Expanding Operations in the U.S.: What Multinationals Need to Know

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Polling Question 1

Is your organization planning a U.S. investment in the short-medium term?

a. Yes, there is a plan established
b. Maybe, discussions have been held
c. No, not interested at the moment
d. Already investing in the U.S.

U.S. Tax General Overview

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U.S. Tax General Overview

Multi level Income Tax system
Federal, State, local

Tax elections and fictions
(DREs, C-Corps, S-Corps, Partnerships, Consolidation rules, etc)

States not binding US Tax Treaties

Indirect and Other Taxes

Doing businesses in 51 different legislations – Corporate and tax perspectives

Limitation on Benefits (LOBs) and Treaty Overrides

Nexus rules not always following Federal tax rules

U.S. Tax General Overview

The U.S. continues to offer attractive headline incentives for inbound investment.

However, these incentives must be weighed against an increasingly complex tax ecosystem that can dilute anticipated benefits.

Inbound Investment Incentives	Tax Challenges for U.S. Entrepreneurs
Reduced tax rates on export income	Earnings stripping limitations
Generous R&D credit regimes	Deferral of deductions for R&D spend
Local incentives for investment and job creation	Deviation from global tax policy trends

U.S. As An Export Platform

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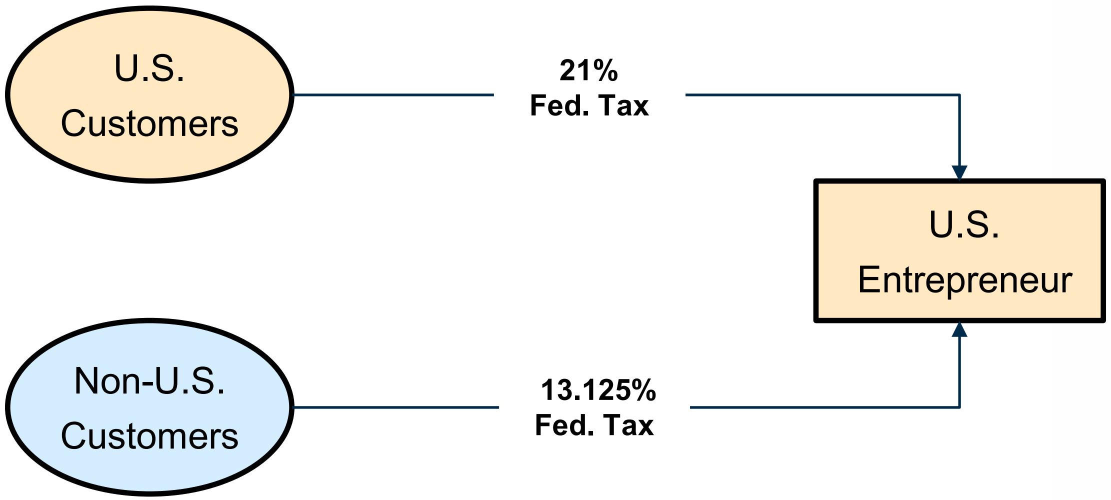
U.S. As An Export Platform

FDII Regime – In General



Other considerations…

- Cost to entry—how to move valuable IP into the U.S.?
- Tangible asset haircut on FDII benefit
- Substantiating foreign-use of goods/services
- Long-term sustainability—are you stuck forever?

U.S. Tax Considerations Under a Distribution Model

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U.S. Tax Considerations Under a Distribution Model

U.S. Tax Considerations Under a Distribution Model

Base Erosion & Anti-Abuse Tax (BEAT)

U.S. Corp

U.S. Corp Pays Greater of…

- **21% Tax:** Regular Taxable Income
- **10% Tax:** Modified Taxable Income, without benefit of outbound deductions

Deductible Payment (Royalty, mgmt. fee, interest, etc.)

Non-U.S. Related Party

Other considerations…

- COGS exception
- Interaction with R&D credit
- Planning on timing of deductions to mitigate impact

U.S. Tax Incentives for Manufacturing/Production Activities

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Purpose of Tax Incentives

- The tax incentives are intended to create conditions that encourage economic growth and activities that the government deems desirable.

- There are two primary types of incentives – Statutory and Discretionary.

