As your company expands into new geographic territories, the business will look to the CFO Organization to ensure compliance, avoid risk and drive strategies for profit and growth. CFOs seeking to gain a more strategic leadership role need to take charge of tax planning—one of the most important issues companies need to consider when expanding.
TOP TAX CONSIDERATIONS FOR CFOS

Making the decision to expand into a new geography is only the first step. The tax risks and opportunities that need to be taken into consideration after that decision is made require CFOs to do some heavy lifting, including careful consideration of these key tasks:

1. Choosing a legal entity
2. Managing a mobile workforce
3. Understanding transfer pricing
4. Structuring intellectual property

CHOOSING A LEGAL ENTITY

What legal form a company should operate under overseas is one of the first things CFOs should consider. During planning, finance chiefs need to keep key goals in mind (e.g., limiting the initial infrastructure investment and minimizing compliance costs) and consider their company’s risk tolerance before making a final recommendation on entity structuring.

Direct Hires

CFOs must exercise caution when hiring U.S.-based, foreign-based or contract personnel, not only because that decision will affect business success, but because there are non-U.S. laws regarding employment and income taxes. One way for businesses to “test the waters” is by hiring an independent contractor—one who concurrently performs work for their company and other companies in the foreign location.

Hiring a contractor without making an initial investment in infrastructure is a viable solution for companies that need a sales professional on the ground in the new market, but they don’t necessarily need the infrastructure. If infrastructure isn’t needed, don’t invest, because simply having a contractor on the ground won’t create an income tax or tax filing obligation; it’s the physical infrastructure that triggers those local tax obligations.
Representative Office

However, some CFOs might find themselves in a situation where their company doesn’t need a sales person on the ground, but they do need to help create market awareness with products or branding. In this case, it would be beneficial to consider opening a representative office. As a physical infrastructure, it can be a trigger for taxation within the local jurisdiction. However, if it is registered as a representative office locally, it generally won’t trigger taxation as long as activities performed in that office are limited to, for example, market research or liaison activities with the U.S.-based parent location.

Branches or Subsidiaries

Due to rapid growth plans in the new location, some CFOs may need to invest in a new office and hire full-time employees. Before hiring, CFOs need to ensure they are planning for compliance with local payroll and social taxes, as well as pension contribution requirements. And before opening an office, CFOs need to understand the benefits and pitfalls of a branch versus a subsidiary:

**Branch**: A branch does not qualify as a legal entity, because it functions as an extension of the U.S.-based parent company operating directly in the foreign location. As such, there are some downsides to operating a branch office: the parent is subject to taxation in the local jurisdiction, as well as all the risks and liabilities of the branch office. As a branch grows, some businesses might be wary of operating as a branch—due to the increase in liability—and incorporate a subsidiary.

**Subsidiary**: The transition from a branch into a subsidiary of the company is relatively easy and typically tax free (although branch losses may have to be “recaptured” in the U.S.). However, once a subsidiary is created, CFOs need to deal with more infrastructure and additional costs, including a potential statutory audit requirement in some jurisdictions.

BOTTOM LINE: When CFOs are helping to determine how their company should be structured in a new location, they need to carefully consider what type of legal entity should be put into place while also keeping in mind the company’s specific risk tolerance.

MANAGING A MOBILE WORKFORCE

Before CFOs add a dozen unnecessary staff members to their new location, they need to consider immigration, residency and work permit issues as they relate to local staff, U.S.-based staff or staff on assignment (e.g., U.S.-based staff working in the new location in lieu of a local hire).

Of the three options, sending staff on assignment—as opposed to hiring local staff—is becoming a fast favorite for companies around the globe, because in general, these employees don’t become a tax liability until their time on the ground exceeds six months. Once a company decides

1 The U.S. has income tax treaties with more than 100 countries around the globe. In most cases, the trigger for local income tax collection is when the employee has been assigned to the abroad location for more than 183 days. Some treaties trigger after 90 days, but in general, 6 months is a general estimation. It’s important for CFOs to understand the specific income tax regulations in their particular operating country.
to send an employee on assignment, CFOs should ensure the following items are considered:

**Outbound Assignments**
(Staff traveling from the U.S. to the new location)

*Keep everyone honest:* Use assignment letters to define the terms and length of the assignment, making it easier to avoid any confusion over tax planning in the jurisdiction.

*Limit time to increase tax savings:* Keep the assignments short and only extend them only where it becomes necessary to achieve “business trip status” in the local jurisdiction. In the U.S., business trip status is awarded after 12 months on assignment, while other countries have a 24- or 36-month requirement.

*Favor reimbursements over cash:* Reimburse or pay direct relocation, housing and local transportation—rather than provide a cash payment—to avoid confusion over what’s taxable. Whereas the items mentioned may qualify as a non-taxable benefit in the non-U.S. jurisdiction.

**Inbound Assignments**
(Staff traveling from the new location to the U.S.)

*Limit time to increase tax savings:* Keep assignees on temporary L-1 or intra-company transfer visas to avoid/delay Green Card status and the associated tax penalties associated with Green Cards.

*Plan foreign duties:* Determine if assignee(s) will have any significant foreign duties (e.g., deferred compensation) to take advantage of location-specific tax advantages.

