PKF International Limited

Doing Business in the U.S.

LOCAL KNOWLEDGE, GLOBAL EXPERTISE

Doing Business in the United States

This booklet is designed to provide an overview of the business climate in the United States. The discussion surveys the many considerations involved in establishing a business enterprise in the United States. While every attempt is made to keep this publication current and concise, the rapidity of change and the complexity of our interrelated world is a strong indication that consultation with professional advisors is indispensable. The highly skilled and dedicated professionals of PKF North America and PKF International Limited look forward to working with you to review, assess, and implement your business plans. We are committed to responsiveness and dedicated to excellence.

Although significant care was observed in creating this publication, the possibility always exists that certain information may, in time, become outdated. PKF North America and PKF International Limited, therefore, accept no liability for the consequences resulting from activities undertaken on the basis of this publication. Consultation about your business opportunity with a professional advisor remains necessary at all times.

We must inform you that any advice in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding any government penalties that may be imposed.

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Foreword

This booklet is produced as a service to the clients of the member firms of PKF North America and PKF International Limited, and as an introduction to the fiscal and commercial environment of the United States for those who are considering doing business within its jurisdiction. The contents provide a guide for understanding the business processes, not a complete description of everything a business or entity needs to know. This booklet should not be used as the basis for any decision in the complex areas of U.S. commercial and tax law. Because the laws of the United States are constantly being modified – both legislatively and judicially – clients are advised to seek specific professional advice from any PKF North America member firm before proceeding with any activities involving the United States.

A key component of doing business in the United States is to understand the various legal jurisdictions that impact businesses. Laws affecting business can be enacted by all government entities – federal, state, county and municipality. Often county and municipality are referred to as “local.” While it does not occur often, various laws enacted by the separate entities can be in conflict. The appendix has contact information for many business-related federal agencies, along with each state’s contact data.

Demographic and Environmental Overview

Geography and Population

The total area of the United States is 3.8 million square miles (9.9 million square kilometers). The mainland stretches nearly 2,800 miles (4,506 kilometers) from the Atlantic Ocean to the Pacific Ocean, and approximately 1,600 miles (2,575 kilometers) from Canada in the north to Mexico in the south. It is the world's second largest country by total area. The noncontiguous states include Alaska, which lies northwest of Canada and borders the Arctic Ocean, and Hawaii, located in the Pacific Ocean approximately 2,000 miles (3,219 kilometers) from the mainland. The population of the United States is approximately 328 million, the third most populous in the world. Similar tax laws and special rules apply in the Commonwealth of Puerto Rico and the overseas territories of American Samoa, Guam, Northern Mariana Islands, and the U.S. Virgin Islands.

Political System

The United States declared its independence from the United Kingdom in 1776 and established a federal republic that now consists of 50 politically separate states and the District of Columbia (Washington, D.C.), the seat of the federal government. The United States has a written constitution; the legal system is based on English common law. However, the state of Louisiana derives its law from the Napoleonic civil code, and nine states have community property laws. The federal government is a tripartite system consisting of independent executive, legislative and judicial branches. Each state has a statewide government elected by the residents of their state. Within the state, there are political subdivisions, known as counties in most states (parishes in the state of Louisiana). Within the counties, there are cities, towns, villages and other local municipalities. Each political entity has the capability of enacting laws that impact its residents.

Economics

A free enterprise system, coupled with an abundance of natural resources and a highly educated work force, produced a gross domestic product of approximately $21.43 trillion based on 2019 data. The United States evolved from a primarily agricultural economy in the 19th Century to a highly industrialized one for most of the 20th Century. However, currently, the country's orientation has become increasingly service-based. The United States, is a major contributor to international financial agencies, and has created free trade agreements with Canada and Mexico, USMCA, which recently entered into force on July 1, 2020. and Central America (CAFTA). The United States is also a member of the World Trade Organization (WTO), the General Agreement on Tariffs and Trade (GATT), the Organization for Economic Cooperation and Development (OECD), Asia-Pacific Economic Cooperation (APEC), and the Organization of American States (OAS).

Communications and Transportation

The nation has a comprehensive network of internal and external communications systems, which includes all forms of wired connections, almost 100 percent universal coverage for cellular technologies and a quickly growing implementation of wireless networks. The transportation network for the movement of goods and services is extensive and varied. While paper maps are still available for purchase, Web-based companies, such as Google, Waze and Yahoo, have extensive online mapping capabilities that provide specific address locations, along with driving directions between multiple points.

Services and Exchange Controls

The two major financial centers are in New York City and Los Angeles. Washington, D.C. is a focal point for government-assisted financing, while Chicago, Miami, Atlanta and Dallas/Houston are major regional financial centers. Through the Internet, financial transactions can be placed instantly from any location to any other location. This enables a significant dispersion of growth throughout the country. There are no exchange controls. Information returns are sometimes required on the transfer of large sums of cash or cash equivalents.

Finance

The U.S. banking market comprises several types of financial institutions, including commercial banks, investment banks, savings banks, savings and loan associations and credit unions. In addition, specialized institutions, including leasing companies, finance companies and factoring companies, offer asset-based financing. Commercial banks supply the most funds to businesses. Short-term financing is usually arranged as a line of credit. Medium-term financing, generally a term of five to seven years, is often used by foreign investors to begin U.S. operations. As a condition of the loan, a bank usually requires execution of a note and a formal loan agreement that may restrict the borrower's decision-making powers through special covenants. Personal guarantees and audited financial statements are commonly required. Investment bankers are often called on to arrange financing through the sale of stock, debt obligation or commercial paper.

Grants and Incentives

The federal government provides equal treatment to domestic and foreign investors. While not granting special tax packages or concessions to foreign investors, the government refrains from imposing any specific discriminatory tax burdens on them. Available concessions or tax holidays are generally offered by state or local governments and are tied directly to investments in the specific jurisdiction.

Regulatory Environment

The U.S. regulatory environment is a combination of open competition and consumer protection. The U.S. Constitution contains an interstate commerce clause that permits the federal government to exercise regulatory control over all businesses engaged in interstate commerce. For a business that is specifically "intrastate" (within one state), such as a restaurant, all regulatory powers reside within the state and its local governmental units. It is important to verify any regulatory information because laws and legal interpretation of the laws are frequently modified. The general policy is to encourage the dissemination of information that allows investors and consumers to sustain order and structure in the marketplace. There are no price or currency controls, but a minimum wage for employees does exist.

Acquisitions and Mergers

The federal laws governing mergers and acquisitions are administered by the Federal Trade Commission and the Department of Justice. These laws are intended to prohibit, under certain conditions only, mergers or acquisitions that might have the effect of substantially lessening competition. In the case of certain large

transactions, advance notice must be given to the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Securities

The Securities and Exchange Commission (SEC) is the primary federal agency that regulates the offering of securities in the United States. One of its primary functions is to assure full and accurate disclosure of financial and business information on securities sold in the United States. The SEC also regulates the securities markets and may bring enforcement actions for improper actions taken with respect to securities transactions.

A foreign investor who wishes to acquire a U.S. corporation may tender cash or issue its own securities in exchange for the shares of the U.S. company. A tender offer requires the foreign investor to file certain information with the SEC. If the acquisition is to be made through the issuance of securities, the acquiring company must file a registration statement with the SEC. All U.S. companies that have securities registered with the SEC, and all companies whose shares are listed on a stock exchange, are required to file periodic reports with the SEC. These quarterly and annual reports also are required of any corporation whose stock is sold over-the-counter and have met certain asset and shareholder requirements. All public companies must have their financial statements audited annually and reviewed by independent accountants on a quarterly basis. Such independent accountants must be registered with the Public Company Accounting Oversight Board (PCAOB).

There are separate requirements for obtaining a listing on any one of the stock exchanges. Companies also must be aware that many states have specific requirements for filing and disclosure of securities transactions.

Alternatives to an Audit

Unlike many foreign jurisdictions, no statutory audit requirements generally exist except for public companies. However, banks and other lending institutions often require specific financial information from their clients and may require a client to undergo an annual audit by an independent accounting firm.

Although there is no audit requirement, companies wishing to do business in the United States should consult with their financial professionals on alternatives to an audit. In addition to an audit, simpler and less-costly alternatives include a review or compilation.

Marketing and Sales in the U.S.

Challenges

Besides the fact that investors tend to underestimate the size of the U.S. in terms of distances between locations, it is very important that investors understand that the U.S. is not one market but consists of many markets. Investors might have to adjust their strategy to enter one of these markets to adapt to regional characteristics. A good starting point to understand the U.S. markets is to divide the country into regions as follows

- North-East
- Mid-Atlantic
- South-East
- North-West
- Mid-West
- South-West
- Far West

Market segments and target groups of customers have to be determined carefully. This is important for buyers of consumer goods as well as for customers in the industry. Also, every state and county in the U.S. has extensive authority to implement rules and regulations. For instance, sales tax is only imposed on a state, county and municipality level, not on a federal level. There are over 11,000 sales tax jurisdictions in the U.S., with widely varying rates. Thus, investors need to make sure that they comply with rules and regulations wherever they conduct business in the U.S.

Potential

The U.S. is the largest economy in the world with a GDP of over USD 21 trillion in 2019 according to the World Bank. That accounts for almost 25% of the worldwide GDP. With a GDP of over USD 64,000 per capita, the U.S. is number eight in the world according to the World Bank only behind countries with a much smaller population. The U.S. is a consumer market with around 328 million consumers and potential customers. That provides enormous opportunities for investors who are willing to enter the U.S. market. The foreign direct

investment in the United States position increased USD 331.2 billion to USD 4.46 trillion at the end of 2019 from USD 4.13 trillion at the end of 2018.

