

OFFSHORING

The Secret to Choosing the Right Jurisdiction

Disclaimer

International laws and regulations may change. Advantages of certain jurisdictions may disappear, or new opportunities arise. While this whitepaper aims to represent the situation at the time of writing, it cannot guarantee that the information provided is or remains accurate. It also cannot substitute for professional advice.

This is why it's so important to get the most up-to-date information and work with a qualified experienced advisor to select the best offshore jurisdiction for your needs.

Offshoring – The secret to choosing the right jurisdiction

Choosing the right jurisdiction is not magic or luck. Don't just follow the most popular or well-known option or rely on the latest online advice. Instead, the right jurisdiction depends on your specific goals for offshoring.

We put together a list of 10 offshoring criteria to help prioritize your objectives:

1. Reputation

Will the offshore business be your international “face” to customers and business partners?

Then a highly reputable jurisdiction like Hong Kong may be a good choice, even so reporting and audit requirements are more onerous there, compared to other jurisdictions.

Luxembourg, Malta and Singapore are also a few jurisdictions with very good reputations but are extremely expensive to open and operate in, costing over \$10,000 annually in some cases. Places such as Panama or Cyprus may look good on paper but have a history of money laundering and can be frowned upon by some foreign governments and banks.

Keep in mind that a business in a jurisdiction that does not meet global financial requirements may receive more scrutiny from tax and financial authorities. Therefore it is wise to generally stay away from those “black-listed” offshore jurisdictions.

2. Tax Optimization

Is there a way to be domiciled in a lower tax jurisdiction or even no tax jurisdiction?

The answer to this question depends on where the operations of your company are located and the type of business you have.

Tax havens such as the Marshall Islands or the British Virgin Islands (BVI) offer no income tax for foreign businesses among other advantages. However, its incorporation fees are not the lowest, with cost of \$1,500-2,000 for quality services. Furthermore, for certain business activities such as banking, trust management or investment advice services, a BVI company requires a license.

In addition, not only the jurisdiction where the company is incorporated, but also the country where the business operates, can levy taxes.

Due to the Subpart F taxation anti-deferral laws, US owners of foreign companies are taxed on undistributed earnings for certain types of income. You can only defer US taxes on earnings in a foreign company IF the income is earned from active business performed outside of the US and not effectively connected to a US business or trade. The new tax reform has eliminated the option for deferring tax on retained earnings, so alternative structures are available with a relationship between a US Corp and foreign company scenario.

We help analyze your situation to determine if you have an appropriate situation in which you can optimize your tax strategy.

3. Tax treaties available

Where do you operate your business? Are you importing/exporting or do you operate or sell in various jurisdictions via independent or dependent agents?

Having a tax treaty with the jurisdiction in which your corporation is set up can help avoid being taxed in both jurisdictions.

Selecting an offshore jurisdiction with a double tax treaty may be particularly beneficial for financial holding and investment activities, holding IP, leasing and franchising (royalty collection), as well as establishing a tax home/permanent establishment in that jurisdiction.

Many countries withhold taxes on certain types of income derived in their jurisdiction, for example for royalties or dividend/interest income. A tax treaty usually reduces the tax withholding. Most tax treaties, but not all, provide tax relief for the beneficial owner of the income. Therefore additional steps may be necessary in structuring of the offshore company to ensure that it can benefit from the applicable tax treaties.

4. Banking

Do you want to run income and expenses through an off-shore bank? Do you need PayPal or a credit card processor such as Stripe? Are you running a business in need of a specialized credit card processor due to high risk clients or products?

Understanding your specific banking requirements will determine the best banking jurisdiction. This may or may not be the same offshore location as for your company.

You don't have to bank in the same country that your offshore company is incorporated. However, not every bank will want to deal with a company

incorporated in some offshore jurisdictions. FATCA and CRS, KYC (Know Your Customer) compliance is becoming stricter, which means banks are more selective about who they have relationships with and take on as clients.

For example, offshore companies incorporated in the British Virgin Islands (BVI) are widely accepted by banks worldwide. BVI has an excellent reputation for its laws and regulations. Some other countries are more difficult to get accounts for such as Panama (other than getting a local account in Panama).

Banking options are becoming more limited as regulations increased and offshore jurisdictions receive more scrutiny.

We help navigate this area to ensure the client has the best bank to fit their needs.

5. Asset protection

Do you want to keep your assets out of reach from civil creditors and litigation?

Some jurisdiction, such as Nevis and the Cook Islands offer greater protection against civil creditors than let's say the US. Iron-clad asset protection will not necessarily shield assets from taxation though.

Asset protection usually involves an international trust to hold the assets. The trust is the owner of an offshore LLC (usually in a different jurisdiction), which is the holder of the assets.

