



HOW TO START A BUSINESS IN THE USA

Guide for international companies and
entrepreneurs

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1. Introduction

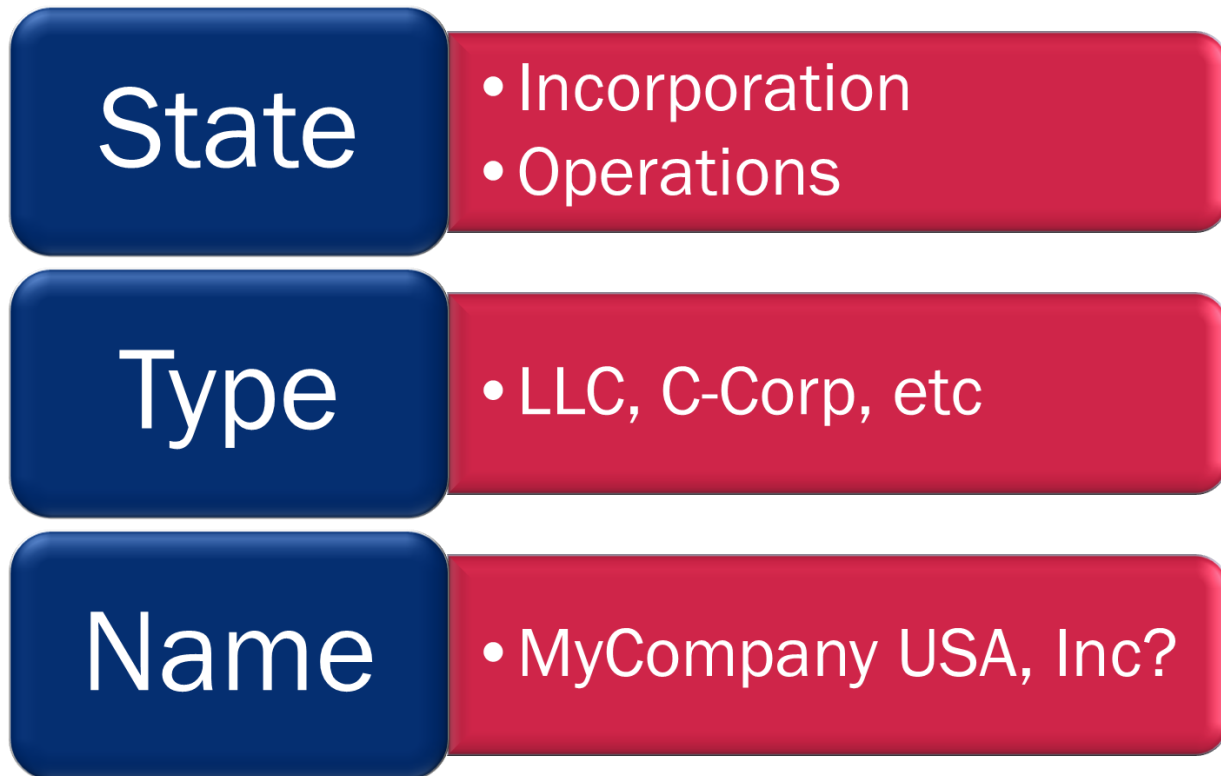
The creation of a company incorporated and registered in the US is one of the preferred ways for foreign companies and entrepreneurs to do business in this country. Owners do not need to have a residence permit or a work visa. For many business models, the creation of a local company provides some important advantages compared to selling through distributors and strategic partners, or the creation of a 'representative office' or 'branch office', which are formulas selected some times when the local presence is limited or temporary.

The existence of a US company is key to being able to process certain visas required for the transfer of employees to the US and greatly facilitates access to local resources (in particular human capital and financing). Another benefit provided by the existence of a local legal entity is the **legal and fiscal separation with respect to the parent company, which provides a higher level of protection and risk reduction** when doing business in the US. It also provides important strategic value since the local presence will give more confidence to potential clients, partners and suppliers.

