EXPANDING TO THE U.S.

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CLAYTON & McKERVEY

ABOUT THE AUTHOR

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As the leader of Clayton & McKervey's international team, Teresa works with global companies expanding to the U.S. Extending far beyond traditional financial and tax reporting, Teresa's team provides specialized services to match the unique needs of foreign-owned subsidiaries as they establish and grow.

Through our partnerships with PrimeGlobal and Centuro Global, we collaborate with other global firms to empower economic development, promote growth into the U.S. and help businesses achieve successful international expansion.

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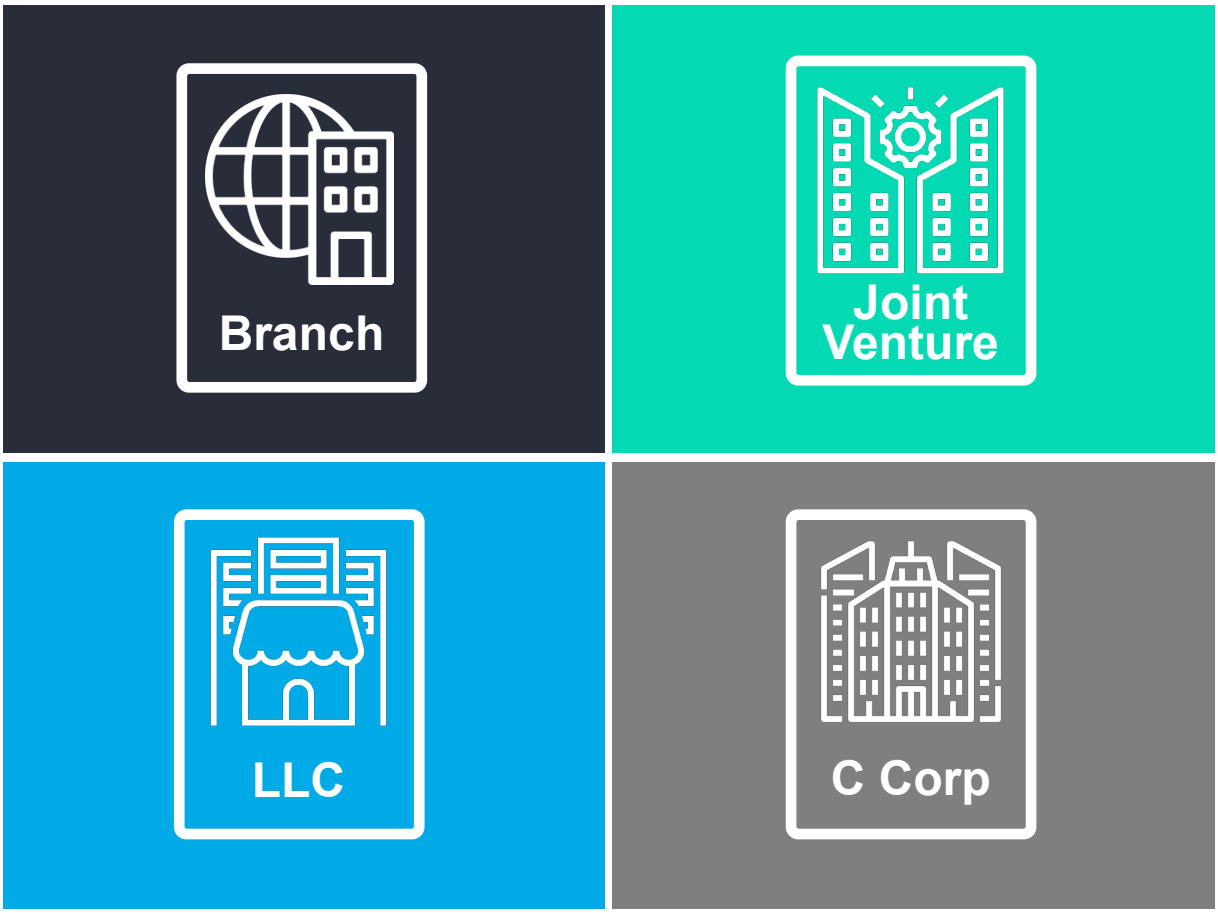
6 Key FAQs

There are many items to consider when planning a U.S. expansion, including tax requirements, financial considerations and other important guidelines. Here are some commonly asked questions and answers to help you get started.

1. **What entity structure should I use for doing business in the U.S.?**
   There are several ways a foreign company can conduct business with U.S. customers. Here are some common entity structures to consider based on your circumstances. It's important to consider the tax and legal implications of each entity structure before choosing one that aligns best with your U.S. expansion goals.



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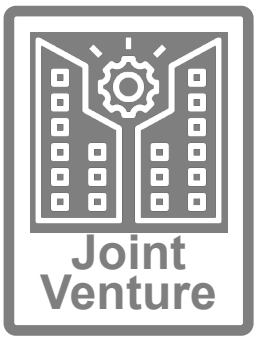
U.S. Branch of the Foreign Company

This type of entity structure works well when a foreign company simply ships or delivers products or services directly to U.S. customers from outside the U.S. and there is no activity in the U.S. except those protected by a U.S. tax treaty. Use of a branch is not recommended when a foreign company conducts business directly in the U.S., such as hiring U.S. employees. This could result in permanent establishment (PE) or a taxable presence in the U.S.



U.S. Joint Venture (JV)

A U.S. Joint Venture (JV) can be used to enter or expand to the U.S. with a strategic U.S. or foreign partner for larger scale projects such as a manufacturing or distribution operation. Since a U.S. JV is usually taxed as a flow-through partnership, a foreign company must consider establishing a U.S. legal entity for ownership in the JV to avoid filing U.S. tax returns for the foreign company.

Limited Liability Company (LLC)

A foreign company can establish a Limited Liability Company (LLC) for its U.S. operations. The LLC can be owned by one or more foreign or domestic members, but they will be required to file U.S. returns to report and pay U.S. tax on their share of the LLC's taxable income. It is recommended that LLCs with foreign members elect to be taxed as a corporation to eliminate the need for U.S. tax filings for the foreign company.

U.S. C Corporation

We saved the best for last! Establishing a U.S. C corporation (C-corp) to conduct business in the U.S. is the most common and recommended legal and tax entity for a foreign company. Businesses can use a corporate structure for early-stage U.S. expansion as well as long term growth in the U.S. A C-corp is taxed on net income at the corporate level, eliminating any entity classification elections for tax purposes and removing the U.S. tax filing requirement for the foreign owner.

