A PRIMER ON DOING BUSINESS IN THE U.S.

IRELAND WEST INTERNATIONAL TRADE CENTER

Co. Galway, Ireland

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About the Presenter: Patrick C. Jordan

- U.S. member of the Irish Diaspora: family from Derryhillagh, Crossmolina, Co. Mayo. Emigrated to Pittsburgh, Pennsylvania via Canada.
- Principal and Director of Business Development of iSQ Power, LLC, a U.S. based global reactive independent power producer/developer.
- Sole Director of the Law Offices of Patrick C. Jordan, dedicated to providing legal services to start-ups/entrepreneurs, energy firms and in energy projects, in Mexico/Latin America, the U.S. and notably, Ireland.
- Licensed attorney in the U.S. (Washington, D.C., Pennsylvania and Virginia --28 years).
- Licensed attorney in Mexico (12 + years)
- Fully bilingual in English and Spanish
- Law Degrees (JDs) from both U.S. and Mexico
- Former Regional Vice President and General Counsel for two multinational energy firms: AREVA T&D and ALSTOM Grid, in charge of the Americas region (North America and Latin America); business with 1 + billion euros annual topline.

U.S. Economy—Current State

- GDP: Annualized 1.4%
- Unemployment: 5%
- Inflation: 1%
- Interest rates: 0.5%
- Balance of trade: negative $45 trillion 677 Billion USD
- Gov´t debt to GDP: 104%
- Currency (USD): 94.58 (down 2.03% from last 12 months/measures dollar against a basket of other currencies).
- Consumer Price Index (CPI): up 1% over last 12 months.

U.S. Trends–Demographic, Political/Cultural

- Demographics:
  - Population is increasingly diverse and getting older.
  - This diversity is underlying interesting changes within the two major political parties:
    - ✓ One party is less diverse, more religious and more conservative, with a membership that is struggling with new demographics and the desire to broaden its voter base, new gender norms and non-traditional family units.
    - ✓ Another party is younger, more diverse, more liberal, more secular, more immigrant and LGBT friendly and generally embraces diversity.
- Cultural/Political:
  - Rise of "non-establishment" political candidates (for both parties) for the office of the President tapping into a perceived voter "anger" toward the federal government.
  - Many constituencies in the U.S. electorate have "cultural"/core issues and beliefs impacting the political selection process-- beyond traditional employment and foreign policy concerns. Significant political/social issues at present include: campaign finance reform; term limits for politicians; 2^{nd} Amendment to the Constitution and right to bear arms versus gun control; immigration; right to choose versus right to life; affirmative action and diversity initiatives; global warming science versus doubters, police accountability, etc.

Market Entry Options

- Market Entry options:
  - Distribution channels. Distributors purchase the manufacturer’s product for resale.
  - Sales agents/representatives. Sourcing clients and sales for the foreign company.
  - Franchising—acquiring the right to an established business logo, name and model in connection with a retail outlet owned by a third party operator.
  - Joint ventures—whether contractual or entity JVs.
- “Brick and Mortar” presence:
  - Via Acquisition
  - Establish a new business vehicle/company

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Typical U.S. Business Establishment Vehicles:
  - Corporations: "C" Corporation and the "S" Corporation.
  - Basic Characteristics of the "C" Corporation:
    - Perpetual life.
    - No minimum capital requirements.
    - Limited liability of shareholders– not personally liable for debts and liabilities of the corporation.
    - Easy transfer of ownership via shares of stock.
    - Most widely used, understood and tested business structure
    - Multiple classes of stock may be authorized by the "C" Corporation.
    - Best business vehicle structure for raising capital
    - Favorable tax treatment (deductibility) for employee benefits expenses.
    - No limit on number of shareholders (except in case of "S" corporations— 100 or fewer shareholders, none of which can be a corporation or non-U.S. citizen)

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Negative aspects of the Corporation:
  - Double taxation at the corporate level and at the shareholder level when dividends are distributed to shareholders.
  - Strict requirements for formal record keeping and there are recurrent costs for corporate maintenance, such as board and shareholder meetings.
  - Dividends must be distributed to each class of shareholders in proportion to their shares.
  - In the case of the "S" Corporation (in which a tax election under Subchapter "S" of the Internal Revenue Service Code is made), although taxation is similar to the taxation treatment of a partnership, the restraints of the number of shares could translate to challenges in raising capital.

