SATURDAY INTERNATIONAL TAX GYAN !!!

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Saturday International Tax Gyaan

SITG

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Basics of USA taxation for Indian resident having companies in USA

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I N T E R N A T I O N A L T A X A T I O N

Introduction to today's topic

- In the past few years we have seen various companies or individual's from India opening a USA based company to sell their products and services.
- Major sectors which are incorporating a USA entities are: IT industry, Diamond and jewelry industry, metal industry etc. and they are opening such companies for the ease of doing business as they have customers in USA and other part of the world and they find it easy to operate from USA.
- There is also a group of people who incorporate USA company to run their drop shipping business in USA.
- Also, many start-ups from India are also opening a company in USA especially for accepting funding in their company or to have patent's outside India.
- While opening a USA company is fast and online it is equally important to know about various important tax related matters after opening a company in USA.

Types of widely used business structures for tax purposes in the US

- **Sole proprietorship:** An Indian resident can have sole proprietorship in USA by applying for ITIN (PAN card equivalent) in USA.

- **Partnerships**
  - Limited partnership (LP)
  - Limited Liability Partnership (LLP)

- **Corporation**
  - C- Corporation
  - S-Corporation

- **Limited Liability Companies (LLCs)**

Sole proprietors and Partnerships

- **Sole proprietorship**
  - A sole proprietorship is the simplest business type and the easiest to start.
  - A sole proprietorship not a separate legal entity and is an unincorporated business that is owned and controlled by one person. There is only one owner who accepts all the risk and liability of the business.
  - A sole proprietor business may have employees.
  - A taxpayer does not have to conduct full-time business activities to be considered self-employed. Operating a part-time business in addition to having a regular job or business may also be self-employment and may also constitute a sole proprietorship.
  - **Important** - An activity qualifies as a business if its primary purpose is for profit, and if the taxpayer is involved in the activity with continuity and regularity. A hobby, which is not conducted for profit, does not qualify as a business.

- **Partnerships**
  - A partnership is a relationship that exists between two or more taxpayers who join together to carry on a trade or business. Each person contributes money, property, labor, or skill and expects to share in the profits and losses of the business.
  - A partnership is a **pass-through entity for tax purposes** must file an annual information return to report the income, deductions, gains, and losses from its operations, but the partnership itself does not pay income tax.
  - **Important** - Any profits or losses are passed through to the partners, who are then responsible for reporting their respective shares of the partnership's income or loss on their individual returns.
  - An unincorporated organization with two or more owners is also generally classified as a partnership for federal tax purposes if its members carry on a business and divide its profits.

Partnership

- **Partnerships**
  - A partnership can have an **unlimited number of partners** and can have **partners** that are **foreign or domestic**. A partnership must always have **at least one general partner** whose actions legally bind the business and who is legally responsible for a partnership's debts and liabilities.

  - **Limited partnership (LP)**
    - A partnership that has at **least one limited partner** in addition to its general partner(s).
    - A limited partnership allows an investor (the limited partner) to own an interest in a business without assuming personal liability or risk beyond the amount of his or her investment in the partnership.
    - **Important - A Limited Partnership (LP) is a state-level entity**. Unlike a general partnership (GP), which can be formed merely with a handshake between two persons. In order to form an LP, a Certificate of Limited Partnership or Certificate of Formation must generally be filed with the Secretary of State where the partnership chooses to do business. For example, in order to form an LP in California, a Certificate of Limited Partnership (Form LP–1) must be filed with the California Secretary of State, and the applicable filing fees must be paid.

  - **Limited Liability Partnership (LLP)**
    - An entity that is formed under state law and is generally used for specific professional services, such as those offered by a law firm or a CPA firm.
    - An LLP allows each partner to actively participate in management affairs but still provides limited liability protection to each partner. A partner in an LLP generally would not be personally liable for the partnership debts or the malpractice of other partners (or the employees under the management of other partners) and would only be at risk for their own malpractice and/or their interest in the partnership's assets.

Corporations

- **Corporations**
  - **S-Corporations**
    - An S corporation is a distinct form of entity, organized as a corporation for legal purposes, but elected with the IRS for tax purposes.
    - For federal income tax purposes, an S corporation is generally not subject to tax; instead, its income, losses, deductions, and credits are passed through directly to its shareholders in a manner similar to a partnership.
    - The shareholders of S corporations are able to avoid double federal taxation on their corporate income. S corporations must meet the following requirements-
      - Be a domestic corporation.
      - Have only "permitted" shareholders (partnerships, C corporations, and nonresident aliens are not eligible).
      - Have no more than 100 shareholders.
      - Have only one class of stock (voting and nonvoting stock are not considered to be separate classes of stock, as long as they have identical rights to distribution and liquidation proceeds).
      - Not be an ineligible type of corporation (certain financial institutions, insurance companies, and domestic international sales corporations are not eligible for S corporation status).
  - **Characteristics of the corporations**
    - Taxed as pass-through entity
    - Income earned by the S-Corporation flows on the shareholder(s) tax return through a Schedule K-1 (Form 1120-S)
    - Only US individuals (citizens and residents) can become shareholder,