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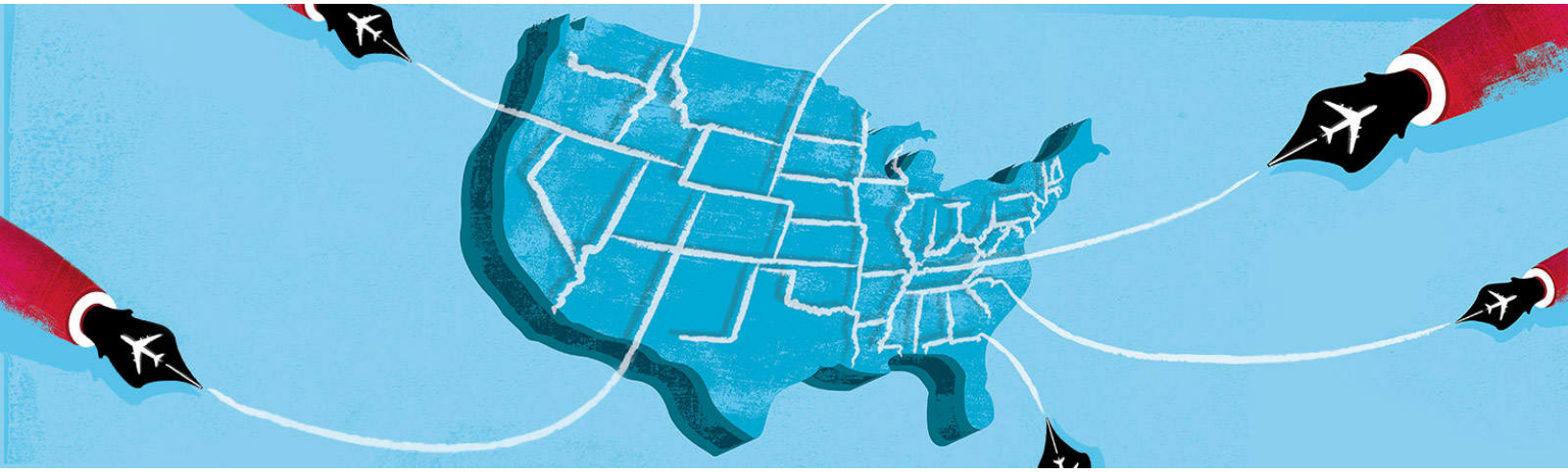

2. How do I choose a state of incorporation for my U.S. operations?

If your business will operate from a physical location, incorporating in that state is recommended. If your business does not need a physical location in the early stages of a U.S. expansion, think about long-term location needs. When selecting the state for your physical location, consider the following:

Proximity of customers and suppliers

Availability of workforce

State incentives for creating jobs

Availability of suitable sites for your type of business, including sufficient power supply and transportation options

Some companies expanding to the U.S. may not need a current or long-term physical location, so which of the 50 states should they consider? Many foreign companies opt for a Delaware corporation due to its long-standing pro-business legal system. Others may consider a no-tax state such as Nevada or Wyoming.

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Regardless of the state in which you incorporate, here are some considerations which extend beyond this initial decision:

- Many businesses will have multi-state tax requirements for income tax and sales tax. This applies regardless of where they are incorporated.

- In addition to the state in which you incorporate, you will also need to register in each state you conduct business in. What constitutes as doing business varies by state but can include hiring employees residing or working in a state, owning real or personal property in a state, providing services to clients in a state, or reaching a threshold of sales to customers in a state.

- Whether you incorporate or register to do business in a state, you will be required to have a registered agent and registered agent address in that state. If you do not have a physical location in a state, it is common to use a third party as your registered agent.

- States will require an annual filing to remain active in the states you are incorporated or registered to do business in. This filing may require disclosure of corporate officers, some financial information and an annual filing fee, but the requirements vary by state.

- Federal anti-corruption legislation passed in January 2021 that will require disclosure of beneficial ownership when a company is formed or is registered to do business in a state. Currently there are few requirements, if any, among the states.

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3. Are there statutory requirements for minimum capital or financial reporting in the U.S.?

The U.S. does not impose any minimum capital requirements when establishing a U.S. trade or business, but there are limitations on the tax deduction for business interest expense, so a company with a high debt to equity ratio may be impacted.

There is no statutory requirement for private companies to provide financial statements. Financial reporting requirements for a foreign-owned U.S. subsidiary are often determined by the parent company and group auditor needs. Any company with a lending relationship with a financial institution will be required to comply with the financial reporting requirements of the debt covenant.

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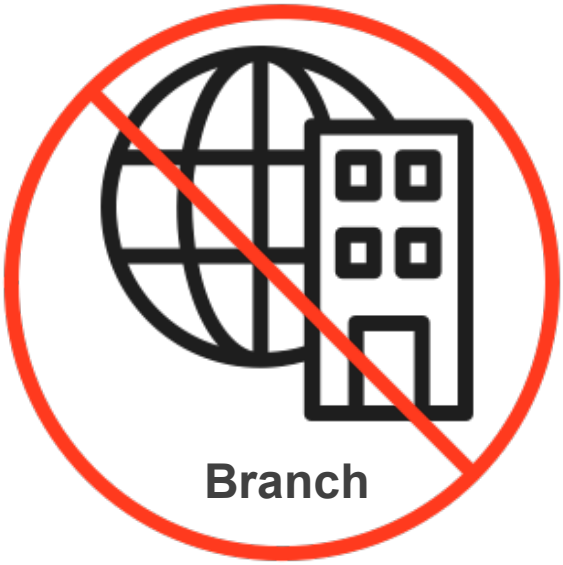
4. Is operating as a branch in the U.S. easier than setting up a subsidiary?

The short answer is no. It may seem easier to start doing business in the U.S. with your existing foreign corporation, but there are disadvantages. For example, the activity carried out in the U.S. could lead to a permanent establishment (PE) or taxable presence in the U.S. for the foreign corporation.

Operating as a branch generally creates a U.S. tax filing requirement for the foreign corporation for which a federal Employer Identification Number (EIN) is needed. Income derived from a U.S. trade or business is taxed on a net basis at the current federal corporate rate of 21% (subject to change). As a branch, the U.S. income and related expenses must be carved out of the foreign company operations without the benefit of a separate legal entity in the U.S. This task is typically easier in concept than in practice. In addition to corporate income tax, a 30% branch profit tax may also apply unless reduced by a U.S. income tax treaty.



If the branch hires employees in the U.S., the foreign corporation must meet all U.S. employer requirements. This includes a long list of federal and state requirements in addition to withholding and remitting payroll taxes. Handling these employment responsibilities in the U.S. with foreign company resources will usually result in compliance gaps. Additionally, a U.S. bank account will be required for U.S. payroll.

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Operating as a branch does not require establishing a U.S. legal entity, but it does require registering in all states in which it is doing business. All considerations mentioned in Question 2 except for the state incorporation will apply to the branch. Operating as a branch does not provide any legal barrier to liability for the foreign corporation. Using a U.S. corporation to conduct U.S. operations can.

In summary, if the branch activity in the U.S. creates a PE, the foreign corporation must meet almost all the same requirements as a U.S. subsidiary. Doing so as a branch of a foreign corporation is generally more complex, time-consuming, and costly in the long run. Additionally, a branch could be subject to an additional layer of branch profits tax. Therefore, operating as a branch in the U.S. is not recommended due to the ease of establishing a U.S. corporation and the lack of advantages that come from operating as a branch.

