Guide to

Canadian Business

Expansion to the U.S.

Vol. 2

INVEST BUFFALO NIAGARA

INVEST
BUFFALO NIAGARA

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BUFFALONIAGARA.ORG

Letter from the Erie County Executive

Western New York is open for business.

Our friends and neighbors across the border often leverage Buffalo Niagara's innate advantages to grow their business and enter a new market full of opportunity. I am happy to see so many Canadian businesses succeeding here.

Since 2012, Invest Buffalo Niagara has attracted 45 Canadian business expansions creating 1,030 jobs and over $146 million in investment. Our strategic geography and depth of resources allows for an easy expansion process.

I am excited to continue my partnership with Invest Buffalo Niagara to support Canadian business expansions. Western New York's collaborative nature is one of our greatest strengths and offers to those seeking support. This Volume 2 Guide is a compilation of our region's best insights on what is often a complicated and daunting process. Leverage our expertise and Invest Buffalo Niagara's dedicated team of project managers.

I hope to soon welcome your business to our community and offer my assistance wherever needed as well.

Best,
Erie County Executive Mark Poloncarz

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Did you know?

Look for these call-outs. For more information about doing business in Buffalo Niagara with-in your target industry visit:

buffaloniagara.org

Strategically Located

10 HOURS

The perimeter of the area shaded in green indicates a 10-hour drive from Buffalo Niagara.

The region's strategic location on the Canadian-American border is within 500 miles of 40% of the bi-national population. Our bi-national gateway for commerce facilitates $82.5 billion in annual trade between Canada and the United States.

Logistics in Buffalo Niagara

For Canadian companies looking to grow their business in the U.S., the Buffalo Niagara Region offers one of the strongest logistics networks and comprehensive options for warehousing and distribution in North America.

Our region is a shipping and logistics hub that provides a market that no other city in the United States or Canada can match because of its location on two Great Lakes. Our region is home to eight international ports of entry, four automobile border crossings, three rail border crossings and one water port. Buffalo Niagara is also home to a broad spectrum of cross-border services required for successful entry to the U.S. marketplace for our Canadian partners including: customs brokerage expertise, 3PL warehousing services, trucking and distribution services, and Can-Am and international legal and financial assistance.

As a Canadian company considering U.S. expansion, shipping supplies to the U.S. will be an important aspect of your business. One of the best methods to receive goods from international suppliers is through the Port of New York and New Jersey. This port is the gateway to one of the most concentrated and affluent consumer markets in the world. It is the largest port on the East Coast, and the third-largest in the nation. In 2016, the Port of New York and New Jersey handled 3,602,508 cargo containers, valued at nearly $200 billion. These volumes allowed the port to maintain its position as the busiest on the East Coast with nearly 30% of the total market share.

There are multiple ways to move goods to Buffalo Niagara from the NY/NJ ports. Use their rail system or transport your goods via truck using the extensive roadway network throughout the state and region. The NY/NJ ports are located under 400 miles from Western New York, a less than 6-hour drive to most parts of the region. Once the product is finished and ready for the end user, Buffalo Niagara is within 500 miles (or a 10-hour drive) of 40% of the continental North American population.

This comprehensive infrastructure, all designed to help Canadian goods and services successfully enter the vast U.S. marketplace, helps facilitate $81 billion in annual trade between Canada and the U.S. That's 30% of the total trade conducted between the world's two largest trading partners. And the volume continues to grow in double digits annually. For our Canadian partners, this means their supplies and goods can easily and efficiently cross international borders and be in the hands of tens of millions of consumers in as little as one day!

For more information on this topic please contact Peter Sigurdson at Sonwil Distribution. Peter can be reached at: 1-716-684-0555 psigurdson@sonwil.com

Did you know?

Buffalo Niagara offers Seven International Ports of Entry

4 HIGHWAY | 3,675-mile network of major interstates, state routes and local arterial roads is a critical factor in enabling effective connections for the region's economy.

2 RAIL | Served by four Class I railroads, one Class II (or Regional) railroad, and three Class III (or Short Line) railroads. Considered one of the largest railheads in the U.S.

1 PORT | The Port of Buffalo, the first major U.S. Port of Call encountered when entering the Great Lakes, consists of 28 terminals. The Port features a 230-ton American crawler crane and a heavy-duty front-end loader.

Importing Goods

It makes sense for Canadian companies to sell their goods in the U.S. The U.S., with almost nine-times the Canadian population, offers tremendous growth potential. In addition, the buying habits of Americans and Canadians are quite similar. If your goods sell in Canada, chances are, you'll find a market for them in the U.S. That said, competing against domestic U.S. competitors will be one of your biggest challenges and it's imperative that you level the playing field. Advertising a U.S. business address will help you avoid needless discussions with your customers regarding logistics issues such as transit time, return capabilities, currency, customs, etc. Make it easy for U.S. customers to buy repeatedly and return your goods if necessary. There are professional logistics organizations that provide a U.S. business identity in support of their service offerings. These companies can allow you to spend your time selling, marketing, and growing your business as opposed to managing logistics.

Crossing the border can be a daunting task for new Canadian exporters to the U.S. It's critical to find a customs broker that is knowledgeable and can help teach you the right way to make entry and ensure compliance. A simple online search can help you find the right partner. However, my recommendation is to find one that has full logistics and customs brokerage capabilities. Reducing the number of vendors in your supply chain will minimize hand-offs, reduce your administrative effort, and will improve efficiency and visibility associated with importing goods to the U.S.

For valuable trade information and assistance, see the following web links:

- **www.cbp.gov – U.S. Customs & Border Protection – travel, trade, border security and more**
- **www.commerce.gov – U.S. Department of Commerce – find offices, explore data**
- **www.ncbfaa.org – National Customs Brokerage & Forwarders Assoc. of America - find customs brokers and forwarders by region/state**
- **www.usitc.gov - US International Trade Commission – harmonized tariff schedule and classifications**

For more information on this topic please contact David Short at Speed Global Services.www.speedgs.com | 1-716-876-2235

Customs and Border Protection – Binding Ruling Guidance

U.S. Customs and Border Protection (CBP) issues binding advance rulings and other legal decisions in connection with the importation of merchandise into the United States. Advance rulings provide the international trade community with a transparent and efficient means of understanding how CBP will treat a prospective import. The binding ruling program enables importers and other interested parties to get binding pre-entry decisions prior to importing a product and filing entries with CBP.

CBP Binding Rulings offer two main benefits. First, it takes the uncertainty out of your import program by eliminating concerns about your merchandise. Second, binding rulings help your company demonstrate that “reasonable care” required under the Customs Modernization Act 1993 is being exhibited.

Who can request rulings?

Any person who, as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request, or by the authorized agent of such person. A "person" in this context includes an individual, corporation, partnership, association, or other entity or group. CBP Regulations (19 C.F.R. Part 177.)

What can be requested?

Baring that there are no current issue’s pending before CBP or any court relevant to the merchandise, rulings can be made for the following:

- **Classification (U.S. Harmonized Tariff Number)**
- **Country of Origin**
- **Trade Program or Agreement Eligibility**
- **Country of Origin Marking**

How are rulings obtained?

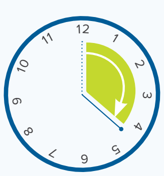
Ruling request can be made by paper request or through the eRuling Template located on CBP website. The Binding Ruling Program is a free service offered by CBP. When a ruling is issued, it is published on Customs Rulings On-Line Search System (CROSS). CROSS is a database of published rulings that can be researched by the importing community to assist them with import decisions.

You can learn more about binding rulings by accessing the following CBP website links:

- **cbp.gov/trade/rulings**
- **cbp.gov/trade/rulings/eruling-requirements**
- **rulings.cbp.gov/home**

For more information on this topic, please contact Invest Buffalo Niagara. Reach us at: 1-800-916-9073

Did you know?



BUFFALO NIAGARA'S
AVERAGE COMMUTE TIME: 21.7 MINUTES
4.3 MINUTES FASTER THAN THE NATIONAL AVERAGE

Source: U.S. Census Bureau, 2016

In-depth Legal Considerations

The exciting part was coming to the largest market in the world. It's right next door, it's just a logical choice.