Corporations

- **Corporations**
  - **C-Corporations**
    - A corporation is considered an entity separate from its shareholders and must elect a board of directors who are responsible for oversight of the company.
    - A corporation conducts business, realizes net income or loss, and distributes profits to shareholders.
    - Most major companies are organized as C corporations. C corporations and S corporations are differentiated for tax purposes only. **Legally, they are both simply corporations**. For tax purposes, however, they are treated much differently.
    - A C corporation may have an unlimited number of shareholders and may be either foreign or domestic.
    - The Tax Cuts and Jobs Act permanently eliminated the graduated rates for C Corporations. All C-corporations are now taxed at a flat rate of 21%.

- **Characteristics of the corporations**
  - **C-Corporation**
    - Separately taxable entity
    - Pay tax on the income earned by it on its own tax return
    - Anyone person can become a shareholder, whether US or non-US
    - Minimum number of shareholders is one.
    - No limit on the maximum number of shareholders.

Limited Liability Companies (LLC)

- **Limited liability companies (LLC)**
  - Business entity formed under state law by filing articles of organization.
  - Depending upon whether it has a single owner or multiple owners, an LLC will be treated for federal tax purposes either as -
    - A **disregarded entity**,
    - A corporation; if the entity elects to be treated as a corporation, or
    - As a partnership, default classification if LLC has more than one member.
  - An LLC can provide the liability protection of a corporation with the tax benefits of a partnership. Unlike a partnership, none of the members of an LLC are personally liable for its debts.

Employer Identification Number (EIN)

- This can be understood as a PAN for business entities.
- Three types **As good as a PAN we have in India.** of tax identification number (TIN) in the US
  - **Social Security Number** (SSN) – Generally. for US resident individuals or employees working in US
  - **Individual Taxpayer Identification Number** (ITIN) – For non-US individuals running business outside US or have US source income or issued those who are required to have a US tax identification number but are not eligible to obtain SSN.
  - **Employer Identification Number** (EIN) - also known as a Federal Tax Identification Number, and is used to identify a business entity.
- A business must apply for an EIN if any of the following apply:
  - The business pays employees,
  - The entity operates as a corporation, exempt organization, trust, estate, or partnership,
  - The business files any of these tax returns:
  - Employment taxes (payroll taxes)
  - Excise tax
  - Alcohol, tobacco, and firearms
- Most taxpayers can apply for an EIN online or paper-file **Form SS-4**, Application for Employer Identification Number.
- **Nugget** - If a sole proprietor has no employees, the business owner is normally not required to obtain an EIN. An EIN can be requested by a sole proprietor who simply wishes to protect his or her Social Security number for privacy reasons. A single-member limited liability company (LLC) classified as a disregarded entity may use the owner's SSN or EIN and does not need a separate EIN, unless the business is required to file employment or excise tax returns.
- Link to Form SS-4

Tax returns filing requirement and original due dates if Calender Year Period (Jan – Dec)

S.No.	Type of Entity	Form Number	Due Date
1	Sole proprietorship	Form 1040 Schedule C/ Form 1040-NR Schedule C	15 April 2024
2	Partnerships	Form 1065	15 March 2024
3	C- Corporation	Form 1120	15 April 2024
4	S-Corporation	Form 1120-S	15 March 2024
5	Limited Liability Companies (LLCs)	Form 1065/Form 1120/Form 1120-S/Form 1040 Schedule C/ Form 1040-NR Schedule C	15 March 2024 or 15 April 2024 depending on the tax status of the LLC

Extension and extended due dates

S.No.	Type of Entity	Form Number	Extension	Extended Due Date
1	Sole proprietorship	Form 1040 Schedule C/ Form 1040-NR Schedule C	6-month	15 October 2024
2	Partnerships	Form 1065	6-month	15 September 2024
3	C- Corporation	Form 1120	6-month	15 October 2024
4	S-Corporation	Form 1120-S	6-month	15 September 2024
5	Limited Liability Companies (LLCs)	Form 1065/Form 1120/Form 1120-S/Form 1040 Schedule C/ Form 1040-NR Schedule C	6-month	15 September 2024 or 15 October 2024 depending on the tax status of the LLC

Tax returns filing requirement and original due dates if Financial Year Period (Apr – Mar)

S.No.	Type of Entity	Form Number	Due Date	If Extension Applied, then Due Date
1	Sole proprietorship	Form 1040 Schedule C/ Form 1040-NR Schedule C	15 July 2024	15 January 2025
2	Partnerships	Form 1065	15 June 2024	15 December 2024
3	C- Corporation	Form 1120	15 July 2024	15 January 2025
4	S-Corporation	Form 1120-S	15 June 2024	15 December 2024
5	Limited Liability Companies (LLCs)	Form 1065/Form 1120/Form 1120-S/Form 1040 Schedule C/ Form 1040-NR Schedule C	15 June 2024 or 15 July 2024 depending on the tax status of the LLC	15 December 2024 or 15 January 2025 depending on the tax status of the LLC

