



## Doing Business in the United States

Compared to other countries, the United States has an uncommon multi-layered system of laws and regulations from the federal level to 50 individual state systems — even down to the city and county government level. Attend our **on-demand** webinar to learn how to effectively navigate the system by considering the what, when, where, and how.

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### Here is a transcription of this session:

Kirthi Manu:

Good morning. Good afternoon. Good evening to everyone, depending on where you are joining us from today. Can't tell you how excited we are to have you. Looks like we have participants from Barbados, Brazil, Canada, Chile, Germany, Ghana, India, Mexico, Netherlands, Nigeria, Switzerland, Taiwan, and the UK. Wow, we thank you for taking one precious hour out of your day to spend with us and we promise to make it worthwhile.

Kirthi Manu:

Why don't we just go ahead and introduce ourselves and I can start with me, myself. My name is Kirthi Manu and I lead CA's global advisory and outsourcing practice. Our team helps businesses expand both within the United States and across the globe by acting as a single point of contact for all their global needs. Our team can help with entity creation, banking and insurance setup, location services, incentives and grants that Patrick's going to be talking about today.

Kirthi Manu:

Global payroll, health insurance and benefit solutions, human resources, global mobility, immigration through law firm partners, local and state registrations, compliance, day to day bookkeeping, financial reporting, cash flow management, budgeting and forecasting, tax filings and compliance and more. We help our clients across the globe when opportunities beckon you to uncharted territory by acting as your trusted advisor alongside management.

Kirthi Manu:

Navigating the myriad of cross-border business, regulatory, operational, personal, and compliance issues. With that, I'll turn it over to you, Patrick.

Patrick Hanlon:

Good morning, everyone. From St. Louis, Missouri, I'm Patrick Hanlon. I'm a director in our business incentives consulting group. As Kirthi said, I focus on site selection and incentives at the state and federal level to help businesses mid lower their costs. Also, the most important part is find out the best location for their operations. I'm going to turn it over to Stephanie.



Stephanie McDonald:

Thank you, Patrick. My name is Stephanie and I sit in the Charlotte North Carolina office. I am a CFO and work in the global outsourcing and advisory services. All of the different services that Kirthi mentioned, we work alongside one another in regards to helping you set up your entity as efficiently as possible.

Stephanie McDonald:

Then, once your entity is established, we help in doing the administration of the operations of your U.S. entity.

Kirthi Manu:

Exactly right. I do all the talk talking and Stephanie does all the hard work. Moving on the agenda for today. We thought we would walk you through the five considerations as you're looking to expand your business to the United States. The why, when, where, what, and how. Stephanie, are you ready?

Stephanie McDonald:

I am.

Kirthi Manu:

Let's move on to the next slide. Stephanie, I have a question with the stubbornly persistent pandemic, events in Ukraine, and simmering U.S. China tensions that have led numerous commentators, not just usual skeptics to boldly proclaim that we are entering a new era of deglobalization. Factories are reassuring. Economies are decoupling and everyone has given up on free trade.

Kirthi Manu:

Is that what you are seeing as a global CFO? Is this the end of globalization or our business is still expanding to the U.S., and if so, why?

Stephanie McDonald:

Kirthi, that is a great question. The U.S. is still a lucrative place to expand your business. Our GDP per capita is \$61 trillion. The U.S. includes access to new markets as well as capital while expanding into the U.S. has never been simple, it is certainly profitable because with cloud-based operations companies can expand and manage many aspects of their business internationally.

Stephanie McDonald:

If you look at the FDI stats on the screen, Japan is the largest source of foreign direct investments into the U.S. New Zealand is the fastest growing source of FDI in the U.S.

Kirthi Manu:

That is fascinating.

Stephanie McDonald:

Why the United States? The United States it's still the largest consumer market in the world. We have \$23 trillion of GDP and 331 million people. The organization of economic cooperation and development



has ranked the U.S. highly competitive in a regulatory environment. In addition, we have a diverse workforce for every industry.

Stephanie McDonald:

As you're considering to move into the U.S., there's usually going to be someone who specializes in your industry. You're able to pull the talent that you need to support the operations. Now, currently, I have a question for you. When should a foreign company think about setting up the U.S. entity?

Kirthi Manu:

That's an amazing question too, Steph, but if I may just backtrack on that touch a little bit on why you said why the United States, I think you touched on all the points right on. Foreign investors look for established innovative markets that are financially strong and safe while also having strong governance and infrastructure. A strong and robust consumer market like you touched upon is a key reason that U.S. ranks top in the world for foreign direct investments.

Kirthi Manu:

Did you know that the United States has been ranked as a top destination for foreign direct investment for the 10th consecutive year? And the ranking is Testament to the attractiveness of the U.S. to foreign companies despite the challenges posed by the COVID-19 pandemic. You have been so busy, Steph helping international clients expand to the U.S. We are seeing that, not just the data is resonating into reality.

Kirthi Manu:

When should you set up a U.S. entity? Again, a top-top question that our clients ask us. The answer simply is depends on your business model. Foreign corporations and individuals, we see, sell goods to us customers by drop shipment without a U.S. company. It's important to consult your professional advisors before doing this. You may need to register as a foreign for-profit ration, which essentially gives you a license to do business in the USA.

