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Guide on Doing Business in United States of America

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Doing business in the USA
Guiding you along the way.

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Introduction

Every entrepreneur wishes to do business in a flourishing economy and dreams of getting an equal business opportunity to showcase his/her strengths and become successful. America is known as "the land of opportunity”. Americans believe in equal opportunity. Surveys consistently find 90% of the American public agree that "our society should do what is necessary to make sure that everyone has an equal opportunity to succeed".

Americans have tended to believe that ours is a country in which opportunity is plentiful. This view became especially prominent in the second half of the nineteenth century when the economy was shifting from farming to industry and Horatio Alger was churning out rags-to-riches tales. It’s still present. On the night of his election in 2008, Barack Obama, the country’s first African American president, began his victory speech by saying “If there is anyone out there who still doubts that America is a place where all things are possible … tonight is your answer.”

Advantages of doing business in the USA

- ✓Techno-friendly country
- ✓Political stable environment
- ✓Favorable economic environment
- ✓Protection of Intellectual property
- ✓Easy future path for US immigration
- ✓Easier access to capital and investors
- ✓Business-friendly laws and regulations
- ✓Federal, state, and local government Initiatives
- ✓Equal opportunities for foreign business owners
- ✓Enhance business credibility, especially among Americans

Types of Business Structures in the USA

- Sole Proprietorship
- Partnerships
- Limited Liability Company (LLC)
- C-Corporations
- S-Corporations

Sole Proprietorship

A sole proprietorship is easy to form and gives you complete control of your business. You're automatically considered to be a sole proprietorship if you do business activities but don't register as any other kind of business.

Sole proprietorships do not produce a separate business entity. This means your business assets and liabilities are not separate from your personal assets and liabilities. You can be held personally liable for the debts and obligations of the business. Sole proprietors are still able to get a trade name.

Sole proprietorships can be a good choice for low-risk businesses and owners who want to test their business idea before forming a more formal business.

Partnership

Partnerships are the simplest structure for two or more people to own a business together. There are two common kinds of partnerships:

1. Limited partnerships (LP)
2. Limited liability partnerships (LLP).

Limited partnerships have only one general partner with unlimited liability, and all other partners have limited liability. The partners with limited liability also tend to have limited control over the company, which is documented in a partnership agreement. Profits are passed through to personal tax returns, and the general partner — the partner without limited liability — must also pay self-employment taxes.

Limited liability partnerships are similar to limited partnerships, but give limited liability to every owner. An LLP protects each partner from debts against the partnership, they won't be responsible for the actions of other partners. Partnerships can be a good choice for businesses with multiple owners, professional groups (like attorneys), and groups who want to test their business idea before forming a more formal business.

C - Corporations

A corporation, sometimes called a C corp, is a legal entity that's separate from its owners. Corporations can make a profit, be taxed, and can be held legally liable.

Corporations offer the strongest protection to its owners from personal liability, but the cost to form a corporation is higher than other structures. Corporations also require more extensive record-keeping, operational processes, and reporting.

Unlike sole proprietors, partnerships, and LLCs, corporations pay income tax on their profits. In some cases, corporate profits are taxed twice — first, when the company makes a profit, and again when dividends are paid to shareholders on their personal tax returns.

Corporations have a completely independent life separate from its shareholders. If a shareholder leaves the company or sells his or her shares, the C corp can continue doing business relatively undisturbed.

Corporations have an advantage when it comes to raising capital because they can raise funds through the sale of stock, which can also be a benefit in attracting employees.

Corporations can be a good choice for medium- or higher-risk businesses, those that need to raise money, and businesses that plan to "go public" or eventually be sold.

S – Corporations

S corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. Shareholders of S corporations report the flow-through of income and losses on their personal tax returns and are assessed tax at their individual income tax rates. This allows S corporations to avoid double taxation on the corporate income. S corporations are responsible for tax on certain built-in gains and passive income at the entity level.

