This report provides helpful information on the current business environment in the United States of America. It is designed to assist companies in doing business and establishing effective banking arrangements. This is one of a series of reports on countries around the world.

Global Banking Service

Report on the United States of America

Contents

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Important to Know

Official language

- English

Currency

- Dollar (USD)

Bank holidays

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Source: www.goodbusinessday.com.

Types of Business Structure

Under US law, there are several business structures available. Each state has its own rules for incorporation. The minimum amount of share capital required varies by state but, in general, most states require the subscribed share capital to be paid up before authorized shares are issued. Delaware is a popular state for incorporation for tax and legal reasons.

Corporation

Corp., Inc. (Corporation). This is a company owned by the stockholders, whose personal liability is limited to the amount of investment in the corporation. A general corporation (classified as a C Corporation for federal tax purposes) is a company whose shares are not registered to their owners and are tradable on a public stock market. A Close Corporation is similar to a C Corporation except that its shares are registered to their owners (and are thus not publicly tradable) and are limited to 30 shareholders. Some corporations can apply to the federal Internal Revenue Service (IRS) to register as an S Corporation, which offers tax advantages, but shareholders are limited to 100.

Limited liability company

LLC, LC, Ltd., Co. (Limited liability company). This is a company whose owners enjoy limited liability, but whose revenues and losses are transferred to its members (shareholders), thus avoiding double taxation. It is similar to an S corporation but without the restrictions.

General partnership

In a general partnership, all partners have full and joint liability. This requires no minimum share capital. It is not necessary to file any paperwork to create a partnership, although it is advisable to create a written agreement.

Limited partnership

LP. In a limited partnership, some partners enjoy limited liability (silent partners) although they are not permitted to exercise managerial control. Other partners are considered general partners and have unlimited liability. This requires no minimum share capital.

Limited liability partnership

LLP. A limited liability partnership allows some or all of the partners to limit their liability to the amount invested in the partnership, which varies by state. In an LLP, one partner cannot be held liable for another partner's misconduct or negligence. Some US states combine the aspects of an LP and LLP to form limited liability limited partnerships (LLLP).

Cooperatives

Several states have cooperative incorporation laws, but cooperatives can also be incorporated as non-profit corporations or general corporations under the laws of many states. Some cooperatives do not need to be incorporated at all.

Other organizational types

A professional limited liability company (PLLC) is a company in some states where certain professionals are not permitted to establish an LLC (e.g., doctors, lawyers and accountants).

A joint venture (JV) is an entity formed between two or more parties to undertake an economic activity, usually for a specific purpose or project, and can take the form of a corporation, LLC, partnership or other business structure.

Branches and representative offices

Non-US companies are entitled to establish a branch or a representative office in the USA; however most foreign companies operate through locally incorporated subsidiaries because of a branch's potential tax treatment and liability.

Opening and Operating Bank Accounts

Residency

To be considered resident, a company must be formed or organized under any US state's laws (plus the District of Columbia).

Domestic and foreign currency account restrictions

Residents are permitted to hold local currency (USD) accounts outside the USA and foreign currency accounts both within and outside the USA with few restrictions.

Non-residents are permitted to hold local currency and foreign currency accounts in the USA.

All local currency accounts are fully convertible into foreign currency.

Anti-money laundering and counter-terrorist financing rules

- Account opening procedures require formal identification of the account holder. Additional verification is required for non-personal customers, based on the financial institution's risk assessment of the customer.
- Existing customers are exempt from the verification requirements as long as the financial institutions have a "reasonable belief" that they know the true identity of the customer.

Supplied by BCL Burton Copeland (www.bcl.com). Data as at September 2009.

Special purpose accounts required by local regulation

None.

Value-added tax (VAT) on banking services

Under US law, there are no national or federal sales taxes or a VAT system. Most states and municipalities apply sales tax on some goods and services. Banking and financial services are exempt from sales tax.

Payment and Collection Instruments

Electronic funds transfers, also known as wire transfers, are the most common payment instrument by value. They can be initiated using Internet and other electronic banking facilities. Non-urgent credit transfers (ACH credits) are the primary payment method used to make payroll payments, with a number of enterprises using third-party payroll agencies. They are also the most common method of payment for business-to-business transactions. Card payments are commonly used for consumer transactions, with debit cards and credit cards both popular. Pre-authorized direct debits are used primarily by utility, mortgage and insurance companies to collect domestic payments. They can also be used for cash concentration purposes by companies. Cheque use has been declining in recent years. Although the cheque is no longer the dominant non-cash payment instrument by volume or value, it still remains an important payment medium.

