

WASHINGTON STATE OFFERS A WIDE RANGE OF TAX INCENTIVES FOR THE AEROSPACE INDUSTRY

Washington State offers a number of tax credits for business entities and individuals to conduct business in the state. These incentives may be claimed by manufacturers in the aerospace industry or those involved in the research, design, and engineering of aerospace products or services. These incentives are amplified as a result of Washington State's lack of an income tax. These tax incentives include but are not limited to:

- Reduced Business and Occupation (B&O) tax rates for the aerospace industry.
- B&O credits for new employees.
- Sales & use tax exemptions for aerospace manufacturers for computer hardware and software.
- B&O credits for expenditures for aerospace preproduction development.
- Special cost recovery programs for business renewable energy systems.

TAXATION

INTELLECTUAL PROPERTY (IP)

MERGERS & ACQUISITIONS (M&A)/ JOINT VENTURES (JV)

INVESTMENT IMMIGRATION

INTERNATIONAL COMPANIES STRUCTURING THEIR US INVESTMENT

Each business is different and requires a complete weighing of the pros and cons in choosing the business entity structure most conducive to their business. These concerns are amplified in the aerospace and defense industry where costs and risks are greater as a result of the industry's international nature. For foreign businesses looking to do business in the United States, the challenges may seem daunting in weighing the pros and cons of selecting the right entity.

Chung, Malhas, & Mantel, PLLC has a wide range of experiences in the planning and structuring the right type of entity for your venture. The information in this brochure provides a few of the main considerations businesses should think about in structuring their affairs.



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The information stated herein is intended for informational purposes only and does not amount to legal advice. If you desire professional legal advice and want to know your legal rights, you should contact an attorney.



CHUNG, MALHAS & MANTEL

A PROFESSIONAL LIMITED LIABILITY COMPANY

AEROSPACE

TAKE YOUR BUSINESS TO NEW HEIGHTS

U.S. SUBSIDIARY

Positives

- Foothold in a new market and potential for future growth.
- Access to an advanced transportation infrastructure and access to high-tech labor markets.
- Foreign parent insulated from liability.

Challenges

- Heavy regulation of foreign investments in sensitive industries.
- Tax consequences of a change of ownership.

JOINT VENTURES

Positives

- Shared costs and risks of the venture.
- Outside and specialized expertise.

Challenges

- Selection of a good business partner.
- Heavy regulation of foreign investments in sensitive industries.

SUBCONTRACTING TO A U.S. ENTITY

Positive

- Limited Investment and no shared costs or risks.
- Supply Chain flexibility.

Challenges

- Challenges stemming from an International Arms-Length transaction.
- Limited Quality Control management.

SALES AND USE TAX: PURCHASING COMMERCIAL AND PERSONAL USE AIRCRAFTS

Individuals and Businesses looking to minimize the costs of acquiring new or used aircrafts can structure their purchasing contracts to minimize or eliminate their tax liability. The sale of an aircraft, parts, or respective research, design or engineering materials can be structured to avoid Washington or other states' sales tax.

However, while business arrangements can be structured to avoid the sales tax, many states have enacted a "Use Tax" for the sale of certain items. The Use Tax is meant and designed to recapture taxes that would have otherwise been paid to the state via the Sales Tax. Generally, the Use Tax can also be avoided depending on the location of its use, and how often the product is used in the state with the Use Tax.

LEASING AN AIRCRAFT

A lease arrangement may be more flexible than the purchase of an aircraft. A lease can enable a company to get in and out of aircraft use more easily through shorter-term commitments and without the prepayment penalties that might be triggered upon sale of a mortgaged aircraft and the risks and responsibilities of aircraft ownership. A business can structure its lease based on short-term or long term expected use without the burdens of ownership.

However, leases will have certain unfavorable tax consequences. Leasing of an aircraft will generally not give you the right to depreciate it for tax purposes, unless the lease extends beyond a year and is capitalized. As a result, most leases are limited to interest deductions paid on the lease. For some companies facing the Alternative Minimum Tax, depreciations or certain leases with fully deductible payments could present serious advantages.

Leasing could be advantageous for businesses if there are no tax liabilities to be offset by ownership depreciation deductions. In such cases, leasing is clearly the more superior position. Also, a company with international operations may have options, in terms of structuring the acquisition of an aircraft, that make the option of leasing more desirable than purchase.

REFORMS IN EXPORT CONTROLS WILL HAVE A MAJOR EFFECT ON THE AEROSPACE INDUSTRY

U.S. export controls are primarily comprised of two major regulatory regimes, the International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR"). The ITAR regulates the export of military commodities, technical data and services and requires authorization (either a license or an exemption) for all exports. The EAR regulates the export of commodities, software and technologies that have a commercial and some other strategic application (e.g., military, terrorism, etc.)—often referred to as "dual-use"—and requires licensing based on the classification of the item under the EAR, its destination, end use and end user.

New rules and regulations were promulgated by the Department of State and Department of Commerce as a result of the Export Control Reform (ECR) Initiative. Under the initiative, certain items from the ITAR will be transferred to the EAR, resulting in the need to keep up-to-date and in compliance within the rules. These reforms will have a major impact on regulated companies, particularly in the aerospace industry. Businesses in the industry will have to adjust their compliance programs to account for the new export jurisdiction, classification and licensing requirements. This is especially true for businesses that fall under both the EAR and ITAR.

FOREIGN CORPORATION ACQUIRING U.S. CORPORATION OR ASSET

In some cases, foreign corporations looking to acquire or gain a controlling interest in a U.S. Corporation or Asset may be subjected to scrutiny as a result of national and security concerns. This is especially true in the aerospace technology and defense industry.

The government agency central to reviewing the national security implications of foreign investment in the United States is the Committee on Foreign Investment in the United States (CFIUS). Companies looking to acquire U.S. assets can voluntarily submit to the CFIUS review process. While the CFIUS reviews voluntary submissions, it may also review transactions not submitted voluntarily.

By submitting to the CFIUS voluntary review process, firms can get a green light on the international transaction in a relatively short time, usually within 30 days. Transactions that are scrutinized more thoroughly, about 40% of the time, go through an investigation that focuses on the national security implications.

While the process is generally voluntary, CFIUS is not restricted to reviewing submitted proposals and may review transactions not voluntarily submitted. The review process is a requirement for state-controlled or state-owned foreign corporations attempting to acquire a U.S. corporation or Asset.