The creation of a company in the US is only part of the initialization of the business in this country and should **always be preceded by a feasibility study, careful strategic planning and initial exploration with the help of experts such as [Markentry USA](http://MarkentryUSA.com).**



Some of the applicable requirements depend on **decisions to be made at the beginning**:



- **State where the operations of the main company will take place:** We will see in detail some considerations to take into account in this decision.
- **State of incorporation of the company:** For simplicity, this state is usually the state in which the company will have its principal business. However, **in the US, the state of incorporation of the company may be different from the state where the company locates its operations.** We will see the factors that affect this decision.
- **Type of business entity:** Companies in the US can choose among different types. We will study the advantages and disadvantages of each one.
- **Choice of company name:** The legal name of the company may vary depending on the selected state and type of business entity.
- **Registration to obtain business licenses:** The requirements depend on each state.

The US is one of the countries where it is easiest to do business, the administrative process to create a company can be completed in a few hours in some cases or a few days in the most complex scenarios. However, some decisions should be made only after careful analysis to ensure that they are best suited to the owner's interests.

2. General Considerations

This guide **does not consider general strategic management issues** applicable to any internationalization project, which must be addressed before creating the company, as we have mentioned previously. This includes the need to prepare a market study and a plan that defines the best way to develop the business in this country. We do not go into the importance of adapting the company's products and services for the market to maximize the probability of commercial success.

Likewise, details of aspects such as **office** rental or entry requirements in certain **online markets are not** discussed. The existence of a physical address (and not a PO Box), telephone and contact email is essential for some of the procedures described in this document. We not go into issues related to **immigration**, we will just say that owning a business does not provide automatically permission to reside and work in the US but can facilitate processing visas.

Legislation in the US is particularly complex as it follows a **federal system of government**. This means that laws are defined at the national (federal), state, and local levels (counties and cities). Each of the 50 states (along with certain territories and the District of Columbia) has its own state and local laws that apply in those jurisdictions. For detailed information on what is applicable for each state, you should go to the corresponding official website for the incorporation of businesses, which can be easily found in [this section of the Small Business Administration website](#) .

Some areas of the law, such as immigration, patents, and copyrights, are governed exclusively by federal law. Many other laws, including those governing contracts, labor relations, and sales transactions, are established primarily by individual states. In some areas, regulations are derived simultaneously from federal and state laws. When doing business in the US, keep in mind the existence of these parallel systems of laws that often differ from state to state. For example, if a company located in Virginia makes a sale to another in California, the applicable laws of both states should be taken into account when determining sales taxes and other issues.

In the case of companies that are going to work in **classified defense contracts** or that are going to need access to information or technology restricted by laws like **ITAR** ('International Traffic in Arms Regulations') there are many other considerations that must be taken into account when planning the creation of a US company and that are beyond the scope of this document.

It should be borne in mind that **the legal, accounting and tax aspects are very important and must always be verified with experts who have the appropriate licenses** to be able to legally provide the corresponding advice: lawyers, accountants with CPA certification ('Certified Public Accountant') and tax advisors.

Markentry USA knows the process of creating a company in the USA thoroughly and can give the necessary support in any area, in all phases of the entity's life cycle.

3. Selection of the state where the main operations of the company will be located



The main factors to take into account for this decision are the following:

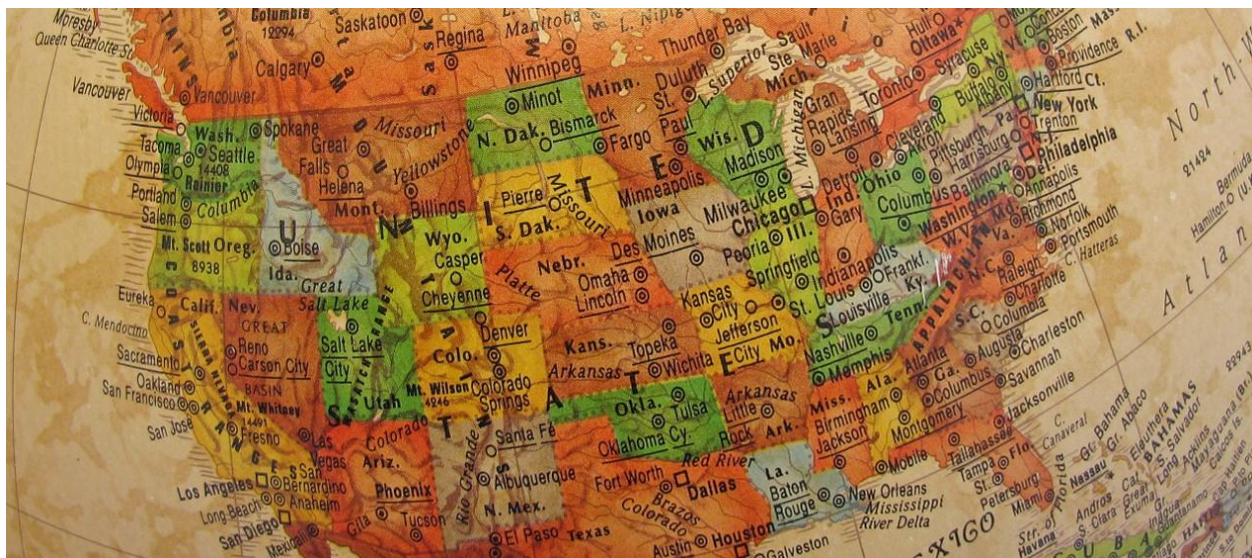
- **Proximity to target clients**, both direct customers and main prime contractors in the company's market.
- **Proximity to critical resources**, in particular ease of access to key human capital with required expertise and certifications, investors or strategic partners.
- **Easy access to stakeholders**, particularly with regard to airports or highways that offer direct routes to destinations that will be visited frequently (parent company, reference clients, other company facilities).
- **Time difference and distance** between places being considered and the organizations with which they will interact frequently.
- **Labor and infrastructure costs** (offices, in particular), which can vary significantly depending on the selected location.
- **Local institutional support**. Occasionally, states or counties considered for the location of company facilities may be able to support the process and provide tax breaks or credits, especially when making a significant investment or recruiting a significant volume of local employees.

As we discuss below, the company must be registered with the states in which it establishes its operations.

4. Selection of the state of incorporation of the company

It is important to note that **the incorporation and the registration** (described in the next section) **are two independent actions**. The US company could be incorporated as a Delaware state business and registered in the states of Virginia and California to be able to carry out its activities in those states (in which it will be considered a foreign entity, despite being a US entity, for having been incorporated in another state).

Likewise, the company must pay **income taxes** in the state or states where revenue is generated, regardless of the state in which it was incorporated. Starting a business in a state different from the one in which it will develop its main activities creates a higher level of complexity and some additional costs. They should be carefully analyzed to ensure they are offset by the advantages offered by this route.



The Administrator or Administrators of the company can be natural or legal persons, and be resident or non-resident in the USA. Their names must appear on the company incorporation documents in all states, with the exception of the state of **Delaware**, which does not require public registration. This privacy is sometimes the reason for some companies to choose this state for the incorporation of the company.

All companies in the US must designate a **Registered Agent** in the state selected for their incorporation. This is public information. Since the administrators and partners may be non-resident foreign citizens, the agent ensures the reception of all official documents related to the business. If the state of incorporation is different from the state where the offices of the company will be located, it will be necessary to contract the services of a Registered Agent in the state of incorporation to promptly receive and transmit any notifications. If the company is incorporated in a state where it has a permanent establishment, it may act as its own agent as long as it can manage these notifications diligently.

The choice of the state of incorporation of the company must be made with legal and fiscal support to understand the consequences and ensure that it is the most appropriate. It must be decided together with the choice of the type of company described in the following section, since the advantages and disadvantages of each option may differ depending on the selected state.