- Tom Chopp
  Managing Partner, SWS Warning Lights, Inc.

Incorporation

Incorporation can be taxing when operating in the U.S.

Tapping into U.S. markets may be a sound business strategy to help grow your Canadian company, but as you make your plans, it is important to understand the legal landscape, as well as the geographic one. Two major legal considerations are:

- At what point is your company subject to U.S. federal income tax?
- When should your company form a separate entity in the U.S. instead of maintaining a division in the U.S.?

The United States - Canada Income Tax Convention (the "Treaty") governs whether a Canadian company is subject to U.S. federal income tax. The threshold question for taxation under the Treaty is whether a Canadian company has a "permanent establishment" in the U.S. This can mean anything from maintaining an office in the U.S. to having an employee in the U.S. for more than 183 days on a 12-month rolling basis. Conversely, a Canadian company may not be deemed to have a "permanent establishment" (and, as a result, may not be not subject to U.S. federal income tax) if its activities in the U.S. are limited to maintaining a storage facility, advertising, or hiring independent contractors to act in in the U.S. The treaty sets forth some additional guidance, the applicability of which is very fact-dependent and should be discussed with legal counsel.

If your company is subject to U.S. federal income tax, it may be advantageous to form an entity in the U.S. Forming a U.S. subsidiary will provide your parent company with liability protection and will allow your parent company to avoid filing a U.S. tax return. In most cases, forming a U.S. corporation is preferable to forming a limited liability company (or LLC) because Canada treats an LLC as a corporation, whereas the U.S. typically treats an LLC as a partnership or a disregarded entity. This distinction eliminates offsetting foreign tax credits under the Treaty and subjects the subsidiary to double taxation. Bear in mind, too, that in the U.S., entity formation occurs at the state level and certain states have more favorable corporate laws than others. The Treaty does not bind states within the U.S. and most states have separate income tax laws and other legal requirements. Your company is not required to form a new entity where its U.S. headquarters are located, but the new entity must qualify in each state in which it transacts business.

For more information on this topic, please contact Phil Delmont, Partner, Harter Secrest & Emery. Phil can be reached at: 1-716-853-1616 or pdelmont@hselaw.com

Complying with U.S. Customs Laws and Regulations

New policies, aggressive enforcement by U.S. Customs and Border Protection (CBP), along with ongoing NAFTA negotiations, mean it is more important than ever for Canadian companies to be familiar with the legal standard for complying with U.S. customs laws and regulations governing the importation of merchandise into the U.S. Executive Order 13785 ("Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Laws"), signed by **President Trump on March 31, 2017**, has only increased the stakes in the event of non-compliance.

"Reasonable Care" Policy

Canadian companies with U.S. subsidiary or branch operations may be importing into the U.S. directly from overseas suppliers, as well as from Canadian parent and affiliated companies. Many Canadian companies that have not established a presence in the U.S. are non-resident importers in the U.S., a strategy that allows them to better serve U.S. customers. For any Canadian companies with U.S. importing activities, U.S. customs laws and regulations, as well as CBP's investigation and enforcement activities can pose significant challenges and risks.

U.S. customs laws and CBP regulations require all businesses and individuals to exercise "reasonable care" when importing merchandise into the U.S. However, "reasonable care" is not defined in these laws and regulations. In general, a lack of reasonable care can (and often does) lead to CBP imposing civil penalties on importers and others that CBP alleges failed to meet this legal standard.

Defining "Reasonable Care"

For CBP to assess a civil penalty, the underlying violation must involve the introduction or entry of merchandise into U.S. commerce by means of a material and false act or statement (oral, written, or electronic) or a material omission. "False" does not require intent; essentially it means in error or incorrect. "Material" means information that tends to affect the decision by CBP to admit and release goods from its custody ("clear customs") or assess accurate duties, taxes, and fees. Penalties can also be imposed against those who aid and abet a violation of the customs laws and regulations.

"Reasonable Care" Risks

Unlike the Canada Border Services Agency's (CBSA) Administrative Monetary Penalty System (AMPS), CBP's civil penalties are not set according to a schedule that provides importers with some certainty as to the risk and potential exposure in the event of a violation or series of violations.

Instead, CBP penalties can range from a maximum of 2x the unpaid duties (for simple negligence) to 4x (for gross negligence, generally meaning recklessness) to the U.S. domestic value of the imported merchandise (for fraud, where intent is shown by direct or circumstantial evidence).

Meeting the reasonable care standard can be shown by evidence that the importer consulted with a U.S. customs broker, legal counsel familiar with customs laws and CBP regulations, or by other means. Generally, documentary evidence and sworn statements will be required to demonstrate that an importer or other party involved with the importation exercised reasonable care to defend against CBP's allegations of a violation. The statute of limitations for negligence and gross negligence penalties is five (5) years from the time of entry, while the limitations period for a fraud penalty is five (5) years from the date of discovery of the fraudulent activity, so complete and accessible documents will be necessary to defend a CBP civil penalty proceeding.

Canadian companies, business owners, and individuals who are involved with U.S. importing activities are not immune to CBP's civil penalties if they fail to meet the reasonable care standard. The case might involve a Canadian non-resident importer facing CBP penalties for not declaring pencils imported into the U.S. from China as subject to U.S. antidumping/countervailing duties or a Canadian company facing potential penalties for importing figure skating dresses into the U.S. and, in good faith but wrongly, declaring the dresses qualified as duty-free under NAFTA. In both instances and many others, CBP will pursue penalties against the Canadian importing parties.

Even if CBP does not seek to impose a penalty resulting from a violation (a rarity these days), a new collection policy significantly shortens the time to pay a supplemental duty bill (often issued by CBP if it reclassifies goods or denies a NAFTA claim). These bills are due within thirty (30) days. Effective September 5, 2017, supplemental duty bills that remain unpaid after sixty (60) days will result in CBP placing the importer on sanctions which will delay the release of goods and require the filing of "live entries" at individual ports. This new policy has been implemented without regard to the 180-day time limit to protest CBP's adverse decision, effectively forcing importers to pay supplemental duty bills before exercising their right to protest against a CBP decision. The payment requirement or threat of sanctions exists even where a protest is pending.

For more information on this topic, please contact Jon Yormick, Special Counsel at Phillips Lytle LLP. Jon can be reached at: 1-716-847-7006 or jyormick@phillipslytle.com

Made in USA? You Better Mean It

President Trump rode to victory on a platform that included a promise to "Make America Great Again."

That idea can lead manufacturers and other companies to proudly proclaim their products are "Made in USA." But a company can't simply make that or similar claims without substantiation. Recently, the **Federal Trade Commission (FTC) reached settlements within weeks in two similar cases where it charged the companies with making unfounded claims** about where their products were made or built.

What Does the FTC Require?

Historically, the FTC has required that a product advertised as "Made in USA" be "all or virtually all" made in the United States. The term "United States" here refers to the 50 states, the District of Columbia, and the U.S. territories and possessions.

The requirement applies to all products advertised or sold in the United States, unless they are subject to country-of-origin labeling by other legislation. It also applies to U.S. origin claims that appear on labeling and all other forms of promotion or marketing, including digital or electronic, such as on the Internet or in emails.

Similar Claims and Outcomes

The two recent cases before the FTC involved settlements containing consent orders where the companies agreed to stop claiming their products were either built or made in the United States.

CASE #1: The FTC charged that a Georgia-based distributor of water filtration systems deceived consumers by presenting false, misleading or unsupported claims that the systems and parts were:

- **"Built in USA,"**
- **"Built in USA Legendary brand of water filter (sic)," or**
- **"Proudly Built in the USA."**

The company marketed the water filtration products on its own and third-party websites.

The FTC maintained that the products were wholly or partially imported and a significant amount of the production occurred overseas.

"Supporting American manufacturing is important to many consumers. If a product is advertised or labeled as 'made' or 'built' in the USA, consumers rightly expect that to be the case when they part with their hard-earned money," said Acting FTC Chairman Maureen Ohlhausen. "This is an important issue for American business and their customers, and the FTC will remain vigilant in this area."

CASE #2: Just five weeks after the water-filtration settlement, the FTC settled charges that a Texas-based distributor of pulley block systems deceived consumers with false, misleading and unsupported claims that the products and other items were "Made in USA."

