

# Why UK startups are still chasing the American dream – and the Delaware flip

THE LAWYER NEWS & COMMENTARY

## The Growth Series

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For the past five years, the Delaware flip has occupied a curious space in European start-up law. Widely discussed and familiar to anyone working with founders who have an interest in US funding, the flip is a corporate inversion transaction whereby the shares of an existing UK or European company are exchanged for shares in a newly created US (typically Delaware-incorporated) holding company. The UK or European company then carries on as a wholly owned subsidiary of the Delaware company.

There are a number of reasons that founders may do a Delaware flip – from wanting better access to US capital or clients, to aiding a possible US listing. But as US capital coming into the UK and Europe increases, and more companies are being sold the American dream, is the flip becoming more common? And what are the risks? The Lawyer headed straight to lawyers at the heart of the problem to find out.

When asked if he’s seen an uptick in flips, Daniel Glazer, managing partner of the London office at Silicon Valley-headquartered Wilson Sonsini, replies: “Yes, because of the increased flow of US capital into the UK and Europe.”

He adds: “More and more UK and European companies are interested in raising early-stage money from US VC investors while remaining operationally headquartered in the UK and Europe. That is a relatively new development; historically, early-stage UK and European companies would move both their operations and corporate structure to the US to raise capital from US VC investors – and some companies still do that, of course. But if a UK or European-based startup is able to raise a US-led Seed round – and the US fund doesn’t have an office in the UK or Europe – there’s about an 80 per cent chance the US fund will require a Delaware flip as a condition of the raise.”

### The \$10m tax question

“In the early part of my career, redomiciles like the Delaware flip didn’t really happen,” recalls one lawyer. “Founders either stayed put or incorporated directly into the US if they were serious about that market.”

For many VC lawyers, talk of a Delaware flip does occur more frequently in discussions. Some see it as default, while others admit the issue is more complicated than that and needs lawyers that truly understand a company and its goals.

Tom McGinn, general counsel of VC fund Northzone, has seen term sheets from top-tier US investors with implicit or explicit expectations that companies will flip to Delaware, but says it is nothing new to the industry.

“The rate of founders in the UK and Europe incorporating in – or flipping to – Delaware has stayed fairly steady over the past few years,” McGinn says. “What’s really changed is the number of founders moving to the US to start their companies. More and more European accelerators and early-stage investors are encouraging that shift – driven by access to capital and the strength of the ecosystems, particularly in San Francisco.”

Investor pressure is a key reason founders outside the US incorporate there – and it all comes down to money. Specifically, this alludes to the fact that US investors can benefit from a \$10m federal capital gains exemption if the investor and the company are US-based.

“That’s why many investors push founders to incorporate in Delaware or flip there later,” McGinn explains. “But founders shouldn’t make such a critical decision based solely on what’s tax-efficient for an investor. It’s on them to push back – and make the case for what’s actually best for the company.”

Ultimately, McGinn thinks that the decision of where to incorporate should be a personal one and not driven by investor-preference alone. That’s easier said than done – for example, Y Combinator is a popular VC fund that has

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seen its companies raise \$85bn from investors all over the world. In order to be eligible for its programme, a company must incorporate into Delaware.

“Often, we hear founders say that US VCs have told them they ‘only invest in US companies,’” Glazer adds. “Too often, the founder doesn’t ask the follow-up question: do you (the VC) mean operationally, commercially, or structurally? In many cases, the VC means all three. That distinction is critical.” Glazer is highlighting the key distinction between having a US holding company and having US commercial traction and US operations.

#### Crimson AI and the Y Combinator condition

Crimson AI, a litigation-focused legaltech start-up, went through a Delaware flip earlier this year. It was incorporated in the UK in September 2024, then flipped to Delaware in January to meet the requirements of the Y Combinator programme.

