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Structuring Foreign Operations to Minimize Tax and Business Risks

Presented by Dave Hove, Senior Tax Partner
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Issues Risks And Solutions

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Advocate • Collaborate • Educate • Motivate



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Issues Of Entering a Foreign Market

Independent Broker or Distributor

- Utilize their expertise and knowledge of foreign markets
- Could be costly- commissions, loss of control over sales
- No company “feet on the street”

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Issues of Entering a Foreign Market continued...

Foreign Branch

- Extension of U.S. corporation
- Subject to taxation of host country
- Income also subject to U.S. taxation

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Issues of Entering a Foreign Market continued...

Subsidiary- Controlled Foreign Corporation (CFC)

- Organized under the laws of the host country
- Subject to taxation of host country
- Not subject to U.S. taxation unless earnings remitted or deemed remitted

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Tax Issues

Tax Advantages of Branches

- Domestic corporation can deduct losses against U.S. income
- Transfer of assets to a branch is nontaxable event
- S Corporation shareholders can utilize foreign tax credit
- No foreign tax issues when repatriating profits
- No ownership issues

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Tax Issues Continued...

Tax Advantages of a CFC

- CFC allows deferral of tax on foreign earned income
- CFC has more control over timing of income
- Local foreign tax incentives may be available only to a CFC

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Business Issues

- A CFC insulates the U.S. parent from legal liability issues in the host country
- A CFC may present a better local image to potential customers and employees
- A CFC may make it easier to involve foreigners in the venture

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Business Issues Continued...

- A branch may be simpler to operate administratively
- Local laws may require a CFC to have foreign shareholders and/or directors
- Use of a branch avoids minimum capitalization requirements imposed by some countries

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Risks of Foreign Operations

Economic Stability of Host Country

- Currency Stability
- Hyperinflation
- Government Stability

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Risks of Foreign Operations Continued...

VAT Taxes- Increases Cost of Moving Products
– Country selection of physical establishment is key

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Risks of Foreign Operations Continued...

Theft of Intellectual Capital

- Illegal or legal
- From MSNBC.com on March 15, 2010

“China announced plans to force Western companies to turn over their most sensitive technology to Chinese competitors in exchange for access to the country’s markets.”

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Risks of Foreign Operations Continued...

U.S. Political Environment

- “Foreign” is a naughty word to Congress and the IRS

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Other Ideas

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- Allows U.S. manufacturers with foreign sales to save taxes and “borrow from the IRS”

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Other Ideas Continued...

Captive Insurance Companies

- Reduce taxes and insurance costs by self insuring
- Tax efficient means of transferring wealth to shareholders of Captive

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Thank You

Dave Hove, Senior Partner

dhove@lwbj.com

515-222-5680

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