ENTERING THE U.S. MARKET: Opportunities & Risks

Presented by:

John Woodward    Florian Stamm
Anton Mertens    Filiberto Calascibetta
Christophe Van Gool
Economic Incentives and Site Selection in the U.S.

John Woodward
Senior Director, Foreign Investment
Incentives in U.S.

- State / Local
- Statutory / Discretionary
- Industry Specific
- Geographic Specific

Macro
Incentives are a function of what the government can control.

**U.S. State**

- Often Tax Credits
- Infrastructure (with local collaboration)
- Workforce Training – e.g., Georgia “Quick Start”
- Targeted Industries – e.g., Georgia - film production, digital media
- State assets – e.g., Georgia ports
- Jobs-based ≈ “trophy” project (discretionary)
- R&D
Incentives are a function of what the government can control.

U.S. Locality (City, County)

- Real estate tax abatements
- Personal property / machinery & equipment
- Sales tax, e.g., construction, machinery
- Grants, Loans
- Industrial Development Authority, Industrial Revenue Bonds
- Public Utilities
Geographic Specific

- Foreign Trade Zone (FTZ)
- Tax Increment Financing (TIF), Tax Allocation District (TAD)
- Enterprise Zone
- Opportunity Zone (OZ)
- Tier structure (e.g., Georgia)
- CARE - Commercial Area Revitalization Effort
  BID - Business Improvement District
Incentives are finite
- initial, up front, maybe 3, 5, 10 years if lucky

Site Selection Process

Best economic incentive is selection of appropriate location.
Chosen and managed correctly, *these* are incentives:

- **Expenses** - Operating & Capital
  - Labor Costs
  - Real Estate
- **Taxes**
- **Regulations**
- **Workforce**
  - Skilled, educated
  - “Right-to-Work”
- **Access to Market – Supply Chain**
  - Inbound & Outbound
  - Suppliers & Customers
- **Universities / colleges / tech schools**
- **Quality of Life**
Industry Clusters -

*have others like you succeeded there?*

**Why important:**
- Precedence
- Supply Chain
- Workforce
- Support
- Networking
- Business Development

**Examples:**
- Oil & Gas - Houston
- Athletic Apparel - Portland

**example: Atlanta**
- Supply Chain
- Mobility / IoT
- FinTech
- Internet Security
- Health IT
- Advanced Manufacturing
Example of industry clustering:

Automotive in U.S. Southeast

Plus, U.S. headquarters of major foreign brands in South

Mercedes-Benz - Georgia
Porsche - Georgia
Groupe PSA - Georgia
Nissan - Tennessee
Toyota - Texas
Volkswagen - Virginia
## Economic Indicators

<table>
<thead>
<tr>
<th>Economic Indicators</th>
<th>Atlanta, GA</th>
<th>Boston, MA</th>
<th>Chicago, IL</th>
<th>Miami, FL</th>
<th>New York-Newark, NY-NJ</th>
<th>San Francisco, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP (Millions) (2015, advanced statistics)</td>
<td>$363,768</td>
<td>$422,660</td>
<td>$651,222</td>
<td>$328,482</td>
<td>$1,657,457</td>
<td>$470,529</td>
</tr>
<tr>
<td>Net Job Creation (2015-2016 nonfarm employment change)</td>
<td>85,700</td>
<td>36,300</td>
<td>57,200</td>
<td>74,300</td>
<td>159,100</td>
<td>82,000</td>
</tr>
<tr>
<td>Metro Area Workforce</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labor Force (2016)</td>
<td>2,938,612</td>
<td>2,648,305</td>
<td>4,926,474</td>
<td>3,056,145</td>
<td>10,003,260</td>
<td>2,543,805</td>
</tr>
<tr>
<td>Unemployment Rate (2016)</td>
<td>5.1%</td>
<td>3.4%</td>
<td>5.8%</td>
<td>5.0%</td>
<td>4.8%</td>
<td>3.8%</td>
</tr>
<tr>
<td>Median Hourly Wage (May 2016)</td>
<td>$17.94</td>
<td>$25.37</td>
<td>$18.93</td>
<td>$15.92</td>
<td>$22.13</td>
<td>$24.90</td>
</tr>
<tr>
<td>FORTUNE 500 Headquarters</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of FORTUNE 500 Headquarters (2016)</td>
<td>12</td>
<td>4</td>
<td>10</td>
<td>3</td>
<td>47</td>
<td>6</td>
</tr>
</tbody>
</table>