Market Research

Market research is one of the first things an investor should do when exploring business opportunities in the U.S.. Different types of market research are available such as branding research or market opportunity research. These are designed to deliver actionable business insights an investor needs to establish, grow and improve a business in the U.S.. Obviously, investors can do the research on their own if they have the capabilities and resources to do so. However, in many cases, especially when an investor is new to the U.S. market, it is advisable to engage a consulting firm to assist with a market research.

Products and Pricing

Pricing consumers goods and capital-intensive goods is follows different rules in the U.S.. The competition for consumer goods is very strong and consumers expect the vendor to “match the price”. This means that the consumer expects the vendor to reduce the price if the consumer finds a better price somewhere else. In these days comparing prices online is very easy and vendors need to be prepared for this and monitor the pricing for consumer products regularly on a “real-time” basis. Pricing in the industry works in a different way and customers are willing to pay a higher price for quality products. In both cases, vendors of industry and consumer goods need to consider the following factors when pricing their products.

- Customs and shipping if the product is not produced in the U.S.
- Additional steps in the delivery process given the size of the U.S.
- Marketing and promotion costs. The following channels play an important role when promoting products in the U.S.
  - TV
  - Social media
  - Radio for local markets
  - Direct mail
  - Ads in newspapers and magazines
  - Billboards along highways and interstates
- Accounting for warranty, return and replacement costs
- Foreign exchange rate changes

Service

Services are very important for consumers in the U.S.. When buying capital-intensive goods customers in the industry expect the following.

- Technical consulting
- Installation and test-runs including training for employees to handle the equipment
- Maintenance and repair services
- Availability of spare parts

Providing maintenance and repair services as well as delivery of spare parts can be challenging for foreign vendors. They need to make sure that these services can be provided on a timely basis. In many cases, customers in the U.S. require vendors to be able to provide maintenance and repair services within 24 to 48 hours. This might require foreign vendors to have a presence in the U.S..

For consumer goods it is important that vendors are very flexible when it comes to return policies and repair services. Typically, U.S. consumers expect a “no-questions-asked” return policy. Vendors need to make sure that they are available for customer complaints and requests and respond on a timely basis.

Distribution in the U.S.

Distribution of products, especially consumer goods, should not be underestimated. Given the size of the U.S., vendors need to make sure that they have an efficient and effective distribution system. Typically, vendors are using distributors, marketplace facilitators and common carriers to get products to their customers. The distribution of products to consumers needs to be planned carefully as every additional step in the delivery process is increasing the price of the product. Also, vendors need to be aware of the fact that the demand for “same-day-delivery” is increasing. This requires planning and coordination with distributors, marketplace facilitators and common carriers.

Consumer Protection and Special Industries

A number of consumer protection laws are enforced by federal agencies such as the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA). Companies must take notice of the various agencies that have the authority to regulate specific organizational products or processes. In addition, certain industries are subject to regulation because of the nature of their activities.

The Department of Transportation (DOT) has jurisdiction over railroads, trucking, water transport and pipelines engaged in interstate commerce. The Federal Communications Commission (FCC) has authority over television, radio and data transmission. Banks, insurance companies and public utilities are all subject to regulation at the federal level and, in most cases, at the state and/or local level as well.

Legal Protection for Intangibles

U.S. law extends legal protection for certain intangible assets, or intellectual property.

A trademark is a word, phrase, symbol or design that identifies and distinguishes the source of the goods of one party from those of others. A trademark filing can be made at either the federal or state level. While it is recommended, a trademark need not be registered with the U.S. Patent and Trademark Office. A trademark is good as long as it is used, and it lapses after two years of non-use.

A copyright protects an original artistic or literary work. Copyrights (as well as patents, discussed below) are only issued through the federal government; states do not provide any such legal protections. A copyright lasts from the moment of its creation until 70 years after the death of the creator; for a work of corporate authorship, a copyright lasts for 95 years from the date of publication or 120 years from the date of creation, whichever expires first. Computer software qualifies for copyright protection. Copyright protects expression – it does not protect ideas, facts, procedures, concepts or the similar. Fair use rules do allow uses of another's copyrighted work for certain purposes, such as parody.

A patent protects an invention. A patent granted by the U.S. Patent and Trademark Office will last for 20 years. During that time, the inventor has the exclusive right to make, use or sell the invention. Since 2013, patents are granted on a first to file basis; if two persons independently develop the same invention, the first to file is granted the patent right. This aligned the U.S. with global trends in patent protection, which is helpful for companies filing for patents in multiple jurisdictions. Patents may be granted for a process, a machine, a product, a composition of matter or an improvement on any of those things.

Businesses also may receive protection for their trade secrets, such as technical information, processes and customer lists. This does not require registration, but is protected by common law. Businesses need to take reasonable steps to keep this information secret in order to receive protection – for example, employees must be bound by confidentiality agreements relating to this information.

It is important to register a business' name with the appropriate state department or agency. Business names cannot duplicate others registered in the state.

Sarbanes-Oxley Act

The Sarbanes-Oxley Act was passed into law in November 2002. Also known as the Public Company Accounting Reform and Investor Protection Act, abbreviated names include "Sarbox" and "SOX." Among other provisions, the Act requires all public companies to submit an annual report of the effectiveness of their internal accounting controls to the SEC. The Act focuses on a wide range of governance issues with an emphasis on preventing fraud by public companies.

The major provisions of SOX include a required external auditor report on internal controls, based on certain requirements, as amended, increased disclosure regarding all financial statements, and criminal and civil penalties for noncompliance. SOX affects all public U.S. companies, as well as non-U.S. companies with a presence in the United States. In addition, many private companies and even nonprofit organizations are voluntarily adopting many of the provisions in SOX based on due diligence and board of directors' requests.

Other SOX measures regulate the activities of audit committees and others responsible for the review of company compliance. There is a major focus on the archiving of all communications, and the creation of transparent and auditable systems for recording transactions, dealings and business correspondence.

It is very important to discuss the possible impact of this legislation on the control and reporting requirements of companies doing business in the United States. Contact a PKF North America member firm to explore the impact of SOX on your business.

2010 Health Care Act

The 2010 Health Care Act (the Affordable Care Act, also known as the ACA and frequently referred to as "Obamacare") requires certain employers to offer and contribute to employees' health insurance (or they may incur a penalty). However, employers with less than 50 employees will not be subject to these penalties. Small business employers may qualify for special tax credits for providing health insurance to their employees. Low and middle income taxpayers will qualify for government assistance in obtaining health care.

High income individuals, estates and trusts are subject to a 3.8% tax on net investment income.

Product Liability

Responsibility for the sale of defective and harmful products falls on the manufacturer and seller. There is no federal U.S. law in this area; instead, liability is based on state common law and commercial statutes. Product liability usually requires negligence in product creation, but in certain circumstances, when the product is especially dangerous, strict liability may apply (the plaintiff would not have to prove negligence).

Supply and Sales Contracts

Supply and sales contracts are generally governed by the Uniform Commercial Code (UCC), which is not federal law but has been adopted by all states, with some variations. Thus, foreign companies can enter into supply and sales contracts without significant differences in treatment based on the state law the contract is governed under.

Environmental Issues

A federal agency, the Environmental Protection Agency (EPA), regulates environmental issues in the United States. Its goal is to protect human health and the environment. Many states also have environmental regulations. Environmental regulations can affect businesses in a range of ways; from companies drilling for oil and disposing of the byproducts of its manufacturing process to companies merely looking to build a new office who must consider environmental regulations on construction.

Business Site Selection

Business location U.S.

In many cases, foreign companies start doing business in the U.S. through a distributor, a small sales team or even just a virtual office. Choosing the right location might not be that important at that stage of the U.S. operations as relocating sales personnel or a virtual office can be done more easily than a production site or a huge number of employees. However, at some point during the life cycle of the U.S. operations, a mid-term or even long-term decision needs to be made where the business location or additional locations should be set up. Before making the final decision for a business location, a thorough analysis needs to be performed. Moving the business location can be very costly, time-consuming and even disrupting the operations, especially if relocating production sites is involved.

Location factors

The following site-related factors are typically involved when performing the search for the business location.

- Proximity to suppliers, customers and markets
- Logistics (Proximity to airports, ports, railway, highways)
- Availability of raw materials
- Availability of energy (electricity, gas)
- Availability and cost of land, property tax level
- Availability of qualified personnel and payroll cost
- Proximity to universities
- “Right to Work” rules and regulations
- “Employment at Will” rules and regulations
- Unions
- Construction/Leasing cost
- Tax burden/Incentives
- Environmental rules and regulations
- Proximity to competitors

Identify the right location

Identifying the right location can be a 3-step process.

- Step one: Identify states or regions that could be candidates for a short-list of potential business locations.

  The starting point are 50 states and/or the following seven regions:

  - North-East
  - Mid-Atlantic
  - South-East
  - North-West
  - Mid-West
  - South-West
  - Far West

  Many of the states or regions can be removed from the list quickly for obvious reasons such as lack of proximity to customers or insufficient options in terms of logistics. The location factors mentioned above can be used to determine the states or regions that are candidates for the “short-list”. Typically, it is not necessary to visit potential business locations at this stage.

