



Corporations

When starting a new business in the United States (“US”) many are the questions that arise as to the choice of entity.

Of course, the final decision depends on the interests being pursued in each particular case; moreover, attention should be paid to the different tax and civil implication of each different entity

In our previous article we talked about Limited Liability Companies (“LLC”). This time we will focus our attention on Corporations, their different types, structure, form of organization and tax features.

In legal terms, a Corporation is defined as an independent entity that is separate from the Shareholders who own and may control and manage it. This means that the Corporation itself is held legally liable for its actions and the debts incurred, while the Shareholders only respond (with their personal assets) in proportion to the amount of capital invested in the corporation. Corporations have perpetual existence, meaning that death or departure of one of the shareholders is not a cause for termination of the Corporation.

There are two different types of Corporations, commonly known as “C” and “S” Corporations, in reference to Subchapters “C” and “S” of Chapter 1 of the Internal Revenue Code of 1986, as amended (the “Code”), which regulates them.

“C” Corporation

is a form of business whose capital is represented by shares (or stocks) and that can have an unlimited number of shareholders and different classes of stocks. As a separate entity, it has full authority to enter into contracts, acquire properties, receive and provide funding and start court proceedings.

With regard to the tax treatment, because “C” Corporations are legally considered separate entities from their owners, their profits are taxed separately from the ones of the Shareholders: **income** is taxed at the corporate level and it is taxed again when it is distributed to owners as dividends, what is known as “double taxation”. Currently the corporate tax for the state of Florida is 5.5%, fixed, while the maximum federal corporate rate is 35%. Considering, however, that state taxes are deductible on federal return, the combined rate of taxes on Corporate **income** is 38.575%.

“S” Corporation

“S” Corporation is a special type of Corporation. If from a legal point of view it is identical to the “C” type, the difference lies in taxation, since “S” Corporation avoids double taxation: all profits and losses are directly passed through to the Shareholders who report them on their personal tax return. Consequently, corporate **income** is taxed only once as the business is not taxed itself, only the Shareholders are. Thus, as it can be easily noticed, there is a similarity between the tax treatment of Corporation type “S” and Limited Liability Companies (“LLC”) and Partnerships (which we will discuss in one of our future articles). “S” Corporations are created through an IRS tax election: within 75 days from the formation, the Corporation may elect “S-Corporation Status” by adopting an appropriate resolution and completing and submitting a form to the Internal Revenue Service (Form 2553).

In order to qualify for S-Corporation status, the Corporation must meet the following requirements:

- be a domestic corporation (located within any state in the US);
- have only US citizen or US resident shareholders;
- have no more than 100 shareholders;
- have only one class of stocks;
- no more than 25% of corporate gross income can be passive income.

Additionally, only certain types of business can choose to select the type “S” Corporation. Among **businesses** that are excluded are:

- financial Institutions;
- insurance companies taxed under Subchapter L;
- international domestic sales Corporations

In general, the corporate structure consists of Shareholders, Directors and Managers. The Shareholders are the owners of the company and are the ones who elect the Board of Directors, which makes **business** decisions and oversee policies and appoints the Officers (President, Secretary and Treasurer). In Florida, these three positions, as well as the one of Director, can be exercised by the same person. It is important to underline that Corporations are not

required to reveal their Shareholders, being in this way, de facto, an anonymous company. Moreover, in many states, like Florida, the Corporation may consist of a single Shareholder provided that it acts as a separate entity from him/her.

In order to create a Corporation it is necessary to register the Articles of Incorporation ("Articles") and pay the appropriate official expenses with the Department of State's Division of Corporation ("Department of State"); bylaws and minutes of meetings of shareholders, must be drafted but need not to be filed with any Governmental agency.

The minimum information required in the Articles of Incorporations varies from State to State: usually it includes the name and the address of the Corporation, the name and the address of the Registered Agent and the name of the members of the Board of Directors, President, Secretary and Treasurer. This information is public and is registered with the Department of State. Note that the Registered Agent may be an individual or a company authorized by the State Department to act as registered agent, located in the state in which the Corporation was created. Additionally, Corporations are required to file, between January 1 and May 31, an Annual Report to the Department of State to avoid an administrative dissolution.

The limited liability of the Shareholders, together with their anonymity, is one of the most important advantage of forming a Corporation; while the double taxation of profits (of the Company level first and the Shareholders level upon distribution of dividends) is definitively a disadvantage.

In any case, before determining what kind of company to form, it is advisable to always consult an expert in order to better study the factors and requirements of each company and analyze the interests of each specific case.

Cav. Piero Salussolia, Esq.;

Dott.ssa Angela Cappuzzello (not admitted in Florida);

This article was written with effort and dedication in order to provide valuable information on diverse topics. Please feel free to share this information with your colleagues and friend so long as you do not modify or alter its contents and our contact information.