



BREAKING NEWS

CONGRESS ELIMINATES 35-YEAR OLD REAL ESTATE TAX ON QUALIFYING FOREIGN INVESTORS

This action could significantly increase cross-border investments in commercial properties. Foreign investment in U.S. real estate totaled \$78.4 billion in 2015, with foreign pension funds accounting for approximately \$7.5 billion. Please see the following article for more details:

<http://www.wsj.com/articles/congress-eases-curbs-on-foreign-real-estate-investors-1450657972>.

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USA FDI News highlights the FAQs arising from your projects - from how to finance a deal to selecting the right visa or tax strategy and more. We want to keep USA FDI News interactive and relevant to your international business or individual investment strategies. Please email your suggestions for future topics to enorman@williamsmullen.com.

This issue of USA FDI News features practical advice on financing your U.S. investment. Brian Fulk, the Senior Vice President of Business Development for the Greater Richmond Partnership, Inc., and a former international banker, explains how to obtain financing for your FDI project, and lays out the options for dealing with U.S. and foreign banks. For more on our **"Breaking News,"** please turn to page 6 for a legal summary of the tax law changes prepared by Bobby Hamlett, an attorney on Williams Mullen's Tax Team.



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HOW DO I FINANCE MY U.S. FACILITY INVESTMENT?

– By Brian Fulk, Senior Vice President of Business Development, Greater Richmond Partnership

You have had a successful business in your home country location, and perhaps have established operations outside your home country. Most likely, you have begun to sell into the USA via exports, or have pending contracts that warrant an US expansion outlook.

WHAT HAPPENS WHEN YOU DECIDE TO PHYSICALLY LOCATE TO THE USA AND SEEK FINANCING FOR YOUR BUSINESS? HOW SHOULD YOU DO THIS?

As a former international banker, I recently reached out to several of my banking colleagues in the Greater Richmond, Va. area to inquire as to how their bank views a new foreign-owned client locating and desiring to expand into our region. While this was not a formal “statistically valid” survey, the results from the various banks point to some common ideas and useful recommendations.

Whether you are looking at a 3-person sales operation, a 15-person distribution and/or service center or a full-fledged assembly or manufacturing operation, reliably financing the business is a key consideration.

WHAT SHOULD YOU BE PREPARED FOR?

First, plan on the first two years to be largely financed by the strength

and resources of the parent company. This can take several forms, and the list below is not exhaustive. Be sure to check with your legal, tax and other advisors before deciding on what is best in your specific situation (intercompany loans can have different tax consequences in some cross-border situations versus a cross-border loan from a bank).

Option 1: Finance the U.S. operation with an equity (cash) infusion from the parent company.

Option 2: The parent company arranges to extend an intercompany loan.

Option 3: The parent’s house bank extends a loan with or without direct parent support.

Option 4: Ask your U.S.-based bank to extend a loan (or lease for equipment) under a parent guaranty.

Option 5: Arrange for a standby letter of credit to be issued by your credit-worthy house bank with the US-based bank as beneficiary. The U.S.-based bank then extends credit with this house bank support.

While the most costly alternative might be the last option, this option is one that I used most often as a banker in situations where the desire was to have a credit facility put in place in short order. Banks will often acknowledge the extra cost the parent is sustaining for the L/C and may reduce their lending rates to better reflect the risk of the issuing bank versus the risk associated with either the local operation or parent.

It is very common, after a couple of years of successful operation, for a foreign-owned subsidiary to seek or consider supplemental local financing. At this stage, local area banks may be able to provide “secured financing,” with no formal reliance on the parent. While more expensive, this provides the local operation with some additional funding alternatives and gives it a bit of independence as it grows. Credit extension by the banks might be supported with the bank taking a secured interest in receivables, inventory, lien-free buildings or land.

Most banks also indicated that in addition to the business financing needs, they are eager to discuss and find ways to assist with the personal financing needs of the key officers locating to the region. Each situation is unique, and virtually all the banks want to work with those locating here to find workable solutions.



How do I Finance my U.S. Facility Investment? (cont.)

BEST ADVICE?

"Pick your support partners carefully, and have conversations early in the process." The Greater Richmond Partnership's Global Assistance Program http://www.grpva.com/files/GAP_4pgr.pdf can provide free and early access to the various support entities you will want to speak with should the Richmond region be on your location list.

In selecting a bank partner, be sure that the bank selected can properly deal with incoming

foreign wires. Some banks (for example, a direct correspondent to the parent company's bank) do this much better than others. You do not want to spend hours trying to track down the status of your money transfer. In addition, while I recommend establishing a relationship with more than one bank, your bank for international affairs should also be able to offer a good information reporting system, allowing your authorized parent officers the ability to see or monitor account activities here.

About the Author



Brian Fulk is Senior Vice President of Business Development with the Greater Richmond Partnership. Brian holds a bachelor's degree in Economics from Guilford College, and an MBA from Wake Forest University. He is a member of the International Economic Development Council and the Virginia Economic Developers Association. Brian and his wife, Deborah, live in Richmond, Virginia.