“It was always our ambition to go for the US market quite quickly, and getting accepted by Y Combinator certainly helped with that,” Mark Feldner, CEO of AI litigation company Crimson says.

“They have a condition of investing only in companies incorporated in certain jurisdictions, so as part of this process we had to turn our English limited company into a wholly-owned subsidiary of a separate Delaware company.”

The company had both UK and US customers with plans to expand further in the US, so the decision made sense for it. Still, the process was more painful than expected.

“A lot of the complexity comes down to HMRC,” Feldner says. “You need to apply for tax clearance to confirm the transaction doesn’t generate stamp duty or capital gains tax liability. That can take weeks or months.” For the actual Delaware incorporation process, the legaltech company used Stripe Atlas which made the process a lot easier.

“The hard part was aligning that with an English entity that wasn’t yet part of a group structure,” Feldner comments. Glazer agrees that timing is crucial. “The cost and complexity of flipping increases dramatically as a startup raises capital and adds shareholders. If you’re just two people, a dog and a garage, it’s relatively simple. But if you’ve got IP, EMI equity grants, SEIS or EIS tax considerations, and multiple rounds of funding, it’s a very different ballgame.”

This kind of move is easier early on. Once there are contracts, IP, or equity grants in place – especially if they’re tax-sensitive – the process can get a lot more difficult. McGinn points to one case where a UK law firm granted shares directly to a German co-founder.

“One company with a founder who was tax-resident in Germany tried to flip to the US as part of a funding round – but couldn’t,” McGinn says. “The UK law firm had set up the company with the founder holding the shares directly – standard in the UK, but problematic in Germany. Flipping would have triggered a dry tax charge for the founder, which ultimately killed the round.”

“We estimate that 20–25 per cent of US-led Series A rounds involving UK startups still require a Delaware flip,” Glazer notes. “That’s a substantial drop from pre-pandemic levels, when it might’ve been 50% or more at Series A. By Series B, the number drops close to zero. At that stage, global investors tend to be more familiar with international structures – and companies are less fungible. As a result, while later-stage Delaware flips are more complicated, they often are not a necessary condition for US investment.”

#### The policy problem

Part of the wider issue is that if most growth capital still comes from the US, and the UK start-up ecosystem increasingly relies on US investors, the Delaware flip raises awkward policy questions. Concerns about the scale-up trajectory in the UK means that US holding companies remain a popular choice. According to data from The State of European Tech, at the end of 2023 \$86bn of EU foreign direct investment went into US holding companies.

That doesn’t mean that US investors aren’t comfortable investing in UK and European companies. According to SeedLegals, US investors are comfortable investing in UK companies about 80 per cent of the time, especially at later stages. Dozens of UK-based startups, including unicorns, have scaled or exited globally without ever incorporating in the US.

The decision to flip is often a product of early-stage investor influence or accelerator requirements, rather than a necessity driven by company fundamentals. From Series B onward, the need to flip becomes increasingly rare, and many founders now choose to stay incorporated in the UK or Europe.

But it does show a state of affairs that reflects deeper structural imbalances – where the question of capital flow and policy lags leave founders navigating transatlantic pressures that often outweigh purely strategic considerations.

“At Series B and later, geography becomes much less of a barrier,” says Glazer. “If you’re running a great business with strong metrics, the best funds – whether in the US or UK – will want to back you. The flip conversation fades into the background.”

That doesn't mean it is the end of the road for the UK scaleup dream. UK venture capitalists see the Mansion House reforms, which aim to better mobilise pension fund capital, as a first step towards closing the transatlantic funding gap and enticing companies to remain UK side.

"This kind of change doesn't happen overnight," a capital markets lawyer warns. For now, many founders will continue to follow the capital - and if that leads to Delaware, so it shall be.

## Wilson Sonsini resources

[The Pros and Cons of the Delaware Flip](#)

[The UK Tax Implications of the Delaware Flip](#)

[When Should a UK Startup Establish a US Company](#)

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