

US Business Entities

General

Similar to Canada, the US has corporations, partnerships and hybrid companies; the difference is that there are more varieties in the US. There are two basic types of corporations, the C corporation and the S corporation. The S corporation is not available to nonresidents.

There are four varieties of partnerships in the US; general partnership (GP), limited partnership (LP) and two types of partnerships that provide limited liability for the general partners, called limited liability partnerships (LLP) and limited liability limited partnerships (LLLP).

A limited liability company (LLC) is hybrid entity, which means that they can be tax like a sole proprietorships, corporations or partnership. Canadian residents should generally avoid using LLCs because they are treated like corporations in Canada and can cause double tax.

General discussions of the taxation of each of these entities are on separate pages.

A Canadian doing business in the US can do business directly through a Canadian company or partnership or you as an individual, be a shareholder or partner of a US business; except for and S corporation. Another option is to create a US entity that will act as a subsidiary of your Canadian entity.

Each state and the District of Columbia have its own laws pertaining to the formation of entities, including the level of privacy and asset protection it will provide. It is possible to establish an entity in one state and operate in another state. You will not need a separate entity for each state that you do business in, however you will need to receive permission to conduct business in each state you operate.

It is important that you seek US advice to obtain the best entity choice in the best jurisdiction for your circumstances.

US Corporations

The concept of corporations and the reasons for using them are basically the same in the US and Canada, however there are some important differences. The most glaring and important difference has to do with how they are taxed.

In general, the US corporate tax rates in 2013 range from 15% to 39%, however there are situations where the tax rate schedule will not be applicable. There is no special tax benefit for capital gains in a corporation, all net income is taxed according to the applicable rate.

US Corporate Tax Rate Schedule - 2015

If Taxable Income Is: (US\$)		The Tax Is: (US\$)	
Not over \$50,000		15% of the taxable income	
Over \$50,000	but not over \$75,000	\$7,500 plus	25% of the amount over \$50,000
Over \$75,000	but not over \$100,000	\$13,750 plus	34% of the amount over \$75,000
Over \$100,000	but not over \$335,000	\$22,250 plus	39% of the amount over \$100,000
Over \$335,000	but not over \$10,000,000	\$113,900 plus	34% of the amount over \$335,000
Over \$10,000,000	but not over \$15,000,000	\$3,400,000 plus	35% of the amount over \$10,000,000
Over \$15,000,000	but not over \$18,333,333	\$5,150,000 plus	38% of the amount over \$15,000,000
Over 18,333,333		35% of the taxable income	
Qualified personal service corporations are taxed at a flat rate of 35% of taxable income.			

While the tax rates are interesting, the real issue with using corporations in the US is that they nearly always lead to double tax. Any net income earned in a corporation is taxed by the corporation and when a dividend is paid to the shareholders, the shareholders must report the dividend as income. There is neither a deduction to the corporation nor a dividend credit for the individual when a dividend is paid, which results in a tax to the corporate and the individual on the same income. A Canadian corporation doing business in the US will have to file a corporate tax return ([Form 1120E](#)) and is therefore subject to US corporate tax laws on the US income.

The Canada-US Treaty allows for a 5% withholding tax when a dividend is paid from a subsidiary corporation in one country to the parent corporation in another country.

Generally, income tax paid in one country can be taken as a credit in the other country. A credit is a dollar for dollar reduction in the tax owed. There can be cases when a credit will not be allowed in part or in whole such as when the tax is paid in one country in one year and the income is reported in the other country in another year. Work closely with your accountant to maximize your foreign tax credits.

Resources:

[Internal Revenue Service](#)

[IRS site for Small Business Forms and Publications](#)

[IRS site for Business Structures](#)

[IRS site for Tax Information for International Businesses](#)

[IRS site for Tax Information for Corporations](#)

Other Governmental Agency

Small Business Association – Chose a Business Structure