To qualify for S corporation status, the corporation must meet the following requirements:

1. Be a domestic corporation
2. Have only allowable shareholders
   - May be individuals, certain trusts, and estates and
   - May not be partnerships, corporations or non-resident alien shareholders
3. Have no more than 100 shareholders
4. Have only one class of stock
5. Not be an ineligible corporation (i.e. certain financial institutions, insurance companies, and domestic international sales corporations).

S – Corporations Characteristics

S corps can be a good choice for a businesses that would otherwise be a C corp, but meet the criteria to file as an S corp.

S corps also have an independent life, just like C corps. If a shareholder leaves the company or sells his or her shares, the S corp can continue doing business relatively undisturbed.

There are special limits on S corps. You'll still have to follow the strict filing and operational processes of a C corp.

S corps must file with the IRS to get S corp status, a different process from registering with their state.

Not all states tax S corps equally, but most recognize them the same way the federal government does and tax the shareholders accordingly. Some states tax S corps on profits above a specified limit and other states don't recognize the S corp election at all, simply treating the business as a C corp.

An S corporation, sometimes called an S corp, is a special type of corporation that's designed to avoid the double taxation drawback of regular C corps. S corps allow profits, and some losses, to be passed through directly to owners' personal income without ever being subject to corporate tax rates.

Limited Liability Company (LLC)

An LLC lets you take advantage of the benefits of both the corporation and partnership business structures.

LLCs protect you from personal liability in most instances, your personal assets — like your vehicle, house, and savings accounts — won't be at risk in case your LLC faces bankruptcy or lawsuits.

Profits and losses can get passed through to your personal income without facing corporate taxes. However, members of an LLC are considered self-employed and must pay self-employment tax contributions towards Medicare and Social Security.

LLCs can have a limited life in many states. When a member joins or leaves an LLC, some states may require the LLC to be dissolved and re-formed with new membership — unless there's already an agreement in place within the LLC for buying, selling, and transferring ownership.

LLCs can be a good choice for medium- or higher-risk businesses, owners with significant personal assets they want protected, and owners who want to pay a lower tax rate than they would with a corporation.

Legal Entity Structure Comparison

Business Structure	Ownership	Liability	Taxes
Sole Partnership	One Person	Unlimited personal liability	Self-employments tax Personal tax
Partnerships	Two or more people	Unlimited personal liability unless structured as a limited partnership	Self-employments tax (expect for limited partners) Personal tax
Limited Liability Company (LLC)	One or more people	Owners are not personally liable	Self-employment tax Personal tax or corporate tax
C – Corporation	One or more people	Owners are not personally liable	Corporate tax
S – Corporation	One or more people, but no more than 100, and all must be U.S. citizens	Owners are not personally liable	Personal tax

Advantages and disadvantages of an LLC vs. a corporation

Advantage of an LLC	Disadvantage of an LLC
No limit on the number of owners	Cannot engage in corporate income-splitting to lower tax liability
Profit and loss are passed through to the owners' individual tax returns	Cannot issue stock
No annual meeting or minute book requirements	

Advantage of an Corporation	Disadvantage of an Corporation
May issue shares of stock to attract investors	C corporation tax structure requires double taxation of corporate profits (S corporations do not)
Corporate income-splitting may help lower overall tax liability	Must hold annual meetings and record minutes
	S corporations have restrictions on the number of owners

Who are Registered Agents?

Every entity must have an agent for service of process in the state. This is an individual or business entity that agrees to accept legal papers on the entity's behalf if it is sued. If the entity is physically located in the state, it may act as its own registered agent. A registered agent may be either an individual resident or business entity that is authorized to do business in the state. The registered agent must have a physical street address in the state.

What is Federal EIN?

The term federal employer identification number (FEIN) refers to a unique identifier that is assigned to a business entity so that it can easily be identified by the Internal Revenue Service (IRS). EINs are commonly used by employers for the purpose of reporting taxes. The number is made up of nine digits and is formatted as XX-XXXXXXX. Businesses can apply for EINs directly through the IRS, which usually issues them immediately.

What is State EIN?