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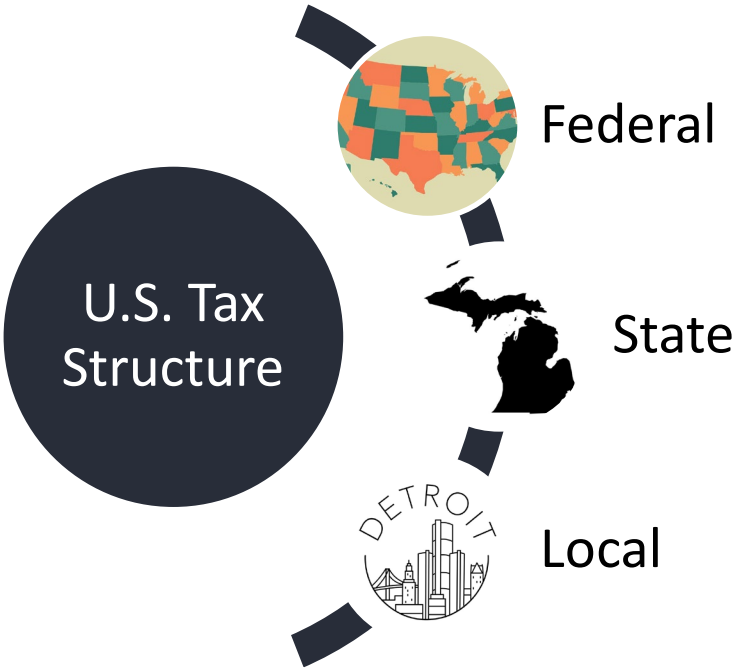
5. What tax requirements do I need to meet when I expand to the U.S.?

The U.S. tax structure has multiple layers, including federal and state income tax, which are assessed to and paid by each taxpayer based on their tax structure and operational results.



As discussed, a domestic or foreign owned corporation is currently taxed at 21% (subject to change) federal income tax on net taxable income. There are some differences between book and taxable income including accelerated tax depreciation and limitation on business interest deduction for tax, among others.

The next layer of tax is at the state level. Most states have a net income tax; 10 states have a tax rate of 5% or below, 6 states have a tax rate of 9% or higher, a few states have a gross receipts tax instead of an income tax and a few states have no income tax. Some states have filing thresholds or minimum tax. Many states are moving away from nexus based on physical presence in the state to economic nexus based on a threshold of sales to customers in that state.

The laws for determining whether you are taxable and how tax is calculated are different across all 50 states. For example, the factors such as sales, property and payroll are used differently across each state to allocate income subject to state tax. Determining which state a sale is allocated to also varies by state, especially with the definition of a product and for sales of services.

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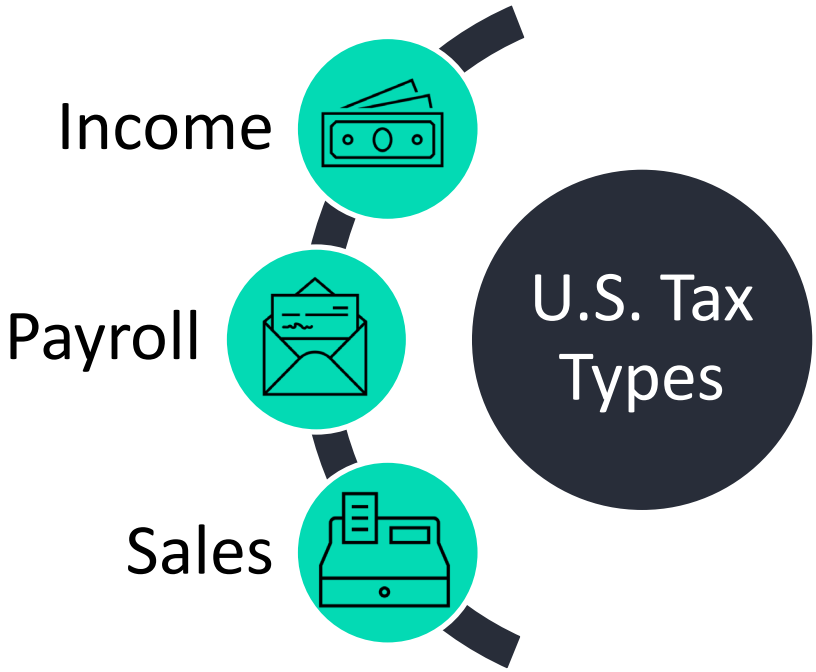
The bottom line is that state income tax can range from straightforward to complex, depending on what you are selling, how much you are selling, and where you are selling. Many corporations are subject to tax in multiple states. You should look to your tax advisor to guide you in determining your state income tax requirements.



Businesses operating in the U.S. may be required to collect and remit taxes from customers, employees or vendors. These taxes can include sales tax, payroll withholding tax and U.S. income tax on certain transactions with foreign parties. Although these taxes are not assessed to the company required to collect and remit them, there is a cost of compliance to meet these requirements. Additionally, if a company fails to fulfill these withholding requirements, the actual tax plus penalty and interest can become their responsibility upon audit.

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6. Do I have to file a tax return before the start of my U.S. operations?

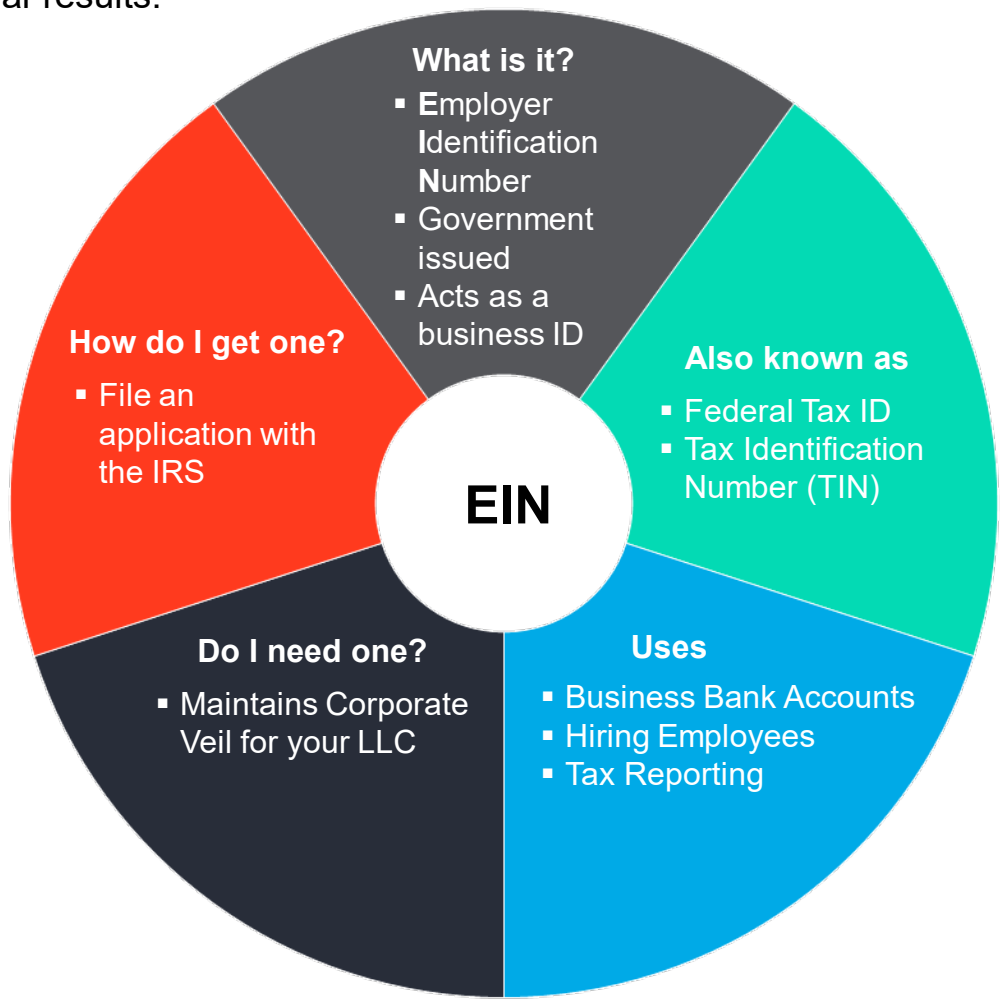
The U.S. tax structure has multiple layers, including federal and state income tax, which are assessed to and paid by each taxpayer based on their tax structure and operational results.