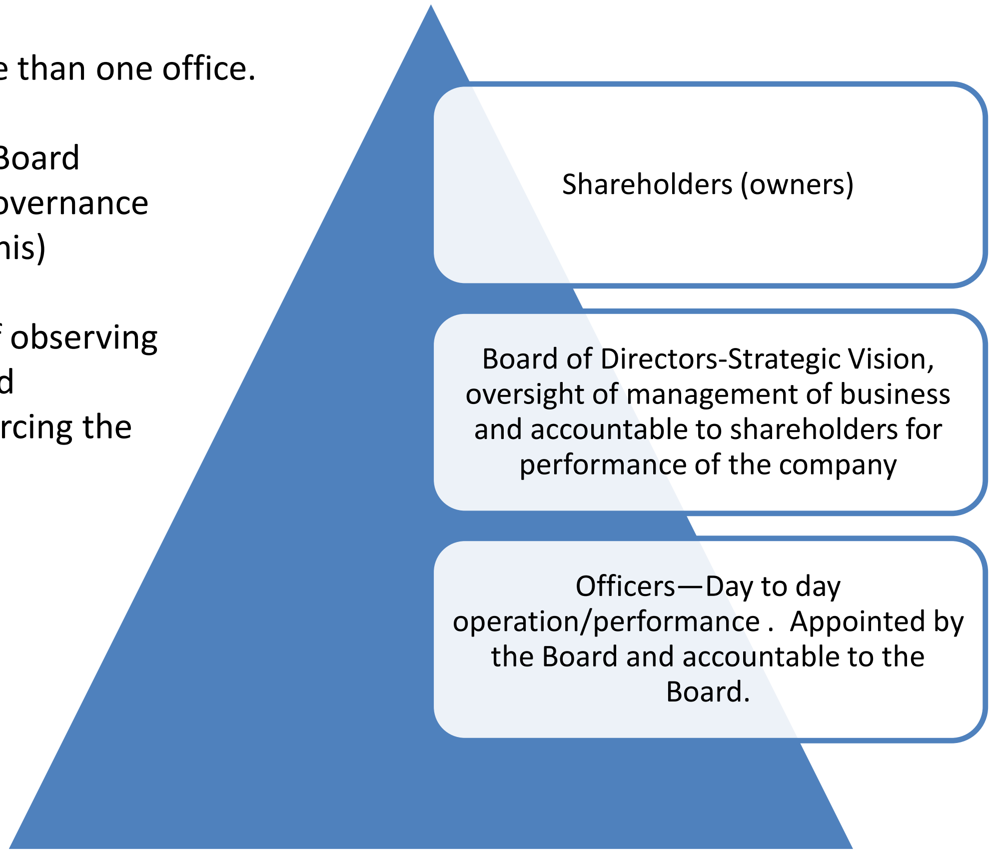
SELECTION OF A BUSINESS VEHICLE/ENTITY

- How to establish:
  - Corporations are created and governed by State law. All 50 States have their own laws governing corporations, although many are patterned after the Revised Model Business Corporation Act.
  - "C" Corporation is considered established upon the successful filing of the articles of incorporation with the office of the State Corporation Commission.
  - Following the filing of the articles of incorporation, an organizational meeting is held in which the board of directors of the company is elected and the bylaws adopted.
  - The bylaws are required by State law and contain the rules for the internal function of the corporation. In the U.S. the bylaws are a non-public document.
  - The bylaws are the primary corporate governance document of the corporation that must adhere to the State law in areas such as regular and special meetings of shareholders, meetings of the board of directors, composition of the board and responsibility of the directors, the officers of the corporation and their duties and other basic matters of corporate governance.