- Federal and state statutory incentives are law and are available to all businesses that meet a program's requirements.

- Discretionary incentives are Federal, state and local incentive programs that can be customized to attract or return certain businesses to a specific locality.

- Jurisdictions have wide flexibility in the form and recipient of the incentives.

Purpose of U.S. Tax Incentives

Redevelopment of a
Geographic Area

Job Creation

Expansion
and Relocation

Investment

Targeted Hiring

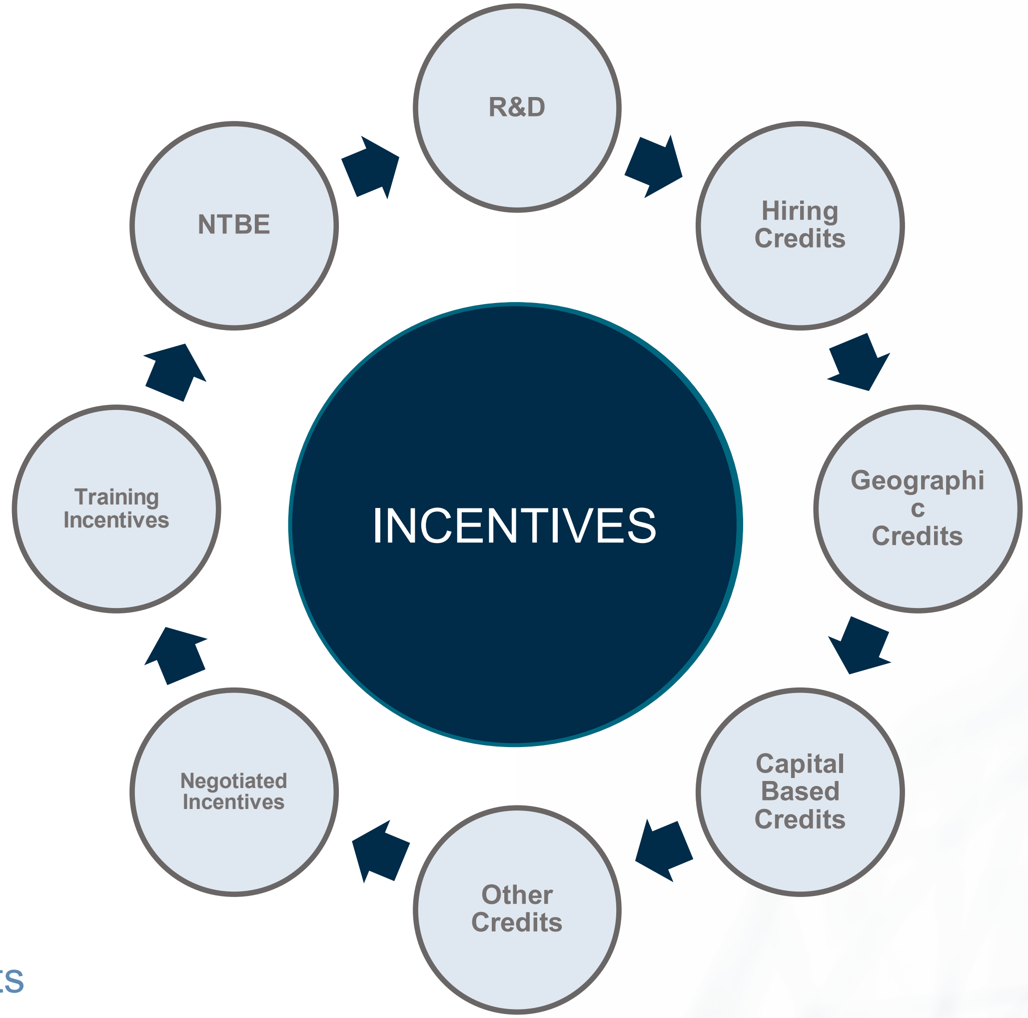
The Tax Credit Continuum

NTBE (Salable Credits)
- Buy and Sell Credits

Training Incentives:
- Grants or Credits

Negotiated Incentives
- Cash Grants
- Abatements
- Exemptions

Other Credits:
- Encouraged activities
- S&U Tax Studies
- Cost Segregation
- Energy Incentives
- And other available credits



