

## Tax and Business Strategies for International Growth

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## Strategies Covered

- Alternative Business Models
- Licensing
- Offshore Entities
- IC-DISC Export Tax Incentive



## Alternatives to Organic Growth

- Strategic Alliance
- Co-marketing
- Joint Venture
- Merger
- Acquisition
- Franchising



## LICENSING

Leveraging the resources  
of others



## What can be licensed?

- Patents
- Trademarks
- Copyrights
- Trade Secrets
- Non-IP Commercial Rights



## Intellectual Property

- Patents – articles of manufacture, compositions of matter, business methods
- Trademarks – logos, brand names, product names, tag lines and phrases
- Service marks – trademarks used in connection with services, not products
- Copyrights – recorded works (i.e. music, books, paintings, photographs, movies, etc.)



## Intellectual Property

- Trade Dress – look and feel of a business and its products
- Trade Secrets – proprietary information that retains value by being maintained secret
- Know-How – proprietary methods of doing things developed through trial and error in operating the business



## What is a license?

- A certificate or document that permits one to do a thing which the licensor could otherwise prevent
- A license does not always guarantee that the licensee will be free to do the thing licensed without interference from third parties



## Anatomy of a License

- Heading
- Recitals
- Definitions
- Grant of Rights
- Payments and Royalties
- Warranties and Representations
- Duration, Termination
- Confidentiality
- Audit Rights
- Special Provisions



## Special Provisions

- Releases for past infringement
- “most favored” treatment
- Improvements and grantbacks
- Tax treatment of payments
- Dispute resolutions



## Subdivision of Rights – Patents

- Make
- Have made
- Use
- Sell
- Offer to sell
- Import
- Enforce
- Sublicense



## Subdivision of Rights – Copyrights

- Reproduce
- Distribute
- Display
- Transmit
- Publicly Perform
- Prepare Derivative Works



## Further Division of Rights

- Licensed rights may be divided
  - By region
  - By field of use
  - By market
  - By media
  - Etc.



## Factors to Consider

- Valuation, including likelihood licensee can design around
- Not all negotiations should result in license
- Risks and consequences if license infringes a third party



## Going (or Starting) Offshore

- Jurisdiction Shopping
- Transferring IP
- Valuation and Tax Issues



## The IC-DISC Export Tax Incentive



## IC-DISC Overview

- Interest Charged Domestic International Sales Corporation
- A tax saving structure available to small and mid-sized companies engaged in exporting US manufactured products
- Provided for under the US tax code



## IC-DISC Entity Details

- U.S. corporation
- Single class of stock
- Minimum par value of \$2,500
- Corporation, and ALL shareholders owning stock on the first day of the taxable year, must elect IC-DISC status:
  - If new, within 90 days of the beginning of the tax year
  - If existing, during the 90 days preceding the beginning of the tax year
- Files a Form 1120-IC-DISC (due 8.5 months after year-end, no extension )
- 95% or more qualified export assets
- 95% or more qualified export receipts
- Interest charge on deferred income
- IC-DISC is a paper company



## IC-DISC Ownership

- If the exporter is a C Corporation owned by individuals the individuals should own the IC-DISC directly
- If the exporter is an S Corporation owned by individuals the S Corporation should own the IC-DISC directly.
- The year-end of the IC-DISC is the year-end of its majority shareholder