(yet, 86% of companies in Atlanta have fewer than 20 employees)
### Demographics

<table>
<thead>
<tr>
<th>Demographics</th>
<th>Atlanta, GA</th>
<th>Boston, MA</th>
<th>Chicago, IL</th>
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<th>New York-NY-NJ</th>
<th>San Francisco, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metro Area Population</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Population (2016 Estimate)</td>
<td>5,789,700</td>
<td>4,794,447</td>
<td>9,512,999</td>
<td>6,066,387</td>
<td>20,153,634</td>
<td>4,679,166</td>
</tr>
<tr>
<td>Projected Population (2020)</td>
<td>6,189,350</td>
<td>4,906,040</td>
<td>9,825,670</td>
<td>6,443,910</td>
<td>20,670,530</td>
<td>4,848,370</td>
</tr>
<tr>
<td>Projected Growth Rate (2016-2020)</td>
<td>6.9%</td>
<td>2.3%</td>
<td>3.3%</td>
<td>6.2%</td>
<td>2.6%</td>
<td>3.6%</td>
</tr>
<tr>
<td>Median Age (2015 Estimate)</td>
<td>36.2</td>
<td>38.8</td>
<td>37.2</td>
<td>40.9</td>
<td>38.2</td>
<td>38.8</td>
</tr>
<tr>
<td>Foreign Born Population (2015 Estimate)</td>
<td>13.7%</td>
<td>18.8%</td>
<td>17.6%</td>
<td>40.5%</td>
<td>29.3%</td>
<td>30.9%</td>
</tr>
</tbody>
</table>

### Metro Area Education

<table>
<thead>
<tr>
<th>Earned High School Degree or Higher (2015 Estimate)</th>
<th>88.9%</th>
<th>91.4%</th>
<th>88.2%</th>
<th>84.8%</th>
<th>86.1%</th>
<th>88.7%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earned Bachelor's Degree or Higher (2015 Estimate)</td>
<td>37.7%</td>
<td>46.9%</td>
<td>37.2%</td>
<td>30.5%</td>
<td>39.0%</td>
<td>48.5%</td>
</tr>
<tr>
<td>Earned Graduate or Professional Degree (2015 Estimate)</td>
<td>14.2%</td>
<td>21.1%</td>
<td>14.3%</td>
<td>11.3%</td>
<td>16.3%</td>
<td>19.8%</td>
</tr>
</tbody>
</table>

Total Post-secondary Degrees Awarded- Bachelor's degree or higher (2011): 42,126, 73,088, 82,055, 37,259, 163,503, 34,886


Sources: U.S. Census Bureau, 2015 American Community Survey; Metro Atlanta Chamber/Human Capital Research Corp. “Higher Education in America’s Metropolitan Areas: A Statistical Profile, 2013.”
## Transportation/Access

### Metro Area Air Service

<table>
<thead>
<tr>
<th></th>
<th>Atlanta, GA</th>
<th>Boston, MA</th>
<th>Chicago, IL</th>
<th>Miami, FL</th>
<th>New York-Newark, NY-NJ</th>
<th>San Francisco, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>International non-stop markets served</td>
<td>ATL</td>
<td>BOS</td>
<td>ORD</td>
<td>MDW</td>
<td>MIA</td>
<td>FLL</td>
</tr>
<tr>
<td>Domestic non-stop markets served</td>
<td>75</td>
<td>45</td>
<td>58</td>
<td>10</td>
<td>101</td>
<td>50</td>
</tr>
</tbody>
</table>

Source: InterVISTAS Consulting LLC, July 2016.

### Regional Container Port Service

<table>
<thead>
<tr>
<th>Service</th>
<th>Savannah, GA</th>
<th>Boston, MA</th>
<th>Baltimore, MD</th>
<th>Miami, FL</th>
<th>New York, NY</th>
<th>Oakland, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distance to ocean port (miles)</td>
<td>251</td>
<td>0</td>
<td>701</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>

Source: Google Maps; individual port websites.