Some of the **factors that differ for each state** and should be considered are shown below:

FACTOR	DESCRIPTION
Legal system	<p>The laws applicable to companies are different in each state. For example, Delaware is known for having one of the best business legal systems (it is the only one with a dedicated court, the 'Court of Chancery', and does not employ a jury in business-related cases). It claims to have been chosen by more than 66% of US Fortune 500 companies mainly for this reason.</p> <p>For companies that plan to use external capital contributions or go public, being incorporated in Delaware is of great importance because it gives investors peace of mind for this reason.</p>
Corporate tax	<p>Normally the applicable taxes depend on the state where the income is generated and not on where the company has been incorporated, but this must be verified in each case. There is no corporation tax in Delaware for companies incorporated in that state that operate in others (they will have to pay taxes in those states, but not in Delaware).</p>
Incorporation cost of the company	<p>It ranges from \$40 to \$500 for LLCs and between \$45 and \$315 for C-Corps. For the latter, it may vary depending on the number of shares. It is not a very relevant factor for the decision compared to the others. In some cases, a fee may be paid to speed up the process.</p>
Annual cost of maintaining the company	<p>The payment of a tax (called 'filing fee') is required, every year or every two years depending on the state. It normally ranges between \$0 and \$800 depending on the state, type of company and, in some cases, also as a function of the income obtained or the number of shares (C-Corps). Also, not a very relevant factor for the decision.</p>
Franchise taxes	<p>Some states require the payment of this tax separately, in some cases replacing the 'filing fee'. As of the date of preparation of this document, the only states in which this tax is required are: Alabama, Arkansas, California, Delaware, Georgia, Illinois, Louisiana, Mississippi, Missouri, New York, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas, and West Virginia. Each state has different rules to calculate this tax.</p>
Registry Agent Cost	<p>This cost is zero if the subsidiary is established in the state where it has operations (if it has a physical address and representatives who can receive and process notifications). Otherwise the cost can be between \$50 and \$500 a year, depending on the state and the selected agent.</p>

5. Selection of the type of business

The only options available to fully-owned subsidiaries of foreign companies are **Limited Liability Corporation (LLC)** and **C-Corporation (C-Corp)**. The creation of 'S-corp' companies is not allowed for foreign companies or non-resident entrepreneurs.

In the case of foreign entrepreneurs (individuals) not resident in the US, in addition to these they can consider the '**partnership**' type and, if they are the only partners, '**sole proprietorships**'.

We will focus on the **LLC and C-Corp types**. Some common characteristics which need to be considered because they may differ from the usual practices in other countries are shown below:



Legal entity separated from the owners, whose liability is limited to their investments in terms of debts assumed by said company or legal claims in which it may be involved



The name of the owner or owners of the company and their percentage of participation are not public data in any state (unless it is traded in the stock market). The owners may be natural or legal persons, and may or may not be residents of the United States.



There are **no minimum capital requirements**. In C-Corps it is usual to designate an amount of Common Stock, but there is no legal obligation to contribute the actual cash.



In general, the identification of a specific, detailed **Business Purpose** in the incorporation documents, is not mandatory in most states for any type of company.



The choice of the type of company for legal purposes is, in part, independent from the choice of the **type of company for tax purposes**, which can be chosen from among several options. For example, an LLC can elect to be taxed as a corporation.

Each of the two options cited has different requirements described in the following subsections. The most important differences between LLCs and C-Corps (in particular the tax treatment of profits) are relevant when the owners are individuals, but are not significant in the case of 100% ownership of a parent company. **The choice of the type of company must be made with the necessary legal and fiscal support to fully understand all the consequences and ensure that it is the most appropriate for its objectives.**

Limited Liability Corporation (LLC)

To form an LLC, you must submit a **Certificate of Organization** (called 'Articles of Organization' in some states) to the applicable Secretary of the State. LLCs offer flexibility regarding how the company can be financed and managed. Typically, LLC owners, called "members," design and create an "operating agreement" that governs the operation and organization of the LLC.

