Initial structuring and income tax considerations

Things to know

- An important distinction exists between doing business "in Canada" (generally considered to result in a Canadian tax presence) and doing business "with Canada" (which can often be accomplished without any Canadian tax presence).
- A business may be carried on in Canada directly by a non-Canadian (through what is known as a "branch office") or indirectly through the establishment of a separate Canadian entity.
- A Canadian entity can be established in a number of ways: creating a corporation (incorporated under the federal laws of Canada or one of its provinces or territories) or a partnership (formed under one of the provinces or territories); acquiring an existing Canadian entity; or joint venture with a Canadian entity.
- Both operational and tax considerations are critical in determining what form of entity will carry on business in Canada.
- Sending foreign based employees to Canada or hiring Canadian employees to solicit business or sign agreements in Canada on behalf of the foreign entity could result in the foreign entity being considered to be carrying on business in Canada and subject to Canadian tax.

USEFUL RESOURCES

Government of Canada

- Is incorporation right for you?
- Name a corporation
- Order a Nuans report

View our disclaimer at osler.com/disclaimer.

Things to do

DETERMINE METHOD OF OPERATIONS

- Does the business require the presence of employees in Canada (sales and/or technical support) or can the business be operated through electronic means? Does the business require an ongoing physical presence in Canada (retail location or otherwise) or can it be operated without physical space?

DETERMINE TAX STRUCTURING

- If applicable, consider the Canadian business in the context of your overall organization. For example, is there a desire to consolidate the financial results of the Canadian operations with those of a foreign parent? Is the Canadian business expected to generate losses in the early years of its operations? Is the foreign parent willing to be a Canadian taxpayer? Other considerations will also apply. A Canadian tax advisor should be consulted.

RELATED TOPICS

- Forming a Canadian subsidiary
- Choosing, registering and protecting your corporate name
- Financing and banking arrangements
- Filings and registrations
- Foreign investment notifications
- Commodity taxes
- Branch of a foreign corporation vs. Canadian subsidiary
- Canada's tax system
- Thin-capitalization rules
- Branch profits tax

Need more info?

Osler's Tax Group can help. Find out more at **osler.com/tax**

View our disclaimer at osler.com/disclaimer.