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TOP TAX TIPS FOR EXPANDING YOUR BUSINESS INTO THE UK OR US

6 DECEMBER 2016

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AGENDA

UK AS A HUB/ PRINCIPAL LOCATION	INVESTING INTO THE UK	US INBOUND TAX PLANNING	STATE AND LOCAL TAX CONSIDERATIONS
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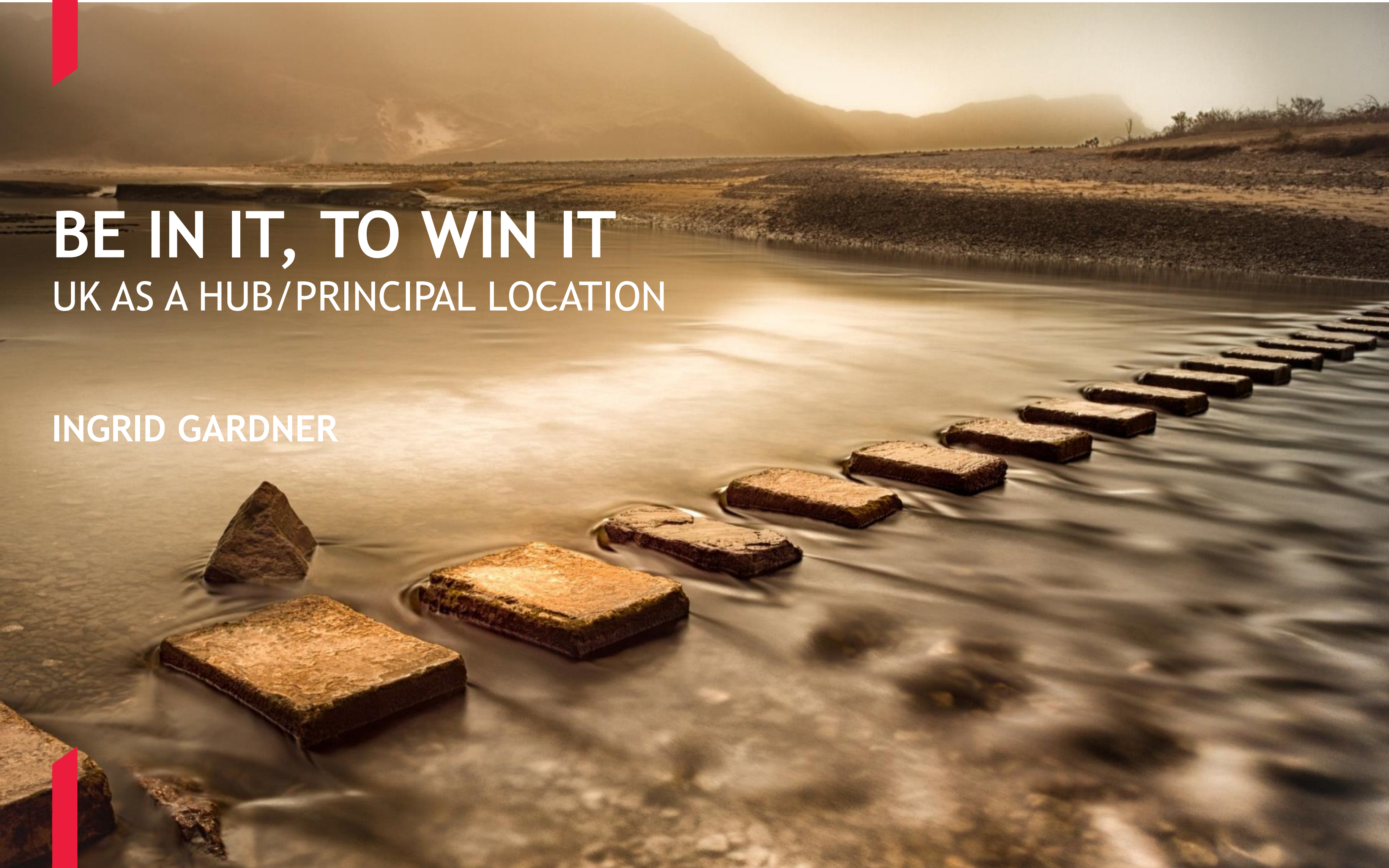

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UK AS A HUB/PRINCIPAL LOCATION

INGRID GARDNER

UK AS A HUB/PRINCIPAL LOCATION

BEPS focus on alignment of substance and profits

- Groups will prefer to have substance, and hence profits, in tax –friendly jurisdictions where possible.