An LLC must have at least one member, and the members need not be natural persons. While most companies choose to create an operating agreement, doing so is optional (this may depend on the state). Normally if a state does not require a written agreement, when the LLC chooses not to establish it, it will be governed by the non-compliance provisions established by the corresponding state statutes. Likewise, if the operating agreement omits certain provisions, the predetermined provisions of the corresponding state LLC law will apply.

The LLC entity type is somewhat less complex than the C-Corp alternative with a lower cost of implementation and operation because it is subject to fewer requirements. Details vary per state.

C-Corporation (C-Corp)

To form a C-Corp, a **Certificate of Incorporation** (also called 'Articles of Incorporation' in some states) must be filed with the applicable Secretary of State. In most states, the owner or owners (also called "shareholders") of a corporation need to elect **directors**, who set company policies and appoint first-level **officers** who will direct the business operations, such as the president, vice president, secretary, and treasurer.

A priori, the directors of a US corporation may be foreign and must be natural persons, not foreign companies. The rules for operating the corporation are commonly included in the written **bylaws** of the company. The internal structure and bylaws of corporations are similar in all jurisdictions, but can be customized to meet the individual needs of the company. **The capital contributed by the parent is divided into shares managed through an internal register** ('stock ledger'). Details vary for each state.

6. Selection of the name of the company

The **legal name** of the company may vary slightly depending on the state and the type of company (C-Corp or LLC) selected for its incorporation. For example, in Virginia the name must contain any of the following words: "Corporation," "Incorporated," "Company" or "Limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." Other states have similar rules.

The company may decide to act under a **fictitious name** instead of its legal name, if it wishes for any reason. This is known as the use of a 'DBA' or 'Doing Business As', or a 'trade name'. The procedure for setting up a DBA depends on each state, but is usually reduced to registering it in the states in which it will operate, which normally costs no more than \$100 each.

It is important to verify the absence of **conflicts** with registered trademarks and the availability of required domains on the Internet. It is also advisable to explore the possibility of **registering trademarks and patents** to protect the intellectual property of the company.

7. Registration to obtain business licenses

When the decisions presented in the previous sections have been made, the company can be incorporated in the selected state and must be registered to do business in one or more states. Almost all states require that a **"foreign" or "foreign entity" company** (that is, one that was incorporated in another state) must register as required by state law before it begins operating in that state.

What state law defines as "doing business" in that state will determine if registration is necessary. The constitution of a company in a state implies its registration to do business in that state. Many states do not define precisely what is meant by "doing business" and only limit themselves to explicitly defining some activities that are exempt from such consideration. In general, **if the company has an office, a store, a warehouse or employees in a state other than the one selected for its incorporation, it must be registered as a foreign company in that state.**

8. Legal, tax and accounting aspects

As mentioned, **the legal, accounting and tax issues are very important and should always be checked with experts who have the required licenses.**

It is recommended to have the support of these advisers at all times, both in the initial phase of establishing the company and during its operation. This support can be obtained from specialized personnel from outside of the company, at least until it reaches a critical mass that justifies hiring its own personnel.

Legal aspects have been covered throughout the document. We describe in this section some fiscal and accounting considerations that must be planned.

Tax aspects

All companies must be registered with the Internal Revenue Service (IRS) and need to obtain an '**Employer Identification Number**' or **EIN** (Tax Identification Number), which is required to identify the company, open and operate bank accounts, and file the corresponding tax returns. This can be done online using [an IRS form](#). The form must be processed by a representative with a valid SSN (Social Security Number) or another taxpayer identification number (e.g. ITIN). It is also necessary to indicate a company address for notification purposes, which can be the final address or a temporary address that will need to be updated with the IRS once it is definitive. The application needs to include the legal name of the company, state and county where its main operations are (or will be) located, and state where it has been (or will be) incorporated.

