



**De Hoon &
Partners**

A US LLC?

*Everything you need to know about this
topic... but were too shy to ask*

**Tax advice is our passion.
Our passion is your benefit.**

Edition 2020

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Who is the founder?



Iven De Hoon

Iven De Hoon is trained as a lawyer in Belgium (University of Antwerp) and holds a master in Tax and Accounting from the acclaimed Vlerick Institute (Ghent, Belgium). He regularly publishes articles and books on the topic of international taxes and has more than 30 years of experience in private practice. In 2009 he gained acknowledgment for his work by winning the Willoughby Memorial Prize in Oxford granted by St. Jesus College.

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Why a US LLC?

Ten facts to convince you!

Fact 1 — Liability

An LLC stands for 'Limited Liability Company.' It means the members of the LLC aren't personally responsible for the Company's business debts or legal actions taken against the LLC.

Fact 2 — Easy to incorporate

The LLC has a simple structure and is easy to incorporate. It doesn't take weeks, but days!

Fact 3 — Flexible tax status

It is up to the LLC's members to decide how to be taxed. Either the Members in private or the LLC pays taxes.

Fact 4 — No tax for non-US citizens

You don't pay taxes when you aren't an American citizen, haven't got a green card, or don't work with American clients. With an LLC, there are always ways to avoid taxes.

Fact 5 — No separate tax return

Each member of an LLC can report business losses and profits on their yearly personal tax returns.

Fact 6 — No double taxation

In most cases, you are taxed both on the corporate level and then again as an individual person. Because an LLC has a pass-through structure, you can avoid taxation on the corporate level.

Fact 7 — Flexible profit distribution

In a corporation, profits are distributed based on a certain percentage of the ownership. Unlike in an LLC, its members are free to determine how to distribute the profits.

Fact 8 — No ownership restrictions

An LLC can have as many members (owners) as you wish. The members may be individuals or another business entity. And both the members and third-parties can be the LLC's manager.

Fact 9 — Bank accounts

We all know it is very tough nowadays to open a bank account for your company. It is quite easy getting a bank account for an American LLC. If you do it in the right way. You can even remotely open a bank account for your LLC!

What do we do?

Fact 10 — No CRS troubles.

The USA did not sign the CRS (Common Reporting Standards). The fact it is not a Party to the CRS could be of significant benefit for people who appreciate privacy and discretion while conducting their business.

We provide affordable international tax and legal advice. We never advise people to engage in tax evasion. We offer smart Tax Planning!

Tax planning

It means that a taxpayer has made lawful arrangements to reduce its tax burden. Tax planning is fundamentally different from tax evasion which can be illegal in a number of ways.

Tax evasion

The term refers to fraudulent or even illegal arrangements with the intention of evading taxes. For example, doing so by failing to disclose taxable income or revenues to the authorities fully. So tax evasion is an illegal activity a taxpayer deliberately undertakes to avoid paying taxes. Examples of those activities are sham transactions, falsification of the accounts and bookkeeping fraud. We see a clear difference with tax planning because tax evasion is illegal.



We do not sell shelf companies or existing structures

We only give tax and legal advice! We do not sell business structures or shelf companies. We offer a tax-friendly solution by using the structure that best suits your situation at the moment. But we do more. We also help set up the complete corporate structure for you! Our fees are adequate and transparent.

Economic substance

International tax planning is in danger. Both tax authorities, courts from around the world and international organizations, are attacking international corporate structures because of a 'lack of substance'. The OECD has presented its action plan (BEPS), resulting in the increasing meaning of the term 'economic substance'. It means an international corporate structure only makes sense when it has 'substance'. So having economic substance is key in international tax planning. Once a lack of substance has been proven, tax authorities can tax you more. So you will be confronted with a considerable higher effective tax burden on your business activities, besides other troubles with your tax authorities.

The extent to which substance needs to be organized in your company varies. An office and one or more employees are required. Furthermore, the staff should have some basic level of decision power. If not, tax authorities will quickly take the position that company decisions are taken in a foreign jurisdiction instead of the jurisdiction where you have set up your entity. We can help you structure your business so it meets the condition of 'economic substance.'



