



2015 GUIDE TO
BUSINESS LAW
 & ACCOUNTING

Expanding Your Business Internationally?

International business transactions are no longer limited to large, multi-national corporations. Small and mid-sized Rochester area businesses are increasingly looking to international markets both to extend the marketplace for their products and services and to expand their supply chain. Although technology has allowed for nearly any business to have a global reach, there are a number of issues you should consider as you contemplate expanding your business internationally.

Cross-border transactions must generally comply with two set of rules – those of the United States and those in the country where you are seeking to do business. It is important not only to know how each set of rules work, but also how they interact and work together. This article points out a few of the key issues to consider, although many others exist and could be of greater importance for businesses operating in certain industries.

One area to consider is how to structure your international business dealings, and how this structure affects liability and taxes for your existing U.S. operations. Businesses often start by transacting with international partners through their existing company. As international transactions grow, they may consider opening a new, separate legal entity to oversee their international operations. Eventually, they may even consider opening a local branch office in a foreign country or a foreign subsidiary through which to operate. Some transactions may call for a joint venture between the U.S. and foreign partners. Each of these choices carries different U.S. and local country tax and liability benefits and burdens that need to be carefully thought out.



PROFESSIONAL OPINION

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Another issue to take into account is intellectual property protection. Patents and trademarks granted by the U.S. government only protect within the U.S. Each other country has its own set of rules for registering and protecting intellectual property there. However, there are several international efforts to help streamline this process. For example, the Patent Cooperation Treaty and the Hague Agreement Concerning the International Registration of Industrial Designs, which provide unified procedures for applying for certain patents in a number of participating countries at once. Beyond having legal protection, a company must also consider the practical and financial reality of trying to enforce their intellectual property rights in another country.

If you plan to have people working for you in another country, you also need to comply with the labor, employment and immigration laws of the local country. Many countries have vastly different labor,



employment and immigration regulations than our own. If you are sending U.S. individuals abroad, the appropriate local visa or work permits must be obtained. Further, you should make sure your U.S. employees understand the local laws that may apply to them. For example, local anti-corruption laws can turn what your employee considers a normal transaction into a criminal bribery offense.

If you are retaining local people abroad, you must decide whether you are hiring these foreign individuals as employees or retaining them as independent contractors under U.S. and local laws. This distinction can affect issues such as your liability for their actions or whether or not you become subject to tax in the foreign country. Foreign countries can also have significant statutory severance and vacation requirements. Cross border transactions can also involve foreign individuals traveling and working in the U.S., in which case the proper visas and work permits must be obtained.

The items above are just a few of the considerations to keep in mind when preparing to expand your business internationally. There are many other issues that may apply in a particular situation. For example, U.S. attorney-client privilege may not apply in certain circumstances, particularly if you become involved in litigation in another country.

The benefits to your business in expanding internationally, however, can easily outweigh what may at first seem like an overwhelming number of possible pitfalls. Understanding your legal obligations and liabilities and performing your due diligence before you enter into a cross-border transaction are essential

to ensuring that you avoid these difficulties.

Your U.S. based legal counsel can help you navigate the U.S. laws that may apply to your cross-border transaction. It is often necessary for them to reach out to their foreign counterparts to help you understand and comply with the local laws in the country where you are seeking to do business. Woods

Oviatt Gilman LLP, for example, is a member of Meritas Law Firms Worldwide, an international network of law firms, which it regularly accesses to help its local clients doing business around the world. ■

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