TOP TIPS FOR BUSINESS EXPANSION ACROSS THE POND

Making the decision to expand your business into new territories, like the US, can be a daunting prospect and the key to success is preparation and planning. But knowing where to start and how to access the information your business may need to cover all eventualities can be a challenge. We brought together a Brighter Thinking panel to help you realise your expansion ambition and help you stay on the straight and narrow when doing business in the US.

EARLY STAGE ENTRANTS – WHAT’S GOOD TO KNOW BEFORE YOU GO?

Panellists included:
Emanuel Adam – BritishAmerican Business
Peter Gillingwater – radi8 Global Limited
Dave Springsteen – WithumSmith+Brown, PC
Kristin Konschnik – Butler Snow LLP

The basics
As a guide to your proposed business expansion, it is recommended that you ask yourself some straight-forward operational and practical questions. Some of the questions you may wish to consider include:

- Where are our customers?
- Is there a market for our product, are any changes required?
- What proximity to talent/ skills do we need?
- What local support networks are relevant? e.g. local government or trade organisations that can help provide contacts, find suppliers and customers, and even grants/funding etc.
- What State should we locate in?
- How do we find space?
- What timelines are involved and what aspects must be done early?
- How are the logistics going to work?
- Need to think forward, what are growth and exit plans?
- What type of entity should be set up and how should this be structured?

Other important business considerations

Tax rates
US corporate tax rate has dropped significantly to a flat rate of 21%, but state and local taxes must also be considered as every State has different tax rules. State taxes are based on nexus and not where your business is incorporated, and this can be a complicated issue for start-up companies.

Sales tax
Companies selling from outside a State didn’t previously have to charge sales tax, making for competitive pricing, but the recent Wayfair case now allows States to levy sales tax based on economic nexus. The actual rules are still evolving and are under consideration by various States.

Strategic employees
To make a success of international expansion, finding the first strategic employees is crucial, as they should be the holders of the business plan and drive it locally. With this in mind, the recruitment process needs to be very robust, with proper integration into the existing business.

Employment
The consideration of local employment law and payroll taxes is a necessity. It is easy to slip up on tax exposure by moving people around, and there is a need to keep track of their movements and activities in different States.
Risk management
It is important to consider how your US exposure is ring-fenced. Invariably this will require the use of separate US entities, and just operating through a branch of a UK company is risky and rarely used these days. Contractual arrangements should also be carefully reviewed as should insurances.

ALREADY IN THE US? - TOP TIPS TO BUILD ON YOUR SUCCESS

Panellists included:

Joe Davis – HSBC
Pat Walsh – WithumSmith+Brown, PC
Alex Lydall – Foenix Partners Limited

William Diaz – Fragomen LLP
Nick Farmer – Menzies LLP

For those businesses already established with a presence in the US, the panel were keen to point out a number of developing challenges that trading in the US can bring. These included:

Foreign Exchange (FX)
You need a strategy for FX, with a focus on managing risk rather than speculating. Often there is a big spread of FX knowledge in management teams but always worth seeking expert advice. The external focus is on macro events although you should not predict but guide through use of strategies such as hedging, flexible and forward contracts. It also needs to be clear where the FX risk sits within contracts and whether this should be in the US or UK.

Funding for growth
Once the local entity has been established, it’s necessary to consider how to fund for growth. Most start-ups operations are commonly funded by a parent company, especially as the local operations may be loss making at the start. A global bank can help with this initial funding as well as with local funding further down the line. Once the local entity has been running for maybe 2-3 years it’s worth considering whether local funding is more appropriate. However, if a parent company guarantee is provided, the funding could still be deemed as an intercompany loan by the tax authorities thus disallowing the US tax deduction for interest.

Immigration
Immigration rules are broadly unchanged under the Trump administration, but can be quite subjective and attitudes to approving applications have in some instances become tougher. When seeking to enter the US, if you are travelling on an ESTA, it’s crucial to know what you can do and if you are planning to work you should apply for a Visa. There are a number of different Visa alternatives, and securing a Visa for employees is not an easy step, although UK to US may be easier than with other countries. The immigration process should be built into the upfront timelines, and stumbling blocks can include past convictions, inadequate qualifications etc.

Transfer pricing
Although not a day one issue, transfer pricing should be considered before the first tax period ends. The business model of operating between the two jurisdictions should be critically assessed, identifying what one entity is doing for the other, including use of intellectual property, management time, administrative resources etc. Depending on the size of the group, exemptions from transfer pricing may exist in the UK, but this won’t be the case in the US and companies should have a documented transfer pricing policy and penalties can apply if you are found to be non-compliant.

Connectivity
To be successful internationally, it is vital to have good external advisers and to keep them close. You can’t go it alone, and having a well-coordinated support network that understands and engages with your business can make all the difference.

If you require any further information on any of the issues raised above, please contact Nick Farmer, international tax partner, at Menzies: NFarmer@menzies.co.uk