A state tax identification number (also known as a state EIN, a state employer ID, or a state tax registration) is a unique number assigned to a business or organization by the state where the business operates and is used for filing taxes and hiring employees.

Process to Setup entity in the USA

1. Choose an entity Name
2. Appoint a Registered Agent
3. Submit documents to Registered Agent
4. Registered Agent will file the documents to State
5. State reviews the document and process the file
6. Entity Formed (State will issue file number)

Neo Banks List for Bank Account Opening

Neobanks, sometimes referred to as “challenger banks,” are fintech firms that offer apps, software and other technologies to streamline mobile and online banking. These fintech's generally specialize in particular financial products, like checking and savings accounts. They also tend to be more nimble and transparent than their megabank counterparts, even though many of them partner with such institutions to insure their financial products.

While Neobanks are typically Federal Deposit Insurance Corporation (FDIC) insured (check before signing up with one), which means that your money is just as safe with one as with a regular bank

Sl No.	Bank Name	Link
1	Relay	https://relayfi.com/
2	Lili	https://lili.co/
3	Oxygen	https://oxygen.us/
4	Wise	https://wise.com/gb/business/
5	Mercury	https://mercury.com/

Virtual US Phone Number Service Providers

A virtual phone number is actually a normal, real phone number. The only difference is that a virtual number isn't connected to any physical phone line or to any SIM-card.
You can make calls with free apps for Android and iOS or your laptop.
People calling your US virtual phone number will have the same experience as if calling a regular local number. When you make calls from your number – people you call will see your number before answering.

List of few cheapest Virtual US Phone Number Service Providers:

Sl No.	Service Provider Name	Website Link
1	Sonetel	https://sonetel.com/en/
2	CallHippo	https://callhippo.com/
3	Mightycall	https://www.mightycall.com/
4	Krispcall	https://krispcall.com/
5	Hushed	https://hushed.com/

Virtual US Office Address Service Providers

A virtual office gives businesses a physical address and office-related services without the overhead of a long lease and administrative staff. With a virtual office, employees can work from anywhere but still have things like a mailing address, phone answering services, meeting rooms, and videoconferencing.

Virtual offices operate as one unit to serve customers but do not exist in a fixed location. This type of setup is especially popular with startups and small businesses that want to minimize overhead. The creation of web-based office productivity software and services, such as videoconferencing, has helped drive the growth in virtual offices.

List of few Virtual Office Address Service Providers:

Sl No.	Service Provider Name	Website Link
1	iPostal1	https://ipostal1.com/
2	Anytime Mailbox	https://www.anytimemailbox.com/
3	Post Scan Mail	https://www.postscanmail.com/
4	Regus	https://www.regus.com/en-us
5	OsDoro	https://osdoro.com/

Importing the Goods by US Entity

If you plan to import goods into the United States, it is important to know what you need before getting started. There are many requirements, restrictions and regulations involved. And as an importer, you are responsible for making sure that all of the correct documentation is filed and that everything complies with the specific rules and regulations of the U.S. government.

There are 7 Steps to Importing into the United States

1. Obtain an Importer Number
2. Speak to a Customs Broker
3. Determine your goods' Tariff Classification and Valuation
4. Prepare your Commercial Invoice
5. Complete your Importer Security Filing (only for ocean shipments)
6. Determine if you will need a Customs Bond
7. File your Entry Documentation and Pay Duties and Taxes

Read More from this Link

https://breezecustoms.com/blog/importing-into-the-united-states/ultimate-guide-on-how-to-import-into-the-united-states/

Types of Taxes on entities in the USA

Following are the mandatory federal taxes applicable to US entities.

- Federal Income Tax
- Social Security Tax
- Medicare Tax
- Federal Unemployment (FUTA) Tax
- Franchise Tax

Particulars	Federal Income Tax	Social Security Tax	Medicare Tax	Federal Unemployment Tax	Franchise Tax
Rate of Tax	21%	12.4%	2.9%	6%	Varies from State to State

Federal income tax

The federal income tax is a tax on annual earnings for individuals, businesses, and other legal entities. Since January 1, 2018, the nominal federal corporate tax rate in the United States of America is a flat 21% due to the passage of the Tax Cuts and Jobs Act of 2017.

