Columbia impose a Sales and Use tax
  - Only states without are Alaska, Delaware, Montana, New Hampshire and Oregon
- In addition, there are more than 10,000 local jurisdictions that impose a Sales or Use tax
- The combined state and local average sales tax rate is approximately 8%
  - Many states may turn to increasing sales taxes to fill their revenue needs
- Sales of tangible personal property occurring within a state are generally subject to sales tax, while sales of services and intangible property (e.g., software) can be subject to sales tax though this varies state to state.

# Overview of U.S. Tax Regime

## Personal tax

- Taxation of foreign individuals working in the U.S. depends on the residency status of the individual.
- Foreign nationals may be considered resident aliens if they are lawful permanent residents (green-card holders), or if their physical presence in the U.S. satisfies a substantial presence test (the 183 day rule).
- Resident aliens subject to U.S. tax on their worldwide income regardless of source.
- Non-resident aliens subject to U.S. tax on income effectively connected with a U.S. trade or business, and U.S. source FDAP income.

# Other Key Topics

- Payroll
  - Hire a service provider to do it
  - Hire a payroll specialist
  - Consider a Professional Employer Organization (PEO)
- Health care (insurance)
  - Complex area
    - Sometimes responsibility falls on employer, sometimes on employee
  - Landscape in each states is different
- Insurance – property, casualty, liability, D&O

# Other Key Topics

- Employer and employee relationship
  - At-will employees
  - Contractor versus employee status
  - Share-based compensation
- Legal environment
  - Litigious!
  - Need to carefully document everything
    - IP
    - Employee agreements
    - Terms of sales
    - Equity agreements

# Summary of Significant Differences

- Utilizing multiple, specialized service providers
- No statutory audit requirements
- Multi-level and complex tax regimes
  - No federal sales tax or national VAT
  - State-by-state differences
    - Income
    - Sales/use
- Significant pools of risk capital available
  - Just need to know how and when to navigate

# Questions?

OR IF YOU WOULD LIKE A FREE CONSULTATION

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