### Air travel time from Atlanta

- **1 hour**: 1
- **2 hours**: 2
- **3 hours**: 3
- **4 hours**: 4
## Commercial Real Estate

### Metro Area Office Market

<table>
<thead>
<tr>
<th>City</th>
<th>Atlanta, GA</th>
<th>Boston, MA</th>
<th>Chicago, IL</th>
<th>Miami, FL</th>
<th>New York-Newark, NY-NJ</th>
<th>San Francisco, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Class A Asking Rent ($/sq.ft./yr.)</strong></td>
<td>$26.99</td>
<td>$25.88</td>
<td>$26.85</td>
<td>$41.12</td>
<td>Manhattan: $72.34</td>
<td>Northern NJ: $28.58</td>
</tr>
<tr>
<td><strong>Class B Asking Rent ($/sq.ft./yr.)</strong></td>
<td>$18.35</td>
<td>$20.14</td>
<td>$21.32</td>
<td>$29.00</td>
<td>Manhattan: $61.81</td>
<td>Northern NJ: $21.88</td>
</tr>
<tr>
<td><strong>Total Office Market Inventory - Class A,B,C (sq.ft.)</strong></td>
<td>305,143,038</td>
<td>398,520,600</td>
<td>470,652,083</td>
<td>100,460,867</td>
<td>Manhattan: 559,035,040</td>
<td>Northern NJ: 363,737,578</td>
</tr>
<tr>
<td><strong>Total Office Market Vacancy Rate - Class A,B,C</strong></td>
<td>11.9%</td>
<td>8.1%</td>
<td>13.5%</td>
<td>9.4%</td>
<td>Manhattan: 8.1%</td>
<td>Northern NJ: 13.8%</td>
</tr>
<tr>
<td><strong>Metro Area Industrial Market</strong></td>
<td>Atlanta, GA</td>
<td>Boston, MA</td>
<td>Chicago, IL</td>
<td>Miami, FL</td>
<td>Long Island, NY</td>
<td>Northern NJ</td>
</tr>
<tr>
<td><strong>Warehouse &amp; Distribution Asking Rent ($/sq.ft./yr.)</strong></td>
<td>$3.88</td>
<td>$5.83</td>
<td>$5.35</td>
<td>$9.19</td>
<td>Long Island: $15.06</td>
<td>Northern NJ: $6.51</td>
</tr>
<tr>
<td><strong>R&amp;D / Flex Asking Rent ($/sq.ft./yr.)</strong></td>
<td>$9.12</td>
<td>$10.07</td>
<td>$10.99</td>
<td>$17.73</td>
<td>Long Island: $17.92</td>
<td>Northern NJ: $11.48</td>
</tr>
<tr>
<td><strong>Total Industrial Market Inventory (sq.ft.)</strong></td>
<td>689,997,434</td>
<td>513,162,089</td>
<td>1,183,079,762</td>
<td>235,773,330</td>
<td>Long Island: 352,165,798</td>
<td>Northern NJ: 810,511,130</td>
</tr>
<tr>
<td><strong>Total Industrial Market Vacancy Rate</strong></td>
<td>7.6%</td>
<td>6.1%</td>
<td>6.5%</td>
<td>3.7%</td>
<td>Long Island: 3.4%</td>
<td>Northern NJ: 5.8%</td>
</tr>
</tbody>
</table>

*Source: CoStar National Market Reports, Year-End 2016.*
## Cost of Business

<table>
<thead>
<tr>
<th>Cost of Business</th>
<th>Atlanta, GA</th>
<th>Boston, MA</th>
<th>Chicago, IL</th>
<th>Miami, FL</th>
<th>New York, NY</th>
<th>San Francisco, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Business Cost Index (Average = 100)</td>
<td>95.1</td>
<td>101.2</td>
<td>98.3</td>
<td>95.4</td>
<td>104.7</td>
<td>104.5</td>
</tr>
<tr>
<td>Total Tax Index</td>
<td>81.6</td>
<td>92.0</td>
<td>96.7</td>
<td>84.2</td>
<td>104.7</td>
<td>106.3</td>
</tr>
</tbody>
</table>


