

S Corporation Election Requirements

The following are all of the requirements a company must meet to elect to be taxed as an S corporation.

1. It must be a domestic company (i.e., it must be a corporation or LLC incorporated in the United States).

2. It must have only the following types of shareholders: individuals (none of whom are non-resident aliens), estates, certain trusts or certain exempt organizations.

Further explanation: Exempt organizations that may be shareholders are described in sections 401(a) or 501(c)(3) or the Internal Revenue Code, and the trusts that may be shareholders are described in section 1361(c)(2)(A). Only citizens or residents of the United States can be shareholders. Some specific examples of individuals or entities that may not be shareholders include partnerships, corporations, non-resident aliens, foreign trusts and traditional or Roth IRAs. However, a parent S corp can elect to treat an eligible wholly owned subsidiary as a qualified subchapter S subsidiary.

3. It must have no more than 100 shareholders;

Further explanation: An individual and his or her spouse (and their estates) may be treated as one shareholder. All members of a family (as defined in Section 1361(c)(1)(B)) and their estates may also be treated as one shareholder. For additional situations in which certain entities will be treated as members of a family, see Regulations section 1.1361-1(e)(3)(ii).

4. It must have only one class of stock; and

Further explanation: In general, a company is treated as having only one class of stock if all outstanding shares confer identical rights to distribution and liquidation proceeds. Voting rights can be disregarded.

5. It must not be an “ineligible corporation.”

Further explanation: “Ineligible corporations” include the following: a bank or thrift institution that uses the reserve method of accounting for bad debts under section 585; an insurance company subject to tax under subchapter L of the Internal Revenue Code; a corporation that has elected to be treated as a “possessions corporation” under Section 936; or a current or former domestic international sales corporation.

Additional Reading

If you own an LLC and want to elect to have that company taxed as an S corp, read this article:

<http://www.nwcorporatelaw.com/llcs-taxed-as-s-corps/>