

# 7 Biggest Mistakes Non-Residents Make When Setting Up a US Company... and How to Avoid Them!



We  
Incorporate  
People

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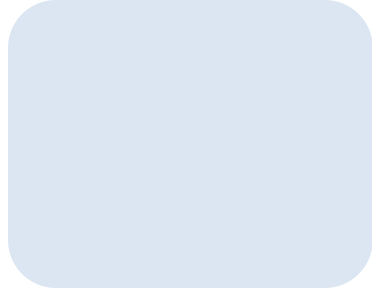
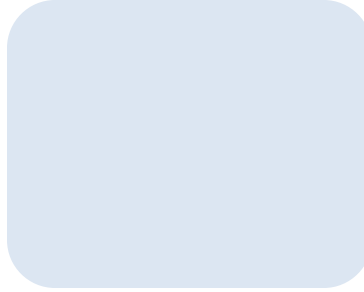
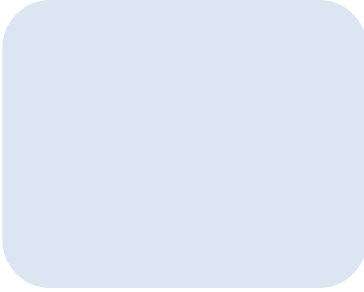
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## About the Author



John P. Gordon is the founder and president of USA Corporate Services Inc., a New York City-based international company formation consulting and management firm. He and his firm have helped clients of all sizes from six continents set up and manage over 35,000 US and offshore companies since 1983.

He is Chairman of the Entrepreneurship and Venture Capital Committee of the Columbia Business School Alumni Club of New York, as well as a long-time member of the International Fiscal Association, and participates in entrepreneurial events around the world. He

earned MBAs from Columbia Business School and London Business School through the Global Executive MBA program, and through various programs in both schools worked as a consultant to entrepreneurs in Nicaragua and Malaysia and developed a global network of resources.

John loves spending time with family, and also has strong interests in history, politics, international relations, and struggling to learn Mandarin Chinese.

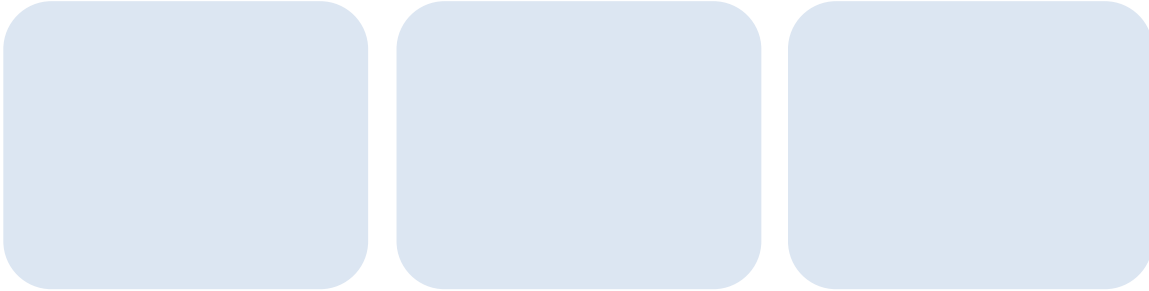


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# Introduction

Accessing the U.S. marketplace is the key to success for many businesses around the world. The most effective way to reach this “land of opportunity” is with a U.S. company, to take advantage of the world’s largest integrated market at the lowest tax rate.

With a U.S. company, it is easier to:

- Sell in the U.S. market, from a customs and tax point of view
- Access the capital markets in the U.S. for venture capital, angel investors and public markets
- Enhance the reputation of your company, both to U.S. customers and overseas
- Get a visa to work in the U.S. (though acceptance is NOT guaranteed!)
- Reduce your tax on U.S. income in certain cases

Whether you’re starting operations in the U.S., selling to the all-consuming U.S. market or gaining the prestige of owning a U.S. company, there’s a company formation that will work for you. Make the wrong choices, however, and you could find yourself losing control of your company, unable to raise finance or even permanently deported from the USA.

Forming a U.S. company can be complex and first-time incorporators often make mistakes that are costly to repair. This free guide highlights the 7 biggest mistakes amateurs make and suggests how you can alleviate them.