SELECTION OF A BUSINESS VEHICLE/ENTITY

❑ Ownership and Management of the Corporation

- Most State's require at least a president and a secretary.
- Can hold more than one office.
- Can serve on Board (although some governance questions about this)
- Importance of observing Shareholder/board governance—"piercing the corporate veil".



SELECTION OF A BUSINESS VEHICLE/ENTITY

- State of Incorporation: Considerations
  - The corporation can be formed in any one of the 50 States, irrespective of the location of its principal place of business.
  - A corporation organized in one State is required to qualify, in advance, as a "foreign" corporation in any other State where it intends to do business.
  - Delaware has traditionally been considered the most flexible and business friendly state; some companies opt to incorporate where the principal place of business is located.   Should require some preliminary due diligence/investigation to decide.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- The Limited Liability Company (“LLC”)– a very effective and popular hybrid entity between the partnership and the “C” Corporation.
- Basic Characteristics:
  - The LLC combines the attributes of the corporation and partnership.
  - Like the corporation, the LLC has the advantage of limited liability for their owners.
  - The LLC is typically taxed like a partnership; thus, no tax at the corporate level.
  - Like partnerships, LLCs are more flexible in their organization and governance compared to corporations.
  - LLCs are independent entities and have the power to enter into contracts, to hold property and to sue and be sued in their own name.
  - LLCs have become a popular ownership vehicle, particularly for small U.S. businesses.
  - Except for certain regulated industries, there are no restrictions on non-U.S. membership in the LLC.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- According to the U.S. Internal Revenue Service (IRS):
  - An LLC is an entity created by State statute.
  - Depending upon elections made by the LLC and the number of members, the IRS will treat an LLC (for income tax purposes) either as a corporation, partnership, or as part of the owner's tax return (a disregarded entity). The default election (i.e. none taken) is either partnership tax treatment (more than one member of LLC) or sole proprietorship (one member LLC).
  - Thus, a domestic LLC with at least 2 members is classified as a partnership for federal income tax purposes, unless it makes an affirmative election to be taxed as a corporation.
  - An LLC with only one member is treated as an entity disregarded as separate from its owner for income tax purposes (but as a separate entity for employment tax– unless it elects to be treated as a corporation.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Advantages of the LLC:
  - No personal liabilities of owners for the debts and actions of the LLC—except in exceptional circumstances (ex. cosigning or personally guarantying business debt; pledging personal property as collateral; failure to observe corporate formalities (maintenance of books/holding of member meetings; fraud, etc.)
  - Profits and losses may be distributed to owners in any proportion in accordance with the LLC operating agreement.
  - No limitation on number of members; it is possible to have a single member LLC while a partnership must have at least two partners.
  - Excluding certain sensitive industries, no ownership restrictions for non-resident alien owners.
  - No minimum capital requirements.
  - There is a single taxation of income (income passes through to owners and is not taxed at the company level).
  - Much less administrative paperwork and record keeping than a corporation, but may be more initial drafting costs and time spent associated with governance and organization issues.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Disadvantages of the LLC:
  - Transfer restrictions are common and can complicate the buying or selling of ownership interests in the LLC.
  - Given that the LLC is a recently created business vehicle, the law is not as developed as in the case of the “C” Corporation.
  - Raising capital/equity: investors are more comfortable with “C” Corporation structure as it is better understood and the law provides greater clarity.
  - The management structure of the LLC is not as homogenous as for the “C” Corporation; for example, the principals of LLCs use many different titles complicating who has the authority to contractually bind the LLC.
  - LLC members sometimes must pay employment taxes (social security and medicare taxes) on all LLC profits, not just those distributed to members.
  - Potential negative U.S. tax considerations– particularly for the non-U.S., sole owner of the LLC, as explained in subsequent slides.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Formation of the LLC:
  - A certificate of formation or articles of organization must be filed with the Secretary of State (or State Corporation Commission as the case may be) of the State selected for organization.
  - The principal document setting forth the rights and obligations of the members of an LLC is the limited liability company agreement or operating agreement.
  - From a practical standpoint, the operating agreement is very similar to the partnership agreement of a partnership, or a combination of the articles of incorporation, bylaws and any shareholder agreement of a corporation

