

# 6 U.S. MARKET ENTRY TIPS

The process for obtaining your company's EIN is different for foreign-owned entities

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Visas can take months, & require extensive documentation, including a business plan

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Take steps to avoid port inspections & use a broker for importing goods

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Hire the right U.S. personnel for the job & plan for U.S. salaries and benefits

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Banking is antiquated & it can be difficult to secure the bank accounts & credit cards you need

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Familiarize yourself with U.S. business terms & practices, as the U.S. is complicated



# FEDERAL EMPLOYER IDENTIFICATION NUMBER

Your company's Employer Identification Number (**EIN** or sometimes FEIN) is issued by the federal government for the purpose of tax administration. You will need an EIN to carry out most business functions – paying your federal and local taxes, paying employees, opening bank accounts, and more. You will also need state-issued tax ID numbers for any state where you have nexus and have to file taxes, but rules and regulations vary by state and are not covered here.

EIN numbers are fairly easy to obtain, but there are some points that need to be addressed for foreign-owned entities. The “**responsible party**” for the business has to complete the SS-4 EIN application paperwork. The IRS (Internal Revenue Service) defines the responsible party as the true principal officer, general partner, grantor, owner, or trustor of the entity. It is the person who controls, manages, or directs the entity and is ultimately responsible for the disposition of its funds and assets. If your company has more than one such individual, you will need to choose who you want to be

the responsible party when applying for your EIN, as the IRS only recognizes one person (if this ever changes, you must formally notify the IRS within 60 days with form 8822-B).

The responsible party is required to be an individual, meaning they also typically have to have a Social Security Number (SSN), which is a personal tax ID number and is issued by the U.S. government. If your responsible party is an American, then this isn't an issue and you can complete your application online, receiving your EIN almost immediately. **However, if your responsible party is a foreigner, who does not already have an SSN or ITIN (Individual Tax Identification Number), then you will have to fill out a hard copy of the SS-4 and fax it to the IRS (putting “Foreign” in lieu of an SSN or ITIN, currently question 7b on the form). Processing times will, therefore, take longer (a few weeks during normal times).**

You should plan on this and apply for your EIN well in advance to avoid issues when starting your business operations.

# VISAS FOR FOREIGN EMPLOYEES

The visa application process can be a complicated and lengthy one (which COVID has exasperated). It also varies based on what kind of visa you will be applying for. **Two common types of visas issued for employees coming to the U.S. to work for or to establish a U.S. subsidiary are E visas and L visas.** You can read more about who is eligible for these visas, explore other types, and learn how to apply on the U.S. Citizenship and Immigration Services website.

One thing to keep in mind is that the required documentation must be thoroughly completed. Therefore, while you can apply yourself without hiring an immigration attorney, we do not recommend it. Immigration attorneys will review all your paperwork, ensure you add clarifying documents to strengthen your case, and advise on if the selected visa type is the best one for your unique situation. **There are often multiple variables that must be taken into consideration when determining the right visa to apply for.**

Depending on the visa type, it is not uncommon to have to **provide a complete business plan in the visa package.** This business plan is unlike the kinds of plans used to secure

funding or woo investors. The plan will need to include the following information (list not exhaustive):

- Description of company history, products, and competitive advantage
- Industry analysis
- Strategy
- Investment to support strategy implementation
- Pro-forma financial statements
- 12-month Action Plan

**For example, the business plan for an E visa must demonstrate that the company/subsidiary for which the visa applicant will be working will be making a “significant” investment in the community where it sets up.** There is no specific information about what “significant” means – but the company should be creating jobs, renting or buying land, and purchasing supplies and/or raw materials for operations. It is essential to engage with a reputable immigration attorney who can advise, or introduce you to someone who can advise, on creating this business plan for the visa application.

## PERSONNEL FOR THE U.S. ENTITY

A company is only as good as its people. When you enter the U.S. market, you have two choices: to bring your own staff with you, or to hire them after you arrive. **Your own staff will know your product or service, and your company culture, but they may struggle to fit in with life in America.** They won't know all the rules and regulations for doing business here that will ultimately make your venture successful. Therefore, many send over one key manager, and then hire the rest of the staff in the U.S. You (or your HR department) will initially need to focus on three key steps:

- Finding and hiring the personnel
- Retaining the personnel
- Managing the personnel

But how do you go about this in a country where you aren't necessarily familiar with the hiring landscape? The following might differ greatly from what you are used to:

- The importance of job descriptions, titles, and responsibilities
- The educational system and what to look for on resumes
- Cultural differences that might make retaining and managing U.S. staff difficult
- Labor laws and how they vary per state
- Typical employee benefits
- Payroll management, and paying taxes/social security for employees

**Plan to engage with a consultant or hiring firm to help you navigate the hiring process to ensure your company starts out on the right foot.** And if this seems too daunting for you, you could engage with a company like Management inSites, which removes this HR headache by acting as your company's fractional employees, until you get a better understanding of the U.S.