It depends on what steps you have completed in establishing your foreign-owned subsidiary in the U.S.

First, have you established a legal entity such as a U.S corporation?

If yes, this step alone does not create a tax filing requirement.

Second, have you applied for and received an Employer Identification Number (EIN) for the new U.S. entity?



If yes, the EIN confirmation you receive from the Internal Revenue Service (IRS) will include all initial federal tax filing requirements you must meet based on the information provided in your EIN application. This includes your choice of tax year end and anticipated start of U.S. payroll.

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For example, if you establish a legal entity on November 1 and apply for an EIN with a tax year end of December 31 and a U.S. payroll start date the following April, the IRS will expect you to file a tax return for the short period November 1 to December 31 even if you have no other activity. They would also expect you to file the initial quarterly payroll tax returns in July of the following year.

Even if you are required to file a “no activity” federal corporate income tax return, there are some key disclosures required for foreign-owned corporations. Even without operational results to report, these disclosures can have significant penalties if not reported accurately and timely. Requirements include disclosures of all direct and indirect foreign ownership meeting several different percentage thresholds and all reportable transactions with foreign related parties including loans but not equity transactions.

If you are planning to establish a U.S. subsidiary close to the end of the tax year, consider waiting to start until the new year to avoid a short period of no activity federal income tax filing.

Chapter Two

Building the Right Team

Building the Right Team

One of the first things you need to think about when expanding to the U.S. is putting the right team in place. Building a team you are confident in can be overwhelming, but having the right team of U.S. experts will help you navigate the tax and legal requirements at every phase of expansion. Learn which partners you need by your side and how they can help you successfully expand to the U.S.

Key Elements for U.S. Team

When building your U.S. expansion team, make sure they check the below boxes:

1. **Foreign Direct Investment (FDI) Expertise** – To effectively address the unique challenges foreign companies face when expanding to the U.S., your U.S. team needs to be experienced not only in each of their respective professions but also in FDI.

2. **Connected Locally and Globally** – Your company will benefit from collaboration among your U.S. and global teams, as well as their involvement in global professional organizations that help expand their networks and expertise.

3. **Growth-Focused Mindset** – From the start of your expansion planning, it's important to work with a team that can proactively advise you on the best ways to achieve your long-term U.S. expansion goals.

Building the Right Team

Now let's look at the roles of each team member.

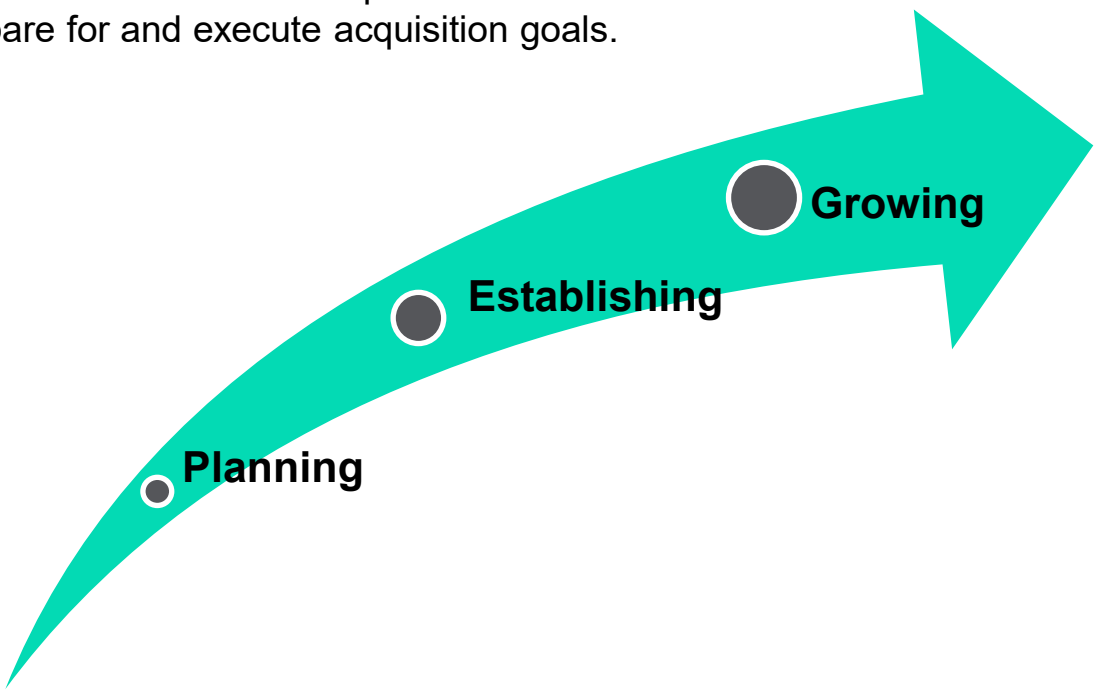
Accountants & Tax Advisors

Your U.S. accounting and tax advisors are the cornerstone of your team because they are responsible for the accounting and tax treatments within all key areas of U.S. expansion and operation. Here are some key focus areas for your U.S. accounting and tax advisors when expanding to the U.S.:

- **Planning** – During this stage, your U.S. accountant will help you make the right decisions regarding U.S. tax structure, business plan, and forecast. They will also help you manage your investment from abroad.

- **Establishing** – When setting up operations in the U.S., your accounting and tax team will support accounting and reporting solutions for the U.S. company to meet the local and global needs of the group. U.S. tax compliance requirements must be met, and your U.S. tax advisor will manage strategies to minimize tax liability and exposure to transfer pricing adjustments and penalty.

- **Growing** – As accounting and reporting needs become more complex, your U.S. accounting and tax advisors should be skilled at anticipating and supporting the changes needed for growth. Tax strategies aligned with operational growth are needed to minimize tax and improve cash flow. Your U.S. accountant can also help you prepare for and execute acquisition goals.



Building the Right Team

Attorneys

It's important to have the right legal advisors on your team throughout your U.S. expansion journey. The collaboration between your attorney and tax accountant is also important as most legal matters have a tax perspective to understand and optimize.

> ***We work closely with attorneys on these items because there's a related tax consequence to be addressed.***

- **Establishing a U.S. Entity** – When choosing the legal structure for your U.S. operations, your legal and tax team will advise you on the best liability protection and tax treatment to meet your circumstances.

- **Immigration** – Your legal team will lead the immigration process with the support of your accountant. A five-year business plan, often prepared or reviewed by your accountant, will be required for a visa application. Additionally, once a visa is obtained, your tax accountant will need to advise and assist you and the expatriate employee with the U.S. tax requirements of the visa.

- **Employment Contracts** – Attracting and retaining talent is crucial to a growing business. It is important for your U.S. attorney to prepare the employment agreement to capture all relevant terms, especially for global businesses where differences exist between employment practices in different countries. Your U.S. accountant should advise and assist with any tax or accounting aspects of the employment agreement including the taxability of allowances or stock options.