The FTC asserted that the company represented that its products and parts were completely or virtually all made in the United States in its advertising. The claims appeared in various places, including on its website, in stores, through trade shows and authorized dealers, and on social media, flyers and pamphlets.

The products actually included substantial imported parts that are essential to functionality. In addition, the pulleys featured steel plates imported and pre-stamped as being made in the United States.

U.S. Origins Claims Banned

As part of both final consent orders, the two companies are banned from making "Made in USA" or similar claims for any product unless they can show that:

1. The final assembly or processing — and all significant processing —took place in the United States, and
2. All or virtually all ingredients or components of the product were made and sourced in the United States.

They are prohibited from making any country-of-origin claims about their products unless the claims are true and not misleading and they have a reasonable basis for making them. The companies are allowed to make qualified "Made in USA" claims as long as they include a clear and conspicuous disclosure about the extent to which the product contains foreign parts, ingredients and/or processing.

The penalty for breaking a final consent order by the FTC is severe. Each violation can result in a civil penalty of up to $40,654.

Be Certain Ground Is Firm

If your manufacturing company says its products are made in the United States, be certain you are on firm ground. Not only can unsupported claims result in loss of revenue and sanctions, but they can irreparably harm a manufacturer's reputation.

Is It Express or Implied?

A claim by a manufacturer of "Made in USA" may be express or implied. Some examples of express claims are "Made in USA," "Our products are American-made," and "USA." That's easy to understand and identify. But for implied claims, the FTC focuses on the overall impression of the advertising, label or promotional material. Depending on the context, U.S. symbols or geographic references (U.S. flags, outlines of U.S. maps or references to U.S. locations of headquarters or factories, etc.) may convey a claim of U.S. origin by themselves or in conjunction with other phrases or images.

Here's a typical example from the FTC:

"A company promotes its product in an ad featuring a manager describing the 'true American quality' of the work produced at the company's American factory. Although there is no express representation that the company's product is made in the U.S., the overall impression likely conveyed by the ad to consumers is that the product is of U.S. origin. This implied claim could run afoul of the FTC policies."

If you plan to advertise a product as made in the United States, consult with Lumsden McCormick to ensure you have enough facts, statistics or other substantiation for the claim.

For more information on this topic, please contact Brian Kern, CPA, Tax Principal at Lumsden McCormick. Brian can be reached at: 1-716-856-3300 or bkern@LumsdenCPA.com

Did you know?

0% **STATE CORPORATE INCOME TAX IN NEW YORK STATE**
FOR MANUFACTURING COMPANIES

Building Insurance — FAQs

If you're considering opening a manufacturing business, you're going to need to purchase insurance. Avoid the mistake of not having the right coverage with these tips.

What type(s) of insurance should I consider?

All businesses should invest in Property and Casualty insurance, which covers your property, its contents and loss of income, and General Liability, which covers property damage, bodily injury, and product liability. Manufacturers Errors and Omissions insurance can protect you from product recalls. Workers Compensation covers your employees in the event of a work-related incident and Commercial Auto, Shippers, and Cargo insurance is good to have if you plan to ship your product across the country or overseas.

If I rent the building am I still required to carry insurance for my business?

Even if you rent, you'll need to carry basic insurance to protect your business. The only exception would be building insurance, which should be covered by your landlord.

How do I decide what type of insurance is best?

Everyone's needs are unique, so you should plan to meet with a local insurance agent to review your company and possible risks so they can help you determine proper coverage.

After purchasing a policy, is there anything I should do to maintain my insurance?

If your insurer offers risk management services as part of your policy, you should plan to take advantage of them. Some of these services can improve your operations and help increase safety and security.

For more information on this topic please contact Jennifer Gibson at Northwest Bank. Jennifer can be reached at 716-730-4216 or Jennifer.Gibson@Northwest.com

Did you know?

47 COLLEGES & UNIVERSITIES

WITHIN 100 MILES OF DOWNTOWN BUFFALO

Patents and Trademarks

Intellectual property ("IP") can be a valuable asset in support of a business expansion into the U.S. Two common forms of IP protection are patents and trademarks. A patent protects your company's inventions or discoveries, while a trademark serves as an identification of the source of your goods or services, often through the use of brand names, taglines and logos.

Companies should be aware that both patents and trademarks are national rights that start and stop at international borders. Canadian patents and trademarks are not directly enforceable in the U.S. Protecting your IP in the U.S. (and all countries where you plan on doing business) should be a priority.

Always Consider Trademark Protection

Trademark rights in the U.S. are based on the actual use of a mark in commerce. Certain common law rights to a trademark are immediately acquired upon the use of a mark in the U.S., but the scope of these rights can diverge from state to state and are limited to the specific geographic regions of use. A much greater set of rights is obtained through federal registration with the U.S. Patent and Trademark Office, including nationwide priority and the right to bring an infringement lawsuit in federal court. Federal registration will also help prevent the registration of another confusingly similar mark by a competitor.

In the context of business growth, you want to be sure at an early stage that your preferred brand names will not risk infringing the rights of a third party in your planned area of expansion. The trademark prosecution process will help you identify potential issues with confusingly similar brands that are already established in the marketplace. One of the first steps prior to filing a trademark application should involve performing a search for any existing use of your desired name and close variants. The search process can vary from simple to complex, depending on your business needs at the time.

Far too many companies need the correction of deficient trademark apps that were filed by individuals or through various other services, so when it comes to filing for trademark protection, it is generally recommended that companies engage qualified legal counsel at the outset. Companies can expect, on average, to pay an attorney approximately $1,500-$2,000 total per trademark application from start to initial registration. Trademarks are a cost-effective means for building value in your brand (and by extension, your company).

Consider Patent Protection If It Makes Sense For Your Business

A Canadian company that has developed a new product may be able to obtain protection for its invention by securing a U.S. patent. Patents are very valuable because they allow companies to stop others from making, using, selling or importing the underlying invention. However, patents can also be expensive to draft, prosecute and maintain, often exceeding $10,000 in all but the most simple cases.

Accordingly, if your business is considering patent protection, you need to determine how patents fit in with your broader business goals. Are you looking to strike licensing deals? Do you want to aggressively enforce your rights in the industry? Are you looking to use patents as a shield against bigger market players? Is the goal to use patents to help attract institutional investment? All of the above?

While it is generally recommended that companies file for patent protection prior to any public disclosure, use or offer for sale of the invention, U.S. patent law may also allow an application to be filed within a one-year grace period of the initial public disclosure. Additionally, companies may consider filing provisional patent applications in the U.S., which can initially be cost-effective and will reserve filing dates for a one-year period.

It can be helpful to consult with a U.S. patent attorney that has both the background technological knowledge that is required to understand your invention, as well as familiarity with the broader business strategies of your company.

For more information on this topic, please contact Brendan S. Lillis, Senior Associate at Phillips Lytle LLP. Brendan can be reached at: 1-716-847-7058 or BLillis@phillipslytle.com

Green Card Pros and Cons

A Green Card is a permanent immigration benefit that allows a foreign national to live and work in the United States, officially known as a Permanent Resident Card. One way to obtain a Green Card is through U.S. employer sponsorship.

Green Cards are highly sought after and confer many benefits. However, it is important to consider all consequences of a Green Card before deciding to apply. The main benefit is the ability to leave and enter the U.S. without risk of being denied entry. However, there are some limits to time spent abroad.

Green card holders can sponsor family members who will also have the unrestricted ability to live, work, and attend school in the U.S. Perhaps one of the greatest benefits of a Green Card is the ability to apply for U.S. citizenship and obtain a U.S. passport. Gaining citizenship is not necessary or guaranteed, but it is a major draw. This status also confers the right to be protected by all laws of the United States, state of residence and local jurisdictions.