Social security tax

In the United States, Social Security is the commonly used term for the federal Old-Age, Survivors, and Disability Insurance (OASDI) program and is administered by the Social Security Administration (SSA). Social Security is funded primarily through payroll taxes called Federal Insurance Contributions Act tax (FICA) or Self-Employed Contributions Act Tax (SECA). Wage and salary earnings in covered employment, up to an amount specifically determined by law, are subject to the Social Security payroll tax. Wage and salary earnings above this amount are not taxed. In 2022, the maximum amount of taxable earnings is $147,000.

Social Security payroll taxes are collected by the Internal Revenue Service (IRS) and are formally entrusted to the Federal Old-Age and Survivors Insurance (OASI) Trust Fund and the Federal Disability Insurance (DI) Trust Fund, the two Social Security Trust Funds

Medicare tax

Medicare tax, also known as “hospital insurance tax,” is a federal employment tax that funds a portion of the Medicare insurance program. Like Social Security tax, Medicare tax is withheld from an employee’s paycheck or paid as a self-employment tax.

Medicare tax pays for Part A of the Medicare program, which includes hospital insurance for individuals age 65 or older and people who have certain disabilities or medical conditions. Medicare hospital insurance covers hospital visits, hospice, nursing home care, and some home healthcare.

Federal Unemployment (FUTA) tax

The Federal Unemployment Tax Act (FUTA) is a piece of legislation that imposes a payroll tax on any business with employees. The revenue it generates is allocated to state unemployment insurance agencies and used to fund unemployment benefits for people who are out of work.

FUTA is a federal law that raises revenue to administer unemployment insurance and job service programs in every state. As directed by the Act, employers are required to pay annual or quarterly federal unemployment taxes; they make up a part of what is commonly known as payroll taxes.

Franchise tax

A franchise tax is charged to some businesses that either do business or are incorporated in a certain state. A business can even owe a franchise tax for simply owning property in a state. Some types of businesses are exempt in certain states, so it's important to check the specifics of the franchise tax in any state where your business is incorporated or does business. It's different from an income tax, which most businesses also pay. A franchise tax is not based on profit and is mandatory whether a business is profitable or not.

The specific states that impose a franchise tax include Delaware, Alabama, Arkansas, Illinois, Georgia, Louisiana, Missouri, Mississippi, North Carolina Oklahoma, New York, Texas, Tennessee, Pennsylvania, and West Virginia.

Withholding tax compliance

A foreign person is subject to U.S. tax on its U.S. source income. Most types of U.S. source income received by a foreign person are subject to U.S. tax of 30%. A reduced rate, including exemption, may apply if an Internal Revenue Code Section provides for a lower rate, or there is a **tax treaty** between the foreign person's country of residence and the United States. The tax is withheld from the payment made to the foreign person.

1. **Form W-8 BEN:** Foreign persons must provide Form W-8BEN to the withholding agent or payer if they are the beneficial owner of the income subject to the tax withholding. You must submit the form regardless of whether you are claiming a reduced withholding.

2. **Form W-8BENE:** Non-U.S. businesses must provide Form W-8BEN-E for the same sources of income that would require an individual to file Form W-8BEN. Foreign entities that do not provide an accurate W-8BEN-E when required to do so will typically have to pay the full 30% tax rate.

US major federal tax forms

Form – W2	Tax Statement provided to employee
Form – 941	Employer's Quarterly Federal Tax Returns
Form – 7004	Application for Automatic Extension of Time to file a tax return
Form – 1065	Partnership Firm Federal Income Tax Return
Form – 1120S	S-Corporation Federal Income Tax Return
Form – 1120F	Estate Federal Income Tax Return
Form – 1120	C-Corporation Federal Income Tax Return
Form – 1040	Individual Federal Income Tax Return
Form – 1040NR	Non-resident Individual Federal Income Tax Return

Indian associated entities in USA

Thousands of Indians had already setup their subsidiary in the USA or planning to do so. The reason is obvious because of US world largest economy, friendly business environment, international recognizable credentials, and many more associated benefits.