Kirthi Manu:

You may need to register to collect and remit sales tax due to sales tax nexus. In this case, you may want to consider creating a U.S. entity, partly because some states in the U.S. still only accept checks. Yes, you heard me right. They still accept the good old checks and no online sales tax payments. To open a U.S. bank account, you need a U.S. entity. What we are cautioning you here is consult your professional advisors. Don't just jump in and say, "I don't need a U.S. entity."

Kirthi Manu:

Then, later on it comes to bite you and then you have to go back and correct so many steps holds up your entire U.S. expansion plans. As soon as you're ready to materialize your idea and take the next steps to expand your business to the U.S., consult your professional advisors. When you're forming a team, building the idea or developing the application. We see a lot of tech businesses expanding to the U.S.

Kirthi Manu:



When you're entering into contracts, seeking investor funding, issuing stock options to your employees, advertising or making a sale, you may need to consider incorporation. One another important topic that I'll touch on briefly here while we discussed, should you set up a U.S. entity is this concept of permanent establishment risk? It is a risk that the presence of an enterprise and a foreign country has inadvertently created a permanent establishment in that country.

Kirthi Manu:

Meaning the enterprise may inadvertently be liable for corporate income tax and any attendant penalty and interest charges. U.S. tax treaties define a permanent establishment as a fixed place of business through which the business of an entity is wholly or partly carried on. The existence of a permanent establishment or a PE as professional advisors call it, is determined based on the facts and circumstances of each case.

Kirthi Manu:

You cannot take or Google one case and say that applies to you. It is important to consult early on to determine if you need to set up a U.S. entity. There are a few common types of permanent establishments, which I will just move on to the next slide here and show it to you. Those are the common scenarios where you could have a permanent establishment hiring U.S. employees, paying vendors and regulatory bodies, owning inventory, including using fulfillment services.

Kirthi Manu:

Don't think that exempts you leasing an office, et cetera. Another common misconception step that we keep running into global clients is when they tell us we only have independent contractors in the U.S. We don't have an employee. That is not right because an agent who habitually exercises the authority to conclude contracts on behalf of the foreign corporation in the U.S. will create permanent establishment.

Kirthi Manu:

We threw a lot at you in summary, incorporation provides protection against personal liability. Investors may require you to incorporate prior to investing in your startup in the U.S. IP protection in the U.S. entity's name is a good best practice. Consult your legal council. IP protection like patterns, copyrights, trademarks, trade secrets, and so on. Stephanie, would you add anything or do we turn it over to Patrick? As I know people are eager to listen to incentives.

Stephanie McDonald:

I think we covered this and I know we're going to get into a little bit more detail throughout the webinar. Why don't we turn it over to Patrick so he can give us an understanding about site selection.

Kirthi Manu:

Absolutely. Over to you Patrick.

Patrick Hanlon:

Well, thank you very much everybody. Let's talk a little bit about where you should establish your U.S. operations and the pieces that come into play when we look at that. At the high level, there are a number of agencies that can be involved in helping you establish your operations as well as providing some credits or incentives to start those operations in certain areas.



Patrick Hanlon:

At the federal level, there's the Department of Commerce, which has the Economic Development Administration. They provide different grants in assistance through the states to try and encourage a business startup. It's like the Small Business Administration. Then there's a Department of Agriculture. They have rural grants. Department of Energy can provide assistance in how much our energy costs in different areas.

Patrick Hanlon:

Also, if you're in an energy saving type industry or a green industry, the Department of Energy is going to be the one that provides the incentives to encourage that type of industry growth. The department of Labor administers a work opportunity tax credit program. That's a federal program for hiring people from targeted demographics and you get a tax credit at the federal level for that.

Patrick Hanlon:

Then there's a housing and urban development department and they help with community development block grants. Those go down through the States and encourage businesses to locate or hire people from certain areas or locate their operations in certain areas. Then there's a treasury which oversees a number of government back loans and other initiatives to encourage businesses. Those are at the federal level.

Patrick Hanlon:

Then at the state level, the United States has made up of a number of different states and localities that also have assistance that they can provide. They really focus on different industries as well as targeting workforce development. Helping encourage companies to hire from certain demographics or train their employees and create a pipeline to help you stay above your benchmark of number of employees that you need to operate efficiently.

Patrick Hanlon:

Then at the local level, there's their counties, localities, which are cities, townships, and villages, and then even industrial development authorities and port authorities and Chambers of Commerce. All of these different agencies can provide information all the way down to their targeted areas that you want to look at. There's a lot of information out there in a lot of different entities that can help support your location decision.

Patrick Hanlon:

Just to get an idea about that, here's a map of all of CLA's locations. We have our 50 distinct states in the U.S., and then they each have their own political structures and also political leanings. Taxes requirements for setting up business as well as incentives to help locate businesses there. They also have different advantages in terms of higher or lower energy costs or types of energy, access to ports, transportation.

Patrick Hanlon:

There are certain rules of thumb you could stay along the U.S. where parts of the Southeast are known for manufacturing. Parts of the east coast are great for access to ports and shipping coming in from Asia.



The Midwest is known for a great work ethic. There's different parts of the United States that help foster growth in certain industries. We can help you navigate that.