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# Choosing the Wrong Business

The business entity you choose affects the taxes you pay, the amount of paperwork you deal with, the employee benefits you can offer and more. In the U.S., there are two main entity types- the limited liability company (LLC) and the business corporation. Both are insulated from liability as long as you are compliant but differ as follows:

	Limited Liability Companies	Corporations
<b>Taxes</b>	LLCs are fiscally transparent by default, which can be a problem for non-resident-owned companies. An LLC can choose to be taxed as a corporation, but if they are planning to do this could just form a corporation instead. If the company will <u>not</u> be used to do business in the US, then an LLC is the better entity type.	Resident- and non-resident-owned corporations pay the same tax rate, although foreign-controlled corporations have to file extra information on their tax returns
<b>Tax Treaty</b>	The treatment of distributions from LLCs to foreign owners may be hazy, so be careful of doing business in the US using an LLC	Tax treaties were usually designed with corporations in mind, so many foreign-owned US companies are corporations.
<b>Structure</b>	Members own the LLC, and control everything. The Members create an Operating Agreement, which can be as long or short as the Members want, and which sets out all the rules of the company. The Members can appoint Managers to run the company on a day-to-day basis. If there are many Members, appointing Managers is a wise thing in order to control the structure (and spending) of the LLC.	Shareholders are the owners. The shareholders elect the directors, who govern the corporation and set policies and goals, and review the activities and progress of the company. Directors appoint the officers, who run the corporation on a day-to-day basis. Only officers can bind the company and sign contracts.

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	Limited Liability Companies	Corporation
<b>Liability</b>	Members are insulated if they are not managing the company as well, and <a href="#">follow proper procedure to separate personal and business matters</a>	Shareholders completely insulated from liability if the <a href="#">corporation stays in compliance</a>
<b>Business Entities and Tax Choices</b>	Flexible & complicated. Under the default rules, an LLC with one member does not exist for federal tax purposes, and an LLC with more than one member is a partnership. If it files an IRS form, an LLC can become a corporation (S or C) for tax purposes. Some states follow the federal rules, and many do not.	All US corporations have to file at least a federal tax return each year. Many states also require an annual tax return as well.
<b>Legal Basis</b>	LLC Law is based on partnership law while allowing the limitation of liability common to corporations. This means that the separation of the owners from the company is less complete: in many states if a Member of an LLC leaves, dies, goes bankrupt or is no longer in the company, the company itself may automatically dissolve unless the remaining vote to continue the company.	Corporation law is several hundred years old. It's based on the belief that the assets of the corporation are legally separated from the shareholders who own the corporation. The shareholders elect directors to represent their interests, and otherwise give up responsibility over the company.
<b>Owning Real Estate</b>	The pass-through taxation benefit combined with liability protection make LLCs a particularly attractive entity to own real estate.	Although the limited liability feature of a corporation is useful when owning real estate, even using an S corporation does not make owning real estate through a corporation attractive.

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	Limited Liability Companies	Corporation
<b>Ownership</b>	Members own LLCs. Since LLCs are based on partnership law, the owners are listed in the operating agreement that runs the company. Many LLCs like to give out Membership certificates to each member, but this is generally not required. Membership certificates designate how much “Membership interest” each member has but this is not as important as the operating agreement. Members can be divided up into different classes, each class having different rights and privileges. Members may also decide not to have any Managers, and thereby run the company by themselves.	Shareholders own corporations through their shares of stock. When the company is formed, the corporation tells the state government how many shares of stock it will be authorized to issue. This is the absolute maximum that can be sold to other people. However, the corporation doesn’t have to issue all those shares, and if there is only one shareholder that shareholder owns 100% of the company whether one share was issued or 1,000. There can be more than one “class” of shares, so that the owners can better divide up how profits will be shared.
<b>Transfer of Ownership</b>	It is can be more difficult to transfer the ownership of an LLC, and the operating agreement may prevent transfer of ownership.	Passing the shares of a corporation is a matter of cancelling an existing share certificate. If the corporation is redeeming the shares then the certificate is taken out of circulation. If the shares were sold to another person, then the corporation cancels the share certificate and issues a new certificate to the new owner.
<b>When not to use</b>	Don’t use an LLC when you need to attract outside investment or plan to go public in the future. Don’t use an LLC for starting an active trade or business in the US when you are a non-resident entrepreneur or company, unless you love international tax complexities.	Don’t use a corporation for holding real estate. Don’t use a corporation if you hate formalities.

