

Case study – expanding into foreign markets

Zilot Ltd is an Irish company involved in the provision of software used in the Construction, Retail & Energy sectors.

Up to 2008, its main market was in Ireland but with the downturn in the Irish property market, the company is focusing more on foreign markets including the UK.

Business Development Function and activities undertaken abroad.

Zilot Ltd is not registered for taxes outside of Ireland and is selling in a number of markets. The contact address on the company's website for its foreign operations in every territory is a virtual office address that allows the company to have a marketing address / phone number in that territory.

The following people do work for the company in its international markets:

Joe Bloggs CEO

Joe Bloggs is the CEO of Zilot Ltd and lives in the UK during the week. He travels home to Ireland at the weekend. Over the next 12 months or so his wife will relocate to the UK to join him and he expects to be based there over the next few years.

Joe works exclusively for Zilot Ltd and is the individual driving the company's growth in the UK market. He spends a lot of time on the road developing business. He also travels around the EU to identify business opportunities.

The company does not have an "office" in the UK other than the virtual office arrangement but Joe does work from his apartment.

He is paid by Zilot Ltd and payroll taxes are operated in Ireland on this income.

Mike Sanders (Sales & Marketing)

Mike undertakes sales & marketing activities in the various markets as an independent contractor.

Paul Diamond (Site Visits / Installations / Support)

Paul undertakes site visits, installations and repairs in foreign markets for Zilot. He does not work exclusively for Zilot and earns a fixed monthly retainer plus expenses.

Zilot's marketing development representatives focus their time on meeting and greeting prospects, customers and attending construction industry events thereby laying the foundations for the development and maintenance of the Zilot brand in the respective market. This type of work includes attending meetings and presentations where product functionality and pricing are often discussed, however the presentation of any contracts for signing are done from Zilot's office in Ireland.

Role of the Board of directors based in Ireland.

With regard to the sales process, the role of the board includes the formulation of strategy, setting pricing parameters, contract terms and conditions.

Operations Team based in Ireland

With regard to the sales process, the Operations Director based in Ireland issues contracts to customers for signing and these are also returned directly to him. In addition, the Operations Director oversees the customer support and technical functions which are based in Ireland with all customers being supported from Ireland. From time to time Zilot will run regional or one to one customer training sessions in both Ireland and other countries.

In summary, the functions based in Ireland are: -

- Office of CEO
- Sales & Marketing
- Operations (Customer Support and Technical)
- IT
- Finance
- Board

The role of UK representatives is to identify and support the development of business opportunities with all pricing, contract terms & conditions, contract signing etc conducted at the office based in Ireland.

Questions:

1. The company has not registered for taxes in the UK (including payroll taxes). Based on the facts outlined above, does Zilot have a permanent establishment ("PE") in the UK or can it be argued that the activities undertaken constitute a marketing presence ie a representative office but not a PE?
2. When Joe is not on the road meeting customers, he works from his apartment. Does this fact have an impact upon your conclusions? Is the PE risk increased by reason of having a virtual office address which is also used as the UK contact address on the company's website.
3. Joe is CEO of Zilot Ltd. What is the significance of this title in your deliberations?
4. If Zilot feels that it cannot avoid having a UK PE for much longer, what structuring alternatives should it consider?
5. How should Zilot finance the UK business?
6. What factors must be addressed when considering the inter-company pricing for goods and services between Ireland and the UK.
7. What are the personal tax issues for Joe arising from his current role with the company?