- Step two: If not already done in step one, the business site selection team should contact Business and Economic Development departments to get more detailed information about the state or region that is a candidate for the short list. Every state and even counties have their own Business and Economic Development department. These departments can help with organizing visits to potential business locations as well, if needed. After reviewing and analyzing the more detailed information, the candidates for the short-list should be selected.
- Step three: The short-list should be finalized and negotiations with the county and/or state should begin.

Incentives

There is very strong competition between states and counties to get new businesses settled in their jurisdictions. Incentives are offered and it is worthwhile to spend the time to research and compare incentives that are offered. In many cases, it is even possible to negotiate the incentives offered to get a better deal. The following is a list of incentives typically offered.

- Corporate Income Tax Relief
- Property Tax Abatements
- Angel Investor Tax Credits
- Quality Job Tax Credits
- Research & Development Credits
- Personal Protection Equipment Tax Credit Bonus (Introduced in Georgia following the COVID-19 pandemic)
- Growth Support (funds, loans)
- Operational Support
- Innovation Development Support such as incentives to foster university collaboration, research and innovation.

Forms of Business Organizations

U.S. Corporation

A corporation is a separate legal entity usually created under the laws of one of the states or the District of Columbia. Each state enacts its own laws regarding the formation and operation of corporations. Although the basic corporate laws are similar, there are differences (largely non-tax related) that may argue for or against specific states in which to incorporate.

Following the Tax Cut and Jobs Act (TCJA) of 2017, the top corporate income tax rate was reduced from 35 percent to 21 percent, bringing the U.S. rate below the average for most other Organization for Economic Co-operation and Development countries, and eliminated the graduated corporate rate.

In any state, the documents necessary to create a corporation may be obtained from the secretary of state's office in the state's capital city. After incorporation, annual reports must be filed and a fee must be paid. A corporation doing business outside its state of incorporation may find it necessary to register to do business in other states. Registration is accomplished by filing the appropriate documents and filing fee with the secretary of that particular state. Generally, a state registration will automatically subject a corporation to taxation (including state and local income and franchise taxes) in that jurisdiction. However, whether the entity creates income tax nexus, and subsequently, tax filing requirement in that jurisdiction should be consulted with the tax professional.

Technically, the classification of an entity as a corporation for tax purposes is independent from the entity's status under state law. Tax regulations interpreting the U.S. Internal Revenue Code ("Code") classify an entity as either an "eligible entity" or as a corporation under "the check-the-box" rules. The entity is treated as an eligible entity unless it is one of the types of entities classified as a corporation. An eligible entity is an entity that neither meets the definition of a trust nor a corporation. Eligible entities are able to "elect" corporate status. If no election is made, then the entity is treated 1) as a partnership for tax purposes if it has two or more owners, or 2) as "disregarded" as an entity separate from its owner if it has a single owner. Typical examples of an eligible entity are limited liability companies (LLCs), partnerships or sole proprietorships. (LLCs and partnerships are discussed below.)

Under regulations, certain business entities are "per se" corporations that receive mandatory treatment as corporations for tax purposes, such as:

- a business entity that is taxable as a corporation under a provision of the Code, such as a public partnership.

- business entities formed under the laws of U.S. territories and possessions.
- certain foreign business entities classified under Internal Revenue Service (IRS) prescribed lists.

These "per se" corporations are called "regular" or "C" corporations, and they are subject to U.S. tax on worldwide income regardless of where it is earned. U.S. corporation earnings are generally subject to double taxation: initially at the company level and then at the shareholder level when dividends are received. A distribution from a U.S. corporation to a shareholder will be treated as a dividend to the extent it is paid out of current or accumulated earnings and profits. Dividends are not deductible by the corporation. Some relief rules exist for certain intercompany dividends. Dividends paid by a U.S. corporation to non-U.S. persons are subject to 30 percent withholding unless reduced by treaty.

Branch of a Foreign Corporation

A branch is a part of a corporation and not a separate legal entity in the United States. A foreign corporation may establish a U.S. branch and commence business at any time. Advice should be obtained from legal counsel regarding the merits of registering to do business in states in which the branch (or company) intends to operate, as well as determining the advisability of obtaining limited legal liability.

If a foreign corporation wants to establish a U.S. branch, use of an LLC should be considered. As a general rule, the U.S. branch of a foreign corporation is subject to regular U.S. income tax on net income that is effectively connected to the U.S. business. Investment-type income not effectively connected with a U.S. trade or business is taxed at 30 percent or lower treaty rate. The United States also maintains a branch profits tax (BPT) that is imposed in addition to the regular corporate tax. The BPT is intended to impose a double tax on distributions from branches in order to mirror the double tax that corporations and shareholders pay on dividends and to eliminate tax advantages from operating as a U.S. branch versus a U.S. corporation. Therefore, the BPT is calculated at 30 percent of the "dividend equivalent amount," and can result in federal tax liabilities equal to U.S. corporation income tax of 21% plus the 30% maximum withholding tax on dividends. As with withholding tax on dividends, the BPT can be reduced or eliminated through tax treaties.

Since branches do not provide tax advantages over corporations, and require U.S. tax filing by the foreign corporation, formation and use of U.S. corporations is commonly preferred over operation via a branch.

Partnership

For legal purposes, a partnership is defined as an association of two or more persons formed to carry on a business for profit as co-owners. Defined by U.S. tax law, a partnership includes a syndicate, pool, joint venture or other unincorporated organization by which any business is conducted – and which is not, for federal income tax purposes, a corporation, trust or estate. Each state and the District of Columbia has its own laws governing the formation and operation of partnerships. Limited partnerships are usually formed under the state's recognized Limited Partnership Act. Public partnerships are defined as those whose interests are traded on an established securities market (or a secondary or equivalent market). Most public partnerships are taxed as corporations.

Non – public partnerships are generally treated as conduits for U.S. income tax purposes, and each partner recognizes a proportionate share of income, loss and credit, whether or not it is distributed to the partners. Partnership law allows for much flexibility for allocation of profits and losses, as well as distributions, if the partnership agreement meets the "substantial economic effect" rules in the IRS regulations. Any partnership engaged in a trade or business in the United States must withhold at the highest U.S. tax rate applicable to its foreign partners' distributive share of business income. Foreign partners may recover excess tax withheld by filing U.S. income tax returns. Similar withholding rules may apply at the state level to nonresident partners.

Limited liability Company

The limited liability company (LLC) is a structure, whose purpose is to provide limited liability for owners while maintaining a single level of tax. The LLC offers the advantages of a partnership, while eliminating some of the drawbacks of these entities. Properly structured, an LLC with more than one member is treated as a partnership for tax purposes, providing all of a partnership's flexibility with the limited liability protection of a corporation. The LLC also may have foreign persons as members. Because LLCs provide significant flexibility for U.S. tax planning, the use of these entities is common. For example, single-member LLCs can serve as divisions of corporations, or as owners of sole proprietorships while enjoying limited liability protection.

An LLC with a single foreign corporate owner is taxed as a U.S. branch unless the owner elects to have the LLC taxed as a U.S. corporation under the "check-the-box" rules. A multi-owner LLC is subject to the partnership withholding tax rules described previously, again, unless an election is made to tax the LLC as a corporation.

State tax planning also should be considered with LLCs since their treatment varies throughout the nation. A foreign owner considering use of a U.S. LLC should also consider the tax treatment of the LLC in the owner's country. Some countries do not recognize U.S. classification of the LLC as a pass-through entity, therefore, a foreign parent that receives distributions from its U.S. subsidiary that was set up as an LLC may be deemed to receive a dividend and, thus, would be subject to tax according to its country's tax law. In part because LLC's are relatively new, opinion varies from country to country as to whether they should be treated as corporations or as partnerships. In some cases, the foreign country view of the LLC can also affect mutual tax treaty benefits.

When making a decision on what type of entity to choose for its U.S. operations, foreign companies should consult a tax professional.

Accounting

Conducting business in the United States requires establishing an appropriate method of record-keeping that will enable proper reporting of the results of business operations. The accounting requirement enables full and fair disclosure of the financial condition in compliance with applicable accounting principles, laws, rules and regulations.

This effort starts with the understanding of the state and federal requirements. Most companies establish their business within a state, and as a result, must first comply with the state regulations for establishing a business, along with the reporting rules and requirements for maintaining proper accounting records. U.S. tax laws provide only general guidelines that support the preparation of appropriate tax returns. There are additional requirements for companies issuing publicly traded securities. For example, the Foreign Corrupt Practices Act is a significant set of rules for maintaining books and records that properly reflect all business transactions.

Tax Accounting and Reporting

Depending on the type of business organization, the company may choose the accrual or cash method of accounting. Companies with average of last three years' gross receipts less than $25 million may generally choose the cash method, while those with $25 million or more in annual gross receipts must, with a few exceptions use the accrual method for U.S. tax reporting. Certain personal service businesses are permitted to use the cash method regardless of their gross receipts. In addition, there are substantial other statutorily required or permitted variances between U.S. tax reporting requirements and U.S. financial accounting standards.

The company will also have to select between reporting on a calendar year or a fiscal year basis. A calendar year is a period of 12 months ending on December 31, and a fiscal year is a period of 12 months ending on the last day of any month other than December for a 52-53 week tax year.

Statutory Audits are not required

Private businesses are not required to publicly disclose the results of their financial operations. Based on their own business requirements, banks and other lending institutions may require financial statements. Public companies are required to present annual financial statements to shareholders and comply with the U.S. Securities and Exchange Commission (SEC)'s rules and regulations, including the requirement of an annual audit.