Many non-residents make the mistakes of following the advice for US residents without paying particular attention to the unique circumstances of being a non-US resident starting a US business.

Make sure you have fully evaluated your needs for ownership, funding over time, transfer of ownership, paperwork and exit options before deciding on which business structure works best for your personal situation.

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## 7 BIGGEST MISTAKES NON-RESIDENTS MAKE WHEN SETTING UP A US COMPANY... AND HOW TO AVOID THEM!

Get advice from experts who understand your unique circumstances as non-residents face additional hurdles to starting a US business.

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## Selecting the Wrong State

There is a lot of confusing information about “preferred” states like Delaware and Nevada over other states to incorporate in. Yes, Delaware has no inheritance tax on stock held by non-residents of Delaware and shares of stock owned by non-resident aliens are not subject to Delaware taxes. Furthermore, Nevada has low filing fees, and no state corporate income, franchise or personal income taxes. However, don’t believe the hype that somehow Delaware and Nevada are tax havens within the US.

For a new company looking to attract outside investment from angels, venture capitalists and private equity, incorporating in Delaware is a great place to start. Many investors only invest in Delaware C corporations so starting off with a Delaware corporation from the beginning can save a lot of legal and accounting headaches later.

Even if you launch your startup as an [LLC in Delaware](#), you can easily convert your LLC to a C corp with one state filing and one IRS filing.

However, it’s normally better and cheaper to incorporate in the state where you have a physical presence. Otherwise, there are numerous challenges associated with operating out of state. These include difficulties opening a business bank account, having to appoint a registered agent, and fees for operating as a “foreign entity” in your own state.

The biggest downside to incorporating in a different state is that your company will be required to file for authority to do business in the state where the business is located, and most likely will also have to purchase a [Certificate of Goodstanding or Certified Copy of the Articles of Incorporation](#) (or Formation) from the Secretary of State where the company is incorporated. These additional filing and documents fees make the use of an alternative state substantially more expensive than incorporating at “home.”

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## 7 BIGGEST MISTAKES NON-RESIDENTS MAKE WHEN SETTING UP A US COMPANY... AND HOW TO AVOID THEM!

If you are a [foreign national who would like to start a business in the U.S.](#), then you have additional considerations about choosing a location, including [business visas](#) and international tax.

Now that you know the main considerations of choosing a state of incorporation, you're ready to start thinking about whether it is worth considering another state, or saving money and incorporating where you are doing business.

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## Not Speaking To a U.S. Based Attorney / Accountant

Many non-residents mistakenly think they can “go it alone” without seeking advice from a U.S. based lawyer or accountant. Granted, you don’t need to hire them to form an LLC or corporation as online services can help you represent yourself when creating a business entity. However, an online legal document filing service is not allowed to give you legal or accounting advice regarding your situation.

There was a recent case when a couple of business partners wanted to set up a company in the U.S. and filed through an online service. They received their incorporation documents and operating agreement and went about selling their products and services.

Business was growing, sales were strong and within a few years the company was generating over \$5m a year in turnover. They were looking to raise a round of finance and when the investors took a closer look at their documentation during a routine due diligence check, they discovered that the company secretary, not the founders, was the legal owner of the business!

This proved to be an expensive mistake as attorneys had to be hired to correct this situation and the company lost their investor.

Each company is different and if you have a particularly complex partnership or financial situation, you should seek the counsel of an attorney and/ or an accountant specific to your situation.

It is best to work with an organization that has a team of recommended and experienced advisors at hand. Setting up a company in the US as a non-resident is simple when you have the help of a team skilled in company formation, immigration, import-export, international tax, real estate and supply chain.