Payment Instrument Use (domestic)

Payment instrument	Transactions (million)		% change 2007/2006	Traffic (value) (USD billion)		% change 2007/2006
	2006	2007		2006	2007	
Cheques	30,521.1	28,248.0	– 7.45	41,600.2	40,946.1	– 1.57
Wire transfers	211.5	222.0	4.96	967,213.1	1,156,289.2	19.55
ACH credits	6,145.0	6,573.4	6.97	18,111.8	20,054.6	10.73
Direct debits	8,680.8	10,240.7	17.97	13,285.4	14,298.4	7.62
Debit cards	26,037.6	30,247.8	16.17	1,023.7	1,182.9	15.55
Credit cards	22,356.7	23,611.6	5.61	1,944.9	2,104.9	8.23
Total	**93,952.7**	**99,143.5**	**5.52**	**1,043,179.1**	**1,234,876.1**	**18.38**

Source: Bank for International Settlements – CPSS Red Book, March 2009.

International Payments

International payments, including foreign currency payments, are processed through same-bank networks, through multibank alliances or by using traditional correspondent banking techniques. Urgent international payments can be made using telegraphic transfers, which take approximately two days to clear depending on the currency of payment.

USD-denominated payments can be cleared through the local banking system in

Canada, the USA and Mexico as a result of the North American Free Trade Agreement (NAFTA). NACHA (the electronic payments association) has created an effective cross-border ACH transfer system with Canada but not Mexico.

Payment Processing Times

Transactions processed (USD-denominated)	Value dating rules	Cut-off time(s) in local Eastern Time (ET)
High-value and urgent domestic and cross-border transfers	Settlement in real time with immediate finality or end-of-day finality	Foreign payment orders = 17:00 ET Domestic payment orders = 18:00 ET
Non-urgent, low-value domestic consumer payments	Debit payments are settled on a next-day basis. Credit payments are settled on a three day cycle.	There are different cut-off times for each bank, format and ACH operator
Cheque payments	Most payments are settled on a same-day basis, but can take up to five days	There are different cut-off times for different banks

Central Bank Reporting

The USA does not apply mandatory central bank reporting requirements. Balance of payments statistics are based on monthly and quarterly administrative records and on the responses to quarterly surveys and benchmark surveys collated by the US Department of Commerce Bureau of Economic Analysis (BEA).

Exchange Arrangements and Controls

The USA applies few currency exchange controls.

There are some restrictions on foreign mutual funds. Non-banking firms, including local affiliates of foreign companies, are required to submit monthly and quarterly reports on foreign exchange assets, liabilities and forward positions to the Treasury.

Restrictions apply to inward direct investment in some sectors, including nuclear energy (foreign investors are not generally granted licences to use nuclear materials), communications (a 20% maximum threshold for foreign investment), shipping and air transport (a 25% maximum threshold for foreign investment).

Cash and Liquidity Management

US companies tend to focus on concentrating cash on a domestic basis, with separate liquidity management arrangements for their international operations.

Physical Cash Concentration

Physical cash concentration is available from all large US and international banks and widely practised.

Cross-border cash concentration is available, although US companies do not generally concentrate cash across borders. Cross-border payments can be sent through

FedACH's FedGlobal ACH Payment Service to and from Canada, Mexico, Austria, Germany, Switzerland and Panama. From January 2010, FedGlobal Services will offer international ACH services to over 60 countries across Europe and Latin America.

Notional Cash Pooling

Notional cash pooling is not generally practised because of certain US regulatory restrictions.

Specifically, Federal Regulation Q does not permit the payment of interest on corporate demand accounts. Regulation D restricts the number of transfers businesses can make from interest-bearing transaction accounts to demand accounts. In addition, overdraft facilities are prohibited. However, there are proposals to repeal Regulations Q and D and it is hoped that this, along with the increase in larger regional banking institutions and pressure from corporations, will allow banks to more easily offer notional pooling.

Cross-border notional cash pooling is not readily available in the USA.

Short-term Investment

Bank instruments

Interest-bearing current (chequing) or demand deposit accounts are not available because Regulation Q prohibits banks from offering them. However, companies can sweep surplus liquidity into overnight investment accounts. Banks offer time deposits in a range of currencies for terms from one week to a year, although these are subject to maximum deposits per bank of USD 150,000. Banks also issue fixed- or floating-rate certificates of deposit (CDs), usually for terms ranging from three to six months, but they can be from one week to over a year.

Non-bank instruments

Commercial paper (CP) is issued with a maximum maturity of 270 days, with a typical minimum investment requirement of USD 100,000.

The US Treasury Bureau of the Public Debt issues Treasury bills, notes and bonds for minimum investment amounts of USD 1,000.

US companies have access to money market funds and these are popular with US investors.