Building the Right Team

Bankers
It is important to have a U.S. bank on your team who can assist you with short-term and long-term banking and lending needs, both which have intersections for collaboration with your accountant.

Short-Term

- Open business checking account with U.S. bank
- Choose bank that syncs with accounting software applications
- Work with U.S. accountant on selection and set-up

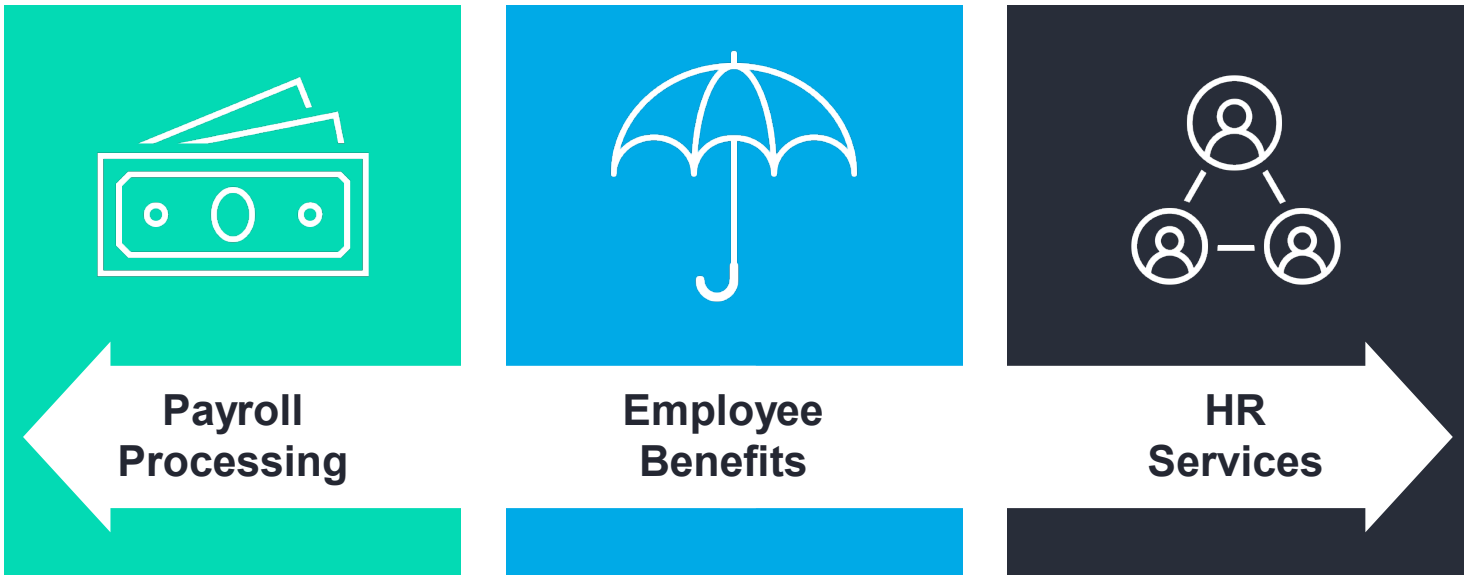
Long-Term

- Obtain financing from U.S. bank
- Build credit history or get guarantee from foreign parent company
- Establish lending relationship with U.S. bank
- Work with U.S. accountant to meet bank's reporting requirements for debt covenant

Building the Right Team

Payroll Service Providers

One of your biggest challenges in your U.S. expansion will be attracting and retaining the right workforce. Once you successfully hire U.S. employees, you need the right payroll related service providers on your team to assist you in meeting all the requirements of a U.S. employer. You may need to use multiple payroll service providers, or you may find one provider offering all services needed for your U.S. workforce.



- **Payroll Processing** – You will use a provider to process payroll, manage tax withholdings and file all payroll tax returns. Your accountant will need to coordinate with your payroll provider for the tax treatment of certain types of compensation and state payroll registrations.

- **Employee Benefits** – Health insurance and retirement benefits are a competitive necessity for your U.S. workforce, and you will need a provider to assist with obtaining policies and plans to offer your employees.

- **HR Services** – Until your U.S. operations are of a size to support an internal HR resource, you will need outsourced HR support to manage your U.S. workforce and employer obligations.

Building the Right Team

Insurance Providers

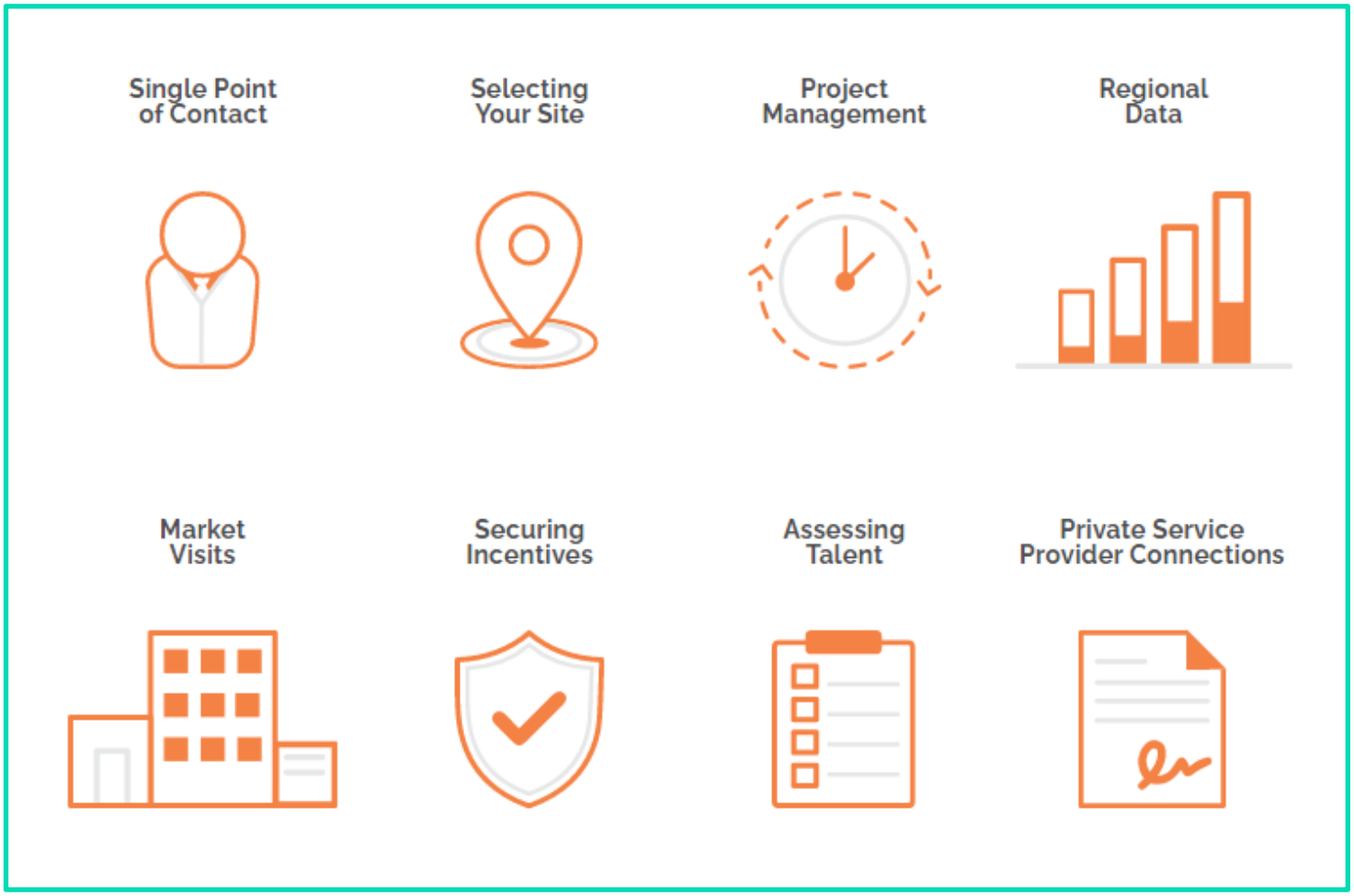
Insurance providers are another important part of your U.S. team. Depending on your business needs, this could include insurance providers specializing in general liability insurance for buildings, auto insurance for company cars, or worker's compensation insurance. U.S. employers also typically coordinate medical insurance for employees, which could include health, vision, and dental. Some insurance brokers are a one-stop shop, but you may require more than one insurance company to meet all your company's needs.

