

Start-Up Procedures and Costs for U.S. Corporations



Cancun, Mexico
October 31, 2013

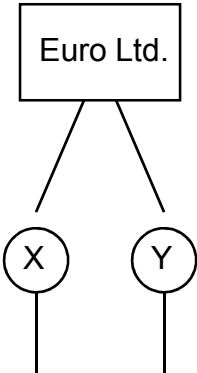
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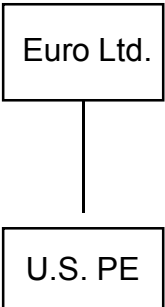
Best Structure ?

(1)



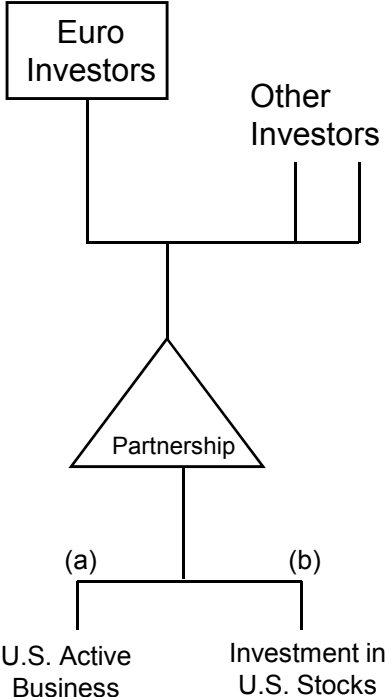
- Assign employees for short period
- Euro Inc. Generally exempt under treaty
- State taxation risk if revenue generated in state

(2)



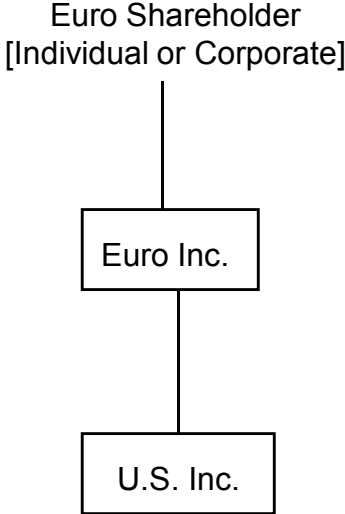
- U.S. Branch
- Euro Ltd. must file U.S. returns
 - Complicated allocations of income and expenses to be made

(3)



- (a) Partnership is similar to a branch, so same taxation as (2)
- (b) If activity is investing in U.S. corp. stock, the partnership is best structure – gains for foreign investors not taxed

(4)



- Form U.S. subsidiary
- Profits in U.S. subject to federal and state tax

Where to Incorporate

State Charter [50 States] establishes corporate existence

1) Delaware

- Typically used if going public or raising capital
- Preferred by East Coast advisors due to familiarity and 200 years of established law
- No state tax, however other states can impose normal state tax if “nexus” or presence exists

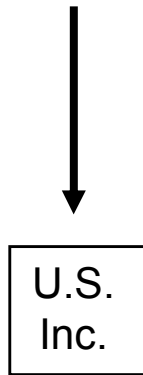
2) Nevada

- Similar to Delaware
- Less expensive
- No state tax

3) California

- Minimum tax = \$800
- Flat tax rate on income: 8.9% on net income

Starting Operations



1. Form U.S. Corporation [Delaware, New York, California]
2. Obtain a tax I.D. # from IRS – Form SS-4
3. Open a bank account, and now you're in business

U.S. Corporation Chart

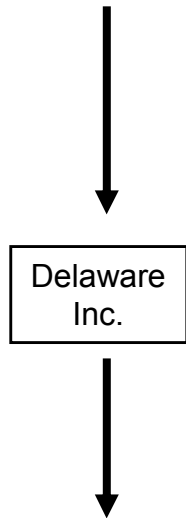
Required Capital: Generally minimal capital required.
Usually \$100, unless investor or business plan
requires more initial capital

Debt vs. Equity: Debt from parent generally limited to 60% of funds
due to limitations on interest deductions if debt to
equity exceeds 1.5 to 1.

U.S. resident directors – Not required

U.S. resident officers – Not required

Cost to Incorporate

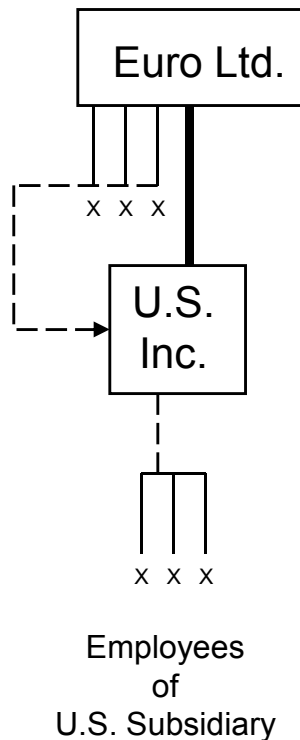


Delaware
Inc.