Short-term Borrowing

Bank

Formal overdrafts are not available, but bank lines of credit and bank loans are usually available in the USA to both resident and non-resident companies. Banks will usually charge a margin over Libor (the London Interbank Offered Rate), the Federal Funds Rate or the Commercial Paper Composite Rate. Other commitment and arrangement fees can be charged and are negotiable.

Non-bank

Companies can issue commercial paper for periods of up to 270 days, and it is a popular form of short-term borrowing. Issues are almost always rated by one of the rating agencies.

Trade bills are not commonly discounted and factoring (only disclosed) is available.

Taxation

Corporate Taxation

- US and certain foreign companies are subject to US federal and state income taxes. Depending on the particular state laws, state corporation tax is computed based on a company's income and certain non-income measures, including capital stock and net worth. Some US cities and municipalities also impose an income tax.
- Income of fiscally transparent entities is subject to US federal income taxation in the hands of the owner (corporate or individual), and taxation depends on the status and residence of the owners and the source and type of income. State taxation of fiscally transparent entities varies depending on the tax law of the particular state.
- Corporate profits are generally subject to double taxation (i.e., the profits are taxed first at the corporate level and then again at the level of the shareholders). Varying dividend-received deductions may be available in certain situations upon distributions from a corporation.
- Income earned by a US parent company from foreign operations conducted by foreign corporate subsidiaries is generally subject to US federal tax when the income is distributed as a dividend to the US company. Under an anti-deferral regime (i.e., the subpart F rules) certain US

shareholders must currently include certain income of controlled foreign companies without regard to whether the income is distributed to the shareholders. This deemed income is not normally taxed a second time when actually distributed.

- Domestic companies are taxable on their worldwide income and foreign corporations on their US effectively-connected income at a maximum marginal federal rate of 35%. Income below certain thresholds is taxed at graduated rates ranging from 15% to 34%. Certain US-sourced income is taxable to non-residents at a gross rate of 30%. Various taxpayers may be subject to Alternative Minimum Tax in lieu of their normal tax.
- State and local income taxes are imposed at varying rates. The state income tax base is generally federal taxable income that has been apportioned to a state on the basis of some combination of property, sales and payroll. City income taxes are generally levied on adjusted "federal taxable income" at various rates (often ranging from 1% to 2%). State and local taxes are deductible expenses for federal income tax purposes.
- Subject to numerous and complex limitations, a US company is allowed a credit for foreign income tax paid or accrued, or deemed paid or accrued, by a foreign company of which it owns at least 10% of the voting stock. Under the foreign tax credit rules, foreign income taxes paid by qualified foreign subsidiaries are eligible for a credit when the earnings of such foreign company are deemed or actually repatriated to the US company shareholder.
- Foreign companies are generally subject to US income tax on two categories of income:
  - income "effectively connected" with a US trade or business; and
  - US-sourced "fixed or determinable annual or periodic income" (FDAP income).
- Effectively connected income is taxed on a net basis in the same way as domestic companies. A factual determination must be made as to when a foreign company is engaged in a US trade or business. The partners/owners of various pass-through/disregarded entities can be deemed to be engaged in a US trade or business due to their ownership in such entities.
- FDAP income (not effectively connected with a US trade or business) includes dividends, interest, rents and royalties, and is generally subject to a 30% withholding tax on the gross amount without an allowance for deductions. This rate may be impacted by an applicable tax treaty.
- Foreign companies engaged in a US trade or business may also be subject to the US branch profits tax at a rate of 30%, or a lesser rate under an applicable tax treaty. The branch profits tax is intended to place foreign companies that operate in the USA through a branch on an equal footing with those operating through a US subsidiary. US branches of foreign companies that are residents of certain jurisdictions and that satisfy specific conditions under the relevant treaty are exempt from the branch profits tax.
- Federal net operating losses generally may be carried back for two years (five years in certain instances) and carried forward for up to 20 years to offset taxable income in those other years.
- Most states have similar provisions, with differences in the carry-forward or carry-back period.

Withholding Tax (subject to tax treaties and other exemptions)

- As a general rule, no US withholding tax is imposed on payments to US citizens, US resident individuals or domestic companies. However, "backup withholding" on interest and dividends may be required if the US recipient fails to provide the necessary withholding certificate to the payer.
- A payment to a fiscally transparent entity may or may not be subject to withholding tax, or may be subject to different withholding rates, depending on the status and residence of the beneficial owner of the income. Various withholding certificates are required.
- Payments of US-sourced dividends, interest, royalties and rents to a foreign company generally incur withholding tax at 30%. However, a reduced rate or an exemption may be available under an applicable tax treaty.
- Notwithstanding the general rule, no withholding tax is imposed when the income is paid to a foreign company which conducts a US trade or business (e.g., payment to a US branch of a foreign company).
- No withholding tax is imposed on broad types of interest payments to foreign companies. Payment of interest to a

foreign unrelated party is in many cases exempt under the "portfolio interest exemption". Payment of interest on a bank deposit to a foreign depositor is generally exempt under the bank deposit interest exemption.