Building the Right Team

Economic Developers

When considering a global expansion, your company will want access to key information about cash and tax incentives, site selection, workforce, customer and supplier connections and more to determine the optimal location and establish an accurate business plan. In the U.S., government organizations at the federal, state, regional and local levels have economic development programs to assist foreign companies with their U.S. expansion plans.

Many countries have organizations and programs to support the international growth of companies outside their native borders. U.S. economic developers often work closely with these foreign economic development organizations to provide strong support for foreign companies investigating an expansion to the U.S.



Source: *Detroit Regional Partnership.* https://www.detroitregionalpartnership.com/

Chapter Three

Multi-State Taxation

Multi-State Taxation

If you are currently planning (or considering) an expansion, it is important to consider how your organization will be affected by U.S. taxation. This includes understanding which areas of multi-state taxation are relevant to your business, preparing in advance to comply with guidelines, and avoiding fees and penalties that could put your entire expansion effort in jeopardy.

First, let's define multi-state taxation.

In the U.S., each of the 50 states has its own tax regulations and various government departments to enforce those regulations. In the beginning stages of U.S. expansion, it is important to examine which states your business will operate in. While this may seem like a straightforward task, the implications can be more complex, depending on how and where you're conducting business.

Most states (with a few exceptions) have more than one tax requirement. The two most common multi-state tax types are *income* and *sales* taxes. If this sounds overwhelming, that's because it usually is, and without acquiring expert assistance tailored to your specific operations, taxation will only become more complicated as you continue your expansion efforts.

Consider the volume of sales and location of buyers.

Taxation in the U.S. will not only vary from state to state, but also based on the volume of sales in each location. Generally, the higher the volume, the higher and more involved the tax obligations will become. When seeking consultation about multi-state tax implications in the U.S., you should have an idea of what your sales volume will look like initially, how it could increase down the line, and where the bulk of your customers are going to be located.

For example, if you're marketing specifically to consumers in Michigan, you'll want to be particularly prepared to comply with Michigan tax laws, regardless if you are originally incorporated in Michigan. It is critical that you obtain legal and financial advice from a trusted source that can educate you on the obligations in each of the 50 states or refer you to someone who can.

Taxation in the U.S. varies from state-to-state and by sales volume in each location. Generally, the higher the volume, the higher and more involved the tax obligations will become.

Multi-State Taxation

Consider the location and function of employees.
Depending on your business model, you may have employees performing different functions in various states. Although it is not a direct tax of the employer, U.S. businesses are required to register for employee income tax withholding in the states in which employees reside and/or work. Payroll service providers can assist with the collection and remittance of this employee withholding tax. More importantly, if you have an employee living, working, or providing certain duties in a state, the business may be required to register for, meet filing requirements and pay income taxes in that state as well. Each state has different regulations on this topic.

VAT ≠ SALES TAX

Learn the difference between value-added tax (VAT) and sales tax.
Many foreign companies expanding to the U.S. are familiar with value-added taxes (VAT) and are interested in its application in multi-state taxation. VAT does not apply in the U.S. The U.S. gross receipts tax is most often compared to as sales tax, but there are many underlying differences. Unlike VAT being applied at every step of the supply chain, U.S. sales tax is only assessed to the end user of a product or service. Each state defines their sales tax rate, taxable transactions, and filing requirements differently. It is important to work with an expert to address this area of sales tax, as it is very highly scrutinized by state authorities.

Multi-State Taxation

Business Model Tax Considerations

When considering multi-state taxation in your expansion to the U.S., be prepared to explain your business model to your consultants. Whether your business will be a B2B (business-to-business) or B2C (business-to-consumer) operation impacts what state taxes you will be responsible for collecting and remitting or filing and paying. For example, many states have sales tax exemption for B2B manufacturers or wholesalers, but not for B2C retailers.

Another consideration in how businesses are taxed depends on whether they operate in a physical location or virtually. States are quickly abandoning their old taxation standards of brick-and-mortar locations. State jurisdictions are now adopting standards based on levels of economic activity, such as revenue thresholds and number of transactions. This is even more prevalent right now as many businesses shift towards e-commerce due to the pandemic. All businesses need to be aware of different physical or economic nexus requirements in the states where their customers are located.

State	Taxability	Nexus Standards for Remote Sellers
Alabama	Reduced rate	Nexus created when sales exceed $250,000 in previous year
Arkansas	Only certain manufacturing equipment is exempt	Nexus created when sales exceed $100,000 in previous or current year or business has 200 transactions in the state
California	Reduced rate	Nexus created when sales exceed $500,000 in previous or current year
Colorado	Purchase must be over $500 and exemption is limited on used equipment	Nexus created when annual sales exceed $100,000
Washington, D.C.	No exemption	Nexus created when retail sales exceed $100,000 or 200 or more separate sales
Hawaii	No exemption (Hawaii also taxes raw materials)	Nexus created when sales exceed $100,000 or 200 or more separate sales
Kentucky	Only certain purchases used in new and expended industry exempt	Nexus created when sales exceed $100,000 or 200 or more separate sales
Mississippi	Reduced rate	Nexus created when sales exceed $250,000 in any consecutive 12-month period
Nevada	No exemption	Nexus created when sales exceed $100,000 or 200 or more separate sales
North Dakota	Only certain purchases used in new and expanding plant exempt	Nexus created when gross sales from the sale of tangible personal property and other taxable items delivered in North Dakota exceed $100,000
South Dakota	No exemption	Nexus created when sales exceed $100,000 or 200 or more separate sales

Link Source: https://claytonmckervey.com/nexus-standards-remote-sellers/

Multi-State Taxation

Tips Going Forward

To minimize unnecessary multi-state exposure and unwelcome surprises, it is imperative to consider multi-state tax laws from the very start of your expansion efforts. Here are some tips to consider.

1. **Do Your Research –** Call upon trusted advisors or quality research to make sure you understand the applicable state tax laws as they apply to your business.

2. **Track Revenue Location –** Track revenue properly by understanding the difference between addresses *billed* and addresses to which you *ship*. Various tax requirements are most commonly based on where the actual transaction is taking place and where the good or service is being used. In addition to tracking revenue location, the location of fixed assets and inventory could result in cumbersome filing requirements that could be avoided with proper planning.