R&D Credits
- Federal
- State

Hiring Credits:
- WOTC
- Targeted Jobs
- Net job increase

Geographic Credits:
- Zone Based
- Tier Based

Capital Credits:
- New Investment
- Expensed Items

Benefits of US Tax Incentives

Reduce Tax Liability

Lower Effective Tax Rate

Find Above-the-Line Opportunities

Reduce Income Tax Expense

Polling Question 2

Has your organization obtained any tax or non-tax incentive in the U.S.?

a. R&D credit
b. Capital credit
c. Hiring credit
d. Other credit

Treaty Network and Structuring Considerations

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Treaty Network and Structuring Considerations

- The U.S. has 57+ Double Tax Treaties in force
- With LATAM countries, the US only has a Double Tax Treaty with Mexico, Venezuela and Chile (starting 2023)
- No Double Tax Treaty between Hong Kong and the U.S.
- Tax treaty between China and the U.S. does not reduce dividend withholding tax rate from the US
- Non-Treaty jurisdictions are typically subject to a domestic US WHT tax of 30% on dividends, interest and royalties
- Economic substance and commercial rationale to be considered if investing via a jurisdiction with favorable Double Tax Treaty with the U.S., including meeting the Limitation on Benefits (LOB) clause of the US Treaties

Structuring Considerations

U.S. inbound structuring considerations

Corporate taxation

- Corporate Income Tax rate of 21% plus State taxes (average state tax may be approx. 5%-6%)
- Consider special U.S. tax regimes such as FDII
- Consider other U.S. tax considerations/limitations (ie. NOLs offset rules, FTC rules, Depreciation rules, Base Erosion and Anti-Abuse Tax (BEAT), etc.

Define business model

- Understand transfer pricing implications
- Analyze functions, assets and risks for defining profitability of relevant entities
- Evaluate high-tax jurisdictions versus taxation in the U.S. (ex. Typically LATAM countries investing in the U.S. have a corporate tax rate greater than 25%)
- Explore other business models involving IP and other intangible assets

Repatriation alternatives

- Analyze U.S. tax implications for distributing dividends out of the U.S.
- U.S. tax rules regarding capital redemptions shall be observed (E&P analysis)
- Transfer pricing and cross-border payments – Subject to US tax rules and limitations
- Financing arrangements in the U.S. – Interest limitation and deductibility rules

Polling Question 3

What type of investment is your organization planning and/or already performing in the U.S.?

a. Manufacturing and production
b. Distribution of goods
c. Logistics/Services hub
d. Other investment

Other Inbound Considerations

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Global Trade Considerations

Pan-Asia Outbound Investment into U.S.

Diversification Strategy

- After punitive tariffs were placed on China origin goods exported to U.S., many organisations are looking to 'de-risk' from China by shifting manufacturing bases (to the benefit of Southeast Asian markets).
- Moving manufacturing locations can be time consuming and costly.
- Across APAC, however, Free Trade Zones and Free Trade Agreements may mitigate certain costs of production.

Client Leading Question: *Can diversifying our manufacturing footprint reduce total landed costs of production?*

First Sale For Export

- Companies across APAC are availing of the First Sale for Export Rule.
- This duty reduction program is designed to reduce the dutiable value of eligible products imported into the U.S..
- While not a new program, it has gained prominence at a time when tariff rates and protectionist policies in the US are increasing.

Client Leading Question: *Does our operating model and documentation satisfy the First Sale for Export rule?*

Customs Value Intangibles

- Often overlooked, intangible elements such as roytalties and trademarks, increase the customs value of imported goods and therefore increase customs duty..
- Opportunities exist to reduce customs value by analysing whether intangible elements of prices can be removed.
- Careful consideration is required to ensure that customs outcomes do not implicatie Transfer Pricing policies.

Client Leading Question: *Is there a way to mitigate additional customs duty costs?*

Global Trade Considerations

Key APAC Free Trade Zone Examples

Free Trade and other Special Economic Zones allow producers to import raw materials and capital equipment into factory locations without the need to pay customs duties. Indirect tax benefits also exist in these locations.