An offshore trust cannot be used like an offshore bank account, where you can withdraw money at any time. The Deed of Trust entered into with your foreign Trustee governs how funds are distributed. Without the Deed of Trust you would be missing a crucial layer of protection.

Setting up and maintaining an asset protection trust does not come cheap. It involves considerable planning and specialized expertise.

Whether you are an actively operating a business or just sold your business and want to protect your wealth from the rampant litigation in the US, we can devise a solution to ensure your assets stay with you.

6. Accounting and reporting requirements

Do you want to keep the paperwork and reporting to a minimum?

Hong Kong would not be your first choice then, since they require annual audits. Many of the Caribbean locations on the other hand only require a registered agent to collect your mail. If you are in search of investors, then an investor friendly jurisdiction like BVI or Cayman has the laws and more robust legal and professional services to help in compliance.

As a US citizen, keep in mind that any type of offshore structure will increase your reporting requirements in the US. You may have to file a myriad of forms with the IRS and Treasury, included but not limited to Form 5471, 926, 8858, 8865, 3520, 3520A, FBAR, etc. Ideally, your advisor for business structuring is well versed in US tax implications (like us).

7. Privacy

Is your most important goal to shield assets and information from the prying eyes of others?

Staying anonymous is not possible. Global anti money laundering laws and other regulations to prevent identity theft, criminal activities, and terrorism require that your identity is shared with the agent (for incorporation) and financial institutions.

Some jurisdictions don't require your information to be shared with the local government, or even prohibit the agent from publicly disclosing your documents, except for certain inquiries including tax inquiries. This can however change at any time. Panama for example now shows company records to the public online.

Bottom line is that you cannot shield your business or assets from disclosure but you can protect them from civil creditors and litigation (see #5).

8. Ease of set up

Are you looking to form an offshore business quickly with minimal capital requirement?

Jurisdictions like the US or Nevis allow you to form a business with minimal capital and paperwork. Most of the times, you can even set up remotely.

Singapore and Luxembourg on the other hand require a resident to be the signatory of all paperwork, meaning increased cost and bureaucracy.

Even the cheapest and easiest offshore company formation can end up costing you a lot of money if not done correctly. For US citizens, any offshoring increases US reporting requirement and failure to comply can result in stiff penalties.

Before you rush to a country like Montenegro, where company formation is relatively easy and inexpensive, get professional advice on the pitfalls of using a low cost jurisdiction.

9. Operating cost

Are business formation and ongoing maintenance cost a major concern?

In this case, you may want to stay clear of locations such as Hong Kong and Malta that require tax reporting, annual audits, etc., which can quickly add up. However, these reporting requirements give more credence to doing business in these jurisdictions if you have clients which believe this is important.

Belize, Nevis, Saint Lucia are jurisdictions with low fees, where you can incorporate for around \$1,000 and have ongoing registration and maintenance for about the same. The opening process is simple and the renewal is even simpler, just pay your bill and keep the company registered. If you are just holding assets and not doing a lot of transactions, these jurisdictions are perfect.

10. Business operations

Does your business require local employees and/or business interactions with specific time zones?

Selecting an offshore location within a similar time zone and language helps with every-day business interactions. Availability of local talent eliminates the need for costly expat hires such as in BVI and Cayman where there are many service providers. However, if you need native English speakers or don't want to call Asia at midnight if you live in the US, you may have to consider different jurisdictions.

Some jurisdictions such as Singapore and Luxembourg even require a registered agent representative, meaning not only do you need an address but also someone to represent you and be on the hook if there are any financial misgivings. This can add a large additional costs if you don't have any local contacts to represent you.

Must-have criteria

Lastly, when selecting a jurisdiction, don't overlook the political and economic stability of the country. This is a must-have criteria. No matter what your goals for off-shoring are, you don't want to find yourself in an economic crash or unfavorable political change that can hurt your business or assets.

Conclusion

As you can see, the secret to choosing the right offshore jurisdiction is being clear on your objectives for offshoring. We recommend evaluating each criteria and rank-ordering them by priority. This priority list will then drive a short list of suitable offshore jurisdiction.

At times, you may find that a combination of offshore structures yields the best results for your business, for example incorporating in one country and banking in another. This adds of course more complexity and requires additional considerations to ensure that the jurisdictions are compatible.

An experienced business structurer can help you weigh the pros and cons of each option, understand the potential tax impact, etc. If you need help going through this process, please let us know. We have set up offshore structures in many different jurisdictions and have a global network of partners to support any required local activities.

For advice on offshore jurisdictions and related business structuring and offshoring matters, [contact us](#) to set up a consultation.

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