# THE U.S. BUSINESS LANDSCAPE CAN BE CONFUSING

Business terminology varies from country to country. Do you know what an EIN is or why you need one? How about 401k options, D&O insurance, nexus for sales tax, or HTS codes? These are just a few of the common, initial terms you would need to be familiar with when starting your U.S. subsidiary.

**Rules and regulations vary too.** The U.S.'s vast geographical spread is daunting from a sales perspective – will you attack regionally, work with distributors, use sales reps, sell to specialty or big box chain retailers, go direct to consumer with your own ecommerce platform or known marketplaces like Amazon, or attack multiple channels at once? – but so too from a compliance side. **There are local (town, city,**

**county), state, and federal laws that businesses must abide by. These regulations cross professional expertise as well – logistics, employment law, taxation, and more.**

In order to launch successfully in the U.S., you will need to familiarize yourself with the terms, rules, and regulations that dictate how business is conducted here. **Unsurprisingly, you will need to research extensively.** Alternatively, you can identify someone within the U.S. that you can trust, and who has your company's best interests at heart who will be able to guide you through the first several months of setup and operations.

# BANKING IS NOT STRAIGHTFORWARD

U.S. banks must deal with inconceivable amounts of regulation and compliance. **People who are used to banking in other countries are often bewildered by how complicated it can be to do something as simple as open a business bank account.**

This isn't without good reason. The financial crisis of 2008 had a detrimental effect on banks. As a result, they shored up their application and review process to protect themselves from loss due to bad loans or illegitimate business, money laundering, and other types of fraud.

The result, however, is that the process for securing a bank account and/or credit card can be complicated. **Be sure to have all backup documentation for your U.S. subsidiary on-hand when applying.** This includes the company tax ID

(EIN), as well as information about the company's officers, the owners of the company, and their shares. You will likely need to provide social security numbers (SSNs), pictures of passports, and proof that the company was properly set up in the U.S.

**As for credit cards, typically the bank where your company has an account will issue a secured business credit card.** That means you would need cash in a deposit account equal to the amount of the card limit to use as collateral for the credit card. This is because the company is likely new and does not have a credit history to ensure it. Some banks do not even want to take the risk of offering a secured card, in which case the open market for credit cards is the only option.

# LOGISTICS & CUSTOMS CAN BE TRICKY

Will you plan to drop-ship your products to customers from your parent company abroad? Will you store stock in a warehouse in the U.S.? If so, how much? Do you need multiple warehouse locations to cover the U.S. geographically? Will you transport internally by air, train, or trucks?

These are very important questions to consider when setting up your subsidiary. Lead time on shipments has been increasing due to supply chain issues, lack of drivers, and backup at ports around the world. Your customer will likely not want to wait a month (or more!) for their item to arrive.

And while issues with the supply chain can cause a delay, so too can U.S. Customs. **Having the proper paperwork (and having it completed correctly) is imperative to avoid a delay at a port.**

The most important thing to remember when it comes to Customs is that **inspections happen randomly**. They can happen to anyone, at any time, and there is no way to

determine if an inspection will take one day or two weeks.

## How to Avoid Inspection (as much as possible):

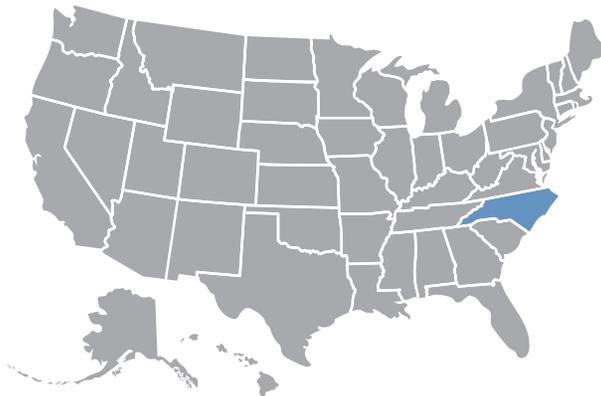
- **Avoid red flags:** Get your paperwork in order, make sure it's clear, and provide accurate valuations of your goods (such as quantity, price, and HTS codes).
- **Work with an established partner:** Use a transportation company that routinely manages international freight.
- **Try to avoid condensing the shipment with another company.** You don't want to be penalized if the other company makes a mistake in its paperwork or process.
- **Hire a broker** (3rd party company) to present the documentation and get a Customs clearance 2-3 days before the arrival of the ship. In this way, you can avoid inspection and won't need to wait for Customs to clear the container when it arrives.

# NEED ASSISTANCE?



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