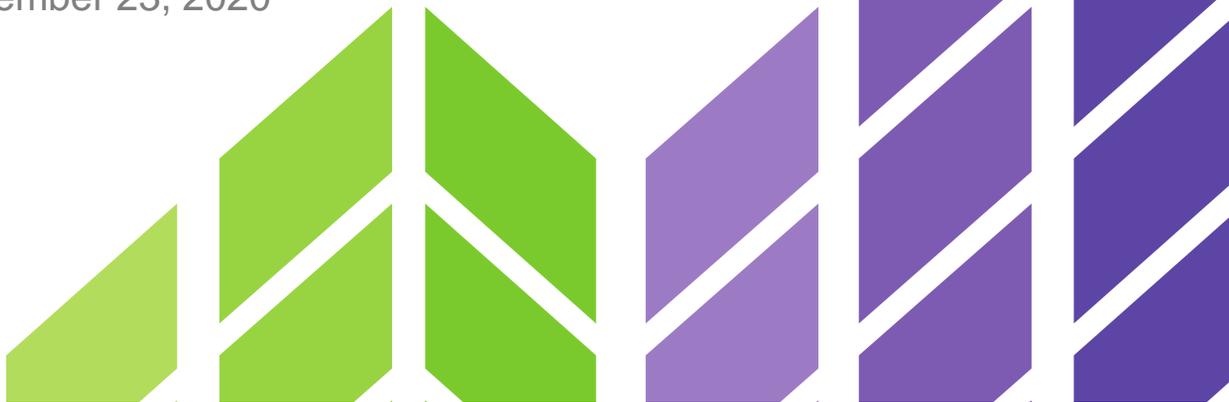




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Entering the U.S. Market – Key Considerations for Foreign Investors

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Presented by:

Steven D. Handler, CPA, CMC, CGMA – Partner at MichaelSilver

Steven has been a partner with the firm since 1997. Prior to merging into MichaelSilver, he founded Steven D. Handler & Associates, a CPA and management consulting firm. With over a decade of hands-on management experience, Steven previously spent time with a Fortune 500 company as an operational consultant and internal auditor, and he also served as vice president of a national real estate development organization.

Steven currently serves as the Partner in Charge of International Services. He has served on numerous International Organizations' Boards of Directors including in the position of International Vic Chairman GMN International of which Michael Silver is a member. Steve has spoken on international business at various Chambers of Commerce around the world. In addition to assisting international companies with their US operations, Steven co-leads the firm's consulting practice. A Certified Management Consultant (CMC), Steven has broad expertise in mergers, acquisitions, and dispositions; long-range strategic business planning for closely-held businesses, incentive compensation planning, and commercial lease negotiations.

In addition to his vast real estate expertise, Steven's other industry experience includes telecommunications, manufacturing and distribution, software and electronics, healthcare, retail, and professional services firms. He is the consulting practice member of the firm's strategic planning committee and leads its international subcommittee.

Member – AICPA, Illinois CPA Society, Institute of Management Consultants, and Charter Member of Beta Gamma Sigma and Delta Mu Delta Scholastic Honors Fraternities

Education – Bachelor's in Business Administration (Accounting) – University of Iowa, Master's in Business Administration – DePaul University

Publications – Multiple articles for a variety of professional journals, trade publications, and client newsletters

How to Conduct Business in the United States



Distinct Competitive Advantage

Distinct. Your product or service is unique.

Competitive. Your product or service must be available, affordable, and supportable.

Advantage. Your customers must be better off/improved after acquiring your product or service.

Sustainable. Your product or service must be able to maintain and improve its DCA.

Strategic Business Planning

Now that we have our DCA, we need a strategic plan that tells us how to leverage that idea, successfully and profitably.

Strategic Business Planning

It must be written and must address basic questions:

- **What** is our product or service?
- **Why** will it succeed?
- **Who** are our resources?
- **Where** will we locate our business?
- **When** do we begin?
- **How** will we get our plan implemented?