UK is well positioned as a holding company or hub/principal company location

- Low corporate tax rate
- Territorial tax system
- No withholding tax on dividends
- Wide treaty network
- Incentives.

INCENTIVES

R&D Credits

- 230% super deduction for SMEs (14.5% cash refund if loss making)
- 11% above the line credit for large companies and subcontractors (8.8% benefit).

Patent Box

- 10% corporate tax rate
- Applies to qualifying patent income
- Uses “modified nexus” approach.

FINANCING

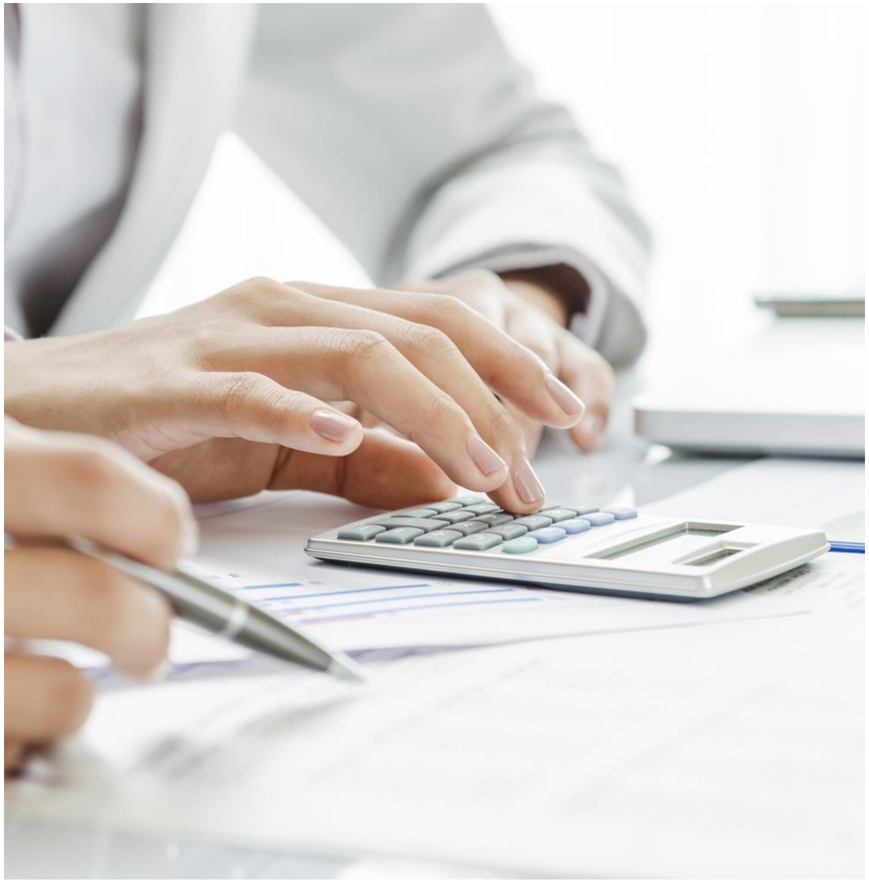
Debt

- Arm’s length interest generally tax deductible subject to:
  - Unallowable purpose rule
  - BEPS Action 2 - anti-hybrid rules from January 1, 2017
  - BEPS Action 4 - 30% EBITDA limitation from April 1, 2017
- Consider tax efficiency, including withholding tax management.

FINANCING

Equity

- No deemed deduction for notional interest on equity investment
- No withholding tax on dividends, but must have “distributable reserves” before a dividend can be paid.