Fundamental financial accounting standards

The fundamental guidelines for maintaining accounting records include the following:

- Accounting records are kept in accordance with the laws of each applicable jurisdiction.
- Accounting records fairly and accurately reflect the transactions or events to which they relate.
- Accounting records fairly and accurately reflect the company's assets, liabilities, revenues and expenses.
- All transactions are supported by accurate documentation in reasonable detail.

Company financial statements are generally required to be prepared in accordance with U.S. Generally Accepted Accounting Principles (GAAP).

The company has an appropriate system of internal accounting controls.

Accounting Principles

U.S. GAAP is the recognized set of standards for the preparation of general purpose financial statements in the United States. The Financial Accounting Standards Board (FASB) Codification, effective for periods ending after September 15, 2009, serves as the single source of authoritative nongovernmental U.S. GAAP. At that date, all existing accounting standards were superseded by the FASB Codification and all other accounting literature not included in the FASB Codification is considered nonauthoritative. As a result, the FASB Codification is the authority for both private and public companies. The Governmental Accounting Standards Board (GASB) is the source for GAAP for state and local governments in the U.S. U.S. GAAP is not written into law; however, SEC requires that U.S. domestic issuers (public companies) report under U.S. GAAP. Foreign Private Issues may report under U.S. GAAP or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board. Private companies may have the option to report in accordance with IFRS or IFRS for Small and Medium Sized Enterprises (IFRS for SME's) as the American Institute of Certified Public Accountants (AICPA) amended Rules 202 and 203 to expand the definition of GAAP to included standards issued by the International Accounting Standards Board.

The key elements for adhering to accounting principles are consistency throughout each reporting period and consistency among succeeding periods. Any changes to the application of accounting principles must be explained with the cumulative effect adjustments presented in accordance with U.S. GAAP.

Certain assets are measured at historical cost and others are measured at fair value such as marketable equity securities and other financial instruments in which U.S. GAAP allows for a fair value option. Generally, tangible long-lived assets, such as property, plant, and equipment, are subject to depreciation adjustments that would allow the financial statements to reflect the asset's original cost less accumulated depreciation. There are tax guidelines that specifically provide for the various methods companies can use to depreciate assets over their respective economic lives as defined by the Internal Revenue Service. These guidelines provide for various accelerated methods of depreciation that must be applied to the basis of the assets.

Unlike IFRS, U.S. GAAP does not allow a fair value option for property, plant, and equipment. In addition, long-lived intangible assets (or asset groups) must be evaluated for impairment whenever a triggering event occurs by applying a non-discounted cash flow approach. If the non-discounted cash flows are less than the assets carrying amount, the asset is written down to its fair value and an impairment loss is recognized.

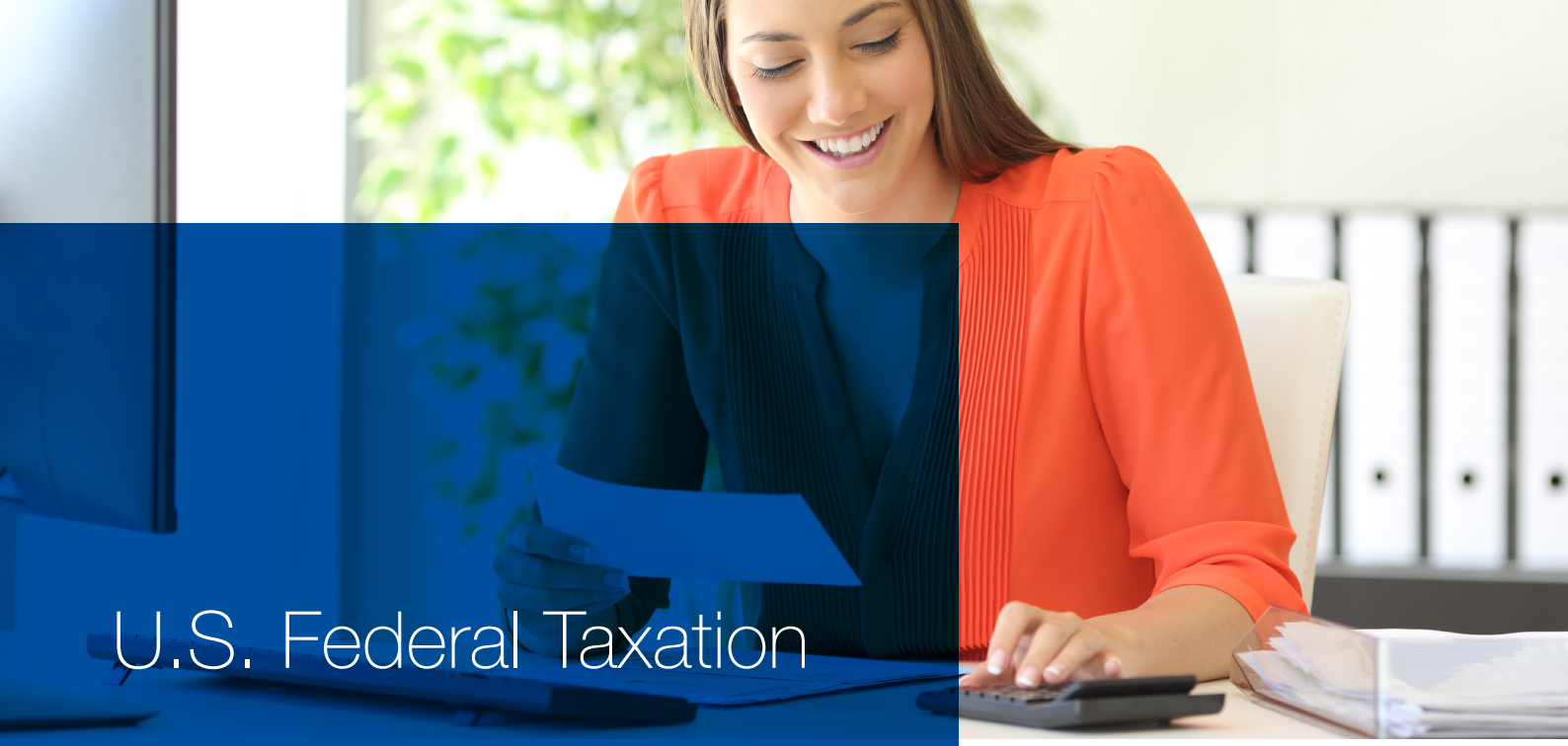
U.S. GAAP defines fair value as the price that would be received to sell an asset, or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The scope of the definition and guidance applies broadly to fair value measurements encountered in GAAP, both financial and non-financial. U.S. GAAP also provides for a formal hierarchy for measuring and evaluating fair value estimates.

Financial Reporting

Financial statements prepared in accordance with U.S. GAAP include a balance sheet, statement of operations, statement of stockholders' equity and a statement of cash flows. If a public issuer, the company must follow SEC interpretations of U.S. GAAP. Balance sheets reflect the status of the company's assets, liabilities and retained earnings at a specific date and time. Income statements reflect the results of business operations for a specific period of time. Generally, companies will issue these statements for the current period, along with the comparative information for the immediately preceding reporting period although not required for private companies.

Although private companies are not required to have their financial statements audited, public companies must have an annual financial statement audit conducted by an independent Certified Public Accountant (CPA). Generally, the users of private company financial statements, such as banks, private equity funds, or other private investors require financial statements to be audited, reviewed, or compiled. Audits of public companies are conducted in accordance with standards of the Public Company Accounting Oversight Board (PCAOB). Audits of other organizations are conducted in accordance with Generally Accepted Auditing Standards (GAAS) that are issued by the Auditing Standards Board of the AICPA. The audit's essential element is the opinion of the auditor that the information contained in the financial statements present fairly, in all material respects, the financial position, results of operations and cash flows in accordance with U.S. GAAP.

More information can be found on the AICPA Web site and other reference sites. Web site URLs are located in the appendix at the end of this booklet.



U.S. Federal Taxation

Similar to other countries, U.S. taxation is full of opportunities and challenges. There are a number of different taxing jurisdictions in the United States and the various political subdivisions, including states, counties, cities, towns and villages. However, in this section we will highlight federal taxation information that organizations should consider. The best way to understand your potential tax requirements is to discuss the issues with a PKF North American Network or PKF International tax professional.

An entity is generally subject to U.S. tax if the individual or corporation is a resident in the U.S. or has income that is “effectively connected with the conduct of a trade or business within the United States.” This is an ongoing test, which means that any trade or business that has income in the United States at any time in the year is probably subject to U.S. tax for that particular tax year. Unlike most countries, the U.S. taxes foreign profits upon repatriation.

The federal government imposes income taxes on corporations, individuals, estates and trusts. It also imposes payroll taxes, the primary one being the Social Security tax levied on the employer and the employee. There are also estate and gift taxes and a number of excise taxes. No national sales or value-added tax is imposed. State and local taxes can significantly increase an individual’s or business’ tax liability.

The U.S. individual income tax system is a self-assessment method that requires withholding tax from employees’ salaries and certain other payments. When a taxpayer is required to withhold taxes on payments to another person, the taxpayer is in a fiduciary relationship and must remit the withheld taxes to the government. Failure to withhold or failure to remit will generally subject the taxpayer to liability for the taxes and penalties. In addition, businesses and individuals are required to make quarterly estimated payments during the year.

After the close of the tax year, taxpayers must file a tax return that reports all taxable income and allowable deductions. The tax is computed on net taxable income and compared with the total taxes the taxpayer either had withheld from income or paid as estimated installments of tax. The net of these two becomes either the final tax payment by or refund to the taxpayer. All returns are filed under penalty of perjury.