3. **Consider Employee Location –** Consider where your employees are located, as this could have a significant impact on your tax obligations. With the work-from-home philosophy arising out of the pandemic becoming permanent for many employers, multi-state tax repercussions may be more significant and more long-term for many companies.

As you've likely known from the outset, there is a lot to consider when expanding your business to the U.S. While all of this can rightfully seem like a lot to manage, the good news is there are plenty of resources you can (and should) utilize going forward with your expansion. The overall advice here is to have multi-state taxation on your radar, period.

Chapter Four

U.S. Payroll Considerations

U.S. Payroll Considerations

Whether becoming compliant with unique legal standards or satisfying the cultural expectations of the U.S. workplace, executing a successful U.S. expansion can present challenges to even the most empowered businesses. Start by reviewing these key U.S. payroll considerations and related human resource matters.

Payroll from an Accounting Perspective

We have been working with foreign companies expanding to the U.S. for decades but leave payroll solutions to experts in the field. However, we do have plenty to say on the topic due to the tax and accounting impacts. As international expansion consultants, we see how operational decisions like payroll impact the business in short and long term. In early-stage expansion, owners need guidance to avoid costly mistakes and lost time. We have relationships with payroll providers and can help you determine the best solution.

Why are CPAs discussing payroll?

As international expansion consultants, we see how operational decisions like payroll impact the business in short and long term.

U.S. Payroll Considerations

Why is payroll so crucial to your expansion plan?

Here are some reasons why payroll should be a priority when planning a U.S. expansion:

Attraction of Workforce

Whether starting your U.S. expansion with a sole employee sales office or with many employees for a manufacturing or distribution operation, you need to attract the best workforce. Offering competitive compensation and benefit packages is a key factor. The level of compensation and expected benefits could vary from what you would offer to employees in your home country. Failing to understand this at the beginning of your recruiting process could cost you valuable time or top candidates.

Different U.S. Requirements

U.S. employer requirements will always be different from your home country. There will be legal requirements from various governmental agencies in addition to customary practices which will be important to understand to attract and retain employees. It will be difficult to know and meet all U.S. requirements by relying on the human resources department in your foreign company. You also cannot assume your accountant or payroll provider will handle your U.S. human resource needs unless they specifically offer those services. Therefore, it is important to understand and plan for the resources needed as a U.S. employer.

Expatriate Employees

Many foreign companies expanding to the U.S. need to utilize employees from their home country to successfully establish their U.S. operations. Even before the travel restrictions of COVID-19, you needed to factor in time to obtain a visa for expatriate employees to live and work in the U.S. Additionally, a comprehensive five-year business plan is needed for a visa application which many companies do not have readily available. For shorter term utilization of foreign employees in the U.S., there are still tax consequences and exceptions to protect them from U.S. taxation for the period they are working in the U.S. The ability to attract U.S. employees and the time it takes to utilize expatriate employees in the U.S. requires knowledge and planning to establish and grow your U.S. operation.

U.S. Payroll Considerations

Key Payroll Considerations

While each company has different circumstances to plan and manage during their U.S. expansion, it can be beneficial to start with these high-level payroll considerations. Your U.S. accountant and payroll providers can help you complete your U.S. business plan based on your unique situation.

1. **Use a payroll provider in the U.S., *not* an accountant.**

   Many foreign companies have their accountants process and manage payroll in their home country. In the U.S., most companies use a payroll service provider (PSP) for U.S. payroll. A PSP is an organization that specializes in processing payroll and providing cost-effective services. These include calculating net pay, paying employees, collecting and remitting payroll tax, withholding tax to the federal and state governments and filing quarterly and annual payroll tax returns.

   In addition to offering these basic services, many PSPs also provide a range of HR consulting services including coordination with affiliate employee benefit and workers' compensation insurance providers. Many PSPs also offer cloud-based applications that integrate services, automate the completion of key employee forms and give employees direct access to their payroll records and tax forms.

   When selecting a PSP for your new U.S. operation, it is important to identify one familiar with foreign-owned start-up companies who can help you understand payroll differences and U.S. employer responsibilities. If your U.S. operation will start with only a few employees, you need to use a PSP without a required minimum number of employees.

   Although PSPs process payroll, they do not advise on tax treatment. This is why your accountant will still play an important role in your payroll from a tax perspective. Accountants with the right experience can advise you on expatriate exemption for social security taxes and equalization calculations. This is important to ensure the expatriate employees are managing their U.S. tax responsibilities correctly from the start, protecting both the company and employee from unintended consequences.

U.S. Payroll Considerations

2. Manage employee benefit requirements and cost.

Your U.S. workforce, including both U.S. and expatriate employees, will require you to provide employee benefit packages including health insurance and retirement benefits. U.S. employers are required by law to provide some benefits, particularly if you have more than 50 employees. Other benefits are provided as a customary practice in the U.S. to attract employees. However, compared to your home country where the government may provide healthcare and retirement benefits, most U.S. benefits will be your cost and responsibility.

The challenge is offering a benefits package with the coverage desired by your employees at a cost that fits your U.S. budget.

Medical health insurance is a high-cost benefit and is the most desired by U.S. employees. If you start out with a small number of employees, the first challenge will be to find a policy for a single employee or small group. The next challenge will be to balance the benefits with the cost. The employer may choose to pay the entire cost of the policy or ask employees to contribute to the cost through a payroll deduction.

The most common retirement benefit offered to employees in the U.S. is a 401(k) plan. This allows employees to contribute to the plan on a pre-tax basis as a payroll deduction. In addition to the cost of setting up and administering the plan, an employer's cost usually includes a matching contribution for the employees, commonly 3% or more of gross pay. Vesting can be put in place for the employer's matching funds to incentivize the employees to stay with the company longer to receive the benefit.

U.S. Payroll Considerations

3. Understand the pros and cons of a PEO.

Professional employer organizations (PEOs) are third-party firms that manage payroll and human resource operations for businesses. In some ways, a PEO is a step beyond a PSP in the level of services provided. Instead of simply automating your payroll operations, PEOs act as co-employers to your employees. They relieve businesses of certain responsibilities like tax filing, regular human resources maintenance and employee benefits management. This can be a great option for foreign-based companies expanding to the U.S. and can address some of the payroll obstacles mentioned above. Here are some pros and cons of acquiring a PEO as a part of your expansion effort.

Pros

- **Management of Benefits -** One significant advantage of using a PEO is giving your employees access to the PEO's benefit plans. Your employees may be able to join a larger PEO group of employees for health insurance coverage, which typically means better coverage at lower rates. PEOs can also offer better retirement plans such as a 401(k), including a larger selection of quality investment options.

- **Human Resources -** Because foreign-based companies can't retain the same human resource practices from their home country for U.S. based employees, a PEO can handle all U.S. based HR operations and free up the cost of outsourcing yet another aspect of your business.

- **Payroll Management -** A PEO will manage all your payroll operations just as a PSP would, and is just as reliable for all payroll related tasks.

- **One Provider -** A PEO is a single provider for all payroll and human resource needs which is effective and efficient. Even though PSPs now offer a fuller range of services including access to benefit plans and HR consulting, they usually work through affiliates which means multiple providers.