*Review tax equalization options:* Consider limiting the amount of tax each assignee is responsible for, which means that the employee pays the amount they would have paid had they remained in the U.S., and the employer reimburses the remainder.

**BOTTOM LINE:** Pre-planning is essential when it comes to adding human capital to new global entities. Before any assignments are given, CFOs should ensure they have drafted and adopted an international assignment policy, developed an international assignment letter template and ironed out a tax reimbursement policy with their professional tax advisor(s).
UNDERSTANDING TRANSFER PRICING

CFOs are increasingly looking to avoid the double taxation that can occur and realize the potential tax savings from selling a product in one jurisdiction and manufacturing it in another. Companies implement transfer-pricing policies to justify intercompany prices to tax authorities, who require intercompany transactions to comply with the “Arm’s-length Standard”—stating prices between related parties should be the same as price between unrelated parties. Transfer-pricing regulations touch nearly all intercompany transactions (e.g., goods, services, licensing, lending and more). And most importantly, transfer pricing policies are mandatory.

As a result, it is an important issue for CFOs to grasp and address when determining how their company will document intercompany transactions to mitigate and reduce the risk of noncompliance. To do so, there is a general checklist of steps to take when implementing a transfer price policy:

Benchmark Intercompany Transactions: Request an economist to complete an analysis of comparable third-party transactions and recommend what pricing should be assigned to specific intercompany transactions based on their findings—but this does not fully satisfy U.S. Internal Revenue Service (IRS) regulations.

Document the Policy: IRS regulations also require that the final methodology chosen for specific transfer pricing is the best available method for any given intercompany transaction. Therefore, companies need to provide documented proof that they are in fact using the best possible methodology.

Draft the Intercompany Agreement: Intercompany agreements should be written to address arms-length standards, as well as specify the services that are going to be rendered and the pricing the all parties have agreed to.

Implement the Policy: Ensure internal accounting policies and invoicing between internal departments is set-up according to your intercompany agreement.

Monitor and Update: Once pricing is established, it isn’t set in stone, because prices need to be adjusted over time in concurrence with the broader market (e.g., third-party comparable transactions) accordingly.

BOTTOM LINE: Getting a physical transfer-pricing structure in place in a company is an essential task for any CFO of a global business—and takes a large initial investment of time and resources. However, once put into place, keeping it operating is generally less of a burden for the finance organization.
STRUCTURING INTELLECTUAL PROPERTY

Once the legal entity and associated staff are ironed out in the non-U.S. jurisdiction, CFOs typically look for alternatives to reduce the company’s global tax burden. One way to help significantly reduce a company’s U.S. global effective tax rate is by considering a non-U.S. intellectual property (IP) structure. The key benefit to moving your IP structure outside the U.S. is a lower tax rate, while the risks include increased compliance requirements in the local jurisdiction, as well as increased U.S. tax compliance requirements.

With that in mind, CFOs considering a non-U.S. IP structure need to ensure they are prepared to modify or add to their existing operational structure when planning around IP:

**Non-U.S. sales infrastructure:** The company needs an operations structure that allows it to sell products outside of the U.S.

**IT system modifications:** Existing or future enterprise resource planning (ERP) or accounting software solution(s) need to be able to handle multi-currency and multi-entity transactions with ease.

**Non-U.S. support:** Companies need staff on the ground in non-U.S. locations to assist with any tasks associated with non-U.S. sales (e.g., contract negotiations, invoicing services and IT/technical assistance).

**BOTTOM LINE:** Having the right sales infrastructure, technology and staff will ensure the new international IP structure works to a company’s advantage. There are several international IP structuring options CFOs can and should consider to optimize their company’s global effective tax rates and minimize tax liabilities. Countries such as Ireland, Cayman Islands and Singapore can offer company’s much lower tax rates than the U.S.

FINAL THOUGHTS

International expansion can be exciting and profitable for any company, but in the midst of the excitement, CFOs need to be attentive to finance-centered concerns. Understanding the risk and rewards associated with legal entity choice, a mobile workforce, transfer pricing and IP structuring will take careful consideration and planning.

At Armanino, our experts can work with CFOs, as well as their legal and tax advisors, to ensure their company is implementing an international expansion strategy that is beneficial to their business, lowers their effective global tax rate and helps them achieve their short- and long-term growth goals.
STRATEGIC INSIGHTS
PRACTICAL ACTION

Armanino LLP provides an integrated set of accounting services—audit, tax, consulting and technology solutions—to a wide range of organizations operating both in the US and globally.

You can count on Armanino to think strategically, to provide the sound insights that lead to positive action. We address not just your immediate issues, but your underlying business challenges, as well — assessing opportunities, weighing risks, and exploring the practical implications of both your short- and long-term decisions.

When you work with us, we give you options that are fully aligned with your business strategy. If you need to do more with less, we will implement the technology to automate your business processes. If it’s financial, we can show you proven benchmarks and best practices that can add value company-wide. If the issue is operational, we’ll consult with your people about workflow efficiencies. If it’s compliance, we’ll ensure you meet the requirements and proactively plan to take full advantage of the changes at hand. At every stage in your company’s lifecycle, we’ll help you find the right balance of people, processes, and technology.

Contact us to schedule an appointment and discuss your business goals

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