Multi-jurisdictional practices

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Intellectual property: *mind to market*

Structuring

- Strategy drives structure – Ideally…..
  - Start with the business outcome. Why are we doing this?
  - *Then* consider regulatory and tax implications
- Common models
  - Federation of separate partnerships
  - Franchise arrangements
  - Partial or full profit sharing
  - Cost of living differentials ?

Structuring

- BSW – unincorporated JV between 2 partnerships
  - Enhanced Federation model with profit-sharing
  - Independent Management Board with balanced partner representation, non-executive director &CEO
  - Independent management company employing senior executives, with appropriate service agreements
  - Management fees and cross-promotional payments to facilitate resource and profit-sharing
  - Adjustments for cost of living differentials
    - (see one we prepared earlier, but don’t try this at home!)
  - Model encouraged collaboration but was resource intensive!

Transfer pricing

- A key issue for multi-national firms
  - A potential fly in the ointment whenever charges are made - or profits shared -between related or controlled entities within the same group.
  - A deemed “permanent establishment” or business presence in a location can result in complications, including multiple tax returns for individual partners.
  - Complications can arise due to different tax rules, coupled with more complex structures such as management companies and service trusts.
  - Even a small foreign outpost with one or two partners can be tricky.
  - Be warned – tax offices are more cooperative (with each other), exchange more information, are hungrier for revenue, and are more punitive, than in the past.

Governance

- What is the governance model?
  - What is the management structure?
    - Board of directors
    - Overarching management committee
    - Substantial independence, with negotiated resource sharing
    - Benevolent dictatorship?
- Will Partners "buy in" to delegated authority …
  - In theory - and in practice?
  - Are delegated authorities well-defined?
  - Are cultures, values and commercial drivers compatible with the management model?
  - What happens if "they" tell us something we don't want to hear?
  - Who controls the brand?

Financial considerations

- Be wary of "synergies" (that may never eventuate)
- Factor in diversion of professional time & resources
- Indirect costs (will be more than you think)
- Integration of systems (will be harder than you think)
- What will the investment of time and money *really* be?
- Can liability be quarantined?
- Approach as if buying a new business….
  - How much are we willing to invest, in real dollars?
  - How will we ensure potential synergies are realised?
  - How will we ensure an appropriate return on investment?

Culture

- Cultural dimensions to consider
  - Who is the dominant party?
  - Is there a shared understanding around this?
  - Jurisdictional differences
  - Geographical differences
    - (e.g. Sydney-Melbourne, Auckland-Wellington)
  - Generational differences
  - Retirement timelines
  - Historical differences
  - Common objectives?
  - Shared values?

Culture

- Premise: the whole will be greater than sum of the parts
- This is linked to partnership dynamics ….
  - (…which is linked to cultural compatibility).
- The best modelling, planning and management can be overdone if this isn't fundamentally right.
- Assumptions should be tested and explored.

Useful lessons

- Begin with business strategy and a clear rationale.
- Don't assume business environments are the same in different jurisdictions – investigate carefully!
- Get the "ducks in a row" – temper initial exuberance.
- Be dispassionate and realistic in analysing business acquisition opportunities, risks, costs and returns.
- Ensure plans, targets, incentives, reports & performance benchmarks are aligned with expected outcomes.
- Don't underestimate the importance of profitability.
- Have an agreed, well-defined exit strategy!

Questions?

- Thank you!

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