Patrick Hanlon:

Now, when we talk about credits and incentives, we have the federal credits and incentives, which for one, the most part really are industry agnostic. They'll work with almost any industry. Then at the state level, we have different credits and incentives. Each state has its own different set of programs that they use. Those are usually targeted to their type of industries.

Patrick Hanlon:

I sit in St. Louis, Missouri, and I know here they want to target advanced manufacturing distribution centers because we're located in the center of the country. Aerospace because Boeing has a large operation here so they have their different niches of industries that they try to target and grow those not only workforce for those industries, but also grow the industries themselves.

Patrick Hanlon:

Our incentives are targeted towards those industries. Other states have industry have credits and incentives that are more industry agnostic, just like at the federal level where they'll treat all industries the same way, but the types of credits and incentives that are out there typically come in discretionary or statutory. You can see on this chart they follow this wing, of these two different wings or arrows.

Patrick Hanlon:

Discretionary incentives are where the states don't have to provide those to you. They give those to you as an incentive to encourage you to locate there. The statutory incentives mean that if you are in the area in that state, and you have created say in Georgia, if you're in a tier one county and you've created 10 jobs, you're eligible for the Georgia Job Tax Credit, because you created the jobs, you check the boxes, you just fill out the form and claim that.

Patrick Hanlon:

On the discretionary side, you have to talk to the states in advance before your project and receive an offer for those incentives in order to take advantage of them. Then we have tax and non-tax benefits. The tax benefits typically come in the form of tax abatements, income tax credits, or tax exemptions, something that will affect your tax burden. The non-tax side, it's more of cash equivalent.

Patrick Hanlon:

We'll give you some land to use from the industrial development authority and build your plant, or we'll give you a forgivable loan as well as some of those in kind benefits that are becoming more popular these days, which are job recruiting assistance and training assistance. Providing training to your employees at the state or county, or city level, so that your workforce is up to speed with the latest in technologies.

Patrick Hanlon:

A lot of these can be fairly significant amounts anywhere between 10% and 20% of your overall capital investment can come back to you in the form of credits and incentives. It's very worthwhile to look towards those programs. Just wanted to provide an example of the statutory opportunities, because just



about every state in the U.S. has a discretionary incentive program typically targeting your job creation or capital investment, or your training.

Patrick Hanlon:

Those three are the biggest triggers for state discretionary incentives. When you're creating 10 or more jobs and in some areas it can be as low as two jobs or if you're making an investment of \$500,000 or more. Again, if you're in a targeted area, it could be less than \$500,000. Then if you're doing a training program or a hiring program targeting vet veterans, or you have new machinery and equipment that you're trying to train your employees on, there can be programs to assist in those as well.

Patrick Hanlon:

These are the states that have statutory programs. That means if you make an investment or create a number of jobs that qualify, you can just fill out the form and receive a tax credit back and help alleviate either your payroll taxes or some of your income taxes. Some of those can be transferable or saleable. They can actually be cash coming into your business.

Patrick Hanlon:

At the same time, it's important to note that some of these provide an opportunity that you can look back almost a year and capture those benefits as opposed to the discretionary and negotiated incentives, which we have to do in advance of the project. That's one advantage to some of these programs in these dates. When we talk about site selection, that's also an important process. The incentives are a piece of that.

Patrick Hanlon:

As you look at this list of sample criteria, that's what's going to drive your site selection process. We look at our universe of opportunities and that can be domestic United States or international. We help in both regards or global. You define the project you look at if you're a manufacturer you're looking at your electricity costs, your labor costs, whether or not the state is unionized or a right to work state.

Patrick Hanlon:

Then, the labor availability as well as suppliers, so you're going to have different priorities among that sample criteria that affect your decision making process. You start to identify those at the very beginning. Then you start to gather the data from the Bureau of Labor Statistics, the Census Bureau, and other sources of information that you can start to then narrow the list down into maybe your top three to 12 sites.

Patrick Hanlon:

Then from there, we take the qualitative look, which cut us down to the three to 12 sites. We start putting numbers to that. We started looking at quantitative data and really coming up with a weighted analysis that leaves us with what are our top three, maybe the six sites. That's when we start to go visit those sites, look at real estate, and really crunch the numbers in what are operating costs going to be for the first five to 10 years?

Patrick Hanlon:



That includes incentives. Then we look beyond those five to 10 years once the incentive programs have essentially stopped providing a benefit, you're still going to be paying those taxes in that area beyond that initial period. We have to do a very comprehensive analysis to help us finally make that ultimate location selection. Beyond that, there's always additional considerations. We have to look at the environmental issues around certain properties or states.

Patrick Hanlon:

California has a lot of restrictions versus less restrictions in states like Texas. What are the advantages to leasing or purchasing property? Are you going to upfit an existing building or are you going to build land from scratch? These are all things that go, come into play. When we want to look at where we're going to go and what is that initial project going to look like? Are we doing a phase, one analysis just to dip our toe in the U.S. and then grow beyond that into a phase two?

Patrick Hanlon:

These are all considerations that we can help you walk through. That's really all I have for now. We'll come back and answer some questions later, but I'm going to pass it back off to Stephanie and Kirthi.

Stephanie McDonald:

Thank you so much, Patrick. Well, I'm going to invite Kirthi back on because Patrick went through site selection and now I'm sure our viewers want to know what are the additional steps that we need to take in order to set up an operations within the U.S.? Kirthi, would you be able to help provide some information of considerations that they need to make?

