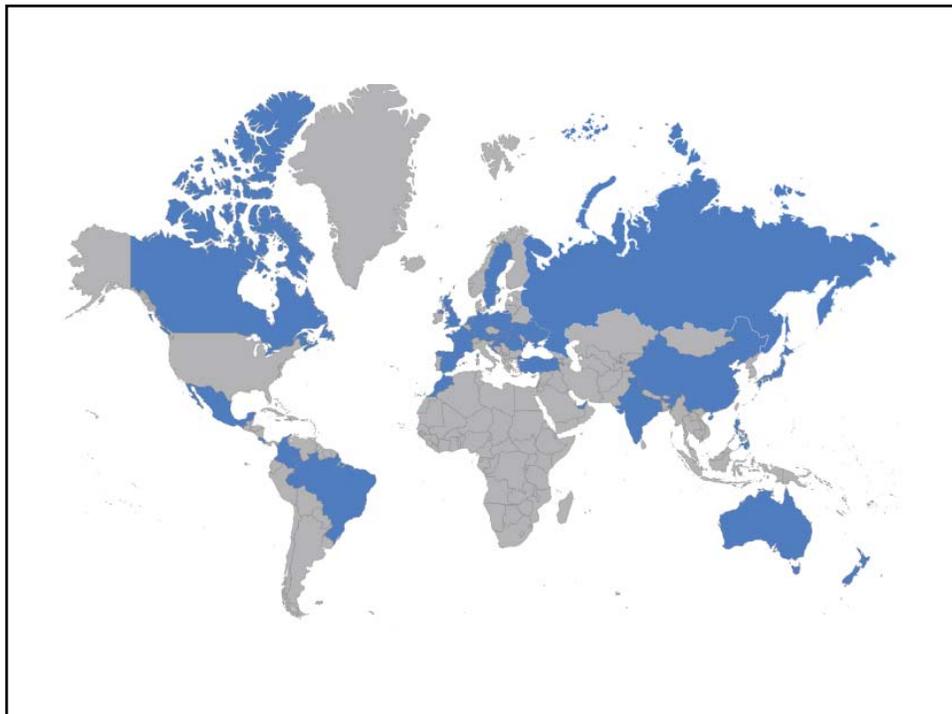


Corporate Tax Update
INTERNATIONAL

Presented By:
DAVE ACHEY, CPA, MST
Manager | Tax Services Group





› Meet Franz

Franz Müller, CFO
ABC USA, Inc.



About

ABC GmbH is a family-owned business based in Austria. It distributes its products to the U.S. market through its wholly-owned subsidiary ABC USA, Inc.

Franz's U.S. Tax Challenges

- Withholding Tax
- Parent Co. Permanent Establishment
- Transfer Pricing
- BEPS

How RKL Can Help

- Treaty Analysis
- Reporting Assistance
- Transfer Pricing Study

› U.S. Withholding Tax

- Most payments from the U.S. to a foreign person or entity will be subject to withholding tax and reporting.
- Fixed, Determinable, Annual, Periodical Income (FDAP)
 - Includes interest, dividends, rents, royalties, premiums, annuities and certain wages.
 - 30% withholding tax on gross income.
 - Withholding rate may be reduced by treaty.
- Effectively Connected Income (ECI)
 - Income from a U.S. trade or business.
 - Generally exempt from withholding tax.
 - 37% or 21% withholding tax required on foreign partners in a partnership that has ECI.



› U.S. Withholding Tax

Relevant Tax Forms:

- W-8 Series
 - Establishes tax status of the payee.
 - Should always be requested before making payment to foreign person.
- 1042 Series - Withholding Tax on FDAP
 - Due March 15.
 - Form required to be filed regardless of tax exemption, including exemption for ECI.
- 8804, 8805, 8813 – Withholding on Partnership ECI
 - Due 15th day of 3rd month after partnership's year end.
 - 8813 filed quarterly.



› Permanent Establishment

- Term defined under each U.S. tax treaty
- Generally “a fixed place of business through which the business of an enterprise is wholly or partially carried on.”
- Including, but not limited to:
 - Place of management
 - Branch
 - Office
 - Factory
 - Workshop
 - Mine, oil well, quarry, etc.
- Exception if limited to inventory activities



› Transfer Pricing

- Pricing between controlled (related) entities.
- Transactions should be priced at arm's length.
- IRS and foreign taxing authorities focus on transfer pricing to determine whether income is allocated appropriately to their jurisdiction.
- Regulations found at Reg. §1.482.
- Transaction-based and profit-based methods.
- Local File documents local country TP approach.
- Master File documents group's TP approach.



› BEPS

- Base-Erosion and Profit Shifting.
- Initiative of the Organization for Economic Cooperation and Development.
- Adopted by most industrialized nations, including U.S.
- BEPS Action 13 requires Country-by-Country Report, Local File, Master File.
- Reports income, assets, employees, taxes, etc. by jurisdiction.
- Applicable to multinational groups with consolidated revenues in excess of €750 million.