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Formation of the LLC (cont.): The LLC's Operating Agreement covers matters such as:
  - Allocation of profits and losses.
  - Process for decision making within the LLC, including the authority of the managing member or non-member.
  - Identification of the LLC members as well as their rights and obligations.
  - Equity contributions of the LLC members.
  - Advisable to avoid potential issues regarding future company decisions (ex. bank borrowing and capital raising) for the LLC members to approve the certification of formation or articles of organization, appoint officers (if any) and approve other company actions via organizational meeting.
  - Procedure for the admission of new LLC members.
  - Rights and limitations on transfer, or sale of ownership interest, including any preemptive rights with respect to the issuance of additional membership interests.
  - Procedure and grounds for removal of LLC members.
  - Preemptive rights and put (non-obligatory right to sell ownership interest at certain time for certain price) and call (right to buy ownership interest by a certain tdate for a certain price) rights upon the sale of membership interest.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Management of the LLC:
  - As stated in the LLC Operating Agreement, the LLC is managed by either the members or managers (who need not be members).
  - In the case of the LLC managed by members, the members may designate one or more managing members.
  - Essentially, a manager or a managing member exercises authority that is like those exercised by the general partner in a partnership.
  - LLCs often adopt corporate governance and management structures with a board of directors (or board of managers) that oversees the management of the overall business and sets strategic goals and officers who manage the day-to-day operations.
  - Members of a manager managed LLC keep the to vote on fundamental matters and other protective rights.

Corporation versus LLC from the Standpoint of the Non-Resident (non-U.S.) Shareholder/Owner

Pros and Cons of Establishing an LLC versus a "C" Corporation in the case of the Non-U.S. Owner:

- "C" Corporation is taxed at the corporate level (progressive scale up to 35%) and then the U.S. shareholders are taxed upon distribution of dividends (most likely the dividend will be taxed at qualified rate of no higher than 20%).

- Withholding of dividends payable to non-U.S. owners of "C" Corporation is at 30% subject to lesser rates as stated in the U.S./Ireland Tax Convention (5% of the gross amount of the dividends if the beneficial owner is a company that owns at least 10% of the voting stock of the company paying the dividends;or 15% of the gross amount of the dividends in all other cases).
- LLC has no "corporate" tax obligation, but the non-U.S. owner is subject to withholding on his/its partnership profits at 30%, subject to potentially lesser rates under the U.S./Ireland Tax Convention, as noted above.
- The non-resident owner of the LLC, whether a person or company, will file his/its tax return with the U.S. Internal Revenue Service (IRS) and the IRS may issue a tax refund for any amounts withheld in excess of the actual amounts due from the non-resident taxpayer. To the extent the actual tax is higher than withholding, the IRS will assess tax (plus possible penalty and interest).

Corporation versus LLC from the Standpoint of the Non-Resident (non-U.S.) Shareholder/Owner

- U.S. tax registration of non-U.S. owner(s) of LLC is required; this is not the case for foreign shareholders of the "C" Corporation.

- An LLC owner must pay income tax based on its distributive share of the profits—irrespective of whether all the profits were actually distributed to the owner.

- Another disadvantage of the LLC (with partnership or sole proprietorship tax treatment) is that all taxable income which passes through to the owners is treated as earned income and is subject to self employment taxes (social security or medicare /13.5% on the first $120,000 of net income and 2.65% on net income above $120,000); although some of this may be deductible. For the non-U.S. owner, there is no self-employment tax—unless it is imposed by a social security totalization agreement (most European countries, including Ireland).

- LLC could potentially have exposure to the U.S. Branch Profits Tax for non-U.S. LLC owner (non-resident company) (30% applied to amounts after corporate tax).

- Some debate as to this point: potentially greater legal costs associated with paperwork to document LLC's legal, governance and operational requirements .