Kirthi Manu:

Absolutely, Steph. Just before that, wow, there was a lot of information that Patrick shared. Did you feel the same it resonated I was jotting down few points when clients come to us to expand to the U.S., planning is so key. Many of them are agnostic to the state, "I don't care which state I am in. I have this great idea." That's when we connect with our federal tax solutions and incentives team, Patrick's team.

Kirthi Manu:

Say, "let's plan let's look, we have good relations with economic development councils and every state." Making sure that they get every incentive that they're eligible for. Steph, did you notice another thing he said, you can look back if you missed our team can help look back and claim those credits. That's where I think I love to be part of this team CLA where it's not like, "I just do bookkeeping. I just do financials."

Kirthi Manu:

We talk to each other and clients don't know what they don't know and we are their trusted advisors. Do you think you can have some incentives or I see some cybersecurity issue with this client. I thought it was fascinating when Patrick was talking.

Stephanie McDonald:

It was definitely exciting. To your point, the guidance that he provides for people who have already set up our tools in their site. The fact that you can still get incentives and we can still help is key.

Kirthi Manu:



Absolutely. Ready? What steps do you need to take? Start with a plan as with everything. That's the key start with a plan. The U.S. regulatory landscape is complex and there are many layers to it. The United States has a federal system of government. This means that laws are made at the national, federal state, and local levels. Local laws are those made by cities and counties that apply in those geographic regions.

Kirthi Manu:

All 50 states, along with the U.S. territories and the district of Columbia have their own state and local laws that apply in those jurisdictions. I hope your head is not spinning. Some areas of law, such as patent and copyrights are governed exclusively by the federal law. Many other laws, including laws governing contracts employment relationships and sales transactions are primarily set by individual states.

Kirthi Manu:

Many other areas of law are governed by both federal and state law. When doing business in the U.S. foreign companies should be aware that they are subject to these federal systems of laws, which often differ from state to state. Our team, we work with our global clients to put a U.S. roadmap, literally saying with a 30, 60, 90-day plan to help prioritize what to focus on when you're expanding to the U.S.

Kirthi Manu:

If not, it can be overwhelming and there can be things that slip through the cracks. Let's move on to the next slide here and we'll touch a little bit on it and Stephanie will come in and chime in as well. Let's walk through setting up the U.S. entity. Once you have determined that you need to set up a U.S. entity, it's time to think what kind of a U.S. entity do I set up. Let's move on here to see various kinds of forms of doing business in the U.S.

Kirthi Manu:

A foreign company entering into the U.S. must decide on the form of business entity to use to conduct its U.S. operations. As we have listed in the slide here, the most common types of domestic business entities are corporations LLCs or limited liability companies, partnerships, and there are branches too. Each business form has its own benefits. The choice of the form depends on case specific legal and business factors.

Kirthi Manu:

Please again, don't go by popular search. It needs to be thought through and well-advised. Each type of business entity must be formed according to the laws of the state, in which that entity is formed. All entity types other than partnerships require organizing documents to be filed with the state government. Maybe we'll start with the branch office. A foreign company is not required to contact business in the U.S. through a U.S. entity and could instead open a branch office.

Kirthi Manu:

Remember we touched on it earlier on, but there are some nuances to that. Doing this generally is not advised for tax and liability reasons. A branch office unlike a subsidiary is not a separate legal entity of the parent company. A branch office is considered to be the foreign company operating in the U.S. A foreign company establish a branch office in the U.S. and conducts business in the U.S., the entire company is considered to be doing business in the U.S.

Kirthi Manu:



This can subject the company to taxation on all income owned rather than limiting taxation to the income of the branch level. Accordingly, foreign businesses coming to the U.S. do not generally elect to open a branch office unless specifically advised to do so by their professional advisors or legal council. Selecting one or the other entity forms listed in this slide is typically more advantageous than opening a branch office.

Kirithi Manu:

Moving on to corporations. Many foreign companies do business in the U.S. as corporations. Corporations are organized under state law and each state has its own rules for creating and operating corporations. In the U.S., a corporation may be created under the laws of one state and have its principal place of business in a different state. That's totally possible.

Kirithi Manu:

A logical choice is to incorporate in the state where the business intends to locate its operations, but the legal and liability protection of established corporate laws and the tax savings provided to Delaware companies has earned Delaware the reputation of the incorporation capital of the U.S. However, as I'm going to repeat multiple times in our presentation today, you must consult to your U.S. advisors before deciding Delaware or any state in which you're going to incorporate.

Kirithi Manu:

Protection from personal liability for directors and owners is among the most important features of a corporation. U.S. law treats corporations as legal persons, meaning that a corporation can enter into contracts, sue and be sued. We don't want that, but just stating and carry its own liabilities as a natural person does. The most common corporate form is called a C corporation.

Kirithi Manu:

C corporations are taxed at the corporate income tax rate separate from the company's owners. This means that the profits distributed as payments to the owners are taxed twice first at the corporate level and second at the owner level. This double taxation can be avoided by us companies by electing to be treated as an S corporation, which is a pass through entity for federal tax purposes.