PROS	CONS
Unrestricted work authorization	Income tax obligations
Unlimited travel authorization	Residency requirements
Family sponsorship	Potential loss of home country benefits
Option to naturalize	Possible loss of support staff

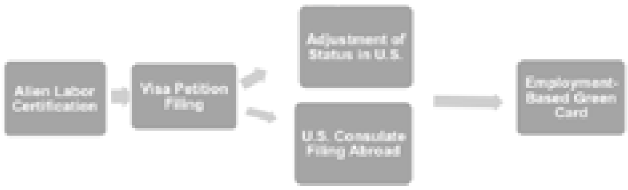
Parties considering this option should be aware of the requirements this route entails. There are less obvious consequences such as the loss of home country benefits and the potential loss of support staff if a foreign national was previously on a nonimmigrant visa that allowed visas for additional staff.

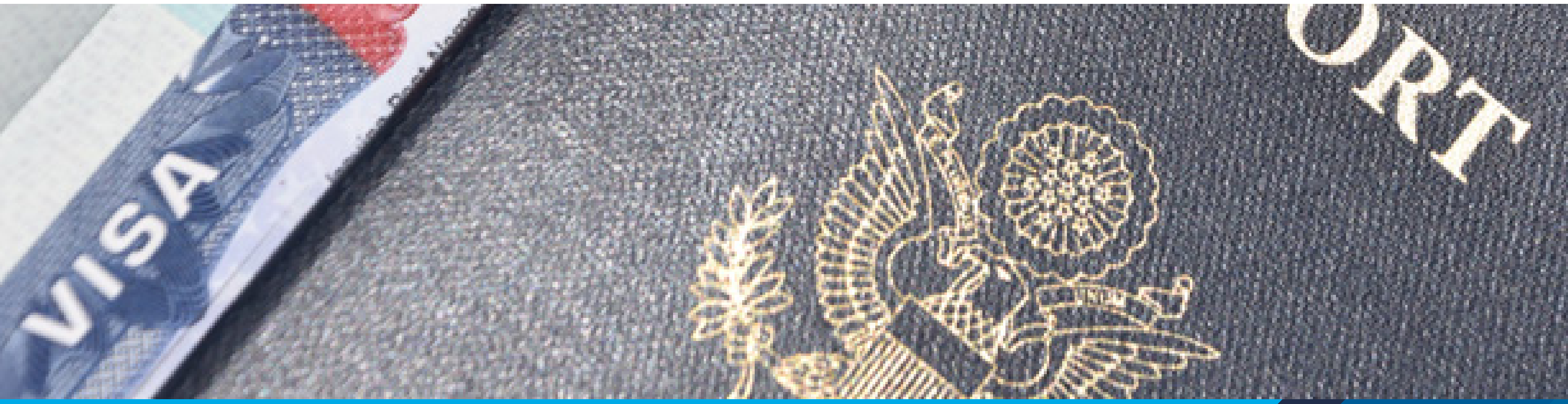
Employment- Based Green Card Processing

There are three main categories of employment-based Green Cards: First, Second and Third Preference. These categories are nuanced and entail various specifications.

As the sponsor, employers assume the costs for most of this three-step process. The first step is the Alien Labor Certification, which tests the U.S. labor market to demonstrate that there are no suitable U.S. workers. The second step is the Immigrant Visa Petition Filing which shows that the foreign national is qualified for the position and the employer can pay the foreign national. The last step is Green Card filing. Foreign nationals in the U.S. file an Adjustment of Status with United States Citizenship and Immigration Services (USCIS), whereas foreign nationals abroad file at a U.S. Consulate.

Three-Step Employment-Based Green Card Process





Maintaining Status

Once a lawful resident, a foreign national maintains status until he or she applies for and completes the naturalization process, abandons status or is convicted of certain crimes.

A Green Card is abandoned if a foreign national moves to another country; remains outside the U.S. for an extended time period; or failed to file tax returns while living outside the U.S. The government views having a home, employment, dependents and tax returns in the U.S. as strong indications of permanent presence in the U.S. Weaker indicators include a driver's license, bank account, mailing address, credit card or belongings located in the U.S.

Certain crimes can result in a loss of status. Some examples include being convicted of an aggravated felony at any time after U.S. admission, falsely representing oneself as a U.S. citizen and voting in violation of any laws. While Green Card status conveys rights and privileges, it does not offer the same level of protection enjoyed by U.S. citizens. Therefore, Green Card holders can still be deported under certain conditions.

Income Tax Requirements

The privilege of being a Green Card holder also comes along with fiscal obligations. Green Card holders are automatically considered U.S. tax residents and are generally required to file a U.S. income tax return and report worldwide income.

Green Card holders should pay attention to tax treaties. Some Green Card holders are dual-resident taxpayers, meaning they are considered residents of the U.S. and another country. The tax treaty between the two countries must have a provision providing a resolution of conflicting claims of residence, known as a tie-breaker rule. This allows a Green Card holder to be considered a nonresident alien for tax purposes.

Long-term Green Card holders who opts to give up their Green Card may face a U.S. Exit Tax. Green Card holders who were permanent residents of the U.S. for at least eight years during the last fifteen-year period before their residency ends are subject to this tax. There are three triggers for the Exit Tax: net worth over $2 million; average net income tax liability of over $162,000; or a Green Card holder cannot certify five years of U.S. tax compliance. The Internal Revenue Service calculates this tax as if a foreign national sold all of his or her assets on the day before permanently exiting the U.S. This tax can be steep, with potential rates over 20%.

For more information on this topic, please contact Rosanna Berardi, Managing Partner, Berardi Immigration Law. Rosanna can be reached at: 1-877-721-6100 or rberardi@usimmlawyer.com

Tax and Financial Matters

We came to our first meeting where Invest Buffalo Niagara hosted several companies and we wrote notes for an entire day. It's been a pretty smooth ride so far and I attribute a lot of that to Carolyn and Invest Buffalo Niagara.

- Shannon Dingle
  President, GVA Lighting USA, Inc.

The Tax Cuts and Jobs Act

On **December 22, 2017** what is known as **The Tax Cuts and Jobs Act (the "Act") was signed into law by the President**. The Act is the most fundamental and sweeping tax legislation in more than thirty years; the last major U.S. tax legislation being the Tax Reform Act of 1986, as amended (the Code).

Most of the changes in the Act affect U.S. citizens or U.S. permanent residents. There are, however, significant changes to the U.S. Estate Tax, which as a result of the Canada-U.S. Income Tax Treaty (the "Treaty"), will have an effect on Canadians who own what is called "U.S. source assets".

The most common type of **"U.S. source assets"** are vacation homes owned by Canadians in the United States, typically in Florida, California or Arizona. "U.S. source assets" also include ownership of common stock issued by companies located in the United States.

As a result of the Act, the Federal Estate Tax exemption increases from the 2011 level of $5,000,000 to $10,000,000 subject to annual adjustment but only until December 31, 2025. Effective January 1, 2018 that exemption becomes approximately $11,200,000. Unlike the changes to the U.S. corporate income taxes, which are permanent, this change to the Federal Estate Tax exemption is temporary. In addition, the amount of the Federal exemption will adjust on an annual basis based on notices published by the Internal Revenue Service.

Canadians, as a result of the Treaty, qualify for a portion of the Federal Estate Tax exemption based upon the Treaty's formula calculation. This calculation takes into consideration a Canadian decedent's worldwide assets in relation to their "U.S. source assets" (see the Spring 2014 edition of our Cross Border Bulletin. This calculation produces what is called the Enhanced Uniform Credit (EUC) which is substantially greater than the existing estate tax credit afforded to non-resident aliens under the Code of $13,000 which translates into a value of $60,000 of "U.S. source assets". In addition to the EUC, the Treaty in a marital couple situation, also allows for an additional estate tax credit, called the Marital Credit, in an amount equal to the EUC for property passing to a surviving spouse.

The good news is that the Federal Estate Tax exemption now has increased substantially but the bad news is this change sunsets after December 31, 2025. So beginning January 1, 2026 the Federal Estate Tax Exemption reverts to the 2012 number, as adjusted, unless Congress and the President adopt new tax legislation making this change made by the Act to the Estate Tax exemption permanent.

"The Act is the most fundamental and sweeping tax legislation in more than thirty years."

The U.S. corporate income tax rate is reduced to 21% from 35%.

Similar short-term changes to the Federal EstateTax exemption occurred as a result of the 2001 Tax Reform Act that expired in 2012 but which were subsequently made permanent by the 2012 American Taxpayer's Relief Act. Only time will tell if this change to the Federal Estate Tax exemption will be made permanent....stay tuned!

