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HOW TO STRUCTURE YOUR BUSINESS IN THE UNITED STATES FOR THE BEST TAX TREATMENT

A company planning to conduct business in the United States has several options for determining its tax structure. These include “C” corporations, branch of a foreign corporation, partnership and limited liability company. Each one has its own set of unique tax advantages.

“C” Corporations – Earnings generated by “C” corporations usually are taxed twice – called “double taxation.” This occurs both as an assessment on the corporation and also on the shareholders at the time a dividend is paid. Under U.S. law, a distribution to a shareholder is considered a dividend assuming the payment is based upon profits or current or accumulated earnings. Corporations may not deduct dividends paid. Unless reduced by treaty, dividends paid to foreign investors will be taxed at a rate of 30 percent.

Foreign Corporation Branch – A foreign corporation may establish a branch in the United States and conduct business at any time, as the branch is not considered as a separate entity under U.S. tax law. In most instances, the net income of a foreign-owned branch in the U.S. will be taxed at a regular U.S. rate for income generated by the branch. In addition, except where lowered by a treaty agreement, income from investments not linked to the branch will be taxed at a rate of 30 percent. A branch profits tax (BPT) also will be assessed, determined as 30 percent of the “dividend equivalent amount.” In some extreme cases, this can mean the IRS might impose taxes as high as 54 percent.

Partnerships – Partnerships range from joint ventures and syndicates to pools and other businesses that are not incorporated. The IRS does not consider partnerships as a corporate, trust or estate entity. Each of the 50 states and the District of Columbia has its own governance structure involving how partnerships are formed and operated.

For income tax purposes, partnerships usually are considered “conduits” for income tax purposes, and each partner recognizes a share of income, loss and credit based upon the percentage of his or her ownership shares, regardless of whether a distribution is made. Under U.S. law, partnerships are much more flexible in terms of how profits, losses and distributions are allocated, assuming the agreement among partners fulfills “substantial economic effect” rules. If a partnership doing business in the U.S. has foreign partners, the partnership is required to withhold the highest U.S. rate of tax on that partner’s share of business income.

Limited Liability Company (LLC) – is a simpler structure because it limits the liability of owners and provides for one level of tax. While similar to a partnership, an LLC eliminates some disadvantages that the business would face under an otherwise different structure. An LLC with multiple members is considered a partnership, and may include foreign individuals among its members. LLCs are common for foreign-owned businesses because they are flexible for the purpose of tax planning. For example, an owner may choose to have an LLC taxed as a “C” corporation, rather than as a partnership.