Kirithi Manu:

However, here is important point, a foreign company cannot elect to be treated as an S corporation. What about LLCs? Limited liability companies. A limited liability company balances the related ease and flexibility of a partnership or sole proprietorship structure with the increased risk protection of a corporate structure. Like corporate shareholders, LLC owners known as members enjoy limited liability.

Kirithi Manu:

Meaning personal liability to the company includes only what members have invested and does not extend beyond it to cover corporate losses or debts. Unlike corporations LLCs can elect to be taxed as a corporation or to have income pass through to members and be taxed at that member level. However, many foreign companies that we work with prefer to be taxed at the corporate level to avoid having distributions to members reflected on their personal tax returns.

Kirithi Manu:



Again, there are pros and cons to these structures and we need to have consultations before jumping in and creating a U.S. entity. Last, but certainly not the least, partnerships. A foreign company can also form a partnership, but agreeing with another party to do business together in the U.S. While a written agreement is not required to form a partnership it is advisable to formalize arrangement through a written agreement.

Kirthi Manu:

General partnerships do not offer the same liability benefits as corporations and LLCs. Foreign companies should also know that partnerships can be formed by oral agreement or the conduct without filing any documentation with the State. In some instances, a partnership can be formed unwittingly through an informal agreement to undertake a particular business with another person.

Kirthi Manu:

Again, cautioning foreign companies should engage counsel early on to avoid these misunderstandings. Moving on to the next slide here. What are some of the initial entity setup step tasks. We discussed, which are the various kind of com corporate structures that can be formed. What next? The first step is to create the entity and once the entity's formed, you must file for a Federal Employer Identification Number also called the FEIN number.

Kirthi Manu:

Without that nothing you cannot proceed with anything else in the U.S. Once your FEIN is received, you will need to register with the applicable states, get permits. At this point you can open a bank account, secure windows, contracts, et cetera. I'm not going to read through the slide here, but few things, capitalizing your us entity. It is important to plan are you going to treat it as a debt or an equity? Consult your tax advisors because there are ramifications for each.

Kirthi Manu:

Determining your accounting year end is crucial because that drives when you need to file your tax returns and pay your taxes. Obtaining a FEIN number we discussed that, but one important point that catches foreign businesses unaware is if you have a U.S. officer with a Social Security Number, the process is super easy. You go online, you apply it, and you instantly get it. If not Steph can attest to that it is a nightmare with COVID related delays it's taking up to six to eight weeks to get their FEIN number.

Kirthi Manu:

The key is again, plan, plan, plan ahead, and get a professional advisor. Once you get your FEIN number, then you start getting your state and local tax ID numbers. Opening a U.S. bank account is one of the biggest pain points in our opinion. We are going to have a whole slide dedicated to that. We'll move on to then not forgetting to register with the Electronic Federal Tax Payment System or the EFTPS that enables you to very easily pay your federal taxes online. It's important to do that.

Kirthi Manu:

You obtain your licenses and permits. Patrick touched on it a little bit. We help life sciences, clients, employment agencies, aviation. Each one of them have their own specific nuances like FDA approval, aviation licenses. Making sure you get that. Also, planning for U.S. important export requirements, customs there is a whole different transfer pricing rules for those.



Kirthi Manu:

Make sure that you're having that in the back of your mind and talking to your import export attorneys, or again, your professional advisors. One big surprise, but an unpleasant surprise is review your worldwide insurance policy to catch gaps in the U.S. coverage. One example is U.S. product liability laws differ greatly from product liability laws in other countries.

Kirthi Manu:

In addition to negotiating indemnification and defense clauses, foreign companies doing business in the U.S. should consider adding adequate insurance coverage to protect against product liability claims, direct and officers claims liability claims. Making sure that you review that and don't say that, "I have a worldwide policy. I'm good." The next is determining your legal us address.

Kirthi Manu:

Again, there is a misconception when we help clients, they say, "We have a registered agent address. We're good." That is a misconception. A registered agent is only required to receive official government documents that pertain to your business. It does not mean that it'll receive regular mail or service your business address. We help global clients regularly with virtual mailbox options, which are great.

Kirthi Manu:

It's not just a PO box number. They give you a real street address, extremely cheap for a monthly fee, and they can scan your mail, send it to you. There are amazing options available there, but please do not think that your registered agent is your official address. Finally, but certainly not the least, determining reporting and bookkeeping needs. Again in the U.S., unless you are publicly listed there is no need to report your even monthly financials, none of that.

Kirthi Manu:

However, make sure that you have any banking governance or do your investors require you to report? If so, it's important to plan what accounting software is there? Is it foreign exchange conversions, is it U.S. gap or the IFRS? Again, our team can help important things to keep in mind. Moving on to the probably one of the most fun slides. We very, very often get asked this question.

Kirthi Manu:

How does a foreign company open a U.S. bank account? So much so that our team wrote an article that was published by select USA's investor guide. That's a guide that is given for a lot of foreign companies coming in bound into the U.S. amazing resource for companies. There's a whole chapter dedicated to banking. Real quick, what we are going to touch is for a foreign company, establishing business operations in the U.S.

Kirthi Manu:

Is there a right way to open a bank account? What, why, when, where and how? One thing that we start telling our clients is what do you want from the banking relationship? A bank that offers tailored services to support your specific business needs can be a game changer, especially for startups. Your banking relationship should go beyond transactional activities and lending options to offer you the support services and flexibility you need to as your business grows in the U.S.