Other changes brought about by the Act that effect: (a) Canadians who own businesses in the United States or (b) Americans living in Canada that own Canadian businesses include the following, effective January 1, 2018:

- (a) Corporate Income Tax Rate: The U.S. corporate income tax rate is reduced to 21% from 35%.
- (b) Business Interest: For every business located in the U.S. whose average annual gross receipts exceed $25 million, the deduction for business interest is limited to 30% of adjusted taxable income; this change can affect how the prospective purchase of a U.S. business is financed.
- (c) Net Operating Losses: Existing U.S. businesses with net operating losses can now only carry those losses forward; the two-year carryback was repealed.
- (d) Controlled Foreign (for U.S. Purposes) Corporations (CFC): A Canadian business that is owned more than 50% by U.S. shareholder(s) (a CFC) can now be subject to: (i) special repatriation transition tax based on retained earnings and (ii) a Global intangible low-taxed income assessment if the Canadian small business income tax rate is below 90% of the U.S. corporate tax rate of 21%; namely, if that rate is less than 18%; in that situation the U.S. shareholder(s) has to include as its income a portion of the CFC's net income.

For additional information on this topic or other cross border tax and accounting questions, please contact David Alexander, Esq, at Gross Shuman P.C.. Davd can be reached at: 1-716-854-4300 x216 or DAlexander@gross-shuman.com

Tax Reform Implications

The new law, 'The Tax Cuts & Jobs Act,' contains sweeping changes to how the U.S. will tax multinational businesses, both those based in the U.S. as well as those whose ultimate ownership is outside of the U.S.

The World Turned Upside Down

With the stroke of a pen, the U.S. went from having the highest corporate tax rate in the world to having one that is quite competitive with its major trading partners. **The new law reduces the corporate tax rate to a flat 21% for both U.S. domestic and non-U.S. corporations**. It also **eliminated the sometimes bothersome corporate Alternative Minimum Tax (AMT**). These changes are effective for tax years beginning after December 31, 2017 (blended tax rates apply to fiscal tax years that begin in 2017 and end in 2018).

Coupled with the New York State 0% tax rate for corporations involved in manufacturing, a U.S. subsidiary producing goods in New York could have a combined tax rate of 21%. Even coupled with the 5% dividend withholding rate upon repatriation of the U.S. profits to a Canadian corporate parent, the effective rate in this situation after dividend would be 24.95%. This compares favorably to the tax rate on Ontario based manufacturers of 26.5%.

For many years, tax advisors to businesses in-bound to the U.S. helped their clients minimize their U.S. operation's taxable income through creative debt structures, transfer pricing policies, allocation of management costs, etc. Such strategies should be re-examined in light of the reduced U.S. corporate tax rate.

In addition to the reduced tax rate, the law also provides for **full expensing of the investment in qualified property** normally subject to depreciation that is placed in service between September 27, 2017 and January 1, 2023. Commencing in calendar year 2023, this expensing is scheduled to be phased down 20% per year through 2027. Generally, qualified property includes most computer software and most tangible property other than buildings. Of particular note is that The Tax Cuts & Jobs Act, unlike prior law, allows for the full expensing of used property and equipment. Thus the establishment or expansion of a U.S. enterprise through the purchase of a business structured as an asset acquisition could support immediate deduction of the purchase consideration allocated to qualifying fixed assets.

Of course if one is borrowing to acquire such qualified property, or for any other purposes, you have to be aware of broadened applicability of the "earnings-stripping" limitations on net interest deductions. Under old law, these limitations were only applicable to debt guaranteed by related parties or interest actually paid to related parties, and then only if the debt-equity ratio exceeded 1.5. Now, effective for tax years beginning after December 31, 2017, all interest expense, irrespective of whether paid to or guaranteed by a related party, is subject to a new limitation, being 30% of what is essentially tax EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization). Gone too is the debt-equity ratio safe harbor. After 2021, the limitation becomes based on EBIT, as the addition to the limitation for depreciation and amortization is eliminated beginning in 2022. While any disallowed net interest deduction can be carried forward indefinitely, unlike prior law, any excess limitation cannot. The new limitation does not apply to businesses whose average gross receipts for the prior three tax years do not exceed $25 million (related entities are aggregated for this purpose) as well as to certain industries (e.g. electing farming businesses and regulated public utilities). In addition, interest expense incurred with respect to floor-plan financing is not subject to the limitation. The new law does clarify that any disallowed interest being carried over will be subject to the U.S. change in ownership limitations, similar to tax loss carryovers.

To help pay for the corporate tax rate reduction, Congress eliminated the 'domestic production activities deduction' (DPAD). It also abolished the two-year net operating loss carryback period (except for certain industries such as farming and insurance), along with the special three-year carryback for casualty losses and the ten-year carryback for specified liability (e.g. product liability) losses. Now, for tax years ending after December 31, 2017, losses generated can be carried over for an indefinite period. However, their use will be limited to 80% of the taxable income generated in a given future year. As they have in the past, the use of tax loss carryovers will continue to be subject to the U.S. change in ownership limitations.

The Hit on Hybrids

Multinational companies often took advantage of differences between how the U.S. and other countries treated certain entities and instruments for tax purposes to lower their overall worldwide tax liability on cross-border investments. For example, an entity would often be set up that was treated as fiscally transparent for U.S. federal tax purposes but as an entity in the country in which it was resident or subject to tax. This is often referred to as a hybrid entity. Reverse hybrid entities were those that were fiscally transparent in the foreign jurisdiction but not for U.S. tax purposes. Similarly, an instrument may be treated as debt in one country but not in another, in which case a payment under the instrument may be deductible interest expense in the payor's jurisdiction but as an exempt dividend in the recipient's country. These techniques were often used by Canadian parent corporations to finance their U.S. subsidiaries.

The Internal Revenue Service and the U.S. Treasury certainly didn't like the potential for abuse that hybrid entities and transactions offered, as is evidenced by the changes in residency definitions contained in the 2007 protocol to the Canada-U.S. Income and Capital Tax Treaty. More recently hybrid arrangements were a keen focus of the "Base Erosion and Profit Shifting" (BEPS) imitative of the Organization for Economic Co-operation and Development (OECD).

Whether as a revenue raiser or to cooperate with the OECD, the Tax Cuts & Jobs Act takes a major swipe at the use of hybrids. Effective for tax years beginning after 2017, any interest or royalty paid or accrued by a U.S. taxpayer to a related party will not be deductible for U.S. tax purposes under a hybrid transaction, or by, or to, a hybrid entity. Under this rule, no deduction is allowed if the amount is not included in the income of the related party under the tax law of the country in which the related party is resident, or the related party is allowed a deduction for that amount under the tax laws of that country. For these purposes, a related person is a person or entity that controls, or is controlled by, the payor of the interest or royalty, and includes entities or persons that are linked via attribution. For corporations, control in this case means more than 50% of either the total combined voting power of all classes of a corporation's voting shares or the total value of the corporation's shares.

The anti-hybrid provision of the Act also grants broad authority to the Internal Revenue Service to issue regulations in keeping with the intent of the law. It is expected that the Service will use such authority to squeeze further what it perceives to be abusive situations.

Businesses that have such hybrid arrangements in place will want to evaluate their continued viability. In so doing, any unwind strategies will need to be planned carefully so as to avoid negative tax consequences in all the countries involved in the structure.

The BEAT goes on

In another provision designed to dissuade the extraction of U.S. profits through deductible payments to foreign affiliates, Congress enacted the Base Erosion Anti-Abuse Tax (BEAT). Despite the apparent death of the corporate Alternative Minimum Tax as described above, the concept remains alive with the BEAT. The BEAT is an alternative tax determined by adding back to a U.S. corporation's regular taxable income "base erosion payments" made to a foreign related party for which a deduction is allowed, and then applying a 10% tax rate to this figure (5% for tax years beginning in 2018, 12.5% for tax years beginning in 2026). To the extent this amount exceeds the regular U.S. tax liability net of certain credits, such excess increases the U.S. corporation's tax liability. Unlike the old AMT tax, such excess does not create a credit that can be used against regular tax in future years.