### State Electricity Prices

<table>
<thead>
<tr>
<th></th>
<th>GA</th>
<th>MA</th>
<th>IL</th>
<th>FL</th>
<th>NY</th>
<th>NJ</th>
<th>CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential (avg price per kilowatt-hour)</td>
<td>11.41¢</td>
<td>19.11¢</td>
<td>12.23¢</td>
<td>11.24¢</td>
<td>NY: 17.59¢</td>
<td>NJ: 15.75¢</td>
<td>17.40¢</td>
</tr>
<tr>
<td>Commercial (avg price per kilowatt-hour)</td>
<td>9.63¢</td>
<td>15.48¢</td>
<td>8.75¢</td>
<td>9.11¢</td>
<td>NY: 14.47¢</td>
<td>NJ: 12.42¢</td>
<td>15.15¢</td>
</tr>
<tr>
<td>Industrial (avg price per kilowatt-hour)</td>
<td>5.64¢</td>
<td>13.11¢</td>
<td>6.37¢</td>
<td>7.81¢</td>
<td>NY: 6.04¢</td>
<td>NJ: 10.14¢</td>
<td>12.07¢</td>
</tr>
</tbody>
</table>

Source: Energy Information Administration, 2016 annual averages.

### State Taxes

<table>
<thead>
<tr>
<th>State Taxes</th>
<th>GA</th>
<th>MA</th>
<th>IL</th>
<th>FL</th>
<th>NY</th>
<th>NJ</th>
<th>CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Corporate Income Tax (Jan. 1, 2017)</td>
<td>6.00%</td>
<td>8.00%</td>
<td>7.75%</td>
<td>5.50%</td>
<td></td>
<td></td>
<td>8.84%</td>
</tr>
<tr>
<td>State Gross Receipts Tax (Jan. 1, 2017)*</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>State Individual Income Tax (Jan. 1, 2017)</td>
<td>1.0% to 6.0% (6 brackets)</td>
<td>5.10%</td>
<td>3.75%</td>
<td>None</td>
<td>NY: 4% to 8.82%</td>
<td>NJ: 1.4% to 8.97%</td>
<td>1.0% to 13.3% (10 brackets)</td>
</tr>
<tr>
<td>State Sales/Use Tax (Jan. 1, 2017)</td>
<td>4.00%</td>
<td>6.25%</td>
<td>6.25%</td>
<td>6.00%</td>
<td>NY: 4.00%</td>
<td>NJ: 6.875%</td>
<td>7.25%</td>
</tr>
</tbody>
</table>

Source: The Tax Foundation, Facts & Figures 2017  *Gross Receipts taxes are complex business taxes imposed at a low rate but on a wide base of transactions, resulting in high effective tax rates that can vary by industry.

### State Unemployment Insurance

<table>
<thead>
<tr>
<th>Taxable Wage Base</th>
<th>GA</th>
<th>MA</th>
<th>IL</th>
<th>FL</th>
<th>NY</th>
<th>NJ</th>
<th>CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>$9,500</td>
<td>$15,000</td>
<td>$12,960</td>
<td>$7,000</td>
<td>NY: $10,700</td>
<td>NJ: $32,600</td>
<td>$7,000</td>
<td></td>
</tr>
</tbody>
</table>

Source: ADP, 2017 Fast Wage and Tax Facts, published 12/08/16
## Cost of Living

<table>
<thead>
<tr>
<th>Cost of Living</th>
<th>Atlanta, GA</th>
<th>Boston, MA</th>
<th>Chicago, IL</th>
<th>Miami, FL</th>
<th>Manhattan, NY</th>
<th>Newark, NJ</th>
<th>San Francisco, CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of Living Index (U.S. average = 100)</td>
<td>98.7</td>
<td>148.1</td>
<td>118.5</td>
<td>111.0</td>
<td>Manhattan: 228.2</td>
<td>Newark: 122.0</td>
<td>177.4</td>
</tr>
<tr>
<td>City Average Housing Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average New Home Price (2400 sq.ft. 4BR 2 BA)</td>
<td>$268,462</td>
<td>$576,189</td>
<td>$460,745</td>
<td>$373,704</td>
<td>Manhattan: $1,621,965</td>
<td>Newark: $500,150</td>
<td>$1,020,413</td>
</tr>
<tr>
<td>Average Monthly Apartment Rent (950 sq.ft. 2BR 2BA)</td>
<td>$1,055</td>
<td>$2,668</td>
<td>$1,525</td>
<td>$1,737</td>
<td>Manhattan: $4,239</td>
<td>Newark: $1,568</td>
<td>$3,548</td>
</tr>
</tbody>
</table>