Late Filing and Penalty

S.No.	Type of Entity	Form Number	Extension
1	Sole proprietorship	Form 1040 Schedule C/ Form 1040-NR Schedule C	If you don’t file your return by the due date (including extensions), the penalty is usually 5% of the amount due for each month or part of a month your return is late, unless you have a reasonable explanation. If you have a reasonable explanation for filing late, include it with your return. The penalty can be as much as 25% of the tax due. The penalty is 15% per month, up to a maximum of 75%, if the failure to file is fraudulent.
2	Partnerships	Form 1065	The penalty is $235 for each month or part of a month (for a maximum of 12 months) the failure continues, multiplied by the total number of persons who were partners in the partnership during any part of the partnership's tax year for which the return is due.

Late Filing and Penalty

S.No.	Type of Entity	Form Number	Extension
3	C- Corporation	Form 1120	A corporation that does not file its tax return by the due date, including extensions, may be penalized 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a tax return required to be filed in 2024 that is more than 60 days late is the smaller of the tax due or $485. The penalty will not be imposed if the corporation can show that the failure to file on time was due to reasonable cause.
4	S-Corporation	Form 1120-S	For returns on which no tax is due, the penalty is $235 for each month or part of a month (up to 12 months) the return is late or doesn't include the required information, multiplied by the total number of persons who were shareholders in the corporation during any part of the corporation's tax year for which the return is due. If tax is due, the penalty is the amount stated above plus 5% of the unpaid tax for each month or part of a month the return is late, up to a maximum of 25% of the unpaid tax. The minimum penalty for a tax return required to be filed in 2024 that is more than 60 days late is the smaller of the tax due or $485.

Tax rates

S.No.	Type of Entity	Form Number	IRS (Federal) Tax rate
1	Sole proprietorship	Form 1040 Schedule C/ Form 1040-NR Schedule C	As per slab between 10% to 37%
2	Partnerships	Form 1065	Pass through entity, Partnership does not pay tax, instead partners pay as per their individual slab rate
3	C- Corporation	Form 1120	21% flat tax rate
4	S-Corporation	Form 1120-S	Pass through entity, S-Corporation does not pay tax, instead shareholders pay as per their individual slab rate
5	Limited Liability Companies (LLCs)	Form 1065/Form 1120/Form 1120-S/Form 1040 Schedule C/ Form 1040-NR Schedule C	Tax applies as per the tax status applicable in the LLC (Tax rates mentioned above as per Type of Entity)

Filing Due Dates for Entities

- **Partnership and S corporation tax returns**
  - Due on the fifteenth day of the third month following the end of the year. For calendar-year partnerships and S corporations, returns are due March 15 of the succeeding year.
- **C-Corporation tax returns**
  - For a calendar year filer, its tax returns are due on April 15 of the following year.
  - If the corporation is on a fiscal year, the tax return is normally due on the fifteenth day of the fourth month following the end of the tax year.
- **Nonprofit entities tax returns**
  - Nonprofit entities using the calendar year must file their information returns (Form 990) by May 15.
  - For nonprofit entities using a fiscal year, returns are due on the fifteenth day of the fifth month following the end of their tax year.
- **Extension**
  - Entities and individuals may request extensions of time to **file** their federal income tax returns.
  - An extension does not grant the entity additional time to pay the tax due. The tax due must be paid by the filing deadline, or the entity will be subject to interest and penalties on the amount of unpaid tax.

Entity Type (Calendar-Year entities)	Normal Due Date/Extended Due Date
Sole Proprietorships (Form 1040)	April 15/October 15
Partnerships	March 15/September 15
C Corporations (except June 30 fiscal years)	April 15/October 15[18]
C Corporations (fiscal year ending June 30)	September 15 / April 15
S Corporations	March 15/September 15
Exempt Organizations (Form 990)	May 15/November 15
Form 1041 (trust and fiduciary returns)	April 15/September 30[19]
FBAR	April 15/October 15[20]
Retirement Plans (Form 5500)	July 31/October 15
Estate Tax Return (Form 706)	Nine months after death, six-month extension

Our comments

- As we have seen it is very easy for people to open a Company and do business in USA and many a times they are unaware of the disclosure and compliance they have to do in USA as well as India as the online consultant's many times don't inform them about the compliance they need to do in USA and the US consultant's are also not aware about the compliances such people have to do in India before investing as they are unaware of Indian laws.

- Thus, it is important for business owners to first do a due diligence and know about all compliances before opening a company anywhere outside India as it could lead to heavy penalties.

- Further, anyone making a foreign investment should also disclose such investment and assets held outside India in his Income tax return schedule FA or it could lead to penalty under Black money act.

- Our FEMA team has prepared a series wherein you will come to know about FEMA/ RBI compliance while making investment outside India:

[Overseas Investment series by JSCO: FEMA Perspective]

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