Base erosion payments made to foreign related parties that must be added back include interest and royalties. It also includes the purchase from a foreign related party of property that is subject to an allowance for depreciation. Amounts paid for services provided, such as management fees, will not be considered base erosion payments as long as the charge from the related party is at cost. This could create tension from a transfer pricing perspective as many foreign jurisdictions expect some level of mark-up on charges for non-fundamental services provided by entities resident in their jurisdictions.

Of some relief is the fact that the BEAT will not apply if the base erosion payments represent less than 3% of all deductions (excluding deductions for net operating losses, at-cost service payments, etc.). In addition, if the annual average gross receipts of all related U.S. entities (including U.S. branches of foreign corporations) over the prior three tax years is less than $500 million, the BEAT will not apply.

Should You Expand Your Business in the United States?

The answer to that question of course will depend on the specific facts and circumstances of the business. Certainly the decrease in the U.S. federal corporate tax rate makes it worth taking a closer look. It should be kept in mind that many of the more popular U.S. tax credits, such as the Credit for Increasing Research Activities (the "R&D credit") continue to be available. In addition, The Tax Cuts & Jobs Act has introduced a new credit for a portion of the payments to employees on family and medical leave.

In addition, the Act has introduced a new export incentive in the form of the deduction for Foreign Derived Intangible Income, or FDII. FDII is the net income from the sales of tangible product which will be used outside the U.S., or the provision of services to a foreign persons or relative to foreign property. To the extent this income exceeds a specified return (10%) on apportioned depreciable property used in the business, a deduction is allowed equal to 37.5% of such excess. This could drive the effective U.S. federal corporate income tax rate on such income down to a rate as low as 13.125%. **If your business has significant sales of product or services to non-U.S. persons, this provision would be very attractive in driving down your overall income tax costs.**

Whether having foreign subsidiaries owned by a U.S. corporation is a good idea remains an open question. In the run-up to the enactment of the 2017 tax legislation, it appeared that the U.S. was moving completely to a territorial tax system. The fact is it hasn't; the U.S. system now is more of a "quasi-territorial" or a "quasi-full inclusion" system. This is largely the result of a new income category brought in by the Act referred to as Global Intangible Low Taxed Income, or GILTI. Under this regime, income earned by a foreign subsidiary (determined under U.S. tax principles) in excess of a specified return (10% again) on the foreign subsidiaries depreciable assets is immediately included in the taxable income of the U.S. parent corporation. The U.S. parent corporation can take a deduction of 50% of the GILTI, such that the effective U.S. corporate income tax rate on such income would be 10.5%. This can be further reduced by the use of a 'deemed-paid' foreign tax credit for a portion of the income taxes paid in its country of residence by the foreign subsidiary. Any income earned by the foreign subsidiary above the GILTI, would not be subject to U.S. corporate income tax upon its distribution.

It should be noted that in moving to the new approach on the taxability of foreign income, the Act imposes a one-time "transition tax" on U.S. corporations and individuals that have held stock in foreign corporations. The accumulated earnings of 'controlled foreign corporations' (those that are owned in excess of 50% by U.S. shareholders) and other foreign corporations which have at least one more than 10% domestic U.S. corporation shareholder, are deemed distributed to the U.S. shareholders and are subject to U.S. tax at reduced tax rates. This distribution is deemed to occur in the last year of the foreign corporation commencing before December 31, 2017. This for calendar year foreign corporations, this is a 2017 taxable event for their U.S. shareholders. For this purpose, U.S. shareholders are those that own 10% or more of the voting shares of the foreign corporation U.S. citizens living abroad that own interests in foreign corporations should determine if they may be subject to this transition tax.

Nothing has changed relative to the fact that Federal and State corporate income tax regimes are not integrated. So the State tax effect on any expansion would also need to be evaluated carefully. The various states continue to offer incentive packages, ranging from tax holidays to credits to outright grants for businesses entering or expanding in their jurisdiction. The states can be aggressive in putting such incentive packages together, especially when the taxpayer has a choice of where to expand or place its business.

As indicated, the Tax Cuts & Jobs Act has made the U.S. quite competitive in the world from a tax policy perspective. While time will ultimately tell, initial indications are that the legislation has achieved its objective of spurring increased business investment and activity in the U.S. If you are interested in further evaluating the opportunities this sea-change in U.S. tax law may bring for your business, we'd be happy to help. Our Cross Border and State and local tax (SALT) professionals have assisted hundreds of non-U.S. businesses and their owners evaluate and plan for entry or expansion into the U.S., whether by "testing the waters," greenfield development, or via acquisition.

For additional information on this topic or other cross border tax and accounting questions, please contact James K. Frank, CPA, Cross Border/International Tax Partner, Tronconi Segarra & Associates LLP. James can be reached at: 1-716-633-1373 or jfrank@tsacpa.com

Did you know?

Access to Supercomputer

University at Buffalo Center for Computational Research provides industry partners access.

Research and Development Tax Credits

Misconceptions about the research and development (R&D) credit can often cause businesses to overlook potential benefits. Too often, these benefits remain unexplored and unused by companies. Here are the top three reasons why management should reconsider evaluating this incentive:

Benefits may be available throughout a business life cycle

Whether a business is in its infancy or mature, the R&D credit may allow more immediate benefits than previously available. Certain businesses with fewer than five years of gross receipts may offset the FICA employer portion of payroll tax. For 2018, this equates to 7.65% of an employee's first $128,400 of salaries and wages. This allows cash otherwise earmarked for payroll taxes to then be available for other immediate needs. The credit may be calculated in one of two ways, which allows mature companies to receive benefits even if not previously explored.

Broad spectrum of costs may be eligible

Qualifying research expenditures may arise from wages, supplies and contractors. Wages include direct and certain indirect supervision. Supplies includes materials used to develop and test assumptions, including prototypes. Contractor expenses include a percentage of amounts paid to third parties that directly impact the R&D qualified activities. This work must be performed by companies within the United States.

Benefits available to more than a few industries

Many businesses face similar challenges as well as market pressures to remain competitive. Often, considerable effort is allocated to activities designed to develop new, improved or more reliable parts, products or processes. The key to tying these initiatives to the R&D credit is to make sure that the activities meet the "Four-Part Test". Activities must meet all criteria to qualify for the R&D credit.

- **1. Uncertainty: Demonstrate that there is technical uncertainty at the onset**
- **2. Permitted purpose: Methods to create or increase functionality of a part, product or process**
- **3. Experimentation: Multiple iterations is required to evaluate whether desired result has been achieved**
- **4. Technical in nature: Reliance on principles of a hard science (e.g. engineering) is required to address technical uncertainty**

Reconsideration often involves engaging a specialist to perform a study of the qualified activities and related expenditures.

For additional information on this topic or other cross border tax and accounting questions, please contact Courtland "Cory" Van Deusen, CPA and Partner, Lumsden McCormick. Cory can be reached at: 1-716-856-3300 or cvandeusen@LumsdenCPA.com

Exploring SRED Credits

Much like the United States, the Canadian government has an incentive program in place for companies that engage in research and development activities. The Canadian Scientific Research and Experimental Research Tax Incentive program ("SRED") provides support in the form of tax credits or refunds to corporations, trusts and individuals. These incentives are offered by both the federal and provincial governments through the Canada Revenue Agency (CRA).

The CRA parameters to qualify for the credit are more extensive and require specific documentation to be included with the tax return. Further, SRED does not award credits to improved functionality of existing products. While many factors are considered when calculating eligible costs in both jurisdictions, the SRED credit may be viewed as more lucrative than otherwise available through tax credits in the United States. Fore instance, SRED credits can range from 15-35%, depending on a variety of factors. This is opposed to the US Research and Development, which is limited to approximately 19% of qualified activities.

There are unique considerations for cross border companies engaged in research and development efforts in both the United States and Canada.