DIVERTED PROFITS TAX

Diverted Profits Tax ('DPT')

- DPT is designed to counter aggressive planning techniques used by large multinational companies for diversion of profits from the UK
  - Avoided 'PE's
  - Transactions lacking economic substance
- 25 % rate of tax – NOT corporation tax
- Effective April 1, 2015
- Company must notify HMRC if DPT could apply
  - 3 months after end of the relevant year.

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INVESTING INTO THE UK

HOWARD VEARES

INVESTING IN THE UK

Areas to cover

- Types of legal entity
- Establishing a taxable presence in the UK?
- Tax and regulatory requirements
  - Payroll taxes
  - VAT and customs duties
  - Need for financial statements
  - Requirement for statutory audit
  - Companies House Annual Confirmation Statement
  - Corporation tax return

INVESTING IN THE UK

Types of legal entity

Branch	Partnership	Private Limited Company ('Ltd')	Public Limited Company ('PLC')

INVESTING IN THE UK

Company facts…..

12 months to 31 March 2016

- 3,678,860 registered companies
- Increase of 6.2% on the previous year.

- 92.7% are Limited companies (Ltds)
- 1.6% are Limited Liability Partnerships (LLPs)
- 0.2% are Private Limited Companies (PLCs)
- 0.3% overseas companies with registered branch
- 5.2% other (eg limited by guarantee, unlimited).

- The average age of UK companies is 8.4 years
- Over half of companies were aged less than 5 years and almost three-quarters were aged less than 10 years.

- 10,938 overseas corporate bodies are on the register with physical presence in the UK. Corporate bodies in the USA accounted for 22.5% of these.

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INVESTING IN THE UK

Establishing a taxable presence

Different thresholds for different taxes:

- Corporate tax
  - UK company or
  - Permanent establishment.
- VAT (on sales)
  - 'Establishment' – human and technical resources (£83k threshold)
- Customs duties and import VAT (on imports):
  - Importing goods
- Payroll taxes
  - Performing duties in the UK
  - Seconded from parent company
  - Tax treaty

INVESTING IN THE UK

Tax registrations and filings

- Separate registrations required for each tax
- Payroll taxes:
  - Online registration for 'Real Time Information'
  - Filings depend on frequency of payroll runs (usually monthly)
  - 7 day filing deadline
  - Signing on bonus.

INVESTING IN THE UK

Tax registrations and filings (continued)

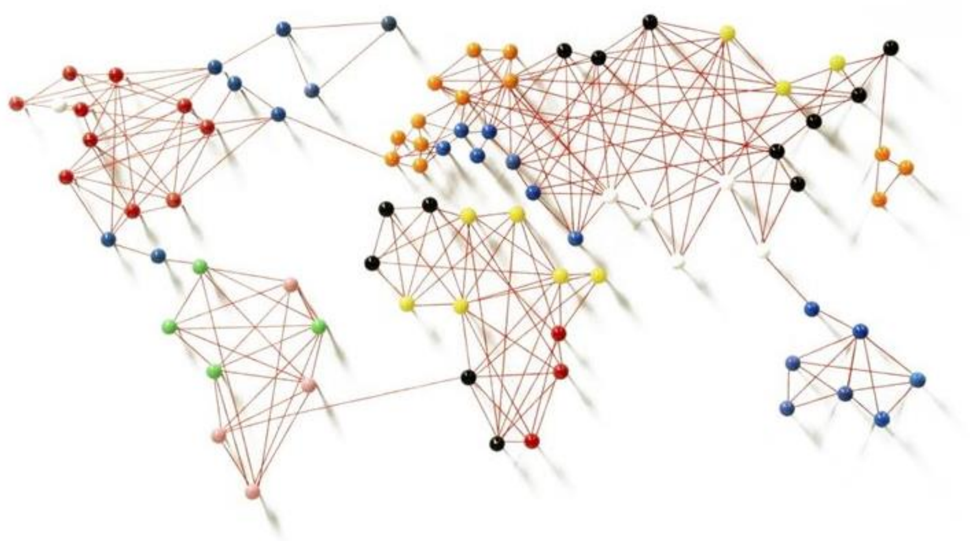
- VAT:
  - Online application
  - Quarterly online returns (not necessarily calendar quarters)
  - 14 days after quarter end.