- In the case of the non-U.S. LLC owner, there may be some negative tax effects if the LLC owns U.S. real estate and sells it as per the Foreign Investment in Real Property Tax Act (FIRPTA).

Corporation versus LLC from the Standpoint of the Non-Resident (non-U.S.) Shareholder/Owner

- The LLC shall designate a tax withholding agent to calculate the amount due and remit it to the IRS before dispersing monies to non-resident owner.
- A non-U.S. company that is the sole owner of an LLC and considered a disregarded entity for U.S. tax purposes, and where a U.S. permanent establishment is established, the LLC will be treated like a branch of the foreign company for federal income tax purposes resulting in:
    1. 30% withholding on U.S. generated profits for U.S. corporate level income tax; and
    2. U.S. Branch Profit Tax (30% on profits after withholding of corporate income tax on U.S. connected income of the permanent establishment).
- The “C” Corporation is not subject to the Branch Profits Tax.

SUMMARY: Corporation versus LLC from the Standpoint of the Non-Resident (non-U.S.) Shareholder/Owner

Characteristic(s)	"C" Corporation	Limited Liability Company (LLC)
Limitation of Liability	General rule: Yes	General rule: Yes
Fed. Income Taxation at Corporate (entity) level	Yes, income tax on earnings	No
Fed. Income Taxation at shareholder/owner level	Yes, on dividends payable to non-U.S. shareholders (30% withholding applies subject to a lesser rate depending upon tax treaties).	Yes, on profits distributed to non-U.S. owners (30% withholding applies subject to a lesser rate depending upon tax treaties).
Fed. Income Tax Registration Requirement (non-U.S. shareholders/owners)	No, unless the non-U.S. shareholder is a green card holder, or has met the IRS physical presence test in the U.S.	Yes, whether as an individual or company.
U.S. Branch Profits Tax	No.	Yes, if the LLC is solely owned by a non-U.S. company (impact = 30% withholding on net income after federal income tax withholding
Foreign Investment in Real Property Tax Act (FIRPTA). Applies to the gain or loss from the sale of U.S. real estate connected with a U.S. trade or business	No	Yes, in the case of the sole owner (non-U.S. company or individual) of the LLC..
Federal Employment Taxes	Yes. The employer pays half of the self employment taxes (social security/medicare) and the employee the other half. The total obligation is: 13.5% on the first $120,000 of net income and 2.65% on net income above 120,000.	Yes, but unlike the "C" corporation, the employment taxes are actually "self employment taxes" which the LLC owner fully covers. For the non-U.S. owner, there is no self-employment tax—unless it is imposed by a social security totalization agreement (most European countries have this including Ireland)
General Corporate Observations	More developed law; easier to issue ownership shares (stock) and to raise capital.	Law is not as well developed. May have ownership restrictions; financial community more comfortable with "C" Corporation.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Partnership:
  - Is established by written agreement of two or more partners.
  - Simple governance requirements: unlike the corporations which must comply with the rules set forth in State corporation laws, a partnership is governed by the partnership agreement and it has relatively simple rules of governance.
  - Although a partnership is not a legal entity fully separate from its general partners, but it can enter into contracts, own property and sue or be sued.
  - The partnership agreement may address matters such as capitalization, allocation of profits and losses, governance, transfer restrictions and termination procedures.
  - A partner may be an individual, or any type of entity, U.S. or non-U.S.
  - Except in certain regulated industries, as a general rule, there are no restrictions on foreign ownership in partnerships.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Types of Partnerships in the U.S.:
  1. General Partnership:
     - All members of the partnership participate in the management of the business.
     - All partners have joint and several liability for partnership debts and actions of the partnership.
     - A general partnership may register as a “limited liability partnership” in most States, which allows the general partners to have limited liability for partnership debts and actions- if they meet the standards prescribed in State law governing limited liability partnerships.   This form is usually used by partnerships of professionals, such as lawyers and accountants.

