

# SETTING UP BUSINESS IN THE US



*The US Desk*

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# FORMS OF DOING BUSINESS IN THE THE US

The principal forms of doing business in the US are:

SOLE  
PROPRIETORSHIP

PARTNERSHIP

LIMITED LIABILITY  
COMPANY (LLC)

JOINT VENTURE

BRANCH

CORPORATION



# SOLE PROPRIETORSHIP

- Sole proprietorships are established and owned by a single individual
- No formal requirements need to be met in order to establish a sole proprietorship
- Appropriate for smaller business enterprises
- The sole proprietor is taxed on the income of the sole proprietorship
- Personally liable for the debts and obligations of the business



# PARTNERSHIPS

- Partnerships, like LLCs are “flow through” or “fiscally transparent” entities for US federal income tax purposes.
- Partnerships are required to file annual tax information returns but the income or loss of a partnership flows through to its partners
- All states permit the formation of general and limited liability partnerships
- Limited liability partnerships are often used as a vehicle for carrying on professions such as legal and accounting practices
- All partners in a general partnership are personally liable for the debts and obligations of the partnership



# LIMITED LIABILITY COMPANY (LLC)

- Limited liability companies provide limited liability protection to their members but are “flow-through” or “fiscally transparent” entities for US federal income tax purposes
- The default classification for US federal income tax purposes for a limited liability company that has only one member is a “disregarded entity”
- The default classification for US federal income tax purposes for limited liability companies that have more than one member is as a partnership
- In either case, the limited liability company is treated as a “flow-through” or “fiscally transparent” entity for US federal income tax purposes



# BRANCHES

- There are no formal federal requirements for a foreign person to establish a branch in the US.
- May be required to obtain certain permits in order to conduct certain types of business operations in particular localities



# CORPORATIONS

- Most often chosen by foreign persons for doing business in the US.
- Corporations are created under the laws of one of the fifty states or the District of Columbia.
- Process of creating a corporation in the US is generally straightforward and inexpensive.
- Under certain conditions, corporations can elect to be treated as “flow-through” or “fiscally transparent” entities for federal income tax purposes. Such corporations are referred to as “S” corporations.



# TYPES OF VISAS

There are two main categories of US visas:



**Nonimmigrant visa** for travel to US for temporary visits such as for tourism, business, work or studying.



**Immigrant visa** for people who intend to live permanently and immigrate to the US.





# BUSINESS FOCUSED VISA

B-1 & B-2 VISA is the most common non-immigrant Visa. Also known as “Visa for temporary visitors for business or pleasure”.



# TEMPORARY H VISAS

H visas are issued to temporary workers in the US. Categories include:

**H-1B1 visa:** Professionals who come temporarily to the US to perform a specialty occupation.

**H-1B2 visa:** Individuals who come temporarily to the US to perform cooperative research and development projects.

**H-1B3 visa:** Individuals who come temporarily to the US as a fashion model.

**H-2A visa:** Individuals who come to the US to perform agricultural labor or services of temporary or seasonal nature.

**H-2B visa:** Individuals who come to the US not to perform agricultural labor or services but to perform work in temporary nature.

**H-4 visa:** Spouses and children under the age of 21.

**H-3 visa:** Individuals who come to the US to participate in a training program.



# US TAXATION SYSTEM

- US Federal law requires employers to withhold and remit income taxes and social security taxes from the wages of employees and cooperation are required to pay income tax on quarterly basis
- Individuals and corporations are subject to federal income tax on their worldwide income
- Non-residents are subject to US federal income tax only on US source income
- US also levies gift tax, estate tax, generation skipping transfer tax and social security tax.



# US TAXATION SYSTEM

- Foreign investors who are not actively engaged in the conduct of a US trade or business are subject to US Federal withholding tax (passive income)
- Foreign investors who carry on trade or business in US are subject to US Federal income tax
- 30% non-treaty reduced branch profit tax
- Profits of a subsidiary are taxed at Federal and State level. Withholding tax on distribution to foreign shareholders.



# US FEDERAL INCOME TAXATION OF NON-US CITIZENS

- Residents aliens are subject to US Federal income tax on their worldwide income
- Non-resident aliens are subject to tax only on their US source income
- Non-citizen and non-green card holder will be treated as a resident alien only if he/she meets the substantial presents test. The individual could still be treated as a non-resident alien if he/she meets the “closer connection test.”



# FEDERAL TAX INCENTIVES

- Domestic production activities deduction.



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