

business objective. For legal and tax purposes, if two unrelated incorporated or unincorporated businesses agree to conduct business as a non-corporate joint venture, the venture is normally considered a partnership, limited in scope and duration. Corporate joint ventures comprise two entities that form a corporation to carry out specific business objectives.

Sole Proprietorships

In a sole proprietorship, an individual directly owns the business assets and remains personally liable for its debts. Generally, few formalities need to be satisfied to operate a sole proprietorship beyond obtaining appropriate state or local licences or permits.

Branches of Foreign Corporations

A foreign corporation that establishes operations — an office, place of business, plant or other permanent establishment — in the United States must register with the state in which it will do business. What constitutes “doing business” depends on the laws of each state. Corporations failing to register properly with a state may not be able to take legal action to enforce contracts in the courts of the state and may be subject to penalties.

Structures Commonly Used by Foreign Investors

Foreign corporations often operate in the United States through a separately incorporated subsidiary rather than through a branch, primarily to minimize their potential liability. If a branch is used, all of the foreign corporation's assets, not merely U.S. assets, may be subject to liability. In contrast, if a U.S. or foreign subsidiary is used, its liability is generally limited to the assets owned by that subsidiary.

Who is Subject to U.S. Federal Tax?

Canadian companies doing business in the United States will be subject to U.S. tax on any business profits that are attributable to a permanent establishment in the United States. Thus a Canadian service firm operating in the United States will not be required to pay federal income taxes on its business profits unless it operates through a permanent establishment (although it is still required to file a U.S. tax return).

What is a Permanent Establishment?

A permanent establishment is defined in the Canada-U.S. Tax Treaty to include an office or fixed place of business, or having an employee in the United States who habitually exercises an authority in the United States to conclude contracts on behalf of the corporation. The definition could also include a client site if the corporation is rendering services at that site for an extended period of time.

When must Payments Be Made and Tax Returns Filed? What Rates Apply?

In general, 90 per cent of corporations' tax liability must be paid through estimated tax payments during the year in which the income was earned. Corporate tax returns are due either 22 weeks after the end of the company's taxation year (no permanent establishment) or 10 weeks after the end of the company's taxation year (permanent establishment). Basic 1992 federal U.S. tax rates applicable to income connected with a U.S. business were:

up to \$50 000 of taxable income	15 per cent
\$50 001 - \$75 000	25 per cent
\$75 001 - \$100 000	34 per cent
\$100 000 - \$335 000	39 per cent
\$335 001 and over	34 per cent

What Are the Tax Implications for Canadian Employees in the United States?

Canadian employees who are U.S. citizens and residents are subject to U.S. tax on their worldwide income. Canadian employees who are non-citizens and non-residents are only subject to U.S. tax on income derived from sources within the United States. Most states and some local governments also impose an individual income tax.

Under U.S. domestic law, non-citizens are considered residents if they are either a lawful permanent resident (green card holders) or if they have resided in the United States long enough to qualify under a substantial presence test. Generally, the Canada-U.S. Tax Treaty provides that if employees of the firm receive employment income that is less than \$10 000 or are present in the United States for no more than 183 days in the calendar year and the services rendered in the United States are not attributable to a U.S. permanent establishment of the Canadian firm, then the employees may be exempt from U.S. taxation on their U.S. employment income.