- As a general rule, withholding tax is not imposed on a payment that is associated with income that is exempt from US taxation when received by a foreign person who is a beneficial owner of the income. Therefore, foreign-sourced income is not subject to withholding tax. Capital gains on disposition of personal property are generally exempt from withholding tax as well.
- The USA has entered into double tax treaties with more than 50 countries, including Canada. These treaties provide for reduced rates of withholding tax provided the recipient meets certain requirements; most US tax treaties also contain a limitation on benefits provision.
- A reduction in, or exemption from, withholding tax is conditioned on compliance with complex rules. Generally, the payer must be in possession of an appropriate withholding certificate at the time of payment to apply a lower treaty rate or to allow exemption. The withholding certificate must be executed by the recipient of the payment and/or the beneficial owner of the income as required by the regulations. When a treaty benefit is claimed, the income recipient must certify its eligibility for benefits and must provide its US tax identification number on the withholding certificate.
- In addition to the above rule, a business entity that is treated as a partnership under US tax principles is subject to a withholding tax requirement with respect to its business income if the entity has a foreign owner. The withholding requirement applies to the foreign owner's share of income that is connected with a US trade or business.

Capital Gains Tax

- Capital gains earned by a domestic company are taxed at ordinary corporation tax rates. Foreign companies are generally exempt from tax on capital gains, unless the income is taxable as FDAP income or is considered to be connected with a US trade or business.
- Capital losses may only be used to offset capital gains, not ordinary income. A corporation's excess capital losses can be carried back three years and forward for five years to offset capital gains in such other years. The amount of capital loss carry-back, however, is limited to an amount that does not cause or increase a net operating loss in the carry-back year.

Thin Capitalization

- There is no statutory "safe harbour" debt-to-equity ratio to ensure debt treatment, but there are judicial doctrines and other principles that can be invoked to both test and properly characterize amounts advanced as debt. A debt-to-equity ratio of 3:1 might be acceptable to the tax authorities provided the taxpayer can adequately service the loan without the assistance of related parties. If the characterization of an amount borrowed from a non-US related party is challenged, it can be helpful to show that an unrelated bank might have advanced similar amounts on similar terms. Such evidence is, however, not binding on the tax authorities.
- Interest paid on amounts that are determined to be equity are treated as dividends.
- In addition, a US company's deduction of interest expense to foreign related persons may be limited under the "earnings stripping" rule where the company's debt-to-equity ratio exceeds 1.5:1. Debt guaranteed by a related foreign person may also be taken into account when calculating various ratios and limitations. Under these rules, interest payments that exceed a certain threshold cannot be deducted in the year in which the interest exceeds the limit. However, the excess interest may be carried forward indefinitely for future use under the current rule.

Transfer Pricing

- Transactions between related parties must be conducted at arm's length.
- Transfer pricing policies between commonly controlled entities are closely scrutinized by the tax authorities (the Internal Revenue Service – IRS), which has substantial powers. Regulations cover prices for products, as well as loan interest, licence and management fees. The IRS is authorized to allocate income and deductions to prevent evasion of taxes or to clearly reflect the income of the different parties. Control is defined very broadly, including where two or more act in concert with a common goal or purpose.
- The specific requirements of US transfer pricing regulations are constantly evolving and should be reviewed continuously.

- Contemporaneous documentation is required as provided in the regulations.

Sales Taxes / VAT

- The USA does not have a national or federal sales-and-use tax or a VAT system.
- Federal excise taxes are levied on certain items such as gasoline, alcohol and tobacco at the manufacturing level. Tax rates on services vary from 3% for communications to 7.5% for air transport. Some states have similar excise levies.
- Most states and municipalities levy sales and use taxes on certain goods and services. The taxability of certain transactions and the rates vary between levying entities and vary by the type of goods or services.

Payroll and Social Security Taxes

- Employers and employees pay social security taxes. US social security contributions of 7.65% each (which includes 1.45% for Medicare) are paid by the employer and employee up to an income limit. The Medicare portion is also due on income in excess of the income limit.
- Employers pay a federal unemployment tax of 6.2% on wages up to USD 7,000 per employee, although a credit of up to 5.4% is allowed for any payments to state unemployment funds.
- Foreign expatriates from selected countries who temporarily work in the USA may be exempt from US social security tax under bilateral social security totalization agreements between the USA and a number of foreign governments.
- State payroll and unemployment taxes vary in coverage and rate by jurisdiction.

All tax information supplied by Deloitte LLP (www.deloitte.com). Data as at March 1, 2009.

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