- Customs duties:
  - EORI registration (Economic Operation Registration Identification)
  - Clearance required as goods arrive.

INVESTING IN THE UK

Tax registrations and filings (continued)

- Financial statements:
  - Typically contain profit/loss account, balance sheet and certain notes
  - Prepared under UK GAAP/IFRS
  - Certain exemptions for small companies
  - File with 9 months of year end with Companies House
  - Audit requirement?



INVESTING IN THE UK

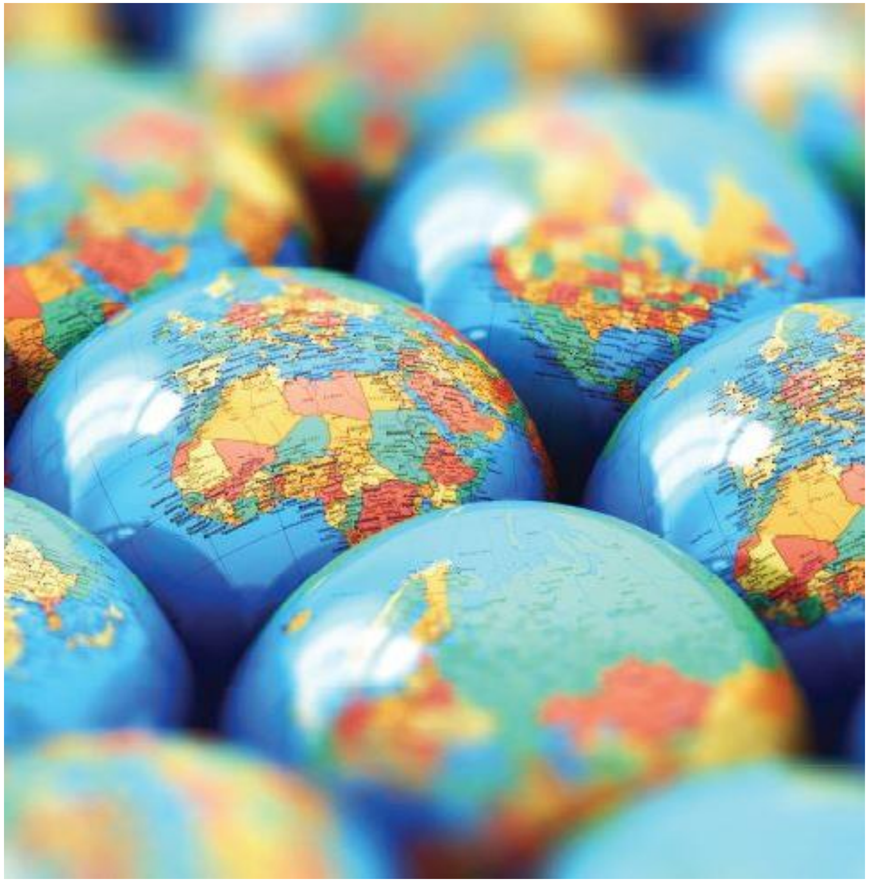
Tax registrations and filings (continued)

- Companies House Annual Confirmation Statement:
  - Separate from financial statements
  - Summary of:
    - Registered office
    - Details of each director
    - Issued share capital
    - Shareholders details
    - Persons with “significant influence”
  - Annually on anniversary incorporation.

INVESTING IN THE UK

Tax registrations and filings (continued)

- Corporate tax:
  - Register and file online
  - Filing deadline 12 months after year end
  - Return, computations, Financial Statements (iXBRL format).