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## Failing to Stay Compliant

Keeping your LLC or corporation compliant is essential, and continues long after you filed your initial application. Even for US residents, if a plaintiff can show that you have not maintained your LLC or corporation to the letter of the law, your corporate shield will be pierced, putting your personal assets at risk. For a non-resident, compliance with the law is absolutely essential to avoid visa, immigration and tax problems. To keep your corporation or LLC in compliance, you need to:

- Keep your personal and business expenses separate (this is particularly important if you've formed a corporation)
- Adhere to the ever-changing tax rules both domestically and internationally
- Purchase adequate business insurance such as business owner's policy for general business liability, inland marine policies for goods that are movable, automobile and workers compensation insurance as required by law, and other business specific insurances. If your company plans to go public or otherwise attract outside investment, directors and officers insurance is highly recommended as well.
- Send in your Annual Statement/Annual Report on time, as required by your state of incorporation
- File for foreign qualification if you're operating in any state(s) other than your state of incorporation
- Send in your Articles of Amendment for any key changes to your business
- Ensure you don't engage in any form of fraud.

It is always worth completing all required initial documents and filings and keeping copies.

If you do not have the services of an accountant or attorney, it's solely your responsibility to know the rules, as the Internal Revenue Service (IRS) does not accept ignorance.

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## Failing to Understand State and Federal Taxes

Unlike many other countries, corporate tax is imposed in the U.S. at the Federal, most state, and some local levels. Federal tax rates on corporate taxable income vary from 15% to 35%. State and local taxes and rules vary by jurisdiction. Corporations are also subject to a Federal Alternative Minimum Tax and a variety of different state and local taxes. Like individuals, corporations must file tax returns every year and they must make quarterly estimated income, payroll and sales tax payments.

Corporations can create tax benefits under certain circumstances, but note that C corporations may be subject to "double taxation" on profits.

Some businesses also have to collect sales tax at the point of purchase from the consumer. The amount is usually a percentage based on the overall taxable price, which again varies from state to state. This also needs to be paid on a quarterly basis and is the one main tax the Internal Revenue Service chase the quickest if you fall behind.

You should also consider double taxation agreements between your home country and the U.S. and how this impacts the tax on profits derived overseas.

As this is specific to the country you live in, you should ensure you work with an expert accountant or keep up to date with U.S. local and federal tax laws.

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## Paying for “low-cost”

When it comes to incorporating your company, there are two main types of service you could pay for- execution-only or advisory.

With execution-only services, you have to know the exact type of company formation you are looking for and these incorporation sites simply take your orders. Because they don't interact with you in a meaningful way, they can charge less. This type of company is great if you are absolutely sure of what you need, and don't want to get a second opinion from experienced professionals.

Alternatively, if you are somewhat hesitant and would benefit from talking to an experienced consultant, it pays to speak to an expert and get guidance tailored to your situation. The best situation is to work with a team of experts who can coordinate a strategy for you based on your particular needs. This kind of teamwork can only work when the team leader takes the time to get to know you, your circumstances and your business needs.

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## Hiring Yourself

If you are planning to come to the US to start a business, you will need to have an appropriate work visa. Otherwise, you can be the owner or manager of a company that you cannot legally work for. If you do work for your own company without the proper visa, you can be deported without right of return, and your company can be fined for hiring an illegal alien.

However, there are a number of visa options for non-residents who have set up a company, the most common being E-1, E-2 and L-1 visas:

### E-1 Treaty trader visa

- Good for setting up a business that will trade with the visa-holder's home country
- Must be with a country with an appropriate treaty with the US
- Temporary, can be renewed until business is no longer in operation
- Is only valid as long as there is a business.
- Children under 21 cannot work and lose their status once they turn 21

### E-2 Treaty investor visa

- Allows a citizen of a [treaty country](#) to come to the US to start a business
- Temporary, can be renewed until business is no longer in operation
- Is only valid as long as there is a business
- Children under 21 cannot work, and lose their status once they turn 21

### L-1 Intercompany transfer visa

- Allows holder to transfer from foreign company to a US company subject to restrictions
- Initial one year, with up to 3 extensions
- Employee must have worked for a foreign, related company for more than one year in the last 3 years

Speak to an immigration lawyer about your personal situation.

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# Not Incorporating at All

The top mistake a business owner can make is never forming an LLC or corporation in the first place. This puts key personal assets (savings, retirement fund, property, etc.) at risk.

When an owner does incorporate a business, they are protected from personal liability for company debts and obligations because the corporation has its own separate existence wholly apart from those who run it. In addition, setting up a company is attractive because it has unlimited life and the ownership can be transferred.

Unlike proprietorships and partnerships, the life of the corporation is not dependent on the life of a particular individual or individuals. It can continue indefinitely until it is sold, it merges with another business, or it goes bankrupt.