Kirthi Manu:

Why might you need a bank account into the U.S.? Do you need business loans? Do you need a line of credit? Do you need merchant services, notary assistance? Believe it or not in the U.S., you need a lot of notarized documents. Again, banks are a great place to get that. Do you need to visit a bank physically? Processing U.S. payroll again, cannot be done without a U.S. bank. Those are the times you need a bank account.

Kirthi Manu:

Very often we run into situations where, "Oh my God, I need to pay a person. I hired him last week. I need to pay her next week. Can we get started?" Unfortunately, no, you need a U.S. bank account, but there are workarounds around that too. Making sure that your compliant as well. Where should your U.S. bank account be located? Brick-and-mortar U.S. bank versus alternatives, lot of FinTech alternatives. Many of those FinTech online banks are insured by the U.S. Federal Deposit insurance Corporation of the FDIC, so very safe.

Kirthi Manu:

There are other options too where you could open a foreign currency USD account with a local bank in your home country various options there. When should you apply for a U.S. bank account? We touched now, once you've set up your U.S. entity and you have your FEIN number, then you are ready to open a bank account. A bank account opening normally takes around three weeks. Again, if you work with the right set of advisors, if not, there is a whole lot of due diligence to be done, and that can drag on.

Kirthi Manu:

Some cases, the banks require an in-person meeting for completing formalities and due diligence. Lastly, how does a non-US company open a bank account in the U.S.? It can be daunting. Lot of us expansion clients are set back by a couple of months just because of the small piece, "I just need a bank account." Banks from their side to be fair to them, they undergo extensive customer due diligence procedures.

Kirthi Manu:

Not just to comply with anti money laundering or antiterrorism requirements, but just to guard against reputational, operational, legal, and concentration risks for them. To refer the investment banking guide banking chapter, we will share that in the link too, and we'll have it in the website too. It talks a lot about the common pitfalls when opening a bank account and a representative list of documents that is typically required.

Kirthi Manu:

If you have it ready, the entire process gets streamlined and moves much faster. Finally, our team works closely with U.S. banks who can do away within in person meeting and expedite setting up your U.S. bank accounts only because in essence, our team does a lot of the due diligence as part of our client acceptance process. The bank has a comfort that your business is a legitimate one.

Kirthi Manu:

That's where bringing us in, comes into the picture. With that, I move on to Steph, who's going to talk about the most interesting part of the session. Steph, everyone wants to hear about tax.



Stephanie McDonald:

Of course, they do. However, I think they probably enjoy that banking session a little bit better. Tax is one of those things that you can't operate a business without. We're going to get into it and talk about tax compliance in the U.S. In the U.S., you have three branches of government, your federal state and local. Local includes your cities and counties. Each of these groups have their own set of rules.

Stephanie McDonald:

When you think about the landscape, you're going to have the rules for federal as well as there could be different rules applicable to your state in local agencies. One of the things and misconceptions that a lot of people have is that your international tax treaties state are covered with your state and local tax. This is not the case in most times, your international tax treaties, yes, are in place with federal tax laws. A lot of times for your state and local tax requirements, those treaties will not apply.

Stephanie McDonald:

As you're thinking about in setting up your business, and you're looking at the implications in regards to your tax compliance, be aware that you want to make sure you understand the state specific laws and sometimes the local laws as well. Additionally, at the state level, one of the things that they tax is they have industry specific tax. There could be specific tax for people in the retail industry or life science, environmental, and finance that's going to be different.

Stephanie McDonald:

As well as they have a tax that applies regardless of industry. When you're looking at your business and when you're setting up those operations, make sure you don't just have a high level understanding of what the state taxes, but you also ask your tax consultants what implications may be put in place based off of the industry of your business. Another thing to consider is that taxes imposed on a state and local level can be for multiple states and multiple local jurisdictions.

Stephanie McDonald:

What states consider is doing business in a state? This can be a variety of activities. For example, if you own or lease property in a state, a state may require specific tax. Having employees working in a state or having your company assets reside in that state. Selling goods and services to customers can enact a sales tax. There are thresholds for all of these considerations, but you don't want to just look at the state in which you may have a physical presence.

Stephanie McDonald:

Meaning you're leasing an office space or you own property, but you also want to look at these different types of activities that you're doing in different states. You want to make sure you're working with your tax consultants to determine at what point of doing these activities will enact an implication that I am required to file a state tax or city and county, but mostly on a state level. They will usually monitor your tax consultants.

Stephanie McDonald:

We usually monitor your activity and your operations, so that way they can have those upfront conversations. Another thing to consider is your intercompany transactions. As you're looking to come into the U.S., think about the type of transactions that you're going to have with all of your related



entities and specifically the transactions that the U.S. entity is going to have with their either sister companies, or the parent home office.

Stephanie McDonald:

If you're deciding that you're going to do dividends and distributions, one of the things to keep in mind is that there may be a withholding tax. As you're taking the money out for those dividends and distributions and paying into the foreign parent, you want to just keep in mind that activity may trigger a specific type of tax. Another thing that's very common is having a transfer pricing methodology.