Source: C2ER Cost of Living Index 2016, annual averages.
Cost of Living

- Atlanta, GA: 98.7
- Miami, FL: 111.0
- Chicago, IL: 118.5
- Boston, MA: 148.1
- San Francisco, CA: 177.4
- New York, NY (Manhattan): 228.2
free land

0% state income tax

unskilled workforce

margin tax
Beware the monsters under the bed ...

- hurricanes
tornados
- unfunded pensions
- state credit rating
- discrimination
- state growth rates
With all these factors, professional site consultants consistently rank Georgia the top U.S. state for business

5 years in a row:

4 years in a row:
“Incentives cannot make a bad site good.”

Joseph Folz
General Counsel
Porsche Cars North America
“In fact, incentives, when you look at the whole picture, it’s just a small piece. We’re making a 50-year decision, and a pile of incentives in Year One, Two or Three over a 50-year decision doesn’t make a gigantic impact.”

Steve Cannon
CEO
Mercedes-Benz USA
John W. Woodward
Senior Director, Foreign Investment
Metro Atlanta Chamber
191 Peachtree Street, NE
Atlanta, GA 30303 USA

+1.404.586.8447
jwoodward@macoc.com

@JohnWWoodward
JohnWoodward
Expanding in the US Market - Legal Considerations -

Florian Stamm
Entering the Market

- Importers
  - Sporadic Success

- Distributing Channels
  - Distributors
  - Agents and Representatives
  - Franchises

- Subsidiary Operation
  - Forming a Subsidiary
  - Acquiring a Business
Local Presence

- Permanent Establishments
- Corporations
- Partnerships
Permanent Establishments

Foreign Co

USA
Corporation

Foreign Co

100%

USA, Inc.
Organization of a Corporation

Shareholders

Board of Directors

Officers

- [CEO]
- President
- [Vice President (s)]
- Treasurer
- Secretary
Partnerships

- General Partnership
- Limited Partnership
- LLC
Limited Liability Company
Corporate Acquisitions
Letter of Intent

- Covenant not to Negotiate
- Purchase Target
- Purchase Price
- Other Terms
- Break-up Fee
- Exclusivity
- Confidentiality
Due Diligence

- Technical
- Financial
- Legal
Top 10 List of Due Diligence Problem Areas

1. Inadequate bad debt and inventory reserves.
2. Improper allocation of non-recurring items.
3. Tax Issues.
4. Internal control weaknesses.
5. Lack of employment contracts for key people.
6. Assignability of key contracts.
7. Excessive related party transactions.
8. Management estimates and representation.
10. Financing agreements – compliance with covenants
Purchase Agreement

- Share / Asset Deal
- Purchase Price
- Financing
- Payment Terms
Common Causes of Liability

• Contractual Liability
• Product Liability
• Piercing the Corporate Veil
QUESTIONS?

Florian Stamm
fstamm@sgrlaw.com
+1.404.815.3719
Immigration Basics: Everything You Wanted to Know But Were Afraid to Ask

Anton Mertens
Coming to America

- Foreign nationals traveling to the United States will, in general, be required to obtain a visa from a Consulate or Embassy of the United States prior to entering the U.S.

- A visa is an endorsement stamped in a passport allowing entrance to the U.S.