Before requesting the EIN, it is necessary to **decide the accounting year in which the company will operate**, since the form must indicate the last month of the accounting year that will be used. The normal practice for a subsidiary of a foreign company is to align the accounting of the subsidiary with the parent's year. Some companies in the US choose a "fiscal year" (different from the calendar year, ending in a month other than December) for having an irregular distribution of income and expenses during the year. Given that the US government operates in a fiscal year ending September 30, which causes spending to increase dramatically at the beginning and end of it, companies working primarily on US government contracts often prefer to use a fiscal year aligned with that of the government. For subsidiaries of foreign companies, a decision on the accounting year should be made taking into account the accounting policies of the parent and taking into account, if necessary, the advice of US accounting and tax experts. Either way, it is possible to change the accounting year if necessary, by processing IRS form 1128.

After obtaining the EIN, the company must choose the classification of the business for tax purposes, processing [form 8832 of the IRS](#).

Once created, **the company must also be registered with the tax authorities of the states in which it carries out business activities**, as we have indicated.

An important point that should be carefully studied by foreign companies to create a subsidiary in the US is that of **transfer prices** charged by the subsidiary to its parent when reselling their products or services in this country. The IRS defines in its [Code Section 482](#) precise rules that must be followed when establishing such prices. To avoid any problem with US tax authorities, it is imperative to establish policies that ensure strict compliance with said regulations, with the corresponding professional advice.

The **main tax obligations** that the company must fulfill are shown in the following table.

FACTOR	DESCRIPTION ION
Income tax	Annual returns and payments: <ul style="list-style-type: none"> • Federal with the IRS (Form 1120) • For the corresponding state or states (those in which it has carried out business activities)
Estimated tax	Quarterly returns and payments <ul style="list-style-type: none"> • Federal with the IRS (form 1120-W). • For the corresponding state or states (those in which it has carried out business activities).
Personal Property Tax	Declarations and payments for the states in which the company has been registered and that require it.
Required legal withholdings in payroll	As required by several US agencies. In particular, the following will be necessary: <ul style="list-style-type: none"> ○ At the federal level: <ul style="list-style-type: none"> ○ Personal income tax ○ Social Security ○ Medicare tax (tax that provides funds for the public health system available after retirement). ○ Federal Unemployment Insurance Tax (FUTA) ○ At the state level, those applicable by state and local income tax At the beginning of each year, before January 31, the company must submit to the IRS a W-2 form for each employee for which any of the indicated withholdings have been applied, providing a copy to the corresponding employee.
Sales Tax	If the company is going to be required to pay this tax, it must register with the State Authorities of the State where it is incorporated and obtain a Sales Tax Number with which to file the Quarterly Sales Tax Declarations. Generally speaking, services and software development are not subject to Sales Tax, but the sale of tangible products is.

Accounting aspects

Obviously, it is necessary to ensure that the company keeps detailed records of its transactions to ensure compliance with the corresponding tax obligations and to be able to properly manage the business. These activities, which can be outsourced to service companies at an early stage, should be undertaken by people with the necessary qualifications (in particular, a CPA or Certified Public Accountant).

This issue is much more important **in the case of companies that intend to participate in US government contracts**, since in this case **there are strict requirements on how accounting should be carried out**, especially when working on 'time & materials ' contracts (billing the cost per hours and dedicated materials, with previously agreed rates) and even more in the case of 'cost plus' contracts, in which the cost incurred plus a predefined margin is billed to the customer. These requirements apply to both the prime contractor receiving the government contract and the entire chain of subcontractors.

In this case, it is essential to ensure compliance with the [Federal Acquisition Regulations or FAR](#), which are the rules that define the policies and procedures applicable to purchases of products and services made by federal agencies in the United States. Other regulations defined by additional agencies may apply as well, such as the [rules of the Department of Defense](#).

The DCAA (Defense Contract Audit Agency) is an agency of the US government that **verifies compliance with the regulations applicable to companies who obtain federal contracts**. In particular, it is very important to avoid problems in their audits **ensuring full compliance with its accounting standards**, called CAS or '[Cost Accounting Standards](#)'). Aspects such as direct and indirect cost accounting, employee work hour accounting, executive salary compensation, and many others must be taken care of even before bidding in such contracts.