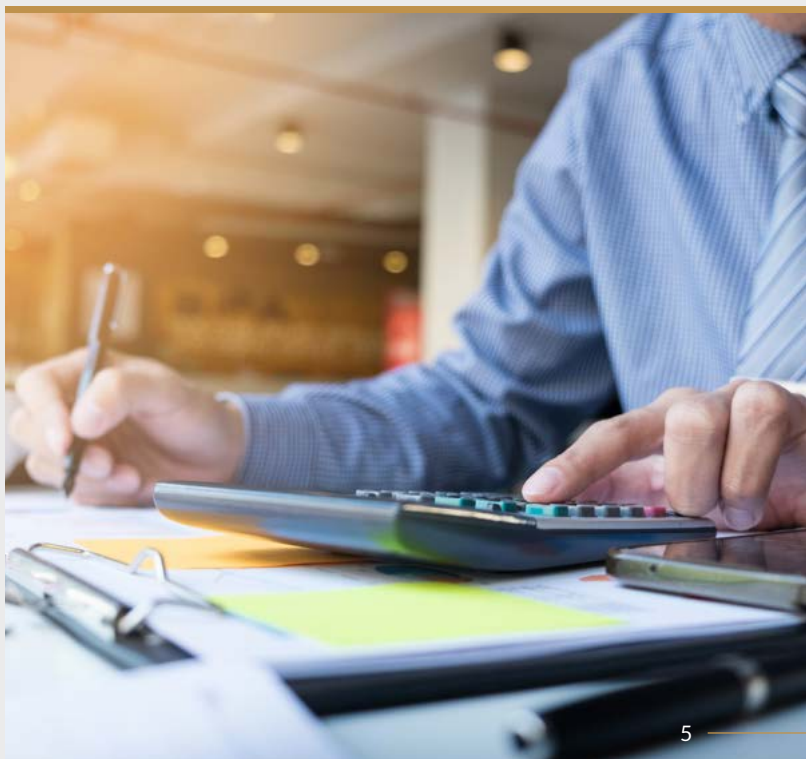
How to form a US LLC?

Step 1 – EIN

First, we need to obtain the company's TAX ID, a so-called EIN. (IT DOES NOT MEAN THAT YOU HAVE TO PAY TAXES!) EIN means an 'Employer Identification Number'. In order to get your 'EIN' the following is needed: a business name, a business address in the US, and a brief explanation of your primary business activities, including the products and/or services you offer.

Step 2 – operational agreement

You need to have 'an LLC operating agreement', which is a legal document that defines all the rights and responsibilities of each member in the LLC. Also, it describes the organizations' terms of how it operates. In some states in the US, such an agreement is not mandatory. However, we always recommend you to keep one. In most cases, it is also needed to open a bank account.



Step 3 – articles of organization

The next step is to form the actual company. It's a formal step and means you are filing the 'Articles of Organization' with the State. For example, a Division of Corporations or Secretary of State.

What do we need in the Articles of Organization?

1. Name of the business
2. A US business address
3. Description of the nature of the business. We always recommend using broad terms to avoid limiting the LLC
4. The name, address, and percentage of what all members own. However, not all States require the latter.

Step 4 – a registered agent

You can only incorporate an LLC through a registered agent. A registered agent is a third-party that is nominated to receive and send official documents on your behalf and resides in the same state where your business is incorporated.