Accounting, Legal, and Business Advisory Resources

Your accountants should:

- Help protect you from transfer pricing issues
- Advise you how to avoid Thin Capitalization problems
- Avoid tax treaty issues such as making sure related party transactions are paid timely
- File all needed international information forms to avoid \$25,000 plus tax penalties

Accounting, Legal, and Business Advisory Resources

Your attorneys should advise on:

- Choosing the best legal structure
- Corporate governance, including election of board members and officers, bylaws, and minutes
- Protection against piercing the corporate veil

Accounting, Legal, and Business Advisory Resources

Your attorneys should assist with:

- Import/Export matters
- Employment Issues, including employee benefits
- Leasing agreements
- Intellectual property rights, such as patents and trademarks
- Product liability issues
- Dispute resolutions
- Immigration matters
- The strategic planning process

Accounting, Legal, and Business Advisory Resources

A business consultant can assist with:

- Development of long-range strategic plans
- Designing appropriate executive compensation packages
- Commission structuring
- Marketing
- IT
- Recruiting
- Organizational structuring
- Facilities planning
- Employee benefit plans

Location and Facilities

“Location, Location, Location”

- Proximity to customers
- Proximity to transportation
- Image/Appearance
- Signage
- Price
- Availability
- Flexibility
- Many other considerations

Location and Facilities

“Location, Location, Location”

- Layout the office design
- Work with contractors to finish the setup
- Order signage
- Obtain business telephone number(s)
- Order stationery and other printed materials
- Order office furnishings, equipment and office supplies
- Setup computer equipment, networks, software, and telephone systems with an IT professional

Marketing and Market Research

- What is our product or service?
- What is its distinct competitive advantage?
- Who is our target customer?
- How should our product be priced?
- Who will sell our product or service?
- Internal sales force
- Distributors
- How will our target customer learn about our product or service?

Marketing and Market Research

- What will induce them to try our product or service?
- How long will it take for them to order our product or service, once they have tried it?
- Of those who try our product or service, what percentage will order and reorder our product?
- How frequently will our average customer order from us?
- What will be the average dollar amount ordered?
- What are our sales and gross profit projections?
- What is our marketing budget and how should we allocate that budget?

Marketing and Market Research

- Allocation of the marketing budget
- Advertising (print, television, radio, internet)
- Market research including initial and ongoing research
- Public relations
- Website
- Social media
- Brochures
- Direct mail
- Billboards

Financing

- One of the main reasons why businesses fail is inadequate financing.
- It is not uncommon for a new business in the U.S. to take twice the time and twice the cost as originally expected.
- The most common sources of financing are related party loans and investments.
- Credit is hard to obtain when a company is not yet established in the U.S.

Operations and Control

The management process consists of:

1. Planning – In this presentation we have emphasized planning.
2. Implementation – Having the right people (internal and external resources) are key to implementing the plan successfully.
3. Control – Without comparing the plan to actual performance and acting appropriately to capitalize on success and to correct failures, it is unlikely the company will succeed.

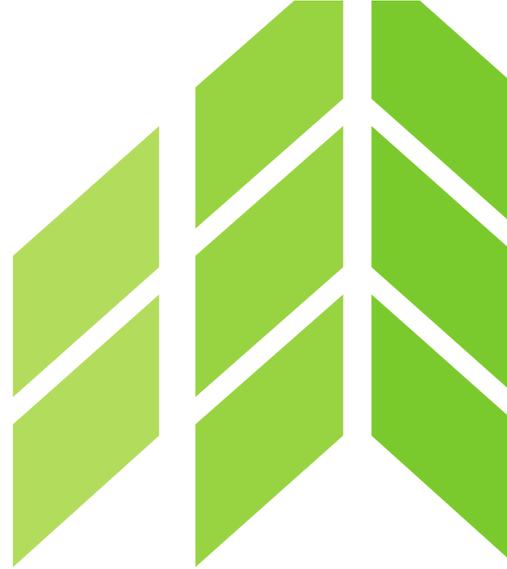
Traits of Successful U.S. Expansions

- Recognition of the need for a formal strategic plan
- Adequate capitalization
- A realistic timetable
- Understanding of their own unique competitive advantage
- Knowledge of their target market(s)
- Due diligence performed on parties who will be part of the plan

Traits of Unsuccessful U.S. Expansions

- Have no formal strategic plan
- Be inadequately capitalized
- Expect success in a short time period
- Cannot articulate their own unique competitive advantage
- Believe that the U.S. is one single market
- Fail to recognize the importance of due diligence

What Questions Do You Have?





Thank You

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US Taxation and Reporting Issues for Related Foreign Parties



Presented by:

Joseph P. Roznai, CPA, CGMA – Partner at MichaelSilver

Joe Roznai joined MichaelSilver in 1992 and became a partner in 1998. Prior to joining MichaelSilver, he served as tax manager at a regional CPA firm, held consulting positions with a national CPA firm, and was the Tax Director for a publicly-held leasing company.