- The I-94 is an on-line arrival/departure record which determines how long you can stay in the U.S.
Coming to America

- Those persons intending to visit or work in the U.S. only temporarily must obtain a non-immigrant visa.
- Those persons intending to reside permanently in the U.S. must obtain an immigrant visa (commonly called a green card), a much more difficult and lengthy process.
Most Common Temporary Visas

- Business Visitors (B-1)
- Treaty Traders or Investors (E-1 or E-2)
- Specialty Occupations (H-1B)
- Intracompany Transferees (L-1)
- Students (F-1)
- Interns or Trainees (J-1)
Temporary Business Visitor (B-1)

- Engage in business activities
- Stay 6 months to 1 year
- Must be on foreign payroll
- Visa Waiver Program participant can stay up to 90 days (37 countries participate)
- Electronic System for Travel Authorization (ESTA)
Treaty Trader or Investor (E-1 or E-2)

- Nationality “match”
- Substantial trade between U.S. and treaty country (E-1)
- Substantial investment in U.S. company by treaty national(s) (E-2)
- Actual investor or an executive, supervisory or essential skills employee
Intracompany Transferee (L-1)

- 1 year employment outside of the U.S. during the last 3 years
- For a “related” company: Parent, subsidiary or affiliate
- As an executive, manager, or specialized knowledge employee: Carries out a key process or function involving proprietary knowledge central to company operations or serves to enhance company competitiveness in international markets
Specialty Occupation Worker (H-1B)

- The job must require a bachelor’s degree or its equivalent in the specific specialty as an industry minimum for an entry-level position
- Prevailing wage needs to be paid
- For FY2019 only 65,000 visas available plus 20,000 visas for workers with U.S.-awarded Master’s degree
- H-1B random lottery was used just like last year
Permanent Visas

• Green cards
  ✓ Employment-based preferences
  ✓ Family-based preferences
  ✓ Asylum, Diversity Visa Lottery, etc.

• Adjustment of status or consular processing
  • … A Long Wait!
Practical Tips

• Retain a law firm experienced in assisting international clients

• Always abide by U.S. and state immigration laws (Form I-9 and E-Verify)

• Consider a long-term strategy

• Comprehensive Immigration Reform may change immigration options, but not any time soon
QUESTIONS?

Anton Mertens
amertens@burr.com
+1.404.685.4267
Starting a Business in the U.S. - Tax Highlights -

Filiberto Calascibetta

Rödl & Partner
Highlights on the U.S. Tax System

- Three levels of taxation

1. **Federal** (Income tax, Excise tax)

2. **State taxation** (Income Tax, Franchise Tax, Sale and Use tax)

3. **Local taxes** (Counties, Cities, Property taxes)
Highlights on the U.S. Tax System

Which can be the tax burden for a foreign investor starting a business in the U.S.?
Highlights on the U.S. Tax System

Starting January 1, 2018: federal income tax rate lowered to 21% (flat rate)

State income tax: many factors may affect the actual rates, which may range from 3% to 7%
Highlights on the U.S. Tax System

Companies can benefit of substantial tax write offs on investments:

• Bonus depreciation increased from 50% to 100% thru 2022 (this will decrease to 80% in 2023, 60% in 2024, 40% in 2025, and 20% in 2026)

• Qualifying used business equipment is now eligible for bonus depreciation

• Section 179 2018 limit was increased from $500,000 to $1,000,000
Highlights on the U.S. Tax System

Companies can benefit of higher tax write offs:

- Depreciation limit on passenger cars used for business has been increased to $10,000 in year one, $16,000 year two, $9,600 in year three, and $5,760 in year four and beyond
Highlights on the U.S. Tax System

• Net Operating loss (NOL) can be carry forward indefinitely, however NOL limited to 80% of taxable income

• Business interest deduction is now capped at 30% of business interest income + 30% of Adjusted Taxable Income (ATI)

• Starting Jan 1, 2018 Business deduction is denied for entertainment expenses
Choosing your company structure

- C-Corporation (taxed on a corporate level, then dividend usually benefit of a lower taxation on the foreign shareholder level)

- Limited Liability Company – transparent for tax purposes (unless an election is made)

- Partnership – transparent for tax purposes
Highlights on the U.S. Tax System

- Payroll taxes
- Social security tax will still be at 6.2% for the employer, for wages up to $128,400
- Medicare (Hospital Insurance) is 1.45% for wages up to $200,000 then 2.35% for wages in excess of that
Highlights on the U.S. tax system: STATE TAXATION

Companies are taxed in those STATES where they have a sufficient presence, considered a Nexus:

- Employees
- Inventory
- Services such as installation, after sales service etc.
- Agents, sales reps
Highlights on the U.S. tax system: STATE TAXATION

- Companies maybe be taxed in several States,
- However, by applying specific apportionment factors, actual income/franchise tax in a State is usually lowered
Highlights on the U.S. tax system: STATE TAXATION

• How much is the State Taxation going to affect my site selection process?