The Internal Revenue Service (IRS) is a branch of the Department of the Treasury. Responsible for administering tax laws, its mission includes interpreting tax laws, auditing tax returns and collecting revenue. Absent a material misstatement of income or fraud, the statute of limitations (SOL) on a tax return is a period ending on the later of three years from the date the return is filed (or required to be filed) or two years from the date of payment. If a return has not been filed, the SOL period will not begin, leaving the year open indefinitely.

The federal tax law is enacted by the U.S. Congress and the legislative structure is found in the Internal Revenue Code of 1986, as amended. The Department of the Treasury and the IRS issue interpretations of the statutory provisions. Sometimes, disagreements arise between taxpayers and the IRS concerning the proper tax treatment of various items and, after administrative reviews within the IRS, many cases end up in federal court. Several of these court-derived interpretations are integral to an understanding of the fabric of U.S. tax law.

Recent Developments

The Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act (the TCJA), which became law in December of 2017, was the most significant piece of U.S. federal tax legislation since 1986. Key pieces of the legislation effecting businesses, many of which are discussed at greater length in the sections that follow:

- Reduced the corporate tax rate to 21%.
- Repealed the corporate alternative minimum tax (any remaining unused AMT credits were able to be claimed in 2018, see the CARES Act, below.)
- For net operating losses (NOLs) incurred after 2018, repealed two –year carryback and capped usage of NOLs at 80% of taxable income. (Temporary changes were made in the CARES Act.)
- Changed the amount of business losses a noncorporate taxpayer could deduct, limiting that amount to $250,000 ($500,000 in the case of a joint return). Losses above those amounts have to be carried forward. (Temporary changes were made in the CARES Act.)
- Limited the allowable interest deduction for a business meeting a gross receipts threshold ($25 million average over three years) to 30% of “adjusted taxable income” (essentially, EBITDA, and from 2022 on, EBIT). Disallowed deductions may be carried forward to future tax years. (Temporary changes were made in the CARES Act.)
- Placed limits on deduction of meals and entertainment expenses.
- Provided full expensing for otherwise capitalized business property through the end of 2022.
- Allowed for tax-free repatriation of dividends from foreign subsidiaries to U.S. corporate owners in most cases, but also implemented a tax on Global Intangible Low Taxed Income (GILTI), essentially a minimum tax on earnings of foreign subsidiaries imposed on U.S. parent corporations.
- Introduced the Base Erosion and Anti-Abuse Tax (BEAT) to combat perceived “base erosion” in payments made by U.S. subsidiaries to foreign related parties.
- Expanded constructive ownership rules in determining whether foreign corporations are “controlled foreign corporations.”
- Provides a deduction to U.S. corporations for “foreign-derived intangible income” (FDII).

This list is not exhaustive; the changes were far reaching. As a result, care should be given when making U.S. business planning decisions to consider the current rules, especially for those with experience with pre-TCJA rules. In addition, many of these rules phase out over time, so their impacts should be considered over the length of the time horizon for the U.S. investment being contemplated.

The CARES Act

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law. The Act includes provisions both for tax relief relating to tax payments and current filings, as well as economic stimulus by allowing for tax refunds on 2019 returns and amended returns for the last several years.

The CARES Act included the Paycheck Protection Program (PPP), which provided forgivable loans to businesses in order to cover salary and other key business expenses. It also had several significant tax provisions for businesses:

- Net operating losses (NOLs) incurred in 2018, 2019, and 2020 can be carried back five years and fully offset taxable income. 80% taxable limitation applies again for unused NOLs incurred in 2018, 2019 and 2020 when it is utilized in 2021 and onward.
- The excess business loss limitation for partners is suspended for 2018, 2019, and 2020 and may now be used in full to reduce a taxpayer's current or prior year (2018 only) income tax liability.
- Any unused corporate AMT credits remaining after the repeal of the corporate AMT in the Tax Cuts and Jobs Act are fully refundable (either on a 2019 tax return or a 2018 amended return).
- A fix to the bonus depreciation rules, retroactive to the beginning of 2018, allows a 100% write-off for qualified improvement property (correcting an error in the TCJA).
- The Section 163(j) business interest expense deduction limitation is 50% of adjusted taxable income for 2019 and 2020, up from 30% as outlined by the TCJA. Taxpayers may also elect to use 2019 adjusted taxable income to calculate the 2020 limitation.

Substance over Form

A constant thread in the administration of U.S. tax law is that the substance of a transaction takes precedence over the form of the transaction. This concept is known as the economic substance doctrine. This concept has been applied in the courts to deny tax benefits of transactions executed for the specific purpose of avoidance of income taxes, if the transaction did not change the overall economic position of the taxpayer. Part of the Health Care and Education Reconciliation Act of 2010, the economic substance doctrine has now been codified into the Internal Revenue Code and new strict liability penalty provisions apply for its violation. Under the doctrine, a transaction is considered to have economic substance if it results in a meaningful change in the taxpayer's economic position without regard to the federal income tax effects of the transaction. Further, the transaction must also have a substantial economic purpose irrespective of its federal income tax effects. If the taxpayer fails to meet either requirement, the transaction will lack economic substance and the tax benefits of the transaction will be denied. The accuracy-related penalty for an underpayment of taxes occurring due to the denial of tax benefits under the economic substance doctrine is 20% for transactions disclosed in a timely filed tax return and 40% in the case of nondisclosure.

Transfer Pricing

Transfer pricing issues derive from the broad authority of the IRS to allocate income, deductions, credits and other items between or among related entities to prevent evasion of tax or to clearly reflect income. The courts have generally upheld both the authority and methodologies of the tax reallocations. The IRS may make such adjustments as are necessary. Either by inadvertence or design, the taxable income of a controlled taxpayer is affected by its dealings, either directly or indirectly, with other members of the same controlled group. Adjustments made by the IRS to one member of a group may require correlative adjustments to other affected group members.

The IRS increases its scrutiny on transfer pricing when related United States and foreign group members are involved. Regulations were issued that reinforce the "arm's-length" standard while increasing the emphasis on comparability and documentation. Arm's-length transactions are identified as transactions between two unrelated companies. Transactions between a holding company and its wholly owned subsidiary are not considered at arm's-length. Several methods are permitted to determine a proper arm's-length price, including the use of transaction comparables, comparable profits and profit split methods. Taxpayers must identify and document the best method, depending on their circumstances. Failure to maintain contemporaneous documentation of pricing determinations, including a written transfer price study, could result in substantial penalties – as much as 40 percent of the tax due related to the transfer pricing adjustment. While transfer pricing studies provide penalty protection, they are currently not mandatory as in some other foreign jurisdictions. IRS adjustments also could result in double taxation since some treaty country partners may not give correlative adjustments in U.S. transfer pricing cases. In cases where a treaty country is involved, consult a competent authority on inter-company transactions.

In recent years, the IRS has focused more on transfer pricing enforcement, resulting in significant cases, such as Coca-Cola Co. v. Commissioner, which resulted in a $3 billion transfer pricing adjustment. As part of the increased emphasis on transfer pricing enforcement, the IRS released an updated version of its publication on transfer pricing examinations (Pub. 5300) in May 2019. The document is a guide to best practices and processes to assist with the planning, execution, and resolution of transfer pricing examinations. Most importantly, the guide makes it clear that an Information Document Request (IDR) is mandatory if the IRS has determined that there are initial indications of transfer pricing compliance risks. That means that the IRS will be scrutinizing a multinational company's transfer pricing documentation closely.

What is the IRS looking for in transfer pricing documentation?

- A full explanation of the data used in the analysis.
- A "self-assessment" to anticipate questions from the IRS and proactively address those questions.
- A description of business risks of the transactions and how these risks were allocated among controlled participants.
- Adequate and reasonable justification for the comparable companies selected to demonstrate to the IRS that arm's length prices were used.
- The functional and risk analysis for each transaction.
- A description of the challenges of the analysis, e.g., allocate losses among controlled participants.
- An intercompany transaction summary at the beginning of the transfer pricing documentation

To mitigate controversies in transfer pricing disputes, the IRS encourages using Advanced Pricing Agreements (APA). An APA is a prospective agreement between the IRS and the taxpayer to determine compliance with the arm's-length standard. It is expected that when treaty partners are involved, the competent authorities in the relevant countries will be involved in the process. If possible, taxpayers should seek bilateral, and possibly multilateral, agreements to ensure the pricing strategy is agreed upon by all countries involved.

Tax Treaties

The United States enters into tax treaties for the primary purpose of eliminating double taxation. The U.S. Model Income Tax Treaty – based on the Organization for Economic Co-operation and Development (OECD) Model – was the basis for all recent treaty negotiations. The most recent U.S. Model Income Treaty was released in 2016. Under the U.S. Constitution, treaties and public laws are given equal weight. When there are conflicts between statute and treaty, the most recent statute or treaty controls. There was a tendency in recent U.S. tax law changes to include treaty override provisions; newer treaties also contain an anti-treaty shopping

rule that limits the benefits of the treaties to bona fide residents of the contracting states. After a treaty is negotiated and signed, it must be ratified by the U.S. Senate before it is effective.