- **Corporate structure can play a significant role in the way the company recoups the incentive. For instance, a foreign-controlled corporation with qualified SRED activities receives a non-refundable tax credit, while a Canadian-controlled private corporation (CCPC) with qualified SRED activities receives a refundable tax credit.**

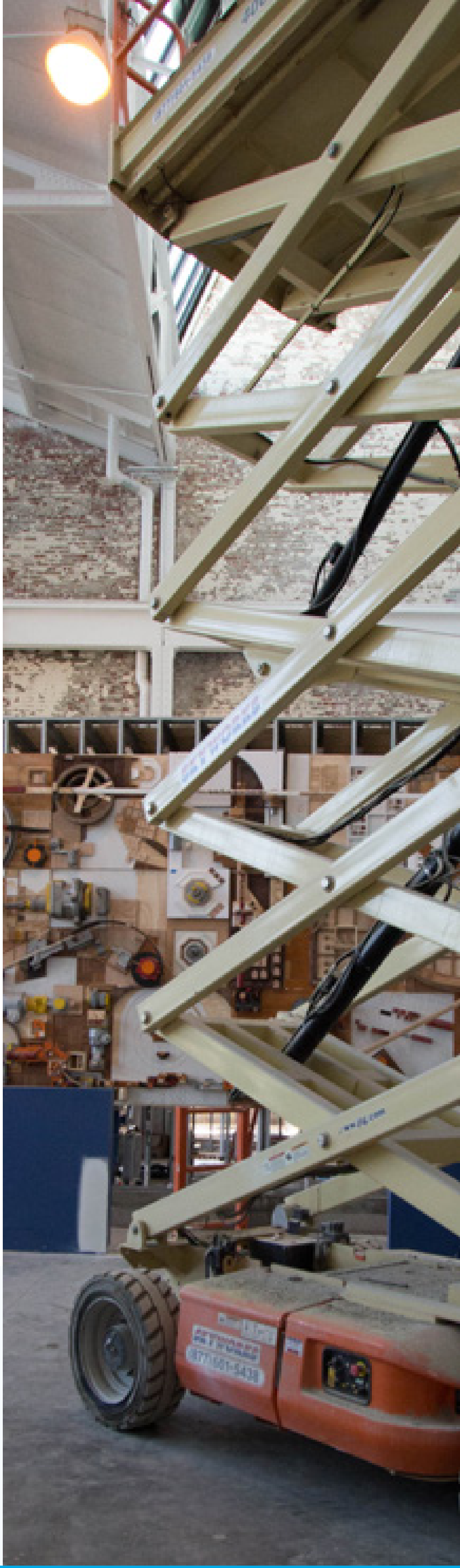
- **Location of qualified SRED activities can play a significant role. For example, if a foreign subsidiary performs qualified SRED activities on behalf of the CCPC on a contractual basis, a portion of these activities can be included in the SRED credit claim. However, if a foreign subsidiary performs qualified SRED activities but retains the IP, these activities cannot be claimed in the SRED credit claim.**

For additional information on this topic or other cross border tax and accounting questions, please contact Courtland "Cory" Van Deusen, CPA and Partner, Lumsden McCormick. Cory can be reached at: 1-716-856-3300 or cvandeusen@LumsdenCPA.com

Did you know?

120-ACRE

Buffalo Niagara Medical Campus



South Dakota vs. Wayfair, Inc. Decision

Taxing Canadian Companies' Selling into the U.S.

As companies engage in online sales through both distributors and direct sales, they need to pay attention to the changing tax structures jurisdictions are implementing to tax these sales. Although a company may not have a physical presence in a state or even in the U.S., they may still be required to file taxes if they have large enough sales volumes. Canadian businesses should review their business activities in the U.S. to determine whether their sales in the states listed below exceed the new sales tax nexus thresholds. If so, this could pull your Canadian corporation into U.S. tax filings even if you do not have a U.S. Corporation established. State and local governments are not bound by U.S. treaties or permanent establishment rules and may impose tax filing requirements on any foreign companies doing business within their jurisdictions.

In the aftermath of the U.S. Supreme Court's landmark decision in South Dakota v. Wayfair, Inc. which overturned the decades-old physical presence standard for sales tax nexus, many states are moving quickly to enact new sales tax filing requirements similar to those instigated by South Dakota in 2016, requiring "remote sellers" who engaged in more than 200 or more separate transactions or exceeded $100,000 of annual sales in the state to register and collect sales tax. (A remote seller is any business that sells products or services to customers in a state using the internet, mail order, or telephone without having physical presence in that state.)

Over the past two years, several states have already passed legislation comparable to South Dakota's encompassing economic nexus thresholds for sales tax. Since the June 21, 2018 decision, even more states have enacted legislation or have issued new regulations or administrative guidelines, updating their sales tax filing requirements in an effort to compel remote sellers to collect and remit tax on sales to customers in their states.

Even though the U.S. Supreme Court did not explicitly rule on the constitutionality of South Dakota's remote seller law (the Court remanded the case to the South Dakota Supreme Court to decide whether any other Commerce Clause objections may be raised), as of September 21, 2018, the following states have already issued guidance about when their new sales tax filing requirements will become effective. These effective dates are:

Effective Date	States
July 1, 2018	Hawaii, Maine, Oklahoma, Vermont
September 1, 2018	Mississippi
October 1, 2018	Alabama, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, New Jersey, North Dakota, Washington, Wisconsin
November 1, 2018	North Carolina, South Carolina, South Dakota
December 1, 2018	Colorado, Connecticut
January 1, 2019	Georgia, Iowa, Louisiana, Nebraska, Utah

Please note that not all of the above states are applying the same economic nexus thresholds for sales tax as South Dakota. Additional information on sales tax filing requirements in these states can be found on tsacpa.com

In addition to the above jurisdictions, Tennessee previously enacted an economic nexus regulation that is not currently being enforced due to a court-ordered injunction resulting from a legal challenge, while Wyoming has passed legislation similar to the South Dakota law, however their Department of Revenue is reviewing the Wayfair decision to determine how it applies to their laws and their ability to require collection of tax. A number of other states, including Massachusetts, Ohio, Pennsylvania and Rhode Island, have previously enacted expanded sales tax nexus legislation that impacts filing requirements for remote sellers. These policies vary by state, and we are anticipating additional guidance from these states' taxing authorities regarding sales tax collection implications for remote sellers. California, New York, Texas and other states are reviewing the Wayfair decision to determine the potential sales tax compliance requirements for remote sellers in their jurisdictions.

For additional information on this topic or other cross border tax and accounting questions, please contact Andrew J. Toth, CPA and Partner, Tronconi Segarra & Associates LLP. Andrew can be reached at: atoth@tsacpa.com

Rising Interest Rates

Cross-Border Banking – Considerations for a Rising Rate Environment

After an extended period of historically low interest rates, the Federal Reserve began a series of interest rate hikes in late 2016, with two 25 basis point increases so far in 2018 and a third projected for September.

These efforts have brought the federal funds rate—the rate at which banks lend reserve balances to other banks overnight—from .50% in December 2016 to 2% today. The “fed funds rate” serves as an important benchmark in U.S. financial markets, as it is frequently the basis for interest rates paid on deposits and charged on loans.

Cross-border businesses should be particularly attentive to this dynamic, as there may be opportunities to take advantage of divergent rates in the U.S. and Canada. Business owners and CFOs should discuss with their bankers how to respond to the rising rate environment.

Primarily, business owners should look into whether there are more attractive investment options for cash balances. Investment sweeps for operating cash, CDs and index funds are all paying rates that are significantly higher than they have been in prior years, and companies with excess cash should be taking advantage.

Additionally, if a company has debt with U.S. banks, they should look at the structure of the rates. Any variable rate loans are increasing and likely to go higher. Banks offer interest rate hedging products to help mitigate the risk of rising rates.

Finally, business owners should consider whether there are opportunities for more favorable rates in the U.S. for certain transactions, for example: Foreign exchange purchases, equipment financing and letters of credit.

With rate increases expected to continue through 2018 and strong national economic reports, businesses operating in the U.S. will have opportunities to benefit from the rising rate environment.

For more information on this topic please contact Lauren Schellinger with M&T Bank Commercial Banker, WNY. Lauren can be reached at 1-716-848-7398 or Lschellinger@mtb.com

Did you know?