Stephanie McDonald:

A transfer pricing is a term used to describe the price that will be set for related party transactions. These are transactions that can be for a variety of reasons. Say, your intangible assets or the sell or purchase of inventory supplies and fixed assets between related parties. Any services that are provided on behalf of another related entity or loans and financing between related party.

Stephanie McDonald:

Having a transfer pricing methodology ensures that the treatment of these transactions are consistent across your related entities. One of the things that we encounter is when people come into the U.S., you want to make sure that your consultants are looking and asking these questions and understanding the type of transactions that you're going to have in the future.

Stephanie McDonald:

That way you set up the different, whether it's a transfer pricing methodology or whether it's additional tax that you need to consider, you have those that knowledge upfront before you begin your business. Now, we're going to move on to talk about the difference between federal, state, and local government. Of course, we have three branches of government. This is part of the thing that makes operating in the U.S. a little bit complex.

Stephanie McDonald:

When you think about federal laws, you have to know that federal laws apply to all companies, all people within the U.S. The laws that they usually oversee it's immigration laws, social security, patents, and copyright laws. They also have regulations for data privacy and security, as well as all companies are subject to federal income tax roles. Then you go into your city, counties and states.

Stephanie McDonald:

They primarily operate independently of the federal government. They have their own regulations and laws. For the state, it's important to know that when you're registering your business, most businesses are set up at the state level. Then, the state laws will usually expand from the federal regulations and they'll set requirements similar to your sales tax requirements or minimum wages that companies must pay to provide to their employees working within the state.

Stephanie McDonald:

At the state level, they too will set personal data privacy and security laws, as well as they'll have employee paid leave requirements, sexual harassment policies and training requirements. Then, when you move on to the local level, the local level will as well expand the state laws and the federal



regulations. It's just one more layer down. At the local level, you'll find that certain local jurisdictions may have an additional sales tax implications.

Stephanie McDonald:

They will have a regulation on minimum wages, as well as employee paid leave. They can also add additional restrictions to COVID requirements. When you're conducting your business, a lot of times you will have applicable business permits or taxes, and that's usually done at the local level. Those permits and taxes are going to differ, not just based off of where you are, what city, and county you're operating in, but it's also going to have considerations on the type of business that you have in the industry.

Stephanie McDonald:

To sum it all up, there are 89,000 local governments in the U.S. Then, on top of that, you add the laws of the 52 states as well as federal. It is a complex landscape just because there's so many different bodies of governments that have unique nuances. What a law that's in place in one state will be different from another state. Same thing with city and counties.

Stephanie McDonald:

You want to make sure that you're working with your local U.S. providers to understand what those implications are for where you're doing and conducting your business.

Kirthi Manu:

Stephanie, I was just chuckling. I thought you mentioned it's a bit complicated doing business in the U.S.

Stephanie McDonald:

I said it a couple of times.

Kirthi Manu:

I thought it's a great opportunity to say what you and your team do. You always create a U.S. compliance calendar for our global clients. When they come to the U.S., you start with, "This is all your filing requirements in the U.S. These are the due dates and this is who is handling it." It's a living, breathing document as the business scales, you keep updating that. Now, I know why.

Stephanie McDonald:

Speaking of the compliance calendar, one of the things that you hit on is it is a living and breathing document because when you think about doing business, as your business expands into the U.S., you're going to hit different jurisdictions. You're going to want to make sure that gets refreshed. You're going to make sure that you work closely with our team and your consultant provider that they have the information.

Stephanie McDonald:

We like to be proactive. We like to know in advance if you're expanding, how you're expanding, because what it does is it allows us to prepare you of the different types of business permits that you need on a city and county level, as well as any other laws and regulations you need to be aware of. We're going to get out of tax compliance for a little bit, and we're going to talk about another hot topic, which is in regards to employment needs.



Stephanie McDonald:

You may elect to hire employees in the U.S. from the start of your business, or it may be something that you're going to do six months down the road. Employment needs is an important factor when you're considering setting up your business and just like taxes, employee law is also governed on a federal state and local agency. There's different things that partake at each government level. One of the things to know is that the rules for payroll tax withholding is done at a state level.

Stephanie McDonald:

When you are setting up your business where your employees are going to work, whatever state that is, that's usually the state that's going to require a payroll tax withholdings. As you're registering for your state, and as you continue to expand in your business and you're starting to do work and other states, or in having building a location, you want to make sure that you're adding the considerations of doing another state registration for payroll tax withholdings.

Stephanie McDonald:

The other thing that you want to look at is workers' compensation insurance. Workers compensation insurance covers employees wages and medical benefits if a person is injured on the job or ill at work. It is a no-fault system. Employees who receive this conversation waive the right to sue the company. It's also an assurance that is mandated by the state.

Stephanie McDonald:

When you're talking about workers' compensation and you're looking and you're working with your insurance brokers, one of the things that you want to make sure and understand is that you have coverage for the states in which your workers are doing business in. If you have workers at a site in New York as well as D.C., you want to make sure that your workers' compensation covers both New York and D.C.

Stephanie McDonald:

As you continue to expand your operation into other states, you want to make sure that you're adding those states and that worker's compensation for those states to provide to the employees. The next big topic is in regards to health benefits. The U.S. does not have universal healthcare. In fact, they heavily rely on employers to provide health insurance to their employees.

