

## THE POWER OF BEING UNDERSTOOD

# U.S. BUSINESS STARTUP CHECKLIST

## Advisors, entity and jurisdiction selection

Select your U.S. professional services team.

- An international tax professional for the most effective structure for the foreign parent company/owners
- A corporate lawyer to incorporate the entity and draft legal contracts and agreements
- An insurance professional to obtain business liability and workers' compensation coverage
- A banker for financing and banking needs

Determine the type of legal entity best suited to your unique situation, and determine the date for your accounting year-end.

**Note:** Business corporation is the most common entity type for foreign investors, but other possibilities exist (for example: limited liability companies, partnerships and unincorporated branches). The selection of entity type and accounting year-end should be made with the advice of your U.S. tax accountant and corporate lawyer, and your home country advisors.

Select the jurisdiction where you will establish your business entity. A company may register in any state.

**Note:** Your business entity will be governed by the laws of the state where it is established. Choice of jurisdiction should be made with the advice of your tax professional and corporate lawyer.

## Creating your U.S. entity

Submit paperwork to establish your legal entity. Use expedited service if speed is needed.

**Note:** You may pay filing fees and franchise taxes as applicable in the state of registration—often more than \$500. You will also name or appoint a registered agent located in the state in which the entity is formed if needed.

Capitalize the new entity. State law determines minimum paid-in capital. A common minimum is \$1,000.

Register with the IRS for a Federal Employer Identification Number (FEIN).

File with state for certificate of assumed name, or doing business as (DBA) name if needed.

Obtain any appropriate state tax and/or local identification numbers.

Obtain required business licenses and permits.

## Tax issues to be discussed with your advisors

Prepare for U.S. income tax compliance. Operations will likely be subject to U.S. income tax. Withholding requirements may apply to payments to the foreign parent.

Assess whether your existing non-U.S. company has had a U.S. income tax presence ("permanent establishment" in the United States) and if there may be delinquent U.S. tax and/or U.S. tax reporting.

Consider investment strategy (debt versus equity).

Review anticipated intercompany transactions to determine potential withholding tax and transfer pricing considerations.

Plan for state and local tax compliance.

**Note:** Don't overlook state and local taxes. There are important, complex and significant variations between each jurisdiction. State and local taxes are generally not covered under international tax treaties. Common state and local taxes include: property tax, sales/use tax, payroll taxes and income tax.

Prepare for employment taxes and contributions. You need to determine the cost and impact of employment taxes and contributions required by state, local and federal law.

## Accounting and financial reporting

Set up your accounting system and financial reporting.

Determine nature and frequency of financial reporting to parent company.

**Note:** There is no mandatory chart of accounts in the United States.

## Audit

Determine whether the parent company needs an audit or other attest procedures in the United States.

**Note:** There is no statutory audit requirement for private companies.

## Employee benefits and Social Security considerations

- Social Security in the United States does not provide health or 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.
- Employers must comply with state and federal laws and regulations controlling the hiring, treatment, compensation and termination of employees (e.g., Fair Labor Standards Act).
- Consult with your professional services team to understand the potential impact of the Affordable Care Act (ACA) for your organization and what proactive steps are needed to be in compliance with ACA regulations.

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