BUFFALO NIAGARA HAS
80,000 MILES
OF FIBER OPTIC LINES

Venture Capital

Angel and Venture Capital Resources

Business growth and expansion requires capital. Accessibility and cost of capital are key factors in a company's determination of how to fund growth. For early-stage, high-growth companies in particular, raising funds from venture and angel investors in exchange for equity is critical.

As a Canadian company considering expansion into the U.S., equity financing may be a key component of the location decision-making process. The Buffalo Niagara region has a range of resources in the venture and angel capital realm. Leaders in the region have made growth of the entrepreneurial ecosystem a major priority and the results have been measurable. In recent years, the amount of equity capital raised by Buffalo-area companies has increased significantly. In 2017, Buffalo-based early-stage companies raised $78.74 million (USD) across 20 individual deals, compared to around $4 million in 2014, according to Buffalo Business First.

To initiate a conversation with these types of funding sources, a company should, at a minimum, be prepared with an executive summary and/or pitch deck that is shareable – i.e. not confidential.

Below is a list of some of the angel, seed, and venture funding resources available in WNY:

43North – dubbed the world's largest business plan competition, 43North is an annual competition that awards $5 million every year to its winning companies, with investments ranging from $500,000 to $1,000,000. The application period is typically in the spring.

Bright Buffalo Niagara – an annual event coordinated by the University at Buffalo showcasing top entrepreneurial companies and stakeholders.

Buffalo Angels, LLC – a member-managed seed investment fund

Excell Partners – a venture capital fund that invests in seed and early-stage high-tech startups in New York State, focused on the Upstate NY area. Excell has the dual mission of generating returns and supporting economic development.

Impact Capital – a venture capital fund building a diversified portfolio of established, revenue-positive companies

LaunchNY – A Venture Development Organization (VDO) providing both pre-seed, proof-of-concept funding and complimentary support services to high-growth companies located in a 27-county region of Upstate NY.

Lorraine Capital – a private investment firm focused on acquiring controlling positions in businesses, focused on Upstate NY and the Northeaster US.

NYS Innovation Venture Capital Fund – a $100 million venture capital fund, managed by Empire State Development (New York State's economic development agency) investing in seed and early-stage companies throughout NYS. The fund promotes commercialization of new technologies and encourages job creation.

OneTen Capital – Early Stage Coalition Investing; OneTen Capital was built on the foundation that exceptional people are the disruptive force that drives long term success in the community.

Rand Capital – a business development company that focuses its equity investments in early or expansion stage companies.

Richmond Capital Partners – a venture capital fund with investment range from angel rounds in early-stage post-revenue companies to growth capital for companies with revenues above $100 million.

Summer Street Capital – a private equity fund focused on investing in lower middle market companies.

Talis Equity – a venture capital firm, providing capital and operational expertise to early-stage medical technology and business-to-business software-as-a-service companies.

WNY Impact Investment Fund – an innovative for-profit investment fund featuring collaboration between corporate, private and philanthropic investors who pooled their capital to seek both financial and social returns supporting the Western New York resurgence.

WNY Venture Association – a not-for-profit organization with the mission to elevate the economic growth of the Buffalo Niagara region by proactively increasing the size and sophistication of the angel investors base, and the quality of investments opportunities throughout Western New York. The group meets bi-monthly.

Z80 Labs – an internet-focused technology incubator, with a corresponding early-stage investment fund called SCP Buffalo Incubator Innovate NY Fund LP.

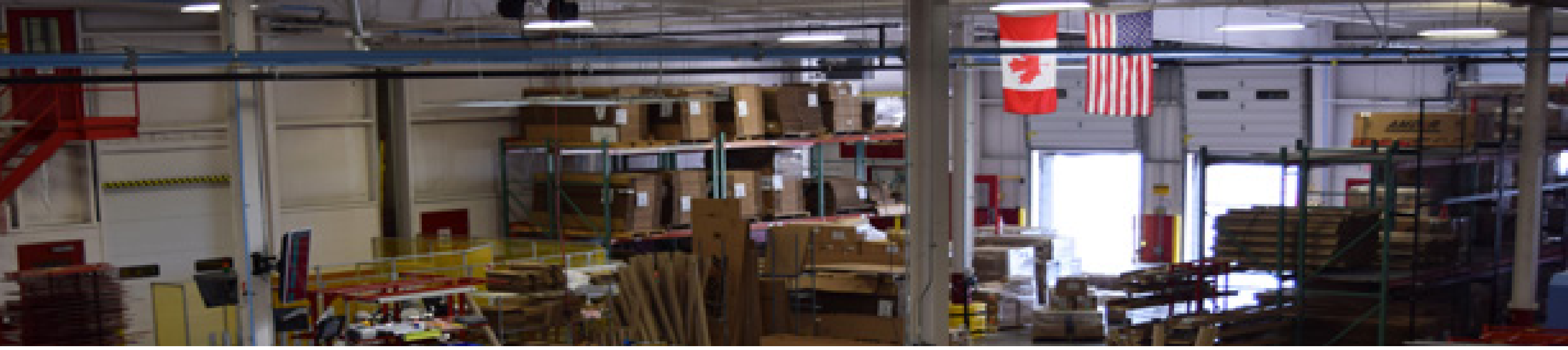
For more information on this topic, please contact Invest Buffalo Niagara.
Reach us at: 1-800-916-9073

Did you know?

BUFFALO NIAGARA PRODUCES OVER

3 BILLION

POUNDS OF FLUID MILK ANNUALLY



Expanding into the U.S. Checklist

International businesses considering a business expansion have good reason to rank Buffalo Niagara at the top of their prospect list. Invest Buffalo Niagara has business development managers who provide a single point of contact to a roster of experts in every key area needed to successfully analyze and consider a U.S. business expansion. Since 1999, Invest Buffalo Niagara has helped over 100 international companies successfully expand their businesses to Buffalo Niagara. Our services are free of charge and confidential.

Legal

- Immigration
- Incorporation
- Tax structure
- Intellectual property (patents, branding, trademarks, etc.)
- Real estate contracts and purchases

Accounting and Tax

- Tax structure
- State and federal requirements and filings
- Tax reporting and timelines

U.S. Banking

- U.S. deposits
- Checking and savings accounts
- Inter-company financial transfers
- Loan programs

Site Selection

- What sites are available in the region?
- What are the current market rates?
- What site best meets my long and short term needs?
- Committing to a real estate site (letters of intent, lease signing)

Workforce

- Wage rate data
- Employment and recruiting
- Employee benefits and medical coverage
- Training programs

Utilities

- What are your requirements of this new facility?
- Is the site that you are considering able to handle that need?
- How can a site be upgraded?
- Energy efficiency programs

Incentives

- State tax credits and grants
- County loans and tax abatements
- University partnerships
- NYSERDA (New York State Energy Research and Development Authority)
- Low-cost renewable power

Misc.

- Insurance (for the new facility and to cover the move)
- Plant layout and efficiency

Most Affordable

MAJOR U.S. HOUSING MARKET

—National Association of Home Builders, November 2015

AVERAGE COMMUTE TIME:

22 MINUTES

4.3 MINUTES FASTER THAN THE NATIONAL AVERAGE

Source: U.S. Census Bureau, 2016

RANKED #1

Friendliest American City

- Travel & Leisure, October 2017

28,000+

COLLEGE GRADUATES ANNUALLY

DIG INNOVATION CENTER

Cost of Living is Low

NEW YORK CITY

SAN FRANCISCO

SEATTLE

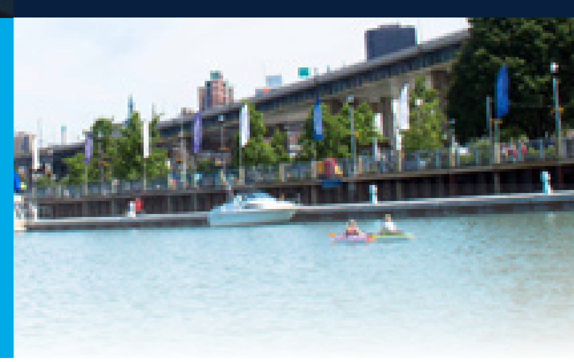
BUFFALO

Council for Community & Economic Research; Cost of Living Index (2017)

RANKED #6

BEST QUALITY OF LIFE

- The Huffington Post, August 2014



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