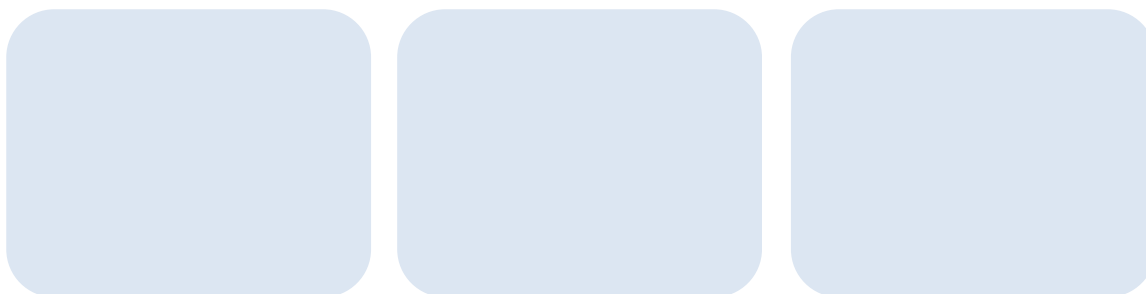
The ownership interest in a business can be readily sold, transferred, or given away to a family member. With corporations, the individual owners' rights and privileges are represented by the shares of stock they hold. The key to a quick and efficient transfer of ownership can be as simple as endorsing and signing over any shares that are sold.

By having a correctly formed legal structure in place, you can better protect your assets, minimize your liability, lower your expenses and enjoy the fruits of your business for years to come.

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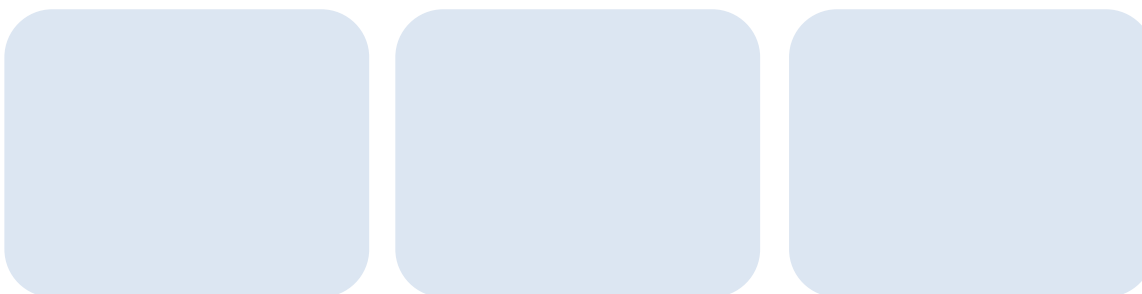
# Summary

As a non-resident, setting up a U.S. company can be a daunting and arduous process, requiring hours of research and reading to ensure you are not one of the thousands that make one of the many mistakes outlined above.

If you do decide to incorporate in the U.S., you'll be joining the many entrepreneurs investing in the U.S. economy, hiring talented people, driving innovation and inspiring change. It's something to admire and we wish you the best of luck with your business endeavor!

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## About USA Corporate Services

For nearly 30 years, New York based USA Corporate Services has guided non-residents in U.S. company formations. We pride ourselves on our fast, cost-effective and convenient services, utilizing our extensive network of experts to get the job done right.

We work with leading immigration lawyers and accountants who are experienced in helping overseas residents for all matters relating to working in the U.S. and tax.

We also provide complementary after sales services such as business insurance, company secretary services and mail forwarding to ensure you file your paperwork in a timely and compliant manner. Pricing is both [affordable and transparent](#).

To discuss your situation in depth and to get the right guidance, [schedule your free consultation today](#).

*“Coming from the UK, I was looking to set up my first company in the US and first thought I would do it myself online to minimize my initial expenses. However I soon realized how complex the process was and how the responsibility of setting it up correctly rested squarely on my shoulders. The last thing I wanted to deal with was any problems with the Internal Revenue Service (IRS)!*

*So I searched for a reputable incorporation company and came across USA Corporate Services. After discussing my situation with them that day, I was guided through the LLC formation steps and was incorporated the next day. Fast and excellent service - highly recommended!”*

**Goutham Bhadri, Founder and CEO, Marketing Samurai LLC**

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