As a matter of internal law, if any activities conducted by a company or individual constitute conducting a U.S. trade or business, any income derived from that activity most likely will be subject to U.S. federal and state income taxation. Such income is known income that is "effectively connected with a U.S. trade or business" or "ECI". Double income tax treaties provide for the concept of a permanent establishment whereby a greater level of activity is permitted without creating a taxable presence than would be the case of ECI. Therefore, for companies or persons resident in countries that have a tax treaty with the U.S., such persons falling within the purview of the permanent establishment article of U.S. treaties typically file a treaty-based return to claim treaty benefits as protection in the event the U.S. tax authorities assert that a taxable presence has been created. However, the higher permanent establishment standard under U.S. treaties does not bind individual states, which have different standards for determining whether a company engaged in business in the state is taxable. Thus, foreign companies entering the U.S. market should seek guidance on the rules in the states where they intend to operate to determine potential tax filing requirements.

Taxation of U.S. Resident Corporation

A U.S. resident corporation is a company incorporated under the laws of a U.S. state. It is also an entity treated, for tax purposes, as a corporation under "check-the-box" regulations. The place where management is located and control is exercised is irrelevant. A resident corporation is taxed by the United States on its worldwide income, including capital gains, without regard to the source of such income. Net taxable income is subject to a regular income tax at a flat rate of 21 percent, for tax years beginning after December 31, 2017.

Prior to the enactment of U.S. tax reform legislation on December 22, 2017 (the Act), AMT previously was imposed on corporations other than S corporations and small C corporations (generally those with three-year average annual gross receipts not exceeding $7.5 million). The tax was 20% of alternative minimum taxable income (AMTI) in excess of a $40,000 exemption amount (subject to a phase-out). AMTI was computed by adjusting the corporation's regular taxable income by specified adjustments and 'tax preference' items. Tax preference or adjustment items could arise, for example, if a corporation had substantial accelerated depreciation, percentage depletion, intangible drilling costs, or non-taxable income. The Act repealed the corporate AMT effective for tax years beginning after December 31, 2017, and provided a mechanism for prior-year corporate AMT credits to be refunded by the end of 2021.

U.S. corporations are required to file income tax returns for each tax year (generally for 12 months). Income tax returns are due on the 15th day of the fourth month following the close of the taxable year. For companies on the calendar year, the return is due April 15. Extensions of time to file may be obtained for up to six months. Estimated income taxes must be paid quarterly during the year. Penalties are imposed for failure to make adequate estimated payments.

For a foreign enterprise entering into the U.S. market, it is more common for that foreign business to conduct business in the U.S. through the formation of a U.S. resident corporation. This is true due to the complex expense allocation and apportionment rules that apply when the branch form of doing business is used. Further, as stated below, the branch profits tax will apply for foreign companies doing business without an incorporated entity. The application of the branch profits tax can be unpredictable and complex.

Affiliated Companies and Consolidated Returns

Members of a group of U.S. corporations affiliated by 80 percent or more of direct ownership may elect to join in the filing of a consolidated U.S. income tax return. An affiliated group exists where one or more chains of included corporations are connected through share ownership with a common parent corporation. The common parent files one return on behalf of the entire group. Non-includible corporations, including foreign corporations, are prohibited from joining such a group.

A partnership may not be included in a consolidated return, even if it is 100% owned by members of an affiliated group, since a partnership is not a corporation. However, a member's earnings that flow through from a partnership are included as part of the consolidated group's taxable income or loss. Filing on a consolidated (combined) basis also is allowed (or may be required or prohibited) under the tax laws of certain states.

Sales, dividends, and other transactions between corporations that are members of the same consolidated-return group generally are deferred or eliminated until such time as a transaction occurs with a non-member of the group. Losses incurred on the sale of stock of group members are disallowed under certain circumstances.

Generally, it is advantageous to file a consolidated return in order to combine losses of some members with income of other members; however, there will be occasions in which it can be a disadvantage. Once a group elects to file on the consolidated basis, it must continue to do so unless the ownership chain is broken or the IRS grants permission to discontinue filing on that basis (which happens only on rare occasions).

Losses

U.S. tax laws distinguish between net operating losses (NOLs) and capital losses. An NOL is the excess of tax deductions over the company's gross income. Subject to limitation, an NOL may not be carried back and may be carried forward indefinitely until fully utilized. For NOLs generated in tax years beginning after December 31, 2017, NOL utilization in a taxable year is limited to 80% of taxable income determined without regard to the deduction (this limitation does not apply for 2018, 2019, and 2020.) This limitation does not apply to NOLs generated in years beginning before December 31, 2017. While NOLs can be used in a consolidated group, there are limitations on using the carry-forward losses from pre-consolidation years or when a change in ownership of more than 50% in value of the stock of a loss corporation occurred. Capital losses will arise on the disposition of capital assets and may only offset capital gains. To the extent not used in the current taxable year, capital losses may be carried back three years and forward five years. Restrictions exist, similar to those for NOLs, when the company experiences changes in ownership. At different times, the NOL carryback periods have been extended in order to provide tax breaks to stimulate the U.S. economy. For example, for the 2018, 2019 and 2020 tax years, NOLs may be carried back 5 years. Therefore, it is important to check with a U.S. tax professional to determine whether any temporary extensions of the NOL carryback periods apply.

Computation of Taxable Income

Taxable income is defined as gross income minus all allowable deductions. Gross income includes business income, gains, interest, dividends and all other increases of wealth, unless specifically excluded from taxation. Although gains would normally be taxed or losses deducted when they are realized, recognition may be postponed under the tax law. The mere increase or decrease of wealth, for example, generally is not a recognition event. Deduction of expenses and losses may be claimed only to the extent set forth in the Internal Revenue Code.

A corporation is allowed to deduct the cost of goods sold, interest on indebtedness, and other ordinary and necessary business expenses. Capital expenditures may not be currently deducted, but the cost may be recovered under depreciation and amortization rules. Dividends paid to shareholders may not be deducted, but there is a partial to full exclusion for certain dividends received by one U.S. corporation from another U.S. corporation.

For years beginning after December 31, 2017, the U.S. corporate AMT has been repealed.

The tax laws also prescribe several penalty taxes that may be imposed, such as accumulated earnings and personal holding company taxes. Those add-on taxes are imposed if the corporation retains excessive earnings or holds substantial passive assets.

The accumulated earnings tax equals 20% of 'accumulated taxable income.' Generally, accumulated taxable income is the excess of taxable income with certain adjustments, including a deduction for regular income taxes, over the dividends paid deduction and the accumulated earnings credit. Note that a corporation may be able to justify the accumulation of income, and avoid tax, based on its reasonable business needs.

U.S. corporations and certain foreign corporations that receive substantial 'passive income' and are 'closely held' may be subject to personal holding company tax. The personal holding company tax, which is levied in addition to the regular tax, is 20% of undistributed personal holding company income.

Timing Differences and Preferences

A number of special rules in U.S. tax law means that income may be taxed or deductions allowed in tax periods that are different from the financial statement reporting periods. Some of these items are permanent differences between book and tax income, while some merely affect the timing of their recognition. The corporate income tax return requires a reconciliation of these differences (commonly called Schedule M items). Differences may also arise between the bases of assets or liabilities reported for financial statements and those reported for tax purposes. The U.S. is also somewhat unique in that many businesses are permitted to base their income tax reporting upon their cash receipts and disbursements.

Debt versus Equity

In establishing the capital structure of a U.S. corporation, the fact that interest paid is deductible, while dividends paid are not, places a high premium on the appropriate classification of capital items. The characterization given by the parties is not the sole determinative factor since the IRS has the authority to reallocate debt as equity. Therefore, unlike many foreign tax jurisdictions, the U.S. tax law does not provide specific rules to distinguish debt from equity. Instead, the U.S. tax authorities have provided the factors it considers when considering whether a particular investment is debt or equity. The debt-to-equity ratio is one of the more important factors used in making this decision. A generally accepted ratio is 3:1, although in litigation, higher ratios have been sustained.

Additional factors taken into account in analyzing an instrument as equity or debt include terms, creditors' rights and the economics of the entire operation, including debt coverage and cash flows.

Under the Act, Section 163(j) limits U.S. net business interest expense deductions to the sum of business interest income, 30% of 'adjusted taxable income' (ATI), and floor plan financing interest of the taxpayer for the tax year, effective for tax years beginning after 2017. Section 163(j) is required for a corporation if their average annual gross receipts (on an aggregated basis of a controlled group) for the prior three years exceed $25 million. Interest deductions are limited to 30% of taxable income before interest, depreciation, amortization and depletion for tax years beginning before 1 January 2022 (50% for 2018 and 2019).

For tax years beginning after 31 December 2021, depreciation, amortization, and depletion must be deducted in determining taxable income. Any interest disallowed under this limitation can be carried forward indefinitely. These rules, known as the "earnings stripping" provision, could result in the indefinite deferral of interest deductions. Also, accrued unpaid interest owed to foreign related parties is not deductible until paid.

Depreciation and Amortization

Since capital expenditures may not be written off in the year incurred, the tax law established a system of depreciation in order for taxpayers to recover the cost of property over its estimated useful life. In an effort to minimize controversies between the IRS and taxpayers, the law sets up tables based on a Modified Accelerated Cost Recovery System (MACRS). Depending on the type of property, the general cost recovery periods are 3, 5, 7, 10, 15, 20, 27.5, and 39 years (31.5 years for nonresidential real property placed in service

before May 13, 1993). The cost recovery methods and periods are the same for both new and used property. Most tangible personal property falls in the three-, five-, or seven-year class. For tangible personal property, recapture of depreciation may occur at the time the property is sold.

Property placed in the three-, five-, seven-, or 10- year class generally is depreciated by first applying the 200% declining-balance method and then switching to the straight-line method when use of the straight-line method results in a larger depreciation deduction than the 200% declining-balance method. Property in the 15- or 20-year class generally is depreciated by using the 150% declining-balance method and later switching to the straight-line method.