Doing business
in California

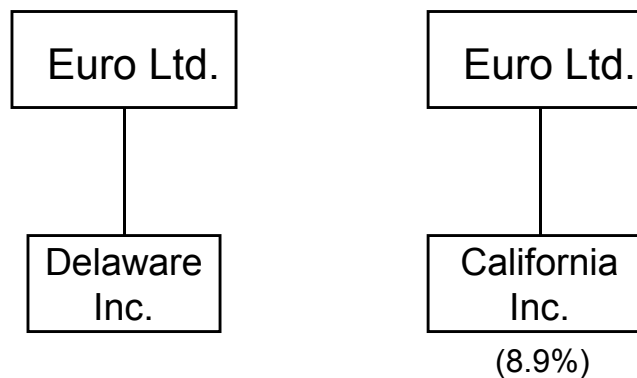
	<u>Cost</u>	<u>Legal or Accounting</u>
(1) Form Delaware Corporation - Online process - Can do same day	\$500	\$1-2,000
(2) Obtain a federal tax id # SS4 - Form SS-4 - www.irs.gov	-0-	\$150
(3) With (1) and (2), a U.S. bank account can be opened. Know your customer [KYC] rules can take several weeks.	-0-	-0-
(4) California – apply to Secretary of State Qualify Delaware company to conduct business in California - Takes two to four weeks - Accelerated approval	\$1,000 \$2,000	\$3,000

Employee Relocation



1. Employees of Euro Ltd.
 - Obtain tax ID #
 - Complete Form W-7, takes time and documents
 - No visa's needed for short-term assignments
 - If U.S. presence exceeds 182 days, employee will generally be taxed as a U.S. resident
 - U.S. residents = worldwide taxation
2. Employees of U.S. Inc.
 - Not allowed unless entering the U.S. with proper visa: E2, L1, H1B, O, J Visas
 - Apply for social security number
 - Form SS-4
 - apply by mail or in person at local service office
 - With social security number, an employee can open a bank account, obtain credit cards

Corporate Taxation



Profits: \$200,000

Annual

- Minimum state tax	\$500	\$800
- Annual income tax	-0-	\$17,800
- Federal tax		
- On first \$100k	\$22,000	\$22,000
- above \$100,000	34%	34%

Federal Tax Rates

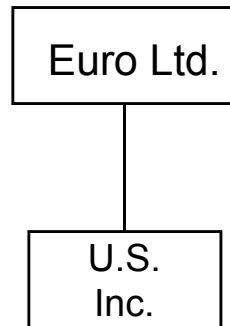
For regular income tax purposes, a system of graduated marginal tax rates is applied to all taxable income, including capital gains

Taxable Income (\$)	Tax Rate
0 to 50,000	15%
50,000 to 75,000	\$7,500 + 25% Of the amount over 50,000
75,000 to 100,000	\$13,750 + 34% Of the amount over 75,000
100,000 to 335,000	\$22,250 + 39% Of the amount over 100,000
335,000 to 10,000,000	\$113,900 + 34% Of the amount over 335,000
10,000,000 to 15,000,000	\$3,400,000 + 35% Of the amount over 10,000,000
15,000,000 to 18,333,333	\$5,150,000 + 38% Of the amount over 15,000,000
18,333,333 and up	35%

This rate structure produces a flat 34% tax rate on incomes from \$335,000 to \$10,000,000, gradually increasing to a flat rate of 35% on incomes above \$18,333,333.

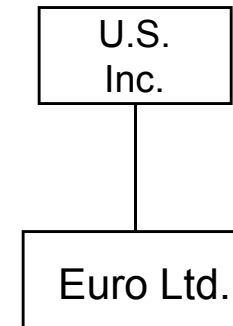
Changing to a U.S. Parent Company

U.S. Subsidiary



- Transactions between parent and subsidiary should use “arms length” pricing.
- For sales and service support in U.S., a cost plus 5% or 10% is often used.

U.S. “Flip Up”



- A U.S. flip-up into a Delaware Company can be accomplished with any corporate tax in the U.S.
- U.S. corporations are often used for going public or raising capital.

Decide Where to Incorporate

Employee Relocation
L-1 transferee, or H1B or E2 Employee
\$10,000 Gross Monthly Payroll [San Francisco]

Gross Pay	\$10,000	
Withholding		
Federal income tax	2,000	} Federal and state Withholding tables based on number of dependents Form W-4 completed by employee
State income tax	700	
Social security tax ⁽¹⁾	<u>853</u>	- 8.53% on gross wages based amount to \$110,000 - 2.35% on wages over base amount
	<u>\$3,573</u>	
Net pay	<u><u>\$6,447</u></u>	

(1) Employer pays equal amount of social security taxes

Doing Business in the U.S.