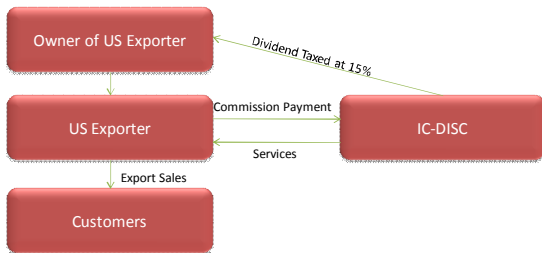


## IC-DISC Mechanics and Tax Benefits

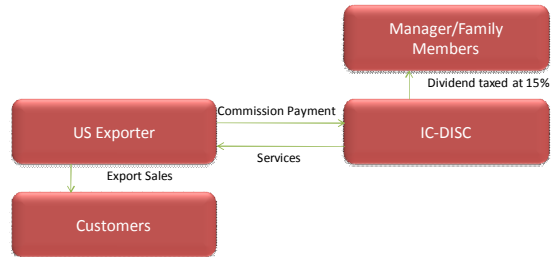
- Have the exporter and the IC-DISC enter into a sales agent agreement
- Exporter pays a deductible commission to the IC-DISC, thereby transferring income to the IC-DISC that would have taxed at a 35% rate (assuming highest rate)
- IC-DISC does not pay tax, but makes distributions to the owners which are taxed at 15% capital gains rate
- Effectively saving the exporter 20%



### Common IC-DISC Structure S Corporation Owner



### IC-DISC Structure C Corporation Owner



### IP-DISC Candidates

- Exporter of US- manufactured products with > 50% US content
- Engineers and architects with construction projects outside the US
- Profitable in the US
- S-Corps, LLCs, and privately-held C-Corps
- Export Receipts > \$2 million



### Qualifying Exports

- U.S. Exporter sold or leased export property must:
  - Be manufactured, produced, grown or extracted in the U.S. by a person other than an IC-DISC
  - Be held primarily for sale, lease or rental for direct use, consumption or disposition outside the U.S.
  - Contain a minimum of 50% U.S. content
  - Be exported within a year of sale
  - Be exported following IC-DISC incorporation
  - Be shipped before year-end



## How to Calculate Commission Expense

- Methods:
  - 4% of Export Gross Receipts
  - 50% of Net Taxable Export Income (CTI Method)
- May select which export sales are included in calculation (i.e. if using the 50% method remove all export loss sales to increase income total)
- Flexible allocation of SG&A expenses, if reasonable
- Method selectable on individual transaction basis



## Calculation Optimization

- 50% CTI if net profit is > 8%
- 4% Gross Receipts if net profit is < 8%
- Selective transaction grouping is best, if practical:
  - Profit variability ( by product, customers, seasonality, etc.)
  - Available Sales & COGS data by transaction



## Paying Commissions

- Pay at any time during the year and up to 8.5 months after year-end
- Exporter must pay at least 50% of the commission payments for the year within 60 days following year-end (Recommend to pay at least 65-75%)
- Must pay the balance within the next 90 days
- However, if additional qualified export receipts are found after the 60 & 90 day marks their related commissions must be paid in within 90 days of discovery. The process of discovery can continue until the earlier of 9/15 or the filing date of the IC-DISC return.



## What is the "Interest Charge"

- Commission to IC-DISC defers Shareholder tax until commission distributed by the IC-DISC, qualified dividend
- IC-DISC shareholder (owner) pays an "Interest Charge" to the IRS when DISC earnings are accumulated and not distributed
  - Calculated on Form 8804, filed separately with IRS:
    - Due no later than original due date of shareholder's tax return, individuals April 15th, corporations March 15<sup>th</sup>
    - Federal income tax at ordinary tax rates on Accumulated IC-DISC income not distributed, approximately equivalent to retained earnings of IC-DISC
    - Interest charge rate is the Base Period T-Bill rate published September 30 annually by IRS (Rev. Rul. 2010-28) set 2010 Base Period T-Bill rate at .34 percent (.0034)
- Shareholder(s) avoid interest charge if IC-DISC does not accumulate income



## Distribution vs. Deferral

- **Distribution:**
  - Commission income is taxed at 15% when distributed
- **Deferral:**
  - Calculated based on income derived from \$10 million of export sales
  - Interest is charge on the deferred amount at a rate imposed by the IRS. Currently .63% (as of September 30, 2009)
  - No limit on the length of time
  - Deferred funds can be loaned back to the U.S. Exporter using producer's or accounts receivable loans



## Timing of Income and Deduction

- Qualified Dividend Income is recorded as income when received, on a cash basis.
- Commission Expense is deductible for the year in which the related product was exported, even if the commission expense is paid after year-end.



## Legislative Environment

- Will the trend of preferred dividend rate extensions continue past 2012?
- What is the qualified dividend rate going to be?
- What is the highest tax rate going to be?



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