Residential rental property generally is depreciated by using the straight-line method over 27.5 years. Nonresidential real property generally is depreciated by using the straight-line method over 39 years (31.5 years for property placed in service before May 13, 1993).

An election may be made to use the alternative depreciation system (basically, the straight-line method over generally longer prescribed lives). An election to use the straight-line method over the regular recovery period is also available for property subject to the 200% or 150% declining-balance method. Alternatively, taxpayers may elect to use the 150% declining-balance method over the regular recovery period, rather than the 200% declining balance method, for all property other than real property.

Separate methods and periods of cost recovery are specified by statute and IRS guidance for certain tangible personal and real property used outside the United States (under the alternative depreciation system).

Tax depreciation generally does not conform to book depreciation. Further, tax depreciation generally is subject to recapture on the sale or disposition of certain property, to the extent of gain, which is subject to tax as ordinary income. The cost of most intangible assets is capitalized and amortized ratably over 15 years.

Some capital expenditures are not covered under the depreciation rules; instead, they are handled through special statutory amortization rules. Expenditures such as organization costs, start-up costs, research and development expenses, and depletion for natural resources, are recovered through amortization deductions. The capitalized cost of goodwill and many other intangibles obtained in connection with the acquisition of a trade or business are amortized over a 15-year period beginning in the month of acquisition.

Also, immediate expensing of certain business property up to a limited amount defined by statute is available for taxpayers that place in service a limited amount of business assets. During recent years, the expensing 50% of business assets with a statutory life of 20 or fewer years, commonly known as “bonus depreciation”, has been made available for original use property as a tax incentive to stimulate the economy.

The Act replaced 50% bonus depreciation with 100% bonus depreciation and expanded the property eligible for such benefit by repealing the original-use requirement for certain property and including certain film, television, and live theatrical production property as qualified property. Thus, for certain new and used property acquired and placed in service after September 27, 2017, and before January 1, 2023 (January 1, 2024, for certain aircraft and longer production period property), taxpayers may expense immediately the entire cost of such property. For qualified property placed in service in calendar years 2023, 2024, 2025, and 2026 (2024, 2025, 2026, and 2027 for certain aircraft and longer production period property), 100% is reduced to 80%, 60%, 40%, and 20%, respectively.

Foreign Source Income Rules and Foreign Tax Credit

A U.S. corporation is taxed on its worldwide income and gains. In addition, income of a foreign affiliate may be attributed, as a deemed dividend, to the U.S. corporation under Subpart F rules. To provide relief from double taxation, the U.S. business may claim a foreign tax credit (FTC) or deduct foreign taxes paid or accrued. Only taxes based on net income or capital gains may be credited. Taxes that cannot be claimed as a credit may be deducted. The FTC is subject to separate limitations based on type of income. Excess credits may be carried

back one year and forward ten years. A company also may credit certain "deemed paid" foreign taxes related to foreign earnings from actual or imputed dividends.

For taxpayers with an NOL for the year, the FTC is of no value in such year. However, a benefit might be received either in an earlier year (through a refund of previously paid taxes) or a later year (through a reduction of future taxes). Note also that a taxpayer has the ability to switch from deduction to credit at any time in a 10-year period commencing when the foreign taxes were paid or accrued. Generally, an FTC may be carried back one year and, if not fully used, carried forward 10 years. Note: FTCs associated with GILTI inclusions may not be carried back or carried forward. FTCs (and foreign tax deductions) are disallowed for foreign taxes paid on amounts that are eligible for the new 100% DRD. The FTC system has numerous other limitations to mitigate potential abuses of the credit by the taxpayer.

Sourcing rules characterizing whether an item of income is U.S. source or foreign source are important since only the U.S. tax liability on foreign source income can be offset by the foreign tax credit. Additionally, foreign source losses that are netted against U.S. source income in one year can recharacterize foreign source income generated in a subsequent year as U.S. source income for purposes of computing the foreign tax credit limitation.

Move toward U.S. territorial tax system

Generally, a U.S. corporation is taxed on its worldwide income, including foreign branch income earned and foreign dividends when received. Double taxation is avoided by means of foreign tax credits; alternatively, a deduction may be claimed for actual foreign taxes that are paid.

A major element of the Act is the addition of a 100% deduction (DRD) for the foreign source portion of dividends received by U.S. corporate shareholders from certain foreign corporations, effective for distributions made after December 31, 2017. Foreign tax credits (and foreign tax deductions) are disallowed for foreign taxes paid on amounts eligible for the abovementioned 100% DRD.

Subpart F rules

In the case of controlled foreign corporations (CFCs), certain types of undistributed income are taxed currently to certain U.S. shareholders (subpart F income). With certain exceptions, subpart F income generally includes passive income and other income that is readily movable from one taxing jurisdiction to another (e.g., income that is separated from the activities that produced the value in the goods or services generating the income). In particular, subpart F income includes insurance income, foreign base company income, and certain income relating to international boycotts and other violations of public policy.

In situations in which the U.S. shareholder is a domestic corporation, the domestic corporate shareholder may claim a foreign tax credit (discussed above) for CFC-level foreign taxes paid with respect to subpart F income. Furthermore, certain rules track the E&P of a CFC that have been included in the income of U.S. shareholders as subpart F income so that such amounts (known as previously taxed income or PTI) are not taxed again when they are actually distributed to the U.S. shareholders.

PFIC rules

Income derived with respect to passive foreign investment companies (PFICs) also is subject to special rules designed to eliminate the benefits of deferral. A PFIC is defined as any foreign corporation if, for the tax year, 75% or more of its gross income is passive income (the 'income test') or at least 50% of its assets produce, or are held for the production of, passive income (the 'asset test'). For purposes of these tests, 'passive income' includes dividends, interest, gains from the sale or exchange of investment property, and rents and royalties (other than rents and royalties that are received from unrelated parties in connection with the active conduct of a trade or business). By contrast, income derived from the performance of services does not constitute 'passive income'.

There are three regimes under the PFIC rules: (i) the excess distribution regime, which is the default regime; (ii) the qualified electing fund (QEF) regime; and (iii) the mark-to-market regime. The latter two regimes are elective and cause the U.S. investor in the PFIC to be either taxed currently on its proportionate share of the PFIC's ordinary earnings and capital gains each year (i.e., the QEF regime) or taxed annually on the increase in value, if any, of the PFIC stock (i.e., the mark-to-market regime). U.S. shareholders generally are subject to special reporting requirements with respect to an investment in a PFIC.

If the U.S. investor does not make either a QEF or mark-to-market election with respect to its PFIC stock, the U.S. investor is subject to taxation under the default, excess distribution regime. Under this regime, 'excess distributions' are subject to special tax and interest charge rules. If a PFIC makes an actual distribution, the distribution generally will be treated as an excess distribution to the extent it exceeds 125% of the average of the distributions made with respect to the stock over the three immediately preceding years (or the U.S. person's actual or deemed holding period, if shorter). Furthermore, gains on dispositions of PFIC stock generally are treated as excess distributions. The excess distribution is allocated ratably to each day in the U.S. investor's actual or deemed holding period. Any amount allocated to a prior tax year in the holding period in which the foreign corporation qualified as a PFIC (a 'prior PFIC year') is subject to tax at the highest marginal tax rate in effect for that year. All other amounts are included in income currently as ordinary income.

The special tax amounts for prior PFIC years also are subject to an interest charge, which is designed to eliminate the benefit of the tax deferral that arises out of having an overseas investment for which no current U.S. income taxes are paid. Finally, PFICs can be owned indirectly through other entities, including other PFICs, under ownership attribution rules.

Dividends from PFICs do not qualify for the 100% DRD when received by U.S. corporate taxpayers or for the reduced rate of taxation on qualified dividend income when received by U.S. individual taxpayers.

Once a foreign corporation qualifies as a PFIC at any time during a U.S. person's holding period for stock in such foreign corporation, it remains a PFIC in such U.S. person's hands unless a timely QEF election or mark-to-market election is made. Alternatively, the U.S. investor could 'purge' the PFIC taint from the prior portion of its holding period (and pay any applicable tax and interest) or seek relief to file the relevant election retroactively as of the beginning of its holding period, if certain requirements are satisfied.

Three new significant tax regimes introduced by the new law should be noted.

Global Intangible Low-Taxed Income rules (GILTI)

U.S. shareholders of controlled foreign corporations (CFCs) have to include on a current basis the aggregate amount of certain income generated by its CFSs, regardless of actual repatriation, effective tax years beginning after 31 December 2017. Generally, this amount is the earnings and profits of the CFC not subject to Subpart F, reduced by a return for tangible assets. Losses in one CFC may offset income in another CFC for GILTI purposes.

The full amount of GILTI is includible in the U.S. shareholder's income, and generally is then reduced through a 50% deduction for corporate taxpayers in tax years beginning after 31 December 2017 and before 1 January 2026, and a 37.5% deduction in tax years beginning after 31 December 2025. A corporate taxpayer generally also can claim a credit for 80% of the foreign taxes associated with GILTI.

Foreign-Derived Intangible Income (FDII)

The Tax Act provides U.S. companies with a new permanent deduction in regards to Foreign-Derived Intangible Income (FDII). The incentive is available to C-corporations or corporations that have not made an S-election to be treated as a flow-through entity. The incentive allows C-corporations who generate income from foreign markets to deduct a portion of their eligible export income, or FDII. Thus the effective tax rate on such eligible export income after the FDII deduction is 13.125%. Beginning in tax years after 2025, the

deduction is reduced and the effective tax rate will be 16.406%. FDII is a new category of income and it does not have to come from intangible assets. Instead, the new tax law assumes a fixed rate of return on a corporation's tangible assets. Any remaining income is deemed to be generated by intangible assets.