Joe has over 30 years of federal, state and local tax planning, consulting, and compliance experience, working with entrepreneurial businesses across a wide range of industries, including manufacturers, printers, retailers, distributors, service providers, auto dealers, and lessors. Joe also has broad experience serving S corporations and partnerships/LLCs, as well as advising clients on U.S. and international income tax issues. He has expertise in:

- Multi-state Income, franchise, and Sales and Use Taxes
- Local Tax Matters and Related Appeals
- Personal Property Taxes
- Taxpayer Representation Before the Internal Revenue Service and Other Government Tax Authorities in Tax Audits and Other Controversies
- Business Acquisitions and Dispositions

Member – AICPA, Illinois CPA Society (Tax Advisory Group and State and Local Tax Committee)

Education – Bachelor and Master Degrees in Accountancy and Taxation – DePaul University

Publications – Multiple articles for a variety of professional journals, trade publications, and client newsletters

Setting up in the US

- Form of US Operation determines taxation
 - US Branch operation by foreign company
 - US Corporate Subsidiary
 - US Joint Venture/Partnership

Treaty Considerations

- US Income Tax Treaties with certain specific countries allow limited exemption from “Permanent Establishment” (PE) if foreign company presence is limited to:
 - Use of facilities solely for storage or display
 - Maintenance of a stock of inventory for sale or delivery
 - Maintenance of a stock of inventory for processing by another enterprise
 - Maintenance of facility solely for purchasing activity, or collecting information for the enterprise

Reporting intercompany transaction with foreign affiliates (Form 5472)

- Foreign related party sales, fees, purchases, services
- Capital contributions
- Loan transactions, including Accounts Receivable and Payable
- \$25,000 penalty for EACH late or non-filed report
 - Separate report must be filed for each related party
 - Filed with annual income tax return

Deductibility of intercompany expenses

- Intercompany Transfer Pricing Agreement
 - Both countries want to tax “fair share” of group income
- Limitation on deduction of interest expense to foreign parties if thin capitalization
- Cash basis deductions for certain expenses to related foreign parties

US Income tax withholding on payments to foreign persons

- Interest, Dividends, Royalties and certain other income
- Treaty exemptions and/or special tax withholding rates
 - Varies by Country
 - Exemption or special rate must be supported by providing Form W-8-BEN or W-8-BEN-E to US payor

Foreign Bank and Security Account Reporting

- Reporting required for all US persons/entities who own, control or have beneficial interest in foreign accounts
- Applicable when the aggregate value of all foreign accounts exceeds \$10,000 at any time during the year
 - Must use the highest US Dollar balance during the year for each account
- Potential for Criminal and Civil penalties for non-filing

Sales and Use Tax

- Must be paid for all equipment, supplies and other items purchased for use in the state, unless specifically exempt in the state of use
 - Manufacturing equipment—exemption varies by state
 - Some states fully exempt packaged grocery food and medicine
 - Some states apply special rates to specific products such as packaged grocery food and medicine
 - Be cautious of definitions for exemptions and special rates

Sales and Use Tax

- Must be charged to customers on all sales unless specifically exempt
 - State tax application determined by “ship to” address
 - Some states apply local rates in addition to state rate
 - Local rates may be imposed based upon point of origin within the state
 - Occasionally based upon the in-state destination
 - Requirement to charge based upon State “Nexus”
 - New rules after Wayfair Case
 - Exemption Certificates

US taxation of foreign nationals working in US

- Nonresident—temporary presence in US
- Part-year resident—year of arrival or departure
- Full-year resident—taxed same as US citizens
- Taxation on world-wide income
- Residency based primarily on physical presence
- Treaty provisions may be applicable

US Corporations With Foreign Operations

- Controlled Foreign Corporation (CFC) Reporting (Form 5471)
 - Includes full financial statements of each CFC
 - \$10,000 penalty for EACH late or non-filed report
 - One report must be filed for each CFC
- Degree of reporting required varies with percentage of ownership
- Form 5471 also required for individuals owning foreign corporations

US Taxation of Foreign Profits

- 2017—“Transition Tax” or deemed repatriation tax on accumulated foreign profits
- Beginning 2018—Global Intangible Low Tax Income (GILTI) Tax
- “Sub-part-F” Income (old law continues)—Foreign profits derived by foreign subsidiaries between and among multiple foreign countries

US Taxation of Foreign Profits

- Beginning 2018—Foreign Derived Intangible Income (FDII)—Special deduction for foreign export of service and intangibles
- Beginning 2018—Base Erosion & Anti-Abuse Tax (BEAT)—Minimum Tax that limits use of certain deductible payments to foreign persons to erode the US tax base
 - Applicable to US Corporations with Gross receipts in excess of \$500 Million.

US Taxation of US Nationals Working Abroad

- Foreign Earned Income Exclusion
 - Housing Expense Allowance
- Foreign Tax Credits
- Treaty Provisions applicable

What Questions Do You Have?



Thank You

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