Step 5 – bank account

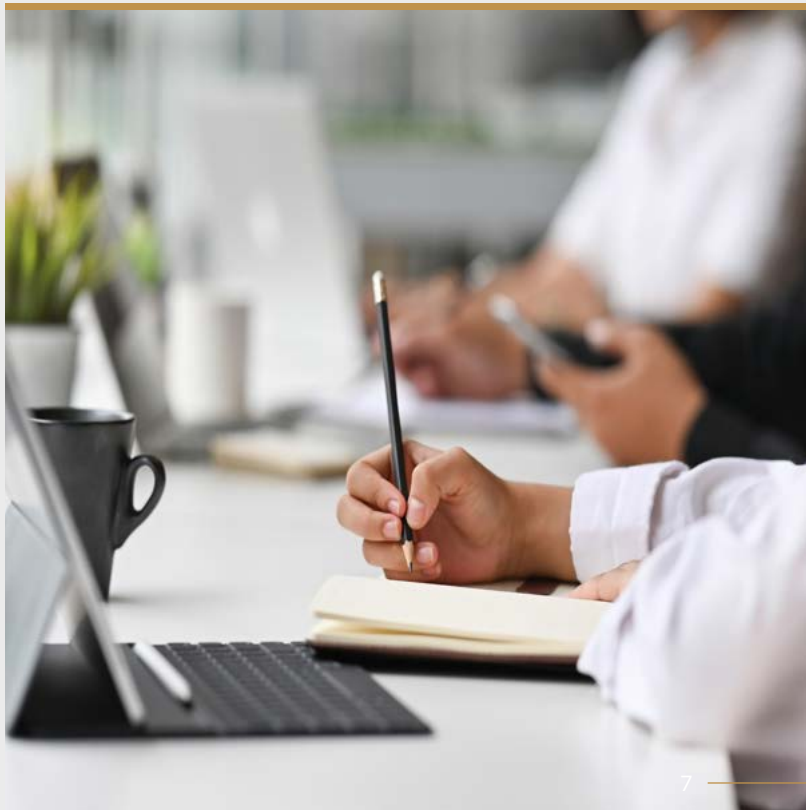
You can complete setting up an LLC without having a bank account. In other words, it's not mandatory to have a bank account. But of course, having an LLC without a bank account is pretty useless. In most cases, it is quite easy to open a bank account for a US LLC. We can even organise opening a bank account remotely. Such a service is quite exceptional nowadays!

Step 6 – Licenses, permits...

In specific cases, it can be required to hold certain licenses and permits. It depends on which state and the type of business.

Step 7 : good standing

Finally, your LLC needs to be in 'good standing'. It principally means that you have to file an annual report with the State, renew the registered agent's services and file a tax return.



Where to establish your LLC?

The question is in which of the 50 States should you establish your LLC? Most people naturally say in Delaware. We don't agree. In 2015 the Federal Government deemed 'Delaware' a 'suspect jurisdiction.' As a result, many bank accounts from Delaware companies in and outside the US were shut down. On its face, Delaware seems a tax haven. But there are many other favourable States to incorporate your LLC in. States like Nevada, Wyoming, South Dakota, and more. Some of them also maintain strict privacy laws

Most of the times, we work with Texas. Texas is one of the largest States with a massive number of companies in that State. The State has a real business environment and is considered a 'low regulation State'. In addition, privacy is important in Texas. The banks in Texas are generally easy to work with. And courts are considered pro-business. In most cases, the State also offers the LLC owners full confidentiality, permitting them to remain unnamed in public registration filings.



Do non-residents pay taxes?

The general rule is that the US is not taxing 'non-resident aliens' for a large part of the income earned in the US. Only the so-called 'active income' in the US is taxed! It means if you don't have US clients, you can open an LLC without paying any taxes in the US.

Who is an 'alien'? So you are safe side when:

- you are not an American citizen
- you don't have a green card
- you don't have a 'substantial presence' in the US, meaning no warehouse, no employees, you haven't stayed more than 182 days in any given year in the US



A 'disregarded' tax entity?