• State tax burden maybe lower in certain states, however most times the choice of the business location, is primarily driven by business factors
QUESTIONS?

Filiberto Calascibetta
filiberto.calascibetta@roedlusa.com
+1.404.586.3479

Rödl & Partner
Insurance for Foreign Companies in the USA

Christophe Van Gool
Unique Legal Aspects in the U.S.

Because of a very different legal system, insurance in the U.S. is more complicated and more costly

- Common Law / Case Law / Law Precedence
- The Players: Jury, Judge, Lawyers, Media
- Pre-Trial Discovery (potential for abuse)
- Punitive and Exemplary Damages
- Class Action
- Lawyers‘ Fees, Contingency Fee
Typical for U.S. Insurance

**Typical for U.S. Insurance:**

- Hold Harmless Agreements
  *Contractual liability/indemnity agreements*

- Additional Insureds
  *Inclusion of co-insured individuals in the policy (including by name)*

- Workers’ Compensation
- Employer’s Liability
- Insurance Certificates
  *Standard in the U.S.*
**Liability**

- **Costs:**
  Count on an average premium 6–10 times higher than European liability insurance for direct exports to the US and a “tangible” minimum premium.

- **Sustainability and the policy expiration trap:**
  As soon as your products are on the US market, you should maintain insurance coverage for their lifetime. You will pay a (minimum) premium for many years, even if revenue is generated only once or in low volume. You should factor that into your costing (trigger and long-tail).

- **Sum insured:**
  In most cases, increasing the sum insured is appropriate because, in the US, costs (e.g. for lawyers and experts) are counted towards the sum insured.

- **Exclusion of punitive and exemplary damages:**
  Compensation for damages awarded to a plaintiff in a civil procedure beyond the real damage sustained.
D&O Insurance

Directors and Officers Liability Insurance
(or asset loss liability insurance for governing bodies of corporations and corporate executives)

• **Purpose of D&O insurance**
  – Cover risk of personal liability by a manager in the performance of his duties for a company = protect your own wallet
  – Protect the policyholder against mistakes by management

• **Insured individuals**
  – **People running the company** (members of the management, supervisory, and advisory boards; members of admin. boards, gen. managers)
  – **Executive employees**
  – **Lump-sum coverage** (insured individuals are not named personally; instead, coverage is for a lump sum: “… all current, former, and future members of the management board, general managers, …”).
Workers’ Compensation Insurance

- Mandatory (from a minimum number of employees – state by state)
- Wage replacement and medical benefits
- Private insurance versus monopolistic states (North Dakota, Ohio, Washington)
- Employer’s Liability
- Regulated state by state
- Officers: choice to be included/excluded
- Yearly audit
Automobile Insurance

- Mandatory
- Regulated state by state
- Minimum liability limits (very low compared to Europe) also set state by state.

For example:
- AL : 25/50/25
- GA : 25/50/25
- FLA : 10/20/10

max each person / max per accident / max property
Supply Chain Risks

- Just in time / contractual liability
- Contingent business interruption
- Long global supply lines / quality issues
- Natural disasters
- Cyber
ENTERING THE U.S. MARKET: Opportunities & Risks

For More Information:

John Woodward  +1.404.586.8447  jwoodward@macoc.com
Florian Stamm  +1.404.815.3719  fstamm@sgrlaw.com
Anton Mertens  +1.404.685.4267  amertens@burr.com
Filiberto Calascibetta  +1.404.586.3479  filiberto.calascibetta@roedlusa.com
Christophe Van Gool  +1.678.475.3853  christophe.vangool@epicbrokers.com