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RECENT FDI SUCCESS STORIES

ITALIAN COMPANY PICKS SOUTH CAROLINA FOR FIRST U.S. FACILITY

BUSCOTT LLC announced plans on Feb. 3 to locate its first U.S. manufacturing facility in Walterboro, S.C., which is about 50 miles west of Charleston. BUSCOTT, which is based in Varisella, Italy, is a producer of specialty bearings such as flanges, turned washers and turned rings for precision ball and roller bearings. They are investing \$1.15 million in the project, which will create 10 new jobs. They expect to begin production in 2016. – <http://scommerce.com/news/press-releases/buscot-llc-establishing-operations-colleton-county>

VIRGINIA ATTRACTS FOUR EUROPEAN COMPANIES

On March 15, Governor McAuliffe announced that **ELDOR Corporation**, an Italian-based automotive manufacturer, will invest \$75 million to establish its first U.S. production company in Botetourt County. The project will create 350 new jobs in the county. Governor McAuliffe approved a \$3.2 million grant from the Commonwealth's Opportunity Fund to assist the County in landing the

project. ELDOR is a global leader in the production of automotive parts, including ignition systems, engine control units and braking system actuators, among others. – <http://yesvirginia.org/AboutUs/NewsItem/1479>

In February, **Polykon Manufacturing** announced an investment of more than \$60 million to establish a manufacturing operation in Henrico County. The operation is part of a joint venture between two French companies – Seppic, Inc. and Schülke Inc – that will create approximately 50 new jobs in Henrico's White Oak Technology Park. Polykon will manufacture ingredients for the cosmetics and pharmaceutical industries. The operation is expected to begin manufacturing ingredients in the early 2018. – <http://www.yesvirginia.org/AboutUs/NewsItem/1470>

Starsprings – a spring and spring-unit manufacturer based in Sweden – announced plans in January to establish its first U.S. manufacturing plant in Henry County, which includes the city of Martinsville. The company, will invest \$3.7 million in the

facility and create 68 new jobs. Headquartered in Herrljunga, Sweden, Starsprings is the leading manufacturer in Scandinavia of spring units for excellent bed and seat comfort. They have operations in Sweden, Brazil and Poland. – <http://www.yesvirginia.org/AboutUs/NewsItem/1449>

In December, **TAG America Inc.**, a subsidiary of TAG Chemicals GmbH, announced plans to build its first U.S. manufacturing facility in Virginia Beach. TAG America will invest \$700,000 in the facility, which will create 15 new jobs. The company – which is headquartered in Bischofsheim, Germany – produces water-based, non-toxic, specialty chemicals such as agent releasers for a variety of industries. – <http://www.yesvirginiabeach.com/media/news-releases/germany-based-tag-america-inc-selects-virginia-beach-for-first-us-manufacturing-facility>

BRAZILIAN LOGISTICS COMPANY RELOCATES HEADQUARTERS TO GEORGIA

Merchant e-Solutions, a logistics firm focused on payment processing, announced plans in January to relocate its corporate

Recent FDI Success Stories (cont.)

headquarters from the Silicon Valley to just outside of Atlanta. The company will invest \$5 million to create more than 140 new jobs. Merchant e-Solutions is a division of Cielo S.A., which is headquartered in Brazil and is Latin America's leader in electronic payment solutions. Merchant e-Solutions provides a technology platform to support the needs of various merchant segments, including small businesses, B2B wholesalers and global e-commerce companies. – <http://www.georgia.org/newsroom/press-releases/merchant-e-solutions-to-create-more-than-140-jobs-in-metro-atlanta/>

GERMAN MANUFACTURER SELECTS GEORGIA FOR FIRST U.S. FACILITY

In January, **LINDE+WIEMANN**, a German-based manufacturer of complex structural steel systems, announced plans to establish its first U.S. manufacturing facility in Hart County, Ga. The facility will create approximately 250 new jobs with an investment of more than \$35 million. LINDE + WIEMANN specializes in manufacturing and assembling engineered steel systems mounted in motor vehicles. The proposed facility will supply several customers, including a

nearby BMW manufacturing plant in South Carolina. – <http://www.georgia.org/newsroom/press-releases/linde-wiemann-to-create-200-new-jobs-will-invest-more-than-35m-in-hart-county/>

FDI LEGAL UPDATES

Breaking News

FOREIGN INVESTMENT IN U.S. REAL PROPERTY TAX REFORMS

The Protecting Americans from Tax Hikes Act of 2015 ("PATH Act"), signed into law on Dec. 18, 2015 by President Obama, creates an exception so that "qualified foreign pension funds" are no longer subject to certain tax and withholding rules under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA"), as amended. The FIRPTA rules generally provide that foreign individuals and corporations will be subject to U.S. income tax on gain from the disposition of U.S. real property interests and that the purchaser must withhold 15 percent (up from 10 percent prior to the PATH Act) of the amount to be realized by the foreign seller on the disposition of such U.S. real property interests. "Qualified foreign pension funds" should no longer be subject to the