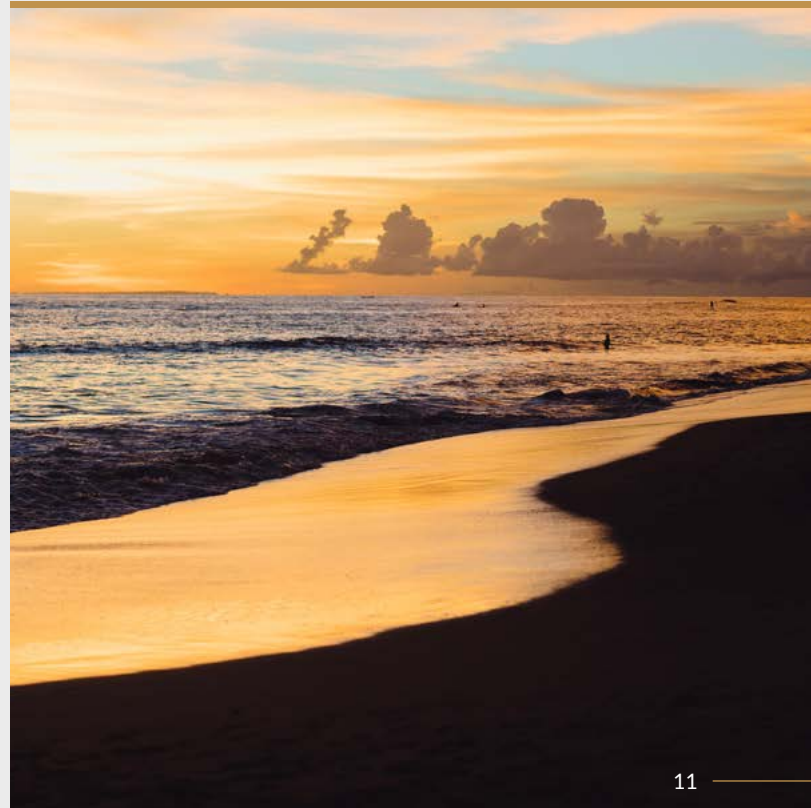
We know how best to structure your LLC. Use a 'single entity' with one member in the LLC! As a result, your LLC is considered a so-called 'pass-through' or 'disregarded entity'. However, if your LLC has two members, the LLC is viewed as a partnership, meaning you have to report taxes in the US. The benefit of a single-member LLC is that your total income will be treated as you earn it. And if the member lives outside of the US, American taxes are generally avoided! However, if you don't pay taxes in the US because of the 'pass-through entity' you may still need to pay taxes in your home country...



Tip. We have a solution for you when you want greater privacy, better asset protection, and more favourable tax treatment. The LLC in the US should be owned by an 'international trust'. Now the international trust – and not you – is the registered owner of the LLC. If the trust is smartly organized you can avoid paying taxes in your home country in a 100% legal way. For this purpose, the Bahamian trust could be a great idea.

The Bahamian trust has many more advantages... and we even have more tips for you!

Contact us for more details on: info@dehoon-dhp.com.



E-commerce and LLC's : problems... and solutions...

Problem?

A lot of non-residents are successfully running their e-commerce business. Even though not all of their clients are Americans, most clients will pay products and services through PayPal, Stripe or Shopify. You are confronted with big problems setting up these payment gateways and at the same time your US LLC is treated as a 'disregarded entity'.


Solution?

To address this problem, we will create a 'taxable association.' It is a new LLC that will be taxed as a corporation. The taxable association will act as a 'payment agent' for a non-resident business and concludes an agency agreement with the other LLC to resell non-resident goods and services in the USA.

An example:

USLLC 1 (taxable association)

USLLC 2

100 income  90
collects as a payment agent and transfer
90 to LLC 2 based on the existing agency agreement

USLLC 1

US TAX on 10 – minus expenses

Invest in US real estate through an LLC!

The USA could be an attractive place to invest in real estate. Even for foreigners, it's a great idea to invest in US real estate through an LLC. But why is that?

Limited Liability Protection. An LLC will limit your liability. If for example, someone visits your property and ends up injured, that person could file a lawsuit against you. We know the US has a claim culture and judges give huge compensations. Avoid those problems by buying an LLC.

Avoid double taxation. As discussed before, the US LLC is a 'pass-through entity'. So as a 'non-resident' owning real estate through your LLC in most cases, you avoid paying taxes. It means you aren't liable to pay any taxes in the US.

Delegation. With a real estate LLC, you can easily delegate the management of your property to others. An LLC makes things much more manageable if you live outside the US.

Transfer of ownership. When an LLC owns the real estate, it makes it easier to transfer the ownership of the property. For example, moving the real estate property to your heirs.





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