Pre-arrival Tax Planning Checklist for Executives

1. Consider establishing a foreign or U.S. trust for estate planning purposes. If assets are located in one's country of origin, it may be necessary to consult with local counsel to coordinate legal and tax issues. The use of trusts may not work in civil law jurisdictions, e.g. France and Germany.
2. Determine if accelerating gift planning or contemplated sales of assets prior to entering the U.S. will save global tax.
3. Explore tax strategies that will step up the tax basis of assets to their fair market value so only appreciation after becoming a U.S. resident will be taxable in the U.S.
4. Review existing investment structures to determine whether there will be adverse tax impacts under U.S. tax laws.
5. Stock options, when exercised, usually generate ordinary income in the U.S. that is taxable at the top rate of 35%. Consider exercising options prior to arrival.
6. Review deferred compensation and retirement benefits, to determine how to efficiently access these sources with minimum tax before and after arrival.
7. If you have a foreign stock plan, you should check whether vesting will be taxable to you after entering the U.S.
8. Plan the proper timing for arrival. Arriving in the last half of the calendar year will usually result in nonresident status for the full year. Foreign income and capital gains during the year should then be exempt from U.S. tax.
9. If you are being relocated to the U.S., consider whether you should be employed by the U.S. or foreign affiliate and whether you should be covered by social security in the U.S. or in your home country.

Doing Business in the U.S.

Pre-arrival Tax Planning Checklist for Executives (Cont)

10. If you are in the U.S. for a short period of time, you may be exempt from U.S. tax under the relevant income tax treaty.
11. Transferring appreciated assets to a foreign trust or foreign company will usually trigger current income tax on the appreciation if the transfer is made when you are a U.S. resident.
12. Expatriation: If after 7 years of residence as a green card holder, you relinquish your green card and leave the US, you may be subject to an exit tax on appreciated assets. To minimize this risk, you may wish to defer getting your green card if your stay in the US is not permanent.
13. Reporting bank balances and foreign investments is required under federal and state rules. The following IRS forms need to be considered:
 - TDF 90-22.1 Foreign Bank Account Report – For balances in excess of \$10,000
 - Form 3520 Receipt of any distributions or benefits from a foreign trust
 - Form 3520 Receipt of gifts or bequests over \$100,000 from a foreign person
 - Form 3520A Annual return for a foreign trust
 - Form 5471 Return of U.S. person in certain foreign corporations
 - Form 8865 Return of U.S. person in certain foreign partnerships
 - Form 8621 Investment in a passive foreign investment company (e.g. foreign mutual fund)
 - Form 8938 New in 2011 – Statement of foreign financial assets

Caution: Many foreign holding structures may fall within these reporting requirements. Significant penalties will be assessed if appropriate reporting is not done.

Speakers Bio Rowbotham & Company



Brian Rowbotham is a CPA with 33 years of experience advising businesses and individuals on complex domestic and international income and estate tax planning. He is the founding partner of Rowbotham & Company LLP which is almost exclusively dedicated to businesses and investors needing both domestic and international tax and accounting services.

His clients include private and public companies around the globe which consist of: U.S. and foreign institutional investors, multinational families and executives and non-U.S. investors doing business in the U.S. Mr. Rowbotham has advised clients in major domestic and international litigation and has also served on the boards of both privately held and publicly traded companies.



Mark is a partner at Rowbotham & Company LLP, with twenty-seven years of experience in providing professional services to private and public middle market companies. The range of his expertise includes:

- Securities and Exchange Commission filings;
- Assurance (audited, reviewed and compiled financial statements);
- Risk assurance & advisory services (Sarbanes Oxley compliance, enterprise risk assessment, policies and procedures review, internal audits);
- Business advisory (accounting matters, mergers & acquisitions, valuations, business plan reviews and negotiating bank debt); and
- Litigation support (damages, bankruptcy, investigative services and asset recovery)

Mark is a member of the San Francisco Chapter of the California Society of Certified Public Accountants, the American Institute of Certified Public Accountants and the Institute of Business Appraisers, Inc. He is the current vice-chairman and a member of Geneva Group International North America. Mark is also a past board member and treasurer for various not-for-profit organization.

Mark heads the firm's SEC practice. The firm is a member of the American Institute of Certified Public Accountants and Public Company Accounting Oversight Board, for which Mark is the contact partner. These memberships subject the firm to extensive peer review process that is performed by an independent accounting firm and the Board. They also allow the firm to practice before the SEC and service both publicly held as well as private concerns.