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US INBOUND TAX PLANNING

MONIKA LOVING

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FRAMEWORK OF US TAX SYSTEM

- Tax jurisdiction of the US encompasses the 50 US-states and Washington, District of Columbia (not encompassed are in particular Puerto Rico, US Virgin Islands, Guam)
- It is important to distinguish different administrative levels:
  - **US Federal:** Federal Corporate Income Tax:
    - Tax administration by Internal Revenue Service (IRS)
  - **US States:** State Corporate Income Tax, Franchise Tax, Sales Tax
    - Tax administration by state agency, e.g. California Franchise Tax Board, Florida Department of Revenue
  - **Local:** e.g. Municipal/ City Corporate Income Tax (e.g. New York City)
- Controlled Foreign Corporation (CFC) rules

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INBOUND STRUCTURING CONSIDERATIONS CHOICE OF ENTITY

Branch or Subsidiary

- Both are essentially subject to the same tax rates: up to 35% Federal corporate income tax plus State income tax plus dividend withholding tax (or branch profits tax) upon repatriation
- A branch will require the foreign owner(s) to file US tax returns
- Allocation between US and worldwide income and expenses adds to the complexity of a branch return (especially at the State and local tax level)
- "Check-the-box" elections and hybrid entities.

Limited Liability Company (LLC)

- Transparent for US tax purposes unless an election is made to treat the LLC as a corporation
- Characterization may be difficult in the shareholder's jurisdiction
- Check-the-box regime allows for substantial flexibility and sometimes planning opportunities
- Single-member LLC is disregarded for US tax purposes
- Transactions between single-member LLC and its owner are therefore also disregarded for US tax purposes.

INBOUND STRUCTURING CONSIDERATIONS DEBT FINANCING

IRC §163(j) – Earnings Stripping Rules

- Foreign businesses often capitalize their US subsidiaries with both equity and intercompany debt. The use of intercompany debt may allow for deductible interest expense which reduces US taxable income.
- The purpose of IRC §163(j) is to limit the deductibility of interest by a thinly capitalized corporation where the interest is paid to a related payee that is totally or partially exempt from US tax on the distribution.

IRC §385 – Debt-Equity Regulations

- The final Regulations under Section 385 restrict the ability of U.S. corporations to treat certain financial instruments purported to be debt as equity in certain circumstances. In addition, these regulations apply a complex set of documentation requirements.
- These final Regulations are more narrow in scope than the Section 385 Proposed Regulations that were issued in April 2016.

WITHHOLDING TAX

- Generally, there is a 30% US withholding tax on certain types of (non-business) income from US sources paid to foreign persons.
- This applies to payments of fixed or determinable annual or periodical ("FDAP") income from US sources. FDAP income generally includes interest, dividends, rents, royalties and any other annual or periodical gain, profit or income.
- Income tax treaties between the US and foreign countries may reduce or eliminate withholding tax on various types of FDAP income. The US has income tax treaties with 67 foreign countries, most of which contain complex limitations on benefits provisions.
- Determination by a US withholding agent of the status of a payee (e.g., beneficial ownership, entitlement to reduced tax rates under a treaty) is made on the basis of a withholding certificate.
- A Valid Withholding Certificate meets the following conditions:
  - Made on a fully complete and signed Form W-8
  - Made while a Form W-8 is still valid
  - Is received prior to making the payment
  - The IRS has not notified the withholding agent that the Withholding Certificate information is incorrect or unreliable

WITHHOLDING TAX
(continued)

- In absence of being provided with a withholding certification, the US withholding agent must withhold at 30%
- No requirement to submit the withholding certificates to the IRS.

INCENTIVES

R&D Tax Credit

- Businesses may claim the Research & Development (R&D) tax credit for certain expenses paid or incurred for qualified research.
- It is a dollar for dollar tax credit that incentivizes businesses to increase their research activities.
- The R&D credit was made permanent as part of PATH Act of 2015.
- For taxable years beginning after December 31, 2015:
  - Eligible small businesses (3 prior years average annual gross receipts less than $50M) may utilize the R&D credit against AMT.
  - Startup companies (gross receipts less than $5M for current tax year and no gross receipts for any tax year before the five tax years ending with the current tax year) may utilize the R&D tax credit against employer's payroll tax (i.e., FICA) up to $250,000.