› Meet Maria

Maria Lopez,
VP of Finance
123 Corporation



About

- Small corporation based in York, PA
- Production subsidiary in Mexico
- Distribution operations through a third-party logistics (3PL) provider in the Netherlands
- Licenses inventory management software from vendor in Canada

Tax Issues Maria is Facing

- GILTI
- Subpart F
- Withholding Tax
- Foreign Bank Account Reporting (FBAR)

Planning Opportunities

- Strategic Repatriation
- FDII

› GILTI

- Global Intangible Low-Taxed Income
- Not limited to intangible income
- Income earned by a controlled foreign corporation (CFC) above a 10% return on its depreciable tangible property used to generate the income
- 50% deduction against GILTI allowed for C-Corps generally reduces tax rate to 10.5%
- Foreign Tax Credits allowed against remaining GILTI, subject to 80% “haircut”
- FTCs relating to GILTI income cannot be carried forward or backward



› Subpart F Income

- Subpart F income is made up of:
 - Foreign-Based Company Income
 - Certain Insurance Income
 - Boycott Income
 - Illegal Bribes and Kickbacks
 - Income from "bad" countries (Iran, North Korea, etc. that we do not have diplomatic relations with)
- Foreign Base Company Income
 - Foreign Base Company Sales
 - Foreign Base Company Services
 - Foreign Personal Holding Company Income
 - Foreign Based Company Oil-Related Income (repealed)
- Limited to current year Earnings and Profits (E&P)



› U.S. Withholding Tax

Payments to foreign individuals and entities

- Form W-8 documentation required to be on file before making payment to vendor for treaty benefit to apply
- Treaty rate modification
- FDAP – Includes passive income types, also personal services
- Reporting required regardless of treaty rate



› U.S. Withholding Tax

Example for Maria and 123 Corporation:

- Licenses for inventory management software
- Form W-8BEN-E requested from vendor – establishes eligibility for treaty benefit
- Review of Canada-United States Tax Treaty as amended by most recent protocol
- Software subscription as a royalty (Article XII)
- Exemption from withholding
- Form 1042 annual filing due March 15



› Foreign Bank Account Reporting

- FinCEN 114 (FBAR)
 - \$10,000 reporting threshold is for the total of all financial account balances, rather than per account.
 - Calendar year report, translated at Dec 31 rate.
- Foreign Account Tax Compliance Act (FATCA)
 - Form 8938.
 - Both individuals and domestic entities may have filing requirement.
 - Higher reporting thresholds than FBAR, thresholds vary based on residency and marital status.
 - Includes ownership interests in foreign entities.
- Includes all financial accounts, not just bank accounts.



› Foreign Tax Credit

- Direct credit allowed for foreign tax paid by U.S. entity or foreign branch.
- Indirect credit for taxes deemed paid on income distributed as dividends – REPEALED.
- Indirect credit for taxes deemed paid on Subpart F income – available only to C Corporations.
- Foreign Tax Credit “Baskets”:
 - General
 - Passive
 - GILTI – new
 - Foreign Branch – new



› Cash Repatriation

- Previously Taxed Earnings and Profits (PTEP)
 - Earnings taxed under anti-deferral rules
 - Not subject to U.S. tax again on distribution to U.S. shareholder
 - Plan for global cash management
- Participation Exemption (DRD)
 - 100% dividends-received deduction allowed against dividends received from 10%-owned foreign corporation
 - Exemption is only allowed to C-corporations
- Consider: Local Country Withholding Tax



› Foreign-Derived Intangible Income

- Informally known as “FDII.”
- Deduction to incentivize export of sales and services.
- Income eligible for deduction is profit above a 10% return on depreciable tangible property used to generate the income.
- May reduce tax rate on eligible income to as low as 13.125% through 2025 (16.406% thereafter).
- Limited by taxable income.
- Available only to C Corporations.



› Meet Khalid

Khalid Williams,
Owner
XYZ Technologies



About

- Founded XYZ Technologies in 2011
- Provides digital products and services
- Operates primarily from Malvern, PA
- Maintains a server in Marseille to better serve European and North African markets

Looking forward to 2022...

- Increased state, federal, and global reporting requirements
- Economic versus physical presence for tax liability
- Consumer data protection responsibilities

› OECD Global Tax Initiatives

- Organization for Economic Co-operation and Development (OECD)
- Seeks “Consensus Based Solution” to taxation of the digitized global economy
- Pillar I – Allocate profits to match taxing rights to location of value creation
- Pillar II – Anti base-erosion, minimum tax
- 2020 target date for adoption by member countries
- Physical Presence vs. Economic Nexus
- Market Sourcing



› Unilateral Digital Taxes

- Generally applicable to large corporations
- France – Implemented 3% digital services tax retroactive to 1 January 2019
- Austria, Italy, Spain, UK – Digital services taxes with proposed effective dates in 2020
- India’s 6% “Equalization Levy” has applied to online advertising since 2016



**FOCUSED.
ON YOU.**

DAVE ACHEY
dachey@rklcpa.com | RKLcpa.com