special tax and withholding provisions under FIRPTA and should be able to more freely invest in U.S. real estate and certain corporations holding U.S. real estate. What qualifies as a "qualified foreign pension fund" is defined at Section 897(l) of the Internal Revenue Code and notably does not include (among others) a fund in which any single participant or beneficiary has a right to more than five percent of the fund's assets or income. Another FIRPTA reform under the PATH Act allows all foreign investors, not just qualified foreign pension funds, to own up to 10 percent of a publicly traded class of stock in a U.S. real estate investment trust ("REIT") without such stock being treated as U.S. real property holding interests held by that investor upon a disposition of such stock. For the anticipated business impact of the FIRPTA changes, please see <http://www.bloomberg.com/news/articles/2015-12-18/u-s-poised-to-lift-35-year-old-real-estate-tax-on-foreigners>.

FDI Legal Updates (cont.)

NEW RESTRICTIONS ON BUSINESS TRAVEL TO THE U.S.

On Jan. 22, 2016 the U.S. Department of State, Bureau of Consular Affairs, published its first Official Notice governing implementation of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. The result: The Visa Waiver Program (VWP) permitting visits for 90 days without a visa cannot be used by citizens of any of the 38 Visa Waiver Program (VWP) countries (France, Germany, Japan, etc.) who are also either nationals of Iran, Iraq, Sudan or Syria or who have traveled since March 1, 2011 to Iraq, Sudan, Iran or Syria. Over 16,000 persons previously registered under ESTA who were using the VWP have had their registrations revoked. The alternative: apply for a B-1 Business Visitor Visa at the U.S. Consulate in your home country. For more information, please click on the following link: <http://www.williamsmullen.com/news/us-state-dept-advises-new-restrictions-business-travel-usa>. For information on obtaining a waiver or exceptions to these restrictions, please see <http://www.williamsmullen.com/news/exceptions-restrictions-using-visa-waiver-program-vwp>.

RECENT CHANGES TO EU COMMUNITY TRADEMARKS MAY IMPACT INTERNATIONAL TRADEMARK OWNERS

Enforcement of U.S. and European Union trademarks is always of concern to international businesses. On March 23, 2016, Regulation (EU) 2015/2424 of the European Parliament and of the Council will take effect, introducing changes to the process for applying for and maintaining Community Trade Mark (CTM) registrations in the European Union. Many changes will have a significant impact on international trademark owners, affecting the cost of applications as well as the standards for acceptable goods and services descriptions. Companies with CTM applications and registrations should carefully review their trademark portfolios to determine the effect of the new changes on the scope of their rights and their filing and protection of trademarks in the U.S. For more details see <http://www.williamsmullen.com/news/recent-changes-community-trade-mark-may-impact-international-trademark-owners>.

KEY EXPORT COMPLIANCE ISSUES FOR 2016

Tom McVey, Chair of the International Section at Williams Mullen, offers five strategic issues to be considered in the export compliance area. Recent developments include country amendments dealing with trade with Iran and Cuba, changes in cybersecurity and export violations, high risk transactions, personal liability for export violations and more. These changes impact U.S. companies and foreign companies whose U.S. subsidiaries export from the USA their products, services or technical data. To access Tom's alert, please click on the following link: <http://www.williamsmullen.com/news/key-export-compliance-issues-2016>.

AFFORDABLE CARE ACT (ACA) COMPLIANCE UPDATE FOR 2016

Foreign companies with operations in the U.S. can follow ACA requirements by reading an alert prepared by Brydon DeWitt, a partner in the Employee Benefits Section at Williams Mullen, that addresses the employer mandate, reporting health coverage and coverage of preventive care, to name but a few topics. To read Brydon's alert, please click on the following link: <http://www.williamsmullen.com/news/affordable-care-act-compliance-update-2016>.

ENVIRONMENTAL NOTES - FEBRUARY 2016

Environmental law enforcement has been a hot news topic in the U.S. after the Flint, Mich. scandal involving lead contamination of the drinking water. For the latest developments nationwide affecting environmental enforcement, please see our latest Environmental Notes at <http://www.williamsmullen.com/news/environmental-notes-february-2016>.

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UPCOMING EVENTS:

(with participation of Williams Mullen attorneys as speakers)

MARCH 26, 2016
The USA IT Market for European Companies
Digital Place Cluster
Toulouse, France
<http://www.williamsmullen.com/events/usa-market-opportunities-it-companies>

APRIL 14-15, 2-16
2016 Aerospace & Defense Supplier Summit
Seattle, WA
Williams Mullen will present on ITAR and IP issues.
<http://seattle.bciaerospace.com/sign-up.html>

MAY 18-19, 2016
French-American Business Week
French Embassy, Washington, DC
<http://selectusa.commerce.gov/events/fabw2016.html>

JUNE 19-21, 2016
SELECTUSA Investment Summit "The Innovation Advantage"
Williams Mullen plans to present on IP issues for FDI projects see <http://tinyurl.com/jb87xlb>. For complete information about the summit see <http://selectusa.commerce.gov/2016-summit.html>