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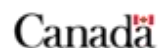
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ATLANTIC – TAP DIGITAL 2024

Day 4 – January 24, 2024

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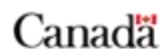
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RECAP ON DAY 3

Dave Archer

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WORKING & MIGRATING TO NEW MARKETS

LEGAL SUPPORT BEYOND BORDERS

COX & PALMER

Gavin MacDonald & Chika Chiekwe

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Working & Migrating to New Markets

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Export Readiness:

Liability and Incorporation Status in Parent Jurisdiction



Export Readiness: **IP Protection**

- Parent Jurisdiction
- Export Jurisdiction



Export Readiness:

Transactional Preparedness

- Supply/Service Agreements
- Agency Agreements
- Subcontractor Agreements



Export Readiness:

Due Diligence of Export Jurisdiction

- Trade Mission/Global Affairs
- Invest Nova Scotia (formerly NSBI) Connectors
- Insurance/EDC

Legal Support Beyond Borders

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Export Jurisdiction Relationship Building


- Investment Agencies
- Board of Investments
- Chambers of Commerce



Engaging Appropriate Local Counsel through:

- Existing Counsel / Referrals
 - Legal Directories (Legal500)
 - Export Jurisdiction Regulators
- 

Considerations for Engaging Appropriate Local Counsel

- Language / translation proficiency
 - Subject matter expertise
 - Relationships and contacts with industry / regulators
 - Costs / legal fees
- 



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INTERNATIONAL AND US TAX PERSPECTIVE

GRANT THORNTON

CRYSTAL BYRON

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Expanding Internationally

International and US Tax Perspectives



Today's Presenter



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Overview

- ✓ Business Structure
- ✓ Canadian Taxation of Foreign Earnings
- ✓ Canadian Taxation of Foreign Distributions
- ✓ US Federal Taxation of Non-Residents
- ✓ US State Corporate Tax Considerations
- ✓ US State Sales and Use Tax



Business Structure

Business Structure

- Is a legal entity required? Does it make sense commercially?
- A Canadian corporation can carry on business abroad. It would generally be entitled to a foreign tax credit for foreign taxes paid.
- The benefit of a foreign corporation from a tax perspective is potential tax deferral.

Corporate Residency

- A foreign incorporated company may be considered to be resident of Canada if its “central management and control” resides in Canada.
 - Depends on high level of control of function of the business referred to as strategic-decision making authority
 - Usually vested in board of directors and normally considered to be where the members of the board of directors meet and hold their meetings provided the board determines corporate policy and generally manages the business and affairs of the corporation.
- A corporation with “central management and control” can be deemed to be a non-resident under a tax treaty.

Does the foreign jurisdiction have a tax treaty with Canada?

Canadian Taxation of Foreign Earnings

Business Activities

- What activities will be carried on abroad? What risks will be assumed by the foreign operations?
- How will goods or services sold by the foreign operations be priced (especially for intercompany transactions)?
- Note that generally, in the case of foreign corporations that are controlled by Canadian residents, certain net income which is considered “passive” may be subject to Canadian income tax as it is earned (as opposed to when repatriated to Canada).



Foreign Accrual Property Income (FAPI)

- Canadian-resident owners of foreign corporations
- Passive income – ex. Rent/royalties/investment/capital gains.
- Not used in “active business”
- Personal service business is not “active business”
- Change in rates in 2023



Canadian Taxation of Foreign Distributions

Dividends from Foreign Subsidiaries

- Dividends from foreign subsidiary are included in computing the Canadian parent's income
- Canadian parent may be entitled to full or partial deduction on dividends from foreign subsidiary.
- Generally, (1) active business income or (2) income that was already subject to foreign tax at a rate of at least 25% can be repatriated to Canada without further Canadian income tax.
 - Note that Canadian resident individuals do not benefit from this regime.



U.S Federal Taxation of Non-Residents

U.S. Federal Taxation of Non-Residents

A Canadian company is subject to U.S. tax on business profits in the U.S. if:

- Carrying on a U.S. trade or business; and
- Effectively connected income ("ECI")

May obtain relief under the Canada-U.S. Tax Treaty



U.S. Federal Taxation of Non-Residents

A Canadian company's business profits are subject to U.S. taxation to the extent attributable to a U.S. permanent establishment ("PE")

Canada-U.S. Treaty defines PE as specifically including the following (among other items);

1. A fixed place of business in the U.S.
2. Employee who habitually exercises the authority to conclude contracts in the name of the company
3. Services PE



State Corporate Income Tax

State Treatment of U.S. Tax Treaties

States are not “*party to*” or “*bound by*” tax U.S. Treaty provisions.

Typically states fall into one of three categories, states that:

1. Voluntarily adopt the treaty for income tax

States such as: Florida and Michigan

2. Do not adopt the treaty for income tax

States such as: California and New York

3. Do not have an income tax regime - do not adopt the treaty

States such as: Ohio (CAT) and Washington (B&O)



State Income Tax Nexus

Differs from permanent establishment

Income tax Nexus can be created by:

- Physical presence of employees
- Services such as training, consulting, repairs and maintenance
- Maintaining property in-state (e.g. inventory, owned or leased property)
- Statutory Nexus – Bright Line or Economic Nexus

Remote Employees

- Federal Corporate Income tax – creating permanent establishment
- Teleworking can create nexus in a state for income or sales tax
- Transfer pricing arrangements
- Payroll withholding, payroll taxes and social taxes
- Visas
- Employee rights under local employment laws

State Sales and Use Tax

State Sales and Use Tax

- Sales tax rates range from 0 to 11%
- Major source of revenue for most states
- Not Treaty protected
- Not Public Law 86-272 protected
- Returns may be required even if no tax due
- Seller and purchaser are jointly liable for state sales tax

State sales tax is imposed by **45** states and over **7,000** local jurisdictions

State Sales Tax - Nexus

- Seller must register and collect for taxable transaction if seller has Nexus in the state.
- Employees, independent contractors, property, “click through”, affiliates, registration in a state.
- “Wayfair” Court Decision – no physical presence necessary to create Nexus.
- Guideline threshold: 200 transactions or \$100,000 in taxable sales.

Questions?

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WORKSHOP:

INTERNATIONAL TAX AND LAW

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WORKSHOP

INTERNATIONAL TAX & LAW – GROUP 1

You've built a good relationship with a prospect in Italy. They have decided to order \$220,000CND from you and have asked you to reduce the value shown on the invoice by 50%, though they promised they would pay the full amount.

Why might they ask you to do that?

What do you do? How do you respond?

How do you complete the sale?

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WORKSHOP

INTERNATIONAL TAX & LAW – GROUP 2

You've just hired a U.S. National to work for you locally as their representative in the U.S. They will work out of their house and go out selling your products on a salary plus commission basis.

How will you deal with U.S. tax & labour rules around employing a person in that country?

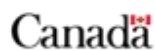
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WORKSHOP

LEGAL & TAX IMPLICATIONS TO GOING GLOBAL – GROUP 3

What are the main points that should always be included in an international contract with a foreign business partner?

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EXPORT PLAN FOCUS: International Law and Tax

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Next Session's Topics

- **International Trade Trivia**
- **Government Funding for Canadian Businesses**
- **International Finance Tools – RBC**
- **Financial Considerations – RBC**
- **Capital Markets – RBC**
- **Export Plan Focus: International Finance**

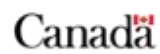
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