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Delaware Company Compliance and Maintenance Guidelines

After successfully registered in Delaware, both the corporations and LLCs are required to operate in compliance with the General Corporation Law/Limited Liability Company Act of the State of Delaware. This guideline note intends to provide a summary of those on-going compliance requirements for the interest of our clients.

The first section of the guideline note briefs the basic maintenance and reporting that a Delaware company is required to comply with, including annual report, annual franchise tax report, registered office and registered agent and business license renewal.

The second section describes income tax filing services, including federal income tax filing and state income tax filing.

The third section describes federal and state payroll tax filing and foreign person's U.S. source income subject to withholding tax filing requirements. All U.S. companies are required to file tax returns on time to comply with tax laws.

The fourth section states the foreign banks and financial accounts reporting. If you have foreign financial accounts, you are required to report accounts to IRS on time.

The fifth section describes financial reporting, including bookkeeping service and the audit service of annual financial report.

The last section summarizes our compliance and maintenance services and costs to maintain a Delaware company in good standing. The fees listed are based on estimation and for reference purpose only. The final service fee may be different according to actual circumstances.

This guideline is not meant to cover all the compliance requirements imposed on a company by the Delaware and U.S. laws. If any issue of interest is not covered in this guideline, you are welcome to contact and consult our professional accountants.

1. Annual Renewal Requirements

(1) Annual Report

All active business entities registered in Delaware, U.S., must file an Annual Report to the Delaware Division of Corporation on or before 1 March (Corporation) or 1 June (LLC) following the end of the calendar year. The Annual Report must include certain basic internal particulars of the company, such as the physical address of company, the names and addresses of the officers and directors etc.

(2) Annual Franchise Tax Report

All active business entities registered at Delaware must file Annual Franchise Tax Report to the Delaware Division of Corporation on or before 1 March (Corporation) or 1 June (LLC) following the end of the calendar year, in line with the filing of the Annual Report. If the franchise tax is not paid on time, the State may impose a USD200 late penalty, plus a monthly interest fee of 1.5 percent.

Limited Liability Companies and foreign corporations (corporations registered outside Delaware but carries out business in Delaware) pay a flat-rate annual franchise tax or annual fee. The calculation of Franchise Tax for corporations is however much more complicated. There are two methods that corporations can figure their annual franchise tax. The default method for the State of Delaware is the Authorized Share Method. This option is fairly simple as the amount of Franchise Tax depends on the number of shares of the corporation and the minimum Franchise Tax is USD175 for a corporation with a capital of 5000 shares or less. If your Delaware corporation has high value assets, the Assumed Par Value Capital Method is more complicated, but sets a cheaper tax fee.

(3) Registered Office and Registered Agent

Delaware law requires that every business entity must have and maintain a Registered Agent in the State of Delaware. The registered agent must have a physical street address in Delaware for the purpose of service of notice.

(4) Business License/Permit Renewal

In the situation where a Delaware registered company holds a business licence or permit issued by the Federal or State Government because it engages in one or more regulated business, in general, such a licence or permit must be renewed each year.

2. Corporate Income Tax Filing

(1) Federal Income Tax Return

According to Internal Revenue Service (IRS), all Delaware registered business entities must file an income tax return on or before the following 15 April (corporation) or 15 March (LLC) of the tax year, or 15 October (corporation) or 15 September (LLC) with extension, if the company adopts the calendar year as its accounting year. However, a business entity must still pay its tax due in full no later than the original deadline for filing of its tax return (not extended deadlines). Interest and penalty will be charged for late payment of tax if an extension of time to file is granted.

An LLC is also required to file a federal income tax return each year without paying any income tax because an LLC is by default a pass-through entity unless it chooses to be taxed as a corporation. Should an LLC make such a choice, then it will need to file the Federal Income Tax Return and at the same time pay federal income tax at company level.

(2) Delaware State Income Tax Return

Every business entity doing business (i.e. having a physical operation) in Delaware is required to file the state income tax return regardless of the amount, if any, of its gross income or its taxable income. The taxable status of a company in Delaware follows the federal treatment of the company. Delaware businesses income tax returns are due in the case of a calendar year taxpayer, on or before April 15 of the following year. Delaware income tax rate is 8.7%.

3. Payroll Tax Filing

(1) Federal Payroll Taxes

If business entities have employees and pay wages in U.S., they must report income and payroll taxes withheld from their employees to Internal Revenue Service (IRS) periodically and deposit these taxes in full to an authorized bank or financial institution pursuant to Federal Tax Deposit Requirements. The business entities are also responsible for filing and paying Social and Medicare Taxes (employer share amount) and Federal Unemployment Taxes.

The deposit schedule for the payroll taxes depend upon the amount of business entities' payroll tax liability. Employers may be subject to criminal and civil sanctions for wilfully failing to pay employment taxes.

(2) State Payroll Taxes

If the business entities will hire and pay wages to employees in Delaware, they need to register as an employer and open a withholding account with the Division of Revenue. The business entities must report withholding tax from employee's taxable wages or other remuneration and pay over to the Division of Revenue, if any employee existed. Employers must contribute to Unemployment Insurance Tax (UI).

(3) Foreign Person's U.S. Source Income

According to Internal Revenue Code, the payments that certain foreign persons received from U.S. sources, are subject to tax withholding. And withholding agent or payer must report the amount withheld to IRS, if any. The sources include dividends, interest, rents, annuities, etc. Kaizen can help you prepare Form 1042, 1042-S, W-8BEN or other forms required by government agencies.