SELECTION OF A BUSINESS VEHICLE/ENTITY

❑ Types of Partnerships in the U.S.:

2. Limited Liability Partnership
   - ➢ Allows some partners (general partners) to manage the business and other partners (limited partners) to only invest.
   - ➢ General partners are personally liable for the debts and actions of the partnership; limited partners are only liable to the extent of their investment.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Advantages of the Partnership business vehicle:
  - Income taxed at the individual partner level– no double taxation. The formation is simple and flexible.
  - Profits and losses may be distributed to owners in the proportion established in the partnership agreement.
  - The minimum number of partners is two; no maximum number of partners.
  - No minimum capital requirement-- except in the case of general partners in certain circumstances.
  - Formal record keeping requirements are few compared to the corporation.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Disadvantages of the Partnership business vehicle:

  - Unlimited liability for General Partners: general partners have unlimited personal liability for all business actions and debts except in the case of limited liability partnerships.
  - In the general partnership, there are multiple potential decision makers and managers; in short, decision making and governance lies with all the general partners.
  - Tax disadvantage: tax deductions for employee benefits are not allowed.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Forming a Partnership:
  - State law governs partnerships; as such, partnerships are established under State law.
  - Two or more parties in agreement to commence with a commercial venture are all that is required to establish a General Partnership; no further legal registration or filing is required.
  - A Limited Partnership, however, is viewed as a distinct legal entity from its members. It is established by presenting a certificate of limited partnership with the Secretary of State of the State selected for its organization.
  - State filings are also required for limited liability partnerships, typically including a written partnership agreement.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Management of the Partnership
  - Only general partners manage partnerships.
  - General partners function as agents for the partnership; thus, he/she can hire employees, borrow money, enter into contracts and deal with third parties in the name of the partnership.
  - Conversely, limited partners are prohibited from participating in the management of the business, or act on behalf of the partnership.

SELECTION OF A BUSINESS VEHICLE/ENTITY

Sole Proprietorship:

- Is the most basic type of business form.
- A single individual is the sole owner and operates the business.
- Unless the single owner has an employee, he/she uses his/her personal federal tax identification number.
- No legal action or documentation is required to establish a sole proprietorship and this type of business provides no legal protection to the owner for business related obligations or liabilities.
- Sole proprietorships are generally the least desirable business vehicle for the U.S. market given the personal exposure to liability.

SELECTION OF A BUSINESS VEHICLE/ENTITY

- Branches:
  - A non-U.S. company may establish a branch in a State in the U.S. by qualifying in that State as a non-U.S. business entity in the same manner as entities organized in other States in the U.S.
  - As a general rule, the branch is permitted to conduct the same types of activities under the same conditions as a subsidiary company that is incorporated under the laws of the State concerned.
  - Negative aspect: the branch subjects the non-U.S. company to claims, possible lawsuits and direct liability in the U.S. for the acts and business of the branch.
  - Conversely, when the non-U.S. company establishes a subsidiary corporation in the U.S., the subsidiary can serve in most cases to insulate the non-U.S. parent from liability for the subsidiary's acts and business. For this reason, most non-U.S. investors prefer to do business in the U.S. through a U.S. corporation rather than a branch.
  - Also, there are significant potential tax disincentives to the U.S. branch, including the U.S. Branch Profits Tax.

Fiscal Characteristics of Doing Business in the U.S.

❑ Taxation Basics:

➢ Federal Taxes:

- ✓ Corporate Income Tax: Based on a progressive rate schedule, topping out at 35% for income over $18,333,333 USD.

- ✓ Individual federal income tax (based on U.S. citizenship, or in the case of a non-U.S. citizen--on existence of a permanent establishment in the U.S., or number of days spent in U.S. or having a U.S. green card) is applied via 7 tax brackets (10%, 15%, 25%, 28%, 33%, 35% and the highest at 39.6%) depending upon filing status and income level. In the case of the taxpayer with a permanent establishment in the U.S., only U.S. connected income will be subject to the U.S. income tax (ex. Non-U.S. owner of an LLC).

- ✓ Withholdings (30%) on dividends paid by the "C" corporation to non-U.S. shareholders and, in the case off the LLC, on profit distributed to non-U.S. owners of the LLC; such rate(s) being subject to potential reductions depending upon applicable tax treaties. Adjustments made (refunds or more taxpayer amounts due) following filing of tax returns by taxpayer of the "C" corporation or owner of the LLC.