U.S. Payroll Considerations

Cons

- **Minimum Employee Requirements –** Most PEOs have a minimum number of employees required for their services. If you have 10 or fewer employees, it may be difficult to find a PEO to work with you. While a PEO is a great option for outsourcing payroll, benefits and HR services, if your U.S. expansion plans include a small number of employees, you may have to wait until you are more established with a larger employee base.

- **Overall Cost – T**o evaluate the cost of using a PEO, you need to understand the PEO service fee and other potential cost savings obtained through their services. If the PEO works with companies with few employees, it is more likely to charge a per employee price to cover their total costs and profit on their services. If the PEO pricing is based on a percentage of payroll, be sure to factor in bonuses and nontaxable compensation planned for your employees to understand the true cost. The cost savings from access to a PEO's larger benefits plans compared to what you would pay on your own as well as through multiple providers could have a big impact on the overall cost of using a PEO.

- **Quality –** There are many PEOs in the market, which is why it is important to get references and understand their services and fees. Accountants experienced in working with foreign companies expanding to the U.S. can help refer you to the right PEO based on your circumstances.

U.S. Payroll Considerations

4. **Review the impacts of working from home.**
   The global pandemic has dramatically increased the number of employees working from home, which has impacted employers. Here are two important considerations that should be included in the planning stage of your U.S. expansion:

   - **Tax Consequences –** If you have employees located in different states or cities from your main business location, you could be responsible for additional state payroll tax registrations and state tax filing. Your business plan and operating budget should include the cost of compliance for additional state filings and tax liabilities.

   - **Physical Footprint –** If your workforce will continue to work from home indefinitely, you can rethink the physical location needed for your business. Particularly in the early days of expansion, this could save you money if you can operate with a smaller physical location or none at all.

Chapter Five

Top Legal Tips

Top Legal Tips

It is imperative to find the right U.S. legal advisor when planning and executing your U.S. expansion. However, beyond the incorporation, immigration and contract needs one usually expects when expanding to the U.S., the U.S. legal landscape warrants a closer look at the compliance and operational requirements for your new operations.

It is important to understand and address U.S. legal requirements during the planning stage of expansion to avoid surprises or mistakes. While we do not provide legal advice, our accounting and tax expertise is tied closely to the legal aspects of operating a business in the U.S. Proper planning with U.S. legal advisors experienced in working with foreign investors in the U.S. is recommended. Some U.S. laws are applicable to all businesses and others are limited to specific industries or circumstances.

Top Legal Tips

7 Important U.S. Legal Considerations

1. **The U.S. litigation system** may cause concern for foreign investors, but a U.S. attorney can support strategies to mitigate risks, especially regarding choice of legal entity, contractual relationships and arbitration clauses.

2. **U.S. patent, trademark and copyright laws** govern intellectual property (IP) rights in the U.S. Foreign investors need to understand the applicability of U.S. IP law regardless of where the IP was developed.

3. **The U.S. Department of Labor (DOL)** administers and enforces more than 180 federal labor laws, many which apply to all U.S. employers and some of which only apply to certain industries. Employers must also meet federal and state requirements to withhold tax and remit tax from employees.

4. **Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation (DFAR)**, among others, are important to understand if your U.S. business plan includes selling products or services to the U.S. government.

5. **Food and Drug Administration (FDA)** is a federal agency responsible for outlining and enforcing regulations related to consumable products sold in the U.S. Foreign-based food and pharmaceutical companies need to be aware of all FDA regulations that apply to their products.

6. **Health Insurance Portability and Accountability Act (HIPAA)** is a federal law to protect patient health information. The HIPAA Privacy Rule applicability is far reaching, and it is important for foreign companies looking to provide products or services in the medical industry to understand.

7. **The Office of Foreign Assets Control (OFAC)** administers and enforces economic and trade sanctions for U.S. national security. OFAC requirements are applicable to U.S. and foreign parties trading in the U.S.

As you can see, if you are planning to expand your business into the U.S., you should be prepared for regulation by multiple governing bodies. Because there is a separation between state and federal legislation and enforcement in the U.S., you will need to be prepared to comply with both federal and state laws where applicable, especially for tax and employment requirements. Your expansion plan should include legal consultation that accurately determines when and where you’re vulnerable and to which regulations.

Chapter Six

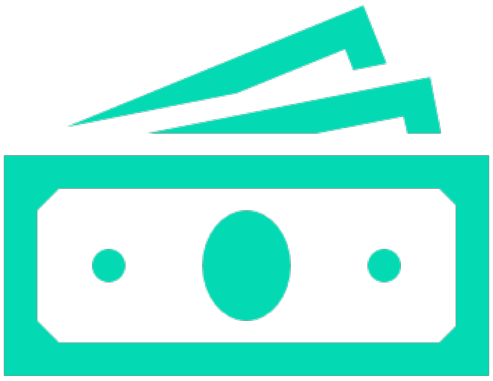
Managing Your U.S. Subsidiary

Managing Your U.S. Subsidiary

Subsidiaries are assets to their parent companies—they enhance group value, build gross revenue and allow entrance into a new market. The most difficult part of managing a subsidiary is finding the correct balance between oversight by the parent and oversight by the subsidiary. Here are some key areas to consider.

Management Team

Financial



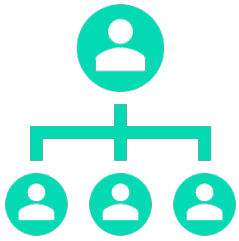
Taxes

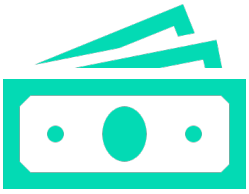
Operational

Managing Your U.S. Subsidiary

Management Team

Decide if the team responsible for the start-up and growth of your U.S. operation will be based in the U.S. or abroad at the parent company. If you find someone who is already in the U.S. to manage your subsidiary, they will require training. Alternatively, if you send an experienced expatriate employee from your parent company, they will require an immigration visa. As your company grows, determine when your U.S. subsidiary should have their own management structure.



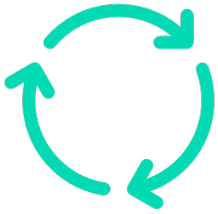


Financial

During early expansion, consider outsourcing U.S. accounting so you can focus on operational growth in the U.S. You should also determine who needs access to the U.S. accounting software, who the authorized signers for your U.S. bank account will be and what type of reporting is required. Make sure your U.S. team, parent company management and outside accountants know who is responsible for approving customer invoices, paying vendors and processing U.S. payroll.

Taxes

You can minimize your risk of exposure to tax adjustments and penalties for U.S. federal and state income requirements by working with an accountant who has foreign direct investment experience, but you must also have a U.S. corporate officer review and sign the U.S. tax filings. It's important to coordinate documentation and execution of group pricing policies for your U.S. company's transactions with foreign affiliates. You should also identify the key U.S. and foreign contacts who will coordinate information and decisions for the group's domestic and global tax positions.



Operational

Since payroll requirements are different in the U.S., consider outsourcing the HR function of your U.S. subsidiary. The location of your employees and customers determines where you are required to register for and pay U.S. income tax, sales tax and payroll tax so make sure you properly track activity throughout the year. Cybersecurity is another operational area to pay attention to, especially due to the recent increase in cyber security threats. Your U.S. systems and processes must be set up to protect your company from losses to the greatest extent possible.

Interested in expanding to the U.S.?

Contact us today for a complimentary consultation!

CONTACT US