The entity setup in the USA enters business mainly with its Indian associated entity to start with and to grow and gradually increase their footprints to the outside world. Doing business with associated entity is always a favorable step for anyone, however, proper regulatory compliance must be done for the said business transactions to make their roots strong for long term.

Associated Enterprises as per I.T. Act, 1961

As per Section 92A of Income Tax Act, 1961, two enterprises shall be deemed to be associated enterprises if:

- which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise;
- in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.
- one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise;
- any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise;
- one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise;
- more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise;
- more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons;

Associated Enterprises as per I.T. Act, 1961

- the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights;
- ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise;
- the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise;
- where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual;
- where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative;
- where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals;
- there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

US-INDIA associated enterprises test

Based on the “associated enterprise” definition given by Indian Income Tax Act, entity can determine if any associated enterprise exists or not and whether any transaction incurred during the fiscal year, if yes, then entity has to also comply as per Indian Income Tax Act.

Overseas Direct Investments Rules Extract

As per RBI Circular RBI/2022-2023/110 A.P. (DIR Series) Circular No.12,
"Overseas investment by way of cash is not permitted".

Generally, it is observed the Indian Owners set-up their entities in the USA and doesn't make the actual transaction of share capital money (in case of C-Corporations) or Capital Contribution (in case of LLCs). It shall be treated as no contribution by the Owners or Owners controlled enterprise.

Registered Agents use to shows the initial investment as cash contribution in the incorporation documents i.e. Operating Agreements, Articles of Organization etc. This is not allowed as per RBI, hence if any transaction shown in such a manner, it shall be treated as invalid and violation of Indian FEMA Rules.

Hence, every resident or its associated enterprise, shall mandatorily make the investment only from their bank account through AD banker.

Yearly Mandatory Statutory Compliance Checklist

Sl No.	US Entity	India Entity
1	Registered agent renewal fees	Statutory audit as per Companies Act
2	Franchise tax fee & return filing	Tax audit as per Income Tax Act
3	Federal tax return filing Form 1120	Transfer pricing study report & audit as per I.T. Act
4	State tax return filing	Form 3CEAA reporting to Income Tax Department
5	Employer return filing (Federal) Form 941	Income tax return filing
6	Employer return filing (State)	Annual Performance Report (APR) form RBI
7	Information return Form 5472	Quarterly TDS return filing (24Q/26Q/27Q)
8	Withholding tax return Form 1042/1042-S	State laws compliance (GST, PF, ESI, PT etc)
9	Foreign Bank and Financial Accounts (FBAR)	Companies Act compliance (AOC4, MGT7, MSME, DPT3)

1. Both countries compliance are required to be done if any relationship exists between companies of both the countries (Holding/Subsidiary/Joint-Venture/Associate etc) as per Section 92 "Associated Enterprises" of Indian Income Tax Act, 1961.
2. Franchise tax fee & return filing is applicable on only few states of USA in which Franchise Tax Laws are applicable.

Key points consideration before finalizing US books of accounts & filing US annual tax return

US financial year starts from January and ends on December, Indian financial year start from April and ends on March, also the due date of filing US Tax return is earlier than Indian Tax return, hence entities must reconcile all the events that occurred in both the companies and especially interparty transactions.

In the US return the previous year's transactions (incurred between US and Indian related entity) are to be covered and in the Indian return the US next year's 3 months' transactions are to be covered, hence utmost precautions must be taken.

Few key points to review in both entities are as follows:

- ✓ All inter companies' transactions between associated enterprises shall be accounted in books of both the entities.
- ✓ Withholding compliances as per US or Indian laws shall be complied.
- ✓ Transactions incurred between both entities should be on arm length prices, hence Benchmarking Analysis should be made in advance of both the entities
- ✓ Comparison of estimated taxes payable in both the entities

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