IRC Sec. 199 (DPAD - Domestic Production Activities Deduction)

- Businesses engaged in manufacturing and production activities in the US as defined in IRC Sec. 199 may be eligible for a deduction.
- The deduction is generally 9% of the lesser of the taxpayer's qualified production activities income (QPAI) or the taxpayer's taxable income figured without DPAD.
- However, the DPAD deduction generally cannot be more than 50% of the Form W-2 wages paid to employees.

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STATE AND LOCAL TAX CONSIDERATIONS

MARIANO SORI

STATE & LOCAL TAX CONSIDERATIONS

Overview of U.S. State & Local Tax System

- There are 50 states and over 80,000 local taxing jurisdictions throughout the U.S., each with its own set of rules and regulations
- U.S.- U.K. (and all other U.S. tax treaties) do not apply to States
  - Activities that do not trigger federal-level taxes may trigger state-level taxes
- States use the concept of ‘nexus’ to determine taxability. Nexus can be established through:
  - **Physical Presence -** property or employees in state
  - **Agency Nexus** – third-party contractors perform certain activities on behalf of the seller (i.e., sales solicitation or warranty repairs)
  - **Affiliate Nexus** – in-state activities of an affiliate that facilitate the activities of the out-of-state seller
  - **Economic Nexus** – seller has in-state property, payroll, or sales exceeding a threshold amount set by state statute

STATE & LOCAL TAX CONSIDERATIONS

Major U.S. State & Local Taxes Imposed on Businesses

- Corporate Income and Franchise Taxes
  - States generally adopt U.S. federal taxable income but require various adjustments to arrive at state taxable income
  - States use apportionment to determine the portion of taxable income attributed to a state
  - States require various filing methodologies for reporting income.
- Franchise/Net Worth Taxes
  - Several states impose a franchise/net worth tax on the privilege of doing business in addition to an income tax (also subject to apportionment).

STATE & LOCAL TAX CONSIDERATIONS

Major U.S. State & Local Taxes Imposed on Businesses

- Sales & Use Tax
  - Seller is required to collect and report/remit sales tax on all taxable sales of tangible personal property (or "TPP") and services made within a state
  - Seller is required to charge and report sellers' use tax on interstate sales when the seller has nexus or has voluntarily registered to collect in a state
  - Buyer is required to report/pay use tax on all taxable purchases of tangible personal property and services used in a state upon which no sales tax was paid (e.g., purchase from an out-of-state or foreign vendor)
  - All sales/purchases are taxable unless exempted by statute:
    - Resale (sales/use tax only imposed on consumer of tangible personal property or services)
    - U.S., state and/or local government
    - Manufacturing
    - Research and development
    - Not-for-profits

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STATE & LOCAL TAX CONSIDERATIONS

Major U.S. State & Local Taxes Imposed on Businesses

- Employment Taxes
  - States may require employers to withhold income tax from wages paid to employees
  - Most states impose an unemployment tax on employers to fund unemployment insurance benefits
  - Foreign employers may be required to withhold state income taxes and pay state unemployment taxes on foreign employees working in the US (some states will accept the treaty protections, but other states will not)
- Property Taxes
  - All 50 states assess property tax on 'real property' (i.e., real estate, realty, or land)
  - Most states assess property tax on business 'personal property' (i.e., furniture, machinery, and inventory)
    - Exemptions may exist in certain states for inventory or for property that is temporarily stored in the state
  - Most states assess at fair market value

STATE & LOCAL TAX CONSIDERATIONS

State Tax Saving Opportunities

- Structural Opportunities to minimize overall state income tax expense
- Credit & Incentive Opportunities
  - State and local tax jurisdictions provide credit & incentive opportunities for businesses that create jobs and make capital investments within their jurisdictions
  - Credit & Incentive opportunities include:
    - State income tax credits
    - Sales/use tax credits and exemptions
    - Property tax abatements
    - Training grants
    - Favorable financing
    - Cost reimbursements.

THANK YOU

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THE BDO NETWORK

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