

The United States (US), the world's largest and most diverse economy, is one of the leading destinations for investment from around the globe and offers opportunities for doing business with a minimum of bureaucracy.

However, there are a number of issues which you must consider when you are looking to set up your business in the US. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

Establishment (a branch of your overseas business)

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the US operations
- If you have a permanent establishment (PE) in the US then profits from this PE are liable to US Corporation tax
- Parent must file income tax returns with:
 - The Internal Revenue Service to report and pay US Corporation tax on the taxable profits of the branch if there is a PE or to claim treaty protection if there is no PE
 - Each of the states where the branch is doing business if there is sufficient presence or "nexus" (This may be required in some cases even if there is no PE.)
 - These returns and accounts of the parent company are not available for public inspection

Corporation:

- Provides limited liability and ring-fencing to US operations
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on company profits unless company qualifies for transparent treatment (Such elective "S" Corporation status is not typically available for foreign investment in the US.)
- Returns must be filed with the Internal Revenue Service and each of the states where there is nexus
- Accounts for non-public companies are not required

Limited Liability Company:

- Members have limited liability
- Profits are allocated to members who then pay Income tax on these profits personally
- The tax residence of the member, and where the profits in the LLC originated, will determine in what jurisdiction and how these profits are taxed

Limited Partnership:

- Partners have limited liability
- Profits are allocated to partners who then pay Income tax on these profits personally
- The tax residence of the partner, and where the profits in the LLC originated, will determine in what jurisdiction and how these profits are taxed

How much Corporation Tax will the business pay?

Current Corporate Tax Rates in the US are:

Tax rate (%) Taxable profit (USD)

Tax rate (%)	Taxable profit (USD)
15%	0-\$50,000
25%	50,000-75,000
34%	75,000-100,000
39%	100,000-335,000
34%	335,000-10,000,000
35%	10,000,000-15,000,000
38%	15,000,000-18,333,333
35%	0-18,333,333

NB: (corporate tax tables are not indexed for inflation)

What if we use the US to set up our holding company?

For US federal income tax purposes, consolidated return filing is permitted for groups consisting of US corporations under a single US parent. Some but not all states allow a similar approach.

For this reason, for operations in the US, such a structure is advantageous because losses incurred by a member of the consolidated group can offset income from other members within the group. Also, dividends paid within the group are not taxable federally and by most states. However, gain on the sale of shares in a subsidiary corporation in the group to a non-group member is taxable. For a foreign parent company with subsidiaries in other foreign countries, it is generally not desirable from a tax perspective to have those subsidiaries owned by a US holding company.

Depending on the applicable treaty there may be a withholding tax imposed on dividends paid by a US corporation to a foreign (but not US) shareholder.

What if we make cross-border transactions between group companies?

The US follows its own **Transfer Pricing** (TP) rules which can be further examined per Treasury Regulations Section 1.482-1 through Section 1.482-9 in addition to the penalty related provisions per Internal Revenue Code (IRC) Section 6662(e) and Treasury Regulations Section 1.6662-6. Affiliated entities must operate in accordance with the arm’s length standard for cross-border (international or intra-state) transactions related to tangible goods, services, intangible property, or financing. The price and terms should be the same as if the transactions had been between completely independent parties. The TP rules generally look to transactional methods or profit based methods to evaluate compliance with the arm’s length standard.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Purchase and sale of goods
- Provision or receipt of services
- Transfer or license of intangible assets e.g. trademarks, patents, technology, know how, customer lists
- Provision of financial support e.g. inter-group loans and charging a “market” interest on loans

The US has contemporaneous documentation requirements where taxpayers are required to prepare documentation contemporaneous to filing their tax return. There is no legal threshold below which the TP rules would not apply. Taxpayers meeting the contemporaneous requirement are not subject to penalties in the U.S. A business will be well advised to prepare a Transfer Pricing study documenting adherence to the arm’s length standard. A transfer pricing study will include a functional analysis, characterization of the intercompany transaction(s), selection of the best method(s), and analysis and testing of the arm’s length nature of the intercompany transaction(s).

What Employment Taxes and Social Security will need to be paid?

If an individual is resident in US then he is subject to US tax laws. Generally, a noncitizen is a resident if he is physically present in the US for more than 183 days in a calendar year. (or more than 121 days under a formula that gives weight to days present in the preceding two years.) A “Green Card” holder is also considered to be a resident. ***A resident is subject to tax on worldwide income.***

We would advise any new entrant to the US or person who spends time working in the US to take professional advice to determine whether they are US tax resident.

Current Personal Income Tax rates for married persons in US are:

Band of income (USD)	Tax rate (%)
0-18,550	10.0

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18,550-75,300	15.0
75,300-151,900	25.0
151,900-231,450	28.0
231,450-413,350	33.0
413,350-466,950	35.0
Over 466,950	39.6

For individuals, long-term capital gains and qualified dividends are taxed at a preferential federal tax rate of up to 23.8%, and surtaxes are levied on other types of investment income over certain thresholds.

Employers and employees also have to pay US social security:

Current Social Security rates are:

	Band of income (USD)	Rate (%)
Employer	Up to 118,500	7.65
	Over 118,500	1.45
Employee	Up to 118,500	7.65
	118,500-250,000 (Married Couples)	1.45
	Over 250,000 (Married Couples)	2.35

NB: (rates are for the tax year 2016)

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the US tax authorities.

The US has a Reciprocal Agreement with the UK, EU countries and many others whereby when an overseas national of those countries is seconded to the US for a defined period of time and continues to pay social security in his home country, then the employer and employee are exempt from paying US social security.

What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made. There is no VAT in the US.

Most states (and many municipalities) however levy a sales tax on sales to the final customer of tangible personal property and on certain specified services. The vendor is responsible for charging, collecting, reporting and remitting the tax in any jurisdiction where it has nexus and must register to do so.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

The US has a number of "approved" share option plans which give tax benefits to

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employees and employers alike and it is often possible to adapt an overseas stock option plan to fit into one of these “approved” plans.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in the US.

How else can we compensate our employees?

The US has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many US businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to “spend” their benefits allowance; which can range from “purchasing” additional holiday entitlement to obtaining full family medical cover.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or [email](#) us directly.

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