- ✓ Sales tax (VAT): U.S. government does not impose a federal sales tax or value added tax (VAT).

- ✓ Customs duties and Import Tariffs: All goods imported in the U.S. are dutiable or duty free, as per classification under the Harmonized Tariff Schedule of the U.S. An ad valorem rate (the rate most often applied) is a percentage of the value of the merchandise. Payment of duty is due and payable by the importer of record at the time an entry is filed with U.S. Customs and Border Protection.

Fiscal Characteristics of Doing Business in the U.S.

❑ Taxation Basics:

- Federal Taxes:
  - ✓ Payroll taxes affecting Employers: All payment s for employment in the U.S. are considered wages and subject to:

    1. Federal income tax withholding.
    2. Federal Insurance Contributions Act (FICA) taxes which are social security and medicare.
    3. Federal Unemployment Tax (FUTA)

  - ✓ For payroll taxes, in the case of employees sent to the U.S. by their foreign employer, there is a de minimus exception for amounts less than $3,000 and visits of less than 90 days; also certain treaty provisions may eliminate the need to withhold income taxes (but generally not the need to report).

  - ✓ Excise taxes (an indirect tax): U.S. government imposes excise taxes on a wide range of goods and activities, including gasoline and diesel fuel used for transportation, air travel and manufacturing of certain goods.

  - ✓ Stamp taxes: There is no federal level stamp tax; however, state and local governments frequently impose stamp taxes at the time of officially recording a real estate or other transaction.

Fiscal Characteristics of Doing Business in the U.S.

Corporate Income Tax Deductions:

- Start-up expenses—amortized over 15 year period, however, certain taxpayers may elect to deduct some taxes for tax year of formation.
- Bad debt—resulting from a trade or business may be deducted in year the debt became worthless.
- Current deduction allowed for employer funding and expenses related to employer retirement plans; also profit sharing and stock option plans.
- Research expenses are deductible in the tax year incurred or deferred for 60 months.
- No deduction is allowed for contingent liability until fixed and determinable.
- Net operation losses (business deductions exceeding gross income) may be carried back (3 year limit) or forward (20 year limit) to offset income.
- State and local taxes typically deductible from federal income taxes.
- Employee salaries and other compensation (bonuses, etc.) subject to certain criteria of the U.S. Internal Revenue Service.
- Dividends are not deductible. In the case of “excessive” compensation (outside of the marketplace norm), IRS may consider that the compensation should be taxed as a dividend.

Fiscal Characteristics of Doing Business in the U.S.

- State and Local Taxes:
  - Tax treaties generally do not address State and Local taxes.
  - Indirect taxes are common (i.e. not based on income): franchise taxes (for the privilege of doing business in a state), real estate transfer taxes, telecommunications taxes, commercial rent taxes, hotel occupancy taxes.
  - States have sales and use taxes (indirect taxes), as well as some cities (localities).
  - States and some cities have income taxes.

Fiscal Characteristics of Doing Business in the U.S.

- Business Location Incentives—State and Local (statutory)
  - State and local tax credits
  - Hiring and jobs tax credits
  - Alternative and renewable energy tax credits
  - Research and development credits
  - Training credits
- Other discretionary benefits might include:
  - Property tax abatements
  - Sales tax exemption
  - Infrastructure grants
  - Training grants
  - Cash grants
  - Withholding tax rebates
  - Reduced financing
  - Utility tax exemption
  - Construction fee waivers

Fiscal Characteristics of Doing Business in the U.S.

