

ESTABLISHING A U.S. PRESENCE

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KEY CONSIDERATIONS

- **Branch Office vs. Separate Entity**
- The latter is usually preferable because of limitations on owner liability
- **Where to set up**
- Especially important if you decide to establish a separate entity
- Governed by State law; states differ
- States like Delaware and Nevada have more favourable laws on corporate governance and favourable local tax treatment.
- Still would need to register to do business and pay taxes where the principal place(s) of business are located.
- **What type of entity to set up**

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BEST TO SELECT A STRUCTURE THAT AFFORDS LIMITED LIABILITY PROTECTION

Structures Include:

- C Corporation
- Limited Liability Company
- Limited Partnership/Limited Liability Partnership
- S Corporation—N/A

Most relevant for Australian companies—C Corp and LLC

Tax Treatment--a key difference

- C Corp taxed like Australian Pty Ltd companies—at corporate level and on distributions to shareholders
- Dividends to Australian shareholders subject to 5% withholding unless exempted under the tax treaty
- LLCs can be taxed like C Corporations or like partnerships depending on treatment elected

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Think through carefully what structure will best fit your plans

LLCS

- US co-owners often prefer them because of the partnership election
- This doesn't mean that tax treatment for an Australian owner will be as favorable.
- Australian owner would need to file US tax returns and pay branch profits tax.
- Whether to set up a C Corporation or LLC and where should be carefully considered in advance.

Other Important Considerations:

- Selling to the US Government? If so, there may be other potentially attractive structures
- * Need for more sophisticated commercial arrangements such as a JV or a holding company?
- Requirements of US funders – VCs will only finance a C Corporation
- State incentive programs – benefits may be primarily relief from corporate income tax assessed on C Corporations
- Immigrations/staff transfer issues

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