Stephanie McDonald:

If employers do not provide this benefit, then the employees will be forced to find it on their own. As you're thinking about whether or not you're going to provide health insurance to your employees, one of the things to consider is that what are your competitors providing and what is kind of the market for your group? If you're thinking I may not provide health insurance, but all of your competitors do, you may find it a little bit harder to recruit and retain good talent.

Stephanie McDonald:

Another thing to consider is that at times when you're setting up your operations, you may not have a large group of employees. Health insurance coverage can be quite expensive when you don't have that many employees to spread the cost around. What a lot of companies may decide to do is do a PEO. PEO



is a group benefit plan with multiple companies. It makes the health insurance cost a little bit more affordable while being able to still provide that benefit to your employees.

Stephanie McDonald:

As we talk through, we went through payroll, set up workers' compensation and health employee health benefits. Another really important topic is immigration. If you are thinking that you're going to have a foreign citizen come into the U.S. to help set up and manage your us operations. This is a conversation to have sooner rather than later, because it is a complex and time-consuming conversation. It is a conversation that you should have with a U.S. immigration attorney.

Stephanie McDonald:

One of the things that they're going to look for in determining the type of visa that is needed is they're going to want to understand your short-term or long-term plan for that employee working in the U.S. They're also going to need to know the job type. It matters, what you're doing in the U.S. will matter. The employee's education matters and their employment experience. All of that will play a role in determining the type of visa that you should get as well as the timing.

Stephanie McDonald:

I can't reiterate this enough, if you are thinking about having a foreign citizen come and about, start those conversations with immigration attorneys early, because it can be a very long drawn out process. It can be months. Sometimes it can even be years depending on all of the information that's needed. Definitely, you want to be informed. That way you can make educated decisions on how you're going to establish your U.S. operations.

Stephanie McDonald:

Now, you've got your visa, you have your foreign citizen, and you're ready to send them over. The next thing you want to consider is a review of global mobility. We have a global mobility team that really helps to walk through both with the company and the foreign citizen coming to work in the U.S., the additional compliance and filings that they are going to be required to meet.

Stephanie McDonald:

In addition to that, a global mobility review will help these employees understand their tax and compliance as well as look at limiting double taxation in between countries where there are certain treaties, they will provide them with the information that the employees going to need to know for their individual taxes. They're going to talk through some in kind benefits. A lot of times companies want to help their employees as they're coming into the U.S. set up.

Stephanie McDonald:

They may provide in kind benefits like housing, car and car insurance, that all of those things can have a tax implication. You want to make sure that you're having those upfront conversations. They're not stuck with a huge tax bill when they're doing their filings at the end of the year. The last topic that I want to talk through is data security. In the U.S., we do not have a single, comprehensive federal law for privacy and security.

Stephanie McDonald:



In fact, we have laws on a federal level, a state level, but also sometimes in certain sectors like health and finance. At times, these laws contradict one another, they overlap with each other. It makes it a little bit harder for businesses to comply. What we encourage and recommend is that you connect with our team, our consulting group, or a consulting group that understands the different type of implications based off of your business.

Stephanie McDonald:

They can walk you through the data security laws related to if you're in the health industry or the finance, there's additional laws for employee relations, that can be at a state level or federal level. They'll help you navigate that. I want to comply, but when the law is contradicted one another, it may be a little bit harder to understand which group and which laws that I should be following.

Kirthi Manu:

If I can just chime in on that data real quick. We do help global clients with their GDPR compliance. Now, with one example is a California Data Protection far more stringent. Again, we are here to help, but we don't want to be breaking those laws. We can bring Patrick into for this slide. What amazing material you covered and most of the audiences here and the clients that we help they have the greatest businesses they're successful outside the U.S.

Kirthi Manu:

Now, they want to expand and grow into the U.S. Is there a trusted advisor who can help you reduce costly mistakes and guide you to achieve the desired outcome? Like we covered, should I set up a U.S. entity? When should I set it up? How, where, what? I'm a foreign national don't have a U.S. [inaudible 00:57:50]. I need help to raise funds from a U.S. entity. That's where we have our fabulous team.

Kirthi Manu:

I'm hoping I can see, but if step and Patrick are on the screen as well, we are here to help you. We are a one-stop shop truly. Again, one other slide here that I want to share that visualizes it. We're all visual people. Again, you don't need to work with multiple providers. It's one team, we talk to one another. Sometimes you don't know what you don't know that's where we do the seamless behind the scenes.

Kirthi Manu:

Real quick, I think I see one question, which is about immigration, Steph. You touched a very important point, important thing to plan if you're sending people foreign citizens over to the U.S. The question was, you said many layers are there. There are federal state, local are immigration laws, which one are they? U.S. visa laws are strictly federal.

Stephanie McDonald:

Yes.

Kirthi Manu:

Individual states do not provide or regulate the visas. Visas are issued by the U.S. Embassy or consulate abroad. Many types of visas, including most types of work visas require approval from the U.S. citizenship and immigration services. One thing to point out is our team, we don't help with visas, but we work with very closely with legal counsels.



Kirthi Manu:

We have a whole ecosystem of partners that help foreign businesses come and succeed in the U.S. so we can help work with them. Thank you so much for your time today. We enjoy having you. I know we threw a lot at you. The recording and the materials will be available after that. Look forward to hearing from each of you. Take care.

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