- Important Tax takeaways:

  - ✓ State and municipal taxes are deductible expenses for federal income tax purposes.
  - ✓ U.S. companies withholding federal corporate income tax on U.S. source payments to foreign persons such as interest, dividends and royalties, generally must withhold at 30% subject to applicable tax treaty provisions between the U.S. and Ireland.
  - ✓ According to the U.S. Tax Convention with Ireland (Jan. 1, 1998), the 30% withholding rate is reduced to not exceed: a) 5% of the gross amount of the dividends if the beneficial owner is a company that owns at least 10% of the voting stock of the company paying the dividends; b) 15% of the gross amount of the dividends in all other cases.
  - ✓ LLC's withholding on a foreign owner's (whether individual or company) distribution share is 30%, subject to the U.S./Irish Tax Convention.
  - ✓ In the LLC, be aware of requirement for foreign owners to register to pay income tax in the U.S.
  - ✓ Pay attention to permanent establishment issues, including potentially the Branch Profits Tax in the case of LLCs.
  - ✓ Transfer pricing – pay close attention to this issue as well.

U.S. Employment Law

- Basic information:
  - Typically, employment in the U.S. is considered to be “at-will”; in other words, the employer can terminate the employee for cause or no cause whatsoever--with two caveats:
    - If the employee has an employment contract, the terms of the contract may establish conditions for employment separation (employee may not be considered as “at will”); and
    - Employees may not be terminated for reasons considered to be discriminatory based on certain protected classes such as gender, sexual orientation, religion, national origin, race, etc. This also includes sexual harassment, workplace retaliation, etc.
  - Worker Adjustment and Retraining Notification Act (WARN): Employers having 100 + employees must provide at least 60days notice in the case of plant closings, mass layoffs, business sales and other triggering event/circumstances.
  - Age Discrimination in Employment Act (ADEA): Prohibits employment discrimination against persons 40 years of age or older in the U.S. ,in a variety of contexts.

U.S. Employment Law

❑ Basic Information:

- Americans with Disabilities Act of 1990 (ADA): Applies to employers with at least 15 employees. Protects against discrimination based on disability. Employee also must provide “reasonable accommodation” for disabled employee.

- Occupational Safety and Health Act of 1970 (OSHA): This legislation covers workplace health and safety and is administered by the Occupational Safety & Health Administration.

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- Employee Retirement Income Security Act (ERISA): This federal law sets minimum standards for most voluntarily established pension and health plans in private industry.

- A word on retirement: with the exception of government employment, unions, etc. , the clear trend today is away from defined benefit pension plans which guaranty a given amount of monthly income in retirement and place investment risk on plan provider. Now, most private employers participate in defined contribution plans, such as a 401 (k), which allows individual employees to choose their retirement investments with no guaranteed minimum or maximum benefits; employees assume investment risk in this type of plan.

Union Considerations

Present State of Unionization in U.S.:

- "Right to Work" states now number 26 in the U.S. Typically, these states allow for a worker's right to work without being compelled to join a union, pay union dues or fees as a condition of employment either before or after hiring. Most commonly found in the South and Southwestern states of the U.S.
- In 2015, only 11.1% of U.S. workers belonged to a labor union, the lowest percentage in 76 years.
- The unionization rate in 2015 for public sector workers , ex. teachers, police officers, firefighters (35.2%) was substantially higher than for private sector workers (6.7%)– mostly workers in utilities, transportation and warehousing, educational services, telecommunications and construction.
- Union election process:
    1. Cards obtained from union and a threshold of 30% of the workforce needs to sign cards saying they want a union.
    2. Once the 30% threshold is met, the employees are eligible to hold an election and the cards are presented to the National Labor Relations Board and the employer.
    3. Employer can accept the union, or request a secret ballot election within 60-days. During this time, both sides basically work to convince the workers as to remaining non-union or becoming a union as the case may be.
    4. The union is elected if more than 50% of the employees vote for the union.

Establishing a U.S. Business and Immigration Constraints.

- Visa Requirements for Irish nationals working for new U.S. company:

  - E-2 Treaty Investor
  - L-1 Intracompany Transferee (ex. employee sent to the U.S. as per a “secondment” arrangement).

Contact information

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THANK YOU/GO RAIBH MAITH AGAT

Photo: St. Patrick's Church, South 20th & Locust Streets, Philadelphia, PA. Constructed by Irish immigrants.