- (a) If foreign persons received U.S source income, they are required to submit Form W-8BEN to the withholding agent or payer for tax withholding purpose;
- (b) Form 1042 is used to report the tax withheld on U.S. source income of foreign persons;
- (c) Form 1042-S is the statement of U.S. source income and amount withheld of foreign persons.

4. Foreign Banks and Financial Accounts Reporting

If your Delaware company owns, or has any interest in, any foreign financial accounts, Foreign financial accounts include, but are not limited to; checking, savings, securities, brokerage, deposit, or any other account held with a financial institution. Foreign financial accounts also include annuities with a cash out value, mutual funds, or whole-life insurance policies.

You must assess the balances each year to determine if your Delaware company is required to file an FBAR form (FinCEN Form 114) or FATCA Form 8938.

(1) FBAR Form

The FBAR form is required to be filed each year if the total balance of foreign financial accounts owned by your Delaware company exceeds USD10,000 during the year. The Foreign Bank Account Report (FBAR, FinCEN Form 114) will need to be filed with the Department of Treasury on or before 15 April following the calendar year you are reporting.

Anyone who are obligated to file the report but failed to do so may be subject to a fine of USD10,000 per violation. If it is determined that you purposely avoided filing, the fine can be USD100,000 or 50% of the balance of the account at the time of the violation, whichever is greater.

(2) FATCA Form 8938

The FATCA Form 8938 is required to be filed each year if the total value of foreign financial assets owned by your Delaware company exceeds USD50,000 during the tax year. It will need to be attached to your annual return and due on the date of that return, including any applicable extensions.

Anyone who are obligated to file the form but failed to do so may be subject to a fine of USD10,000 per violation and an additional \$10,000 for each 30 days of non-filing after IRS notice of a failure to disclose, for a potential maximum penalty of \$60,000; criminal penalties may also apply.

5. Financial Reporting

(1) Financial Reports

Delaware is one of the few states that does not statutorily require the keeping of books and records. This is an example of the pro-business climate that inspires many entities to choose Delaware as their formation state. However, it should be noted that Delaware companies may still have other reporting requirements, such as filing of Federal Income Tax Return and this could not be done without properly kept accounting records and financial statements. In this regard, we suggest that you should keep all your accounting records and update the books of accounts on a regular basis.

(2) Audit of Annual Financial Reports

In Delaware, all entities, both corporations and LLCs, other those than listed in a stock exchange, are not required to appoint an auditor, and is also not required to arrange to have their annual financial statements audited. Public companies are required to submit the audit reports to the U.S. Securities and Exchange Commission annually per the list rules of the relevant stock exchange. It should be noted however, private companies may also want to have their financial reports audited annually or periodically for some other reasons, such as submitting the audited financial report to lending party or to investors.

6. Delaware Company Annual Maintenance Costs

As elaborated above, all Delaware corporations and LLCs are required to operate in compliance with the Delaware business laws. They may also need to apply for license and permits with the State Department according to industry specific requirements. Kaizen U.S. is a professional CPA firm, offers complete compliance services and business support, such as bookkeeping, financial statement audit, filing tax return, making payroll, etc. Some of our Delaware company related services and fees are listed below for your reference.

Item	Description	Service Fees (USD)	
1	Annual renewal including registered agent, registered office, franchise tax and annual report filing fees (Note 1)	Yearly	900
2	Business license/permits renewal (Note 2)	Yearly	75 up
3	Federal and state corporate income tax filing (Note 3)	Each	800/up
4	Payroll tax filing and relevant services (Note 4)	TBA	TBA
5	Foreign banks and financial accounts filing (FBAR) (Note 5)	Yearly	200 up
6	Financial statements and special audit (Note 6)	Yearly	2,000/up
7	Accounting and bookkeeping (Note 7)	Monthly	300/up

Note:

- (1) Kaizen service fee for the annual renewal includes provision of registered office, registered agent, preparation and filing the annual report and franchise tax payment, but not including business license endorsements renewal service, if any.
- (2) This is the official filing fee for renewal of business licence when your company holds one for reason of carrying out business in Delaware. Kaizen does not charge service fee for handling the renewal of business license/permits for your Delaware company. The final amount depends on the number of locations of business operation your company may have in Delaware.
- (3) Our service fee for preparation and filing of the Federal and State Corporate Income Tax Return depends on business model and complexity and transactions of financial statements of your Delaware company. Once we have the opportunity to review the books of accounts of your Delaware company, we will then prepare and provide an accurate quotation for your consideration.
- (4) Our fee for payroll tax filing and relevant services is charged based on numbers of employees and frequency of salary payments.
- (5) Our fee for handling of filing of FBAR depends on the number and type of financial accounts to be reported. If no more than three accounts, the filing fee is USD 200. For each additional account, we charge USD50.

- (6) Our service fee for audit of annual financial statements is determined taking into consideration the business model of company, the complexity of the financial positions and the types and amounts of assets etc. Once we have the opportunity to review the books of accounts and financial statements of your company, we will then prepare and provide an accurate quotation for your consideration. In addition to audit of financial statements, we can also provide special audit and review services.
- (7) Our service fee for accounting and bookkeeping is determined taking into consideration the number of transactions. Other than updating books of accounts on a monthly basis, we can also update the books of accounts of your Delaware company on a quarter or annual basis. We can also prepare financial statements in a language other than English.

If you wish to obtain more information or assistance, please visit our official website at www.kaizencpa.com or contact us through the following methods:

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