

## A quick guide to forming a business in the United States

Provided by RSM US LLP

Anticipating and planning for international business needs are challenges for most companies and their leaders. At RSM US LLP, our global capabilities are matched by our commitment to personal attention and service to our clients.

Entering the United States without adequate planning or implementation can lead to diminished returns on your investment. RSM US LLP has the experience, methodology and relationships to help you address the complexities of capitalizing on having a presence in the United States. We bring a dedicated team together to help companies leverage opportunities, reduce risk and ease the unknown while identifying potential blind spots.

### **Business formation**

There is no national law on business formation in the United States. New business entities are created under the law of one of fifty states or the District of Columbia. The choices regarding jurisdiction and business entity type are up to the party forming the business.

### **Entity choice**

A difference between the United States and many other countries is the wide array of business entity forms available. But, despite the wide range of choices, most foreign-owned companies set up in the United States as a business corporation.

Because of certain negative tax consequences, the limited liability company (LLC), another business entity form that is popular with U.S. companies, is usually not recommended for foreign owners.

Be careful if your attorneys recommend using an LLC. They may not be aware of the negative tax consequences that can result for companies with headquarters abroad.

### **Jurisdiction choice**

A company can incorporate in any state, regardless of whether it has business operations there. However, companies usually incorporate in the state where their primary operations are located, or in one of a number of states that have friendly corporation rules. The state of Delaware is the most popular of these jurisdictions, with corporate laws viewed as liberal and friendly to businesses.

Decisions on entity and jurisdiction choices are best made with the joint advice of a U.S. tax expert and a corporate lawyer, both experienced at working with companies headquartered abroad.

### **General requirements**

The requirements for incorporation can vary from state to state, but incorporation is usually simple, fast and relatively inexpensive in the United States. The following principles generally apply:

- Incorporation can be accomplished very quickly. If needed, expedited service can result in incorporation in as little as one day.
- The filing fees and taxes charged for incorporation vary from state to state. They are less than \$500 U.S. dollars.
- Minimum paid-in capital is \$1,000.
- A corporation can have just one shareholder, which can be a company.
- Corporations have a board of directors and officers. Corporations can have as few as one director. Shareholders, directors and officers can all be foreign citizens and residents.
- Corporations must have a registered agent located in the state of incorporation. This can be a resident manager (foreign or U.S. citizen), a lawyer or a corporateservice company with offices in the state.
- Corporations are required to file an annual report and pay franchise fees. The information on the annual report is usually limited to the name and address of the corporation, the name and address of the registered agent, and the names and addresses of directors and officers. This is filed with the secretary of state and the state of incorporation, and is public information.
- Except in the case of listed companies and companies in certain regulated industries like banking, there is no statutory audit requirement and no public filing of company financial information.

### **Tax registration**

New companies are required to register with the Internal Revenue Service (IRS) and with tax authorities of the states in which the company is incorporated or is doing business.

The IRS issues the corporation a Federal Employer Identification Number (FEIN) which is used for both federal and state tax purposes. This process can usually be accomplished electronically in a day or less.

Depending on the state in which operations are located, other registrations may be required. A company's U.S. professional advisors can provide full details.

### **Other registrations**

Depending on the nature of the business, other federal and state registrations may be required. Legal counsel is needed to determine this.

### **Federal taxes**

Companies operating in the United States will probably be subject to U.S. income tax. Payments to the foreign parent may be subject to withholding requirements.

If a company has employees, it will also be subject to strict federal and state tax withholding requirements relating to the wages of those employees. Direct employment taxes for Social Security and Medicare will also arise. The effect of U.S. federal taxes on a company's global taxation may depend on whether a tax treaty exists between the parent country and the United States.

### **State taxes and regulations**

Most foreign companies entering the United States are surprised by the importance of and lack of consistency among state and local taxes. These taxes take three primary forms and can vary significantly from one state to another. Some states aim to be business friendly and hold out the most favorable tax regimes. State taxes generally are not covered under tax treaties.

- Real estate tax. This tax is levied against the owners of real estate and is used to finance public schools and local government operations. In some jurisdictions, the tax is very high, and can significantly affect company expense irrespective of whether the company owns or leases.
- Personal and corporate income tax. Many states have some form of personal and corporate income tax. Rates can vary substantially. A few states have no state income tax and may represent attractive choices.
- Sales tax. Many states impose a tax on the sale of goods at retail. Unlike value-added taxes known in much of the world, sales tax does not usually apply to the exchange of goods prior to the final sale.

### **Social Security and employee benefits**

Social Security in the United States is unlike social programs in many other countries. The program does not provide health or other similar benefits to employees. Instead, it is a retirement income and health benefits program for the elderly and disabled funded by mandatory employer and employee contributions.

Most states have employer-funded unemployment and worker injury compensation programs. Unlike many other countries, there are no requirements for health care or disability protection, or for paid vacation. However, most employers fund voluntary programs to provide employees with these common benefits.

### **Foreign investment incentives**

There are no national incentive programs to attract direct foreign investments. Many states offer incentives for major investments that will create jobs and add to the tax base. These incentives take the form of real estate tax holidays, infrastructure improvements, job training and other similar items.

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