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Legal and Tax Issues in Foreign Markets

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3 Steps to Successful Foreign Expansion

1. Establishing the optimal legal presence
2. Structuring and enforcing optimal legal relationships
3. Crossing the cultural divide

■ Step 1: Establishing the optimal legal presence

- Find the balance amongst:
 - The optimal commercial structure
 - The optimal tax structure
 - The regulatory barriers and constraints

The optimal commercial structure checklist

- The nature of the business or service
 - E.g. tangible goods or intellectual property

- Values and pricing structure

- The level of localized business operations
 - Manufacturing
 - Sales
 - Franchise, etc.

The optimal commercial structure checklist (continued)

- Your position in the supply chain
 - Developer
 - Manufacturer
 - Value Added Reseller
 - Distributor, Agent, etc.

- Your relationships up and down the supply chain
 - Particular attention to partners in countries other than target country

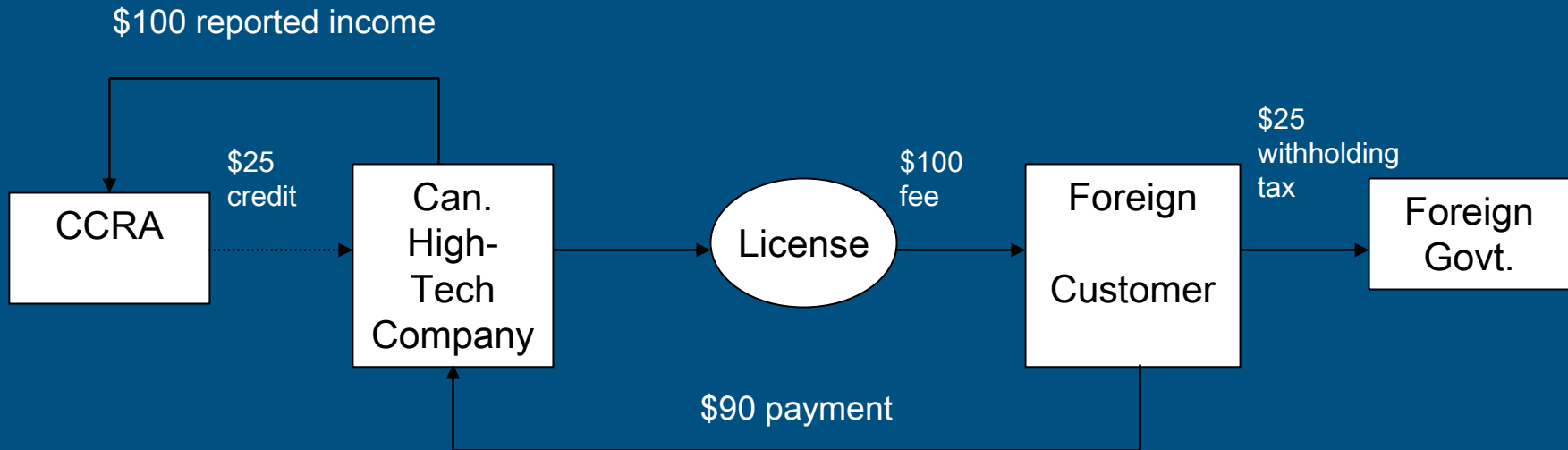
The optimal commercial structure checklist (continued)

- What level of foreign investment
 - Dominant
 - Significant
 - Incidental

- Where
 - Economic Community
 - Country
 - Trade Zones

The optimal tax structure

- An example: withholding tax



- Status Issues

- e.g.'s
 - residency
 - permanent establishment

Identifying and dealing with regulatory constraints

- Home country constraints
 - E.g. privacy regulation, export controls
- Host country constraints
 - E.g. anti-dumping legislation, distribution regulation, labour laws
- Other country constraints
 - E.g. U.S. export controls regulation
- International conventions
 - E.g.: UN Convention on Contracts for the International Sale of Goods

Step 2: Structuring and enforcing optimal legal relationships

- Identifying and profiling relationships
- Embodying the relationships in contracts
- Managing risks outside the contract

Identifying and profiling relationships

- Type
 - Handshake – the information exchange
 - Confidentiality
 - Evaluation and due diligence
 - Supply, service and distribution channels
 - Investment and joint ventures

- Objectives
 - Strategic
 - Financial

Identifying and profiling relationships (continued)

- ROI Analysis
- Risk Analysis
- Special “red flag” factors
 - E.g. deals with competitors



Embodying the relationship in contracts

- Some fundamentals
 - Financial
 - Pricing/valuation
 - Payment
 - Currency management
 - Security for payment
- Law and dispute resolution
 - Governing law and venue
 - Alternative dispute resolution
 - International conventions

■ Embodying the relationship in contracts (continued)

- Intellectual property rights and protections
- Risk management
 - Limitations of liability
 - Indemnification
- Termination provisions

Managing risks outside the contract

- Insurance
 - Political risks
 - Credit risks
 - Shipping risks
 - Local property and liability risks
 - Personnel risks

- Bank Guarantees

- Political and economic monitoring

Step 3: Crossing the cultural divide

- Understanding the legal systems
- Understanding the economics
- Understanding the social structures and protocols