9. Financial aspects

Opening bank accounts

The following conditions must be met by the company before opening its initial bank accounts, providing to the bank the corresponding documents:

CONDITIONS TO CREATE A BANK ACCOUNT

Registration

Having created and registered the business

EIN

Having obtained an EIN (tax identification number)

Address

Having a physical address in the state where the account is being created

Personnel

Having authorized representatives who are resident in the US

The authorized representatives do not need to have US citizenship or a 'Green Card' but they must have legal authorization to reside in the United States. Each bank can define additional conditions and request other documents.

In the case of multinationals obtaining financing in the US, as discussed in the next section, this can be more easily achieved when using the services of US subsidiaries of international banks with which the parent has a solid business relationship. In the event that such bank(s) do not have branches in the target area of operations, it will be useful to also open an operating account in a large US bank (such as JP Morgan Chase, Bank of America, Citibank or Wells Fargo), for convenience. It is advisable to check the costs of maintenance and certain transactions that will be used frequently (such as bank transfers) to ensure that an adequate option is selected.

Financing the new business

To cover the initial development expenses of the new entity, it will be necessary to make decisions about its financing strategy until it can generate the necessary cash flow to be autonomous. The **usual ways of financing** include:

- **Contribution of funds from the owner** company to the subsidiary, either through capital or via loans.
- **Financing through US banks.** Experience shows that this can be more easily accomplished when using the services of US subsidiaries of banks with which the parent has a strong business relationship.

Each option has its advantages and disadvantages that must be carefully studied to choose the right strategy. Some points to keep in mind:

- The **tax treaty to avoid double taxation** between the country of origin and the United States, if it exists, defines the rules applicable to tax dividends paid by the subsidiary to the parent.
- **Interest payments** on financing of the subsidiary are deductible for tax purposes, unlike the payment of dividends. Obviously, this is only relevant when the subsidiary begins to make a profit.
- **The payment of the principal of a debt linked to a loan** has no tax impact, while the return of capital to the parent company may have similar tax effects as dividends depending on the profits obtained.
- The parent may recover the fruits of its investment in the subsidiary through various means, including **dividends or interest** on the funds contributed, payment of royalties for the use of products or intellectual property of the parent (patents, copyright, know-how) or direct repatriation of profits. Each route has a different tax consideration defined in the framework of the aforementioned tax treaty, if it exists.

Acronyms and Glossary

CEO	Chief Executive Officer: CEO
C-Corp	C Corporation, a type of business entity
CPA	Certified Public Accountant, accountant with an official certification
DBA	Doing Business As: Refers to the use of a fictitious name or alias used by the company instead of its legal name. It must be registered in the states where it is used.
DCAA	Defense Contract Audit Agency: Agency of the US government that verifies compliance with accounting standards applicable to companies who obtain federal contracts.
EIN	Employer Identification Number, required to identify the company before the United States tax authority (IRS)
FAR	Federal Acquisition Regulations: Rules that define the policies and procedures applicable to purchases of products and services made by federal agencies in the United States.
IRS	Internal Revenue Service: US Tax Authority
ITAR	International Traffic in Arms Regulations: US law that restricts and controls the export of military and defense technologies to safeguard US national security and other foreign policy objectives
LLC	Limited Liability Corporation, a type of business entity

About Markentry USA

Markentry USA is a registered Trade Name of InnoSky, LLC, a Maryland Business based in the Washington DC metropolitan area created in 2014.

Our mission is to achieve a successful entry into the US Market for our clients: foreign companies, entrepreneurs, executives and professionals.

Our founder and CEO is [Gonzalo Garcia](#), an entrepreneur born and raised in Spain who lives in Washington DC since 2004. He has led for more than 17 years multiple internationalization projects for companies from different sectors, particularly for their entry into the US market through organic growth or through acquisitions.

Our [Team of Partners](#) includes multi-cultural experts with a deep understanding of the issues faced by businesses and professionals entering the US Market. They cover a **wide spectrum of sectors, capabilities and locations in the US and abroad.**



Our Passion is Achieving
Success in US Market Entry
Projects



Maximum Cost
Effectiveness



Wide Geographical and
Sectorial Network