Singapore

Keppel Distripark
Keppel Distripark Linkbridge
Changi Airport Cargo Terminal Complex
Airport Logistics Park of Singapore
Tanjong Pagar Terminal and Keppel Terminal

China

Xiong An New Area (Hebei)
Binhai New Area (Tianjin)
Qingdao (Shandong)
Suzhou Industrial Park (Jiangsu)
Lingang New Area (Shanghai)
Zhoushan Island (Zhejiang)
Hangzhou (Zhejiang)
Qianhai (Shenzhen)

Malaysia

Labuan
Langkawi
Tioman

Indonesia

Batam Free Trade Zone
Bintan Free Trade Zone
Karimum Free Trade Zone
Sabang Free Trade Zone

Vietnam

313 Economic Zones
292 Industrial Parks
18 Special Economic Zones

Correct as at April 2024

Global Trade Considerations

Diversification Strategy

Client Problem Statement

- China based motor vehicle and motorcycle company was planning to expand distribution into the U.S. market.
- Due to punitive tariffs in place, additional 25% tariffs would render the Client's vehicles uncompetitive.
- Client wanted to mitigate punitive tariffs in the U.S. and was open to diversifying its manufacturing facilities within APAC.

Indirect Tax Support Provided

Location Assessment

- Identify customs duty outcomes for manufacturing facility based on multiple ASEAN locations

FTA/FTZ Review

- Outline relevant FTAs in the region based on proposed trade routes of manufacturing facility
- Outline Free Trade Zone and Special Economic Zone locations across APAC

Customs Duty Analysis

- Based on further analysis, provide customs duty analysis (i.e., duty rates and exposure) based on proposed manufacturing sites export into U.S.

Documentary Support

- Prepare necessary documentary evidence to support duty free import of raw materials and Origin Status of new facility.

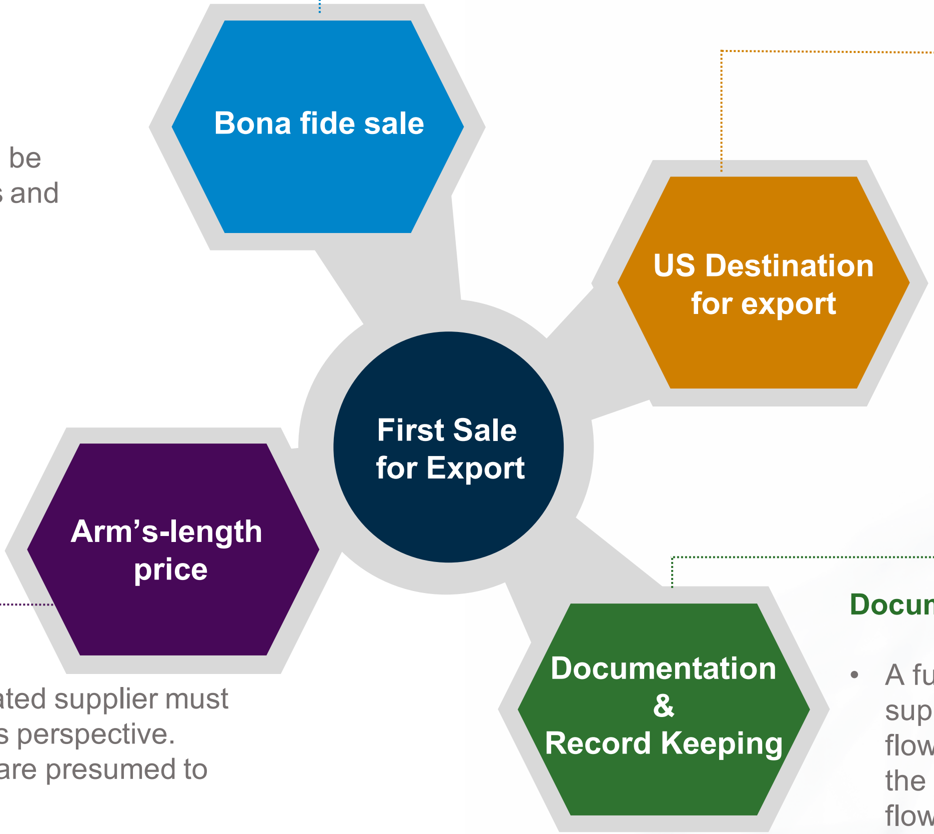
Outcome For Client

- As a result of the analysis undertaken, Client selected a Thailand manufacturing site, utilising a Board of Investment (BOI) factory incentive.
- Client continued to import raw materials from China into Thailand at duty free rates.
- Origin of vehicles was changed from China to Thailand
- Client saved **25%** punitive duties which was estimated to be a saving of circa **USD7 million** in first year of factory operation.

Global Trade Considerations

First Sale for Export

An importer bringing goods into the U.S. using a multi-tiered transaction model may be eligible for First Sale valuation if the following conditions are met:



Bona fide sale

- The first 'sale' between the manufacturer/seller and intermediary/buyer needs to be supported by circumstances and documentation

US Destination for export

- It must be clear that the goods are destined for exportation to the U.S. at the time the merchandise is sold by the manufacturer/seller to the buyer in the first sale transaction.

Arm's-length price

- The manufacturer's price to a related supplier must be at arm's length from a customs perspective. Sales between unrelated parties are presumed to be arm's length in basis.

Documentation & Record Keeping

- A full documentation trail must be kept in support of all transactions in the transaction flow. The documents and records shall support the role of each entity within the transaction flow.

Global Trade Considerations

First Sale for Export

Client Problem Statement

- Large retailer in U.S. wanted to apply the First Sale for Export rule on imports of Fast-Moving Consumer Goods imported from China.

Global Trade Support Provided

Operating Model Rev.

- Analysis of whether existing operating model satisfied FSFE requirements.

Documentation

- Establish documentation requirements between manufacturer and middleman as well as middleman to buyer.
- Sample review undertaken to confirm.

Benchmarking

- Benchmarking of pricing to confirm that prices were at arm's length and that sale between manufacturer and middleman was bona fide.

Outcome For Client

- Retailer continues to apply the First Sale for Export Rule.
- Annual duty savings is in the **USD millions** as a result of ongoing application.
- Retailer reduces the burden of punitive tariffs on imports into U.S. from China.

Global Trade Considerations

Customs Value and Intangibles

Intangible elements of pricing do not necessarily need to be included in the customs value of an imported good. However, careful consideration and documentary evidence of the below may be required to substantiate any change to customs values declared.

Global Trade Considerations

Customs Value and Intangibles

Client Problem Statement

- Newly established U.S. entity wanted to establish procurement hub for imports of solar panel products into the U.S. (from China).
- Procurement hub established in Hong Kong, with a service fee for payable for procurement services performed (10% commission).
- As solar panel products are manufactured in China, punitive tariffs are payable. However, analysis was required to ensure procurement fee not included in dutiable value of imported goods (increasing duty payable).

Global Trade Support Provided

Customs Valuation

- Analysis of whether procurement fee will be classified as buying commission vs selling commission and therefore whether customs value needed to be adjusted.

Documentation

- Contract support such as proposing the necessary terms and conditions to align with both TP policy and customs guidelines on buying commission.

Training

- Proposed training communication to outline to client necessary substance that may need to be justified for customs purposes (i.e., how parties should interact).

Outcome For Client

- Based on analysis undertaken, it was determined that Procurement hub was buyers agent and buying commission was not required to be added to customs value.
- Client will be able to mitigate punitive tariffs of **25%** on procurement fee.
- Protocols to be set up to support customs implications and TP policy.

License Advisory Services

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License Advisory Services

Licenses & Registrations

- Some licenses required to be transitioned on Day 1 in order to continue operations
- Even when PE or nexus requirements do not exist, a license requirement may still exist
- Licensing regulations are governed by each jurisdiction and vary city to city and state to state
- May exist at all levels, depending on location and business activity (city, county, state, federal)
- Both asset and stock acquisitions impact a company's existing licensing footprint

International Grocery & Convenience Store Chain

European company acquired US multi-state chain to expand into the US market

- 11,000+ licenses transitioned in 10 weeks due to M&A activity
  - Research on individual jurisdictions to document requirements for seamless license transition
  - Ongoing communication with each jurisdiction beginning with formal notification and spanning through license issuance
  - Coordinating all requirements accompanying license applications, such as:
    - Background checks and fingerprinting
    - Personal/character reference interviews
    - Inspections/re-inspections
  - Follow-up to ensure licenses secured and roadblocks addressed
  - Delivery of final matrix with all supporting documentation related to the transfer of each license

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