The FDII deduction may represent a significant deduction for C corporations if they generate income from the sale of property for foreign use by unrelated parties. A sale includes any lease, license, exchange, or other disposition. FDII also applies to services provided to any foreign person. Many related-party property and service transactions are also eligible for the deduction, although special rules apply.

Both calculations are complex and require companies to keep track of the data needed.

Base erosion and anti-abuse tax (BEAT)

The Tax Act creates a new U.S. federal tax called the 'Base Erosion and Anti-abuse Tax' (BEAT). BEAT targets U.S. tax-base erosion by imposing an additional corporate tax liability on corporations (other than regulated investment companies [RICs], real estate investment trusts [REITs], or S corporations) that, together with their affiliates, have average annual gross receipts for the three previous years immediately preceding the current tax year of at least $500 million and that make certain base-eroding payments to related foreign persons during the tax year of 3% (2% for certain banks and securities dealers) or more of all their deductible expenses apart from certain exceptions. The most notable of these exceptions are the Net Operating Loss (NOL) deduction, the new Dividends Received Deduction (DRD) for foreign-source dividends, the new deduction for Foreign-Derived Intangible Income (FDII) and the deduction relating to the new category of Global Intangible Low-Taxed Income (GILTI), qualified derivative payments defined in the provision, and certain payments for services.

The BEAT is imposed to the extent that 10% (2019 through 2025, 12.5% in 2026 and beyond) of the taxpayer's 'modified taxable income' (generally, U.S. taxable income determined without regard to any base-eroding tax benefit or the base-erosion percentage of the NOL deduction) exceeds the taxpayer's regular tax liability net of most tax credits. The above percentages are changed to 11 % and 13.5%, respectively, for certain banks and securities dealers. After 2025, regular tax liability is reduced for all tax credits.

A base-eroding payment generally is any amount paid or accrued by the taxpayer to a related foreign person that is deductible, made to acquire property subject to depreciation or amortization, or for reinsurance payments. The category also includes certain payments by 'expatriated entities' subject to the anti-inversion rules of Section 7874. The provision is effective for tax years beginning after 31 December 2017.

Taxation of Foreign Corporations

A foreign corporation is any corporation that is not organized under the laws of a state or the District of Columbia. The income of a foreign corporation may be taxed under two separate tax regimes:

1. Income from U.S. sources and certain types of foreign source income that are effectively connected with a U.S. trade or business and are defined as Effectively Connected Income (ECI) are taxed at graduated U.S. corporation tax rates.
2. Certain types of U.S. source fixed determinable annual or periodic (FDAP) income are taxed at a flat rate of 30 percent of gross income, unless a lower treaty rate applies. Examples of FDAP include interest, dividends, royalties and annuity income.

A foreign corporation is subject to U.S. tax if it has U.S. source income, and if the company is engaged in a U.S. trade or business. If the foreign corporation is resident in a treaty country, the treaty may affect this determination. As a general rule, a foreign corporation will be subject to U.S. tax during the year if it has any U.S. source income. FDAP income will be taxed at 30 percent or the reduced treaty rate; ECI will usually be taxable by the United States only if, and to the extent that, the foreign corporation is engaged in a U.S. trade

or business. However, if the taxpayer can demonstrate that a “permanent establishment” has not been created (as defined in the relevant income tax treaty), then the U.S. taxation can generally be avoided if the taxpayer claims the benefits of the treaty.

Prior to the enactment of U.S. tax reform legislation on December 22, 2017 (the Act), a non-U.S. corporation engaged in a U.S. trade or business was taxed at a 35% U.S. corporate tax rate on income from U.S. sources effectively connected with that business (ECI). However, the Act significantly revised the federal tax regime. The Act permanently reduced the 35% corporate income tax rate on ECI to a 21% flat rate for tax years beginning after December 31, 2017. Certain U.S.-source income (e.g., interest, dividends, and royalties) not effectively connected with a non-U.S. corporation’s business continues to be taxed on a gross basis at 30%.

U.S. tax law imposes a 30% branch profits tax on a foreign corporation’s U.S. branch’s effectively connected earnings and profits (ECE&P) to the extent they are treated as distributed, based on any decrease in the branch’s U.S. net equity for the year. The branch profits tax may be reduced or eliminated under an applicable U.S. tax treaty. The tax does not apply in the year the foreign corporation terminates its U.S. trade or business. The purpose of the branch profits tax is to treat U.S. operations of foreign corporations in a manner similar to U.S. corporations owned by foreign persons – that is, it is a proxy for the U.S. tax on dividends paid by a U.S. subsidiary to a foreign person.

Permanent Establishment Rule and Business income

A foreign corporation resident of a treaty country conducting business in the United States is normally subject to U.S. income tax on business income – but only if it has a permanent establishment in the United States (as defined by the applicable treaty), and then, only to the extent that such income is attributed to such permanent establishment. In general, a foreign corporation’s U.S. agent’s office location is not considered a permanent establishment unless the agent regularly exercises power to negotiate and conclude contracts, or has inventory which he or she regularly sells on behalf of the foreign company.

To the extent attributable to a permanent establishment, a foreign corporation’s U.S. source business income and gains are taxed on the same basis and at the same rates as a U.S. corporation. Business income is generally defined as income “effectively connected” with the conduct of a trade or business in the United States. A foreign corporation may claim all ordinary and necessary business expenses associated with the production of ECI, including certain head office expenses.

In certain circumstances, foreign businesses may consider making protective filings with the IRS related to their exposure to taxation in the U.S. including protection of the right to claim deductions and credits). A protective return also starts the running of the statute of limitations on the right of the IRS to assess taxes. This option should be analyzed carefully to determine the circumstances when it should be considered.

Non-business income and FIRPTA and related withholding taxes

Certain types of FDAP income are taxed at a flat rate of 30 percent or lower treaty rate. FDAP income is income not effectively connected with the conduct of a U.S. trade or business, including interest, dividends, rents, royalties, annuities and gains from the sale of certain property. The trend with recently updated U.S. tax treaties is to provide an exemption from withholding taxes for dividends if a foreign corporate entity owns a majority stake in a U.S. C corporation. Further, the trend has also been to provide for an exemption from withholding taxes on royalty payments to encourage cross-border investment. Gains from the sale of U.S. real property are subject to tax under the Foreign Investment in Real Property Tax Act (FIRPTA) provisions of the tax law. A foreign person’s gain or loss on the sale or other disposition of a U.S. real property interest (USRPI) is taxed under FIRPTA as if the sale were effectively connected with the conduct of a U.S. trade or business.

FIRPTA gain recognition may be required even if the disposition is in an otherwise nontaxable transaction. A USRPI includes direct and indirect ownership of U.S. real property through a U.S. real property holding

company (USRPHC). A USRPHC is a domestic corporation whose U.S. real estate assets comprise greater than 50 percent of the corporation's total business and worldwide real estate assets. A withholding tax of 15 percent of the gross sales price is generally required on the disposition of a USRPI by foreign persons; partnerships must withhold a higher percentage (up to 37 percent) of the gain reported on the disposition under partnership withholding tax rules. It is possible to obtain from the IRS a withholding certificate that reduces or eliminates the otherwise required withholding. Gain on the sale of stock of a USRPHC is also taxable under FIRPTA.

Capital gains tax

For corporations, the excess of the net gains from the sale of capital assets over net losses from the sale of assets or net capital gains is taxed at the same rates applicable to ordinary income. However, capital losses may only be used to offset capital gains and the excess of losses over gains may be carried back three years or forward five years. Losses must be applied to the earliest carry-back year before any carry forwards may be used.

For dispositions of personal property and certain nonresidential real property used in a trade or business, net gains are first taxable as ordinary income to the extent of the previously allowed or allowable depreciation or amortization deductions, with any remainder generally treated as capital gain. For other trade or business real property, net gains generally are taxed as ordinary income to the extent that the depreciation or cost recovery claimed exceeds the straight-line amount, with any remainder treated as capital gain.

Branch operations and the Branch Profits Tax (BPT)

Income from the operation of a branch in the United States will generally be considered effectively connected with the conduct of a U.S. trade or business. The branch would then be taxed at graduated rates, as previously discussed. However, additional taxes may apply, such as: branch profits tax (BPT), branch interest tax (BIT) and second level withholding. The BPT is a 30 percent tax on the branch's income that is not reinvested in the U.S. operations. The rate may be reduced or eliminated by treaty and is a tax in addition to the graduated corporate tax. Gross income is computed from the branch's separate records. Expenses are allocated between the branch and the head office based on specific allocation rules described in tax regulations.

In addition to the BPT, a BIT is imposed at a 30 percent statutory rate on interest paid by or imputed to a U.S. branch with respect to a foreign corporation. The taxable interest amount represents the excess of the interest deduction over the interest paid. The rate may be reduced or eliminated by treaty.

Compliance and Reporting

U.S. corporate taxpayers are taxed on an annual basis. Corporate taxpayers may choose a tax year that is different from the calendar year. New corporations may use a short tax year for their first tax period, and corporations changing tax years also may use a short tax year.

The U.S. tax system is based on the principle of self-assessment. Legislation enacted in 2015 changed filing dates for corporate, partnership, and certain other returns filed for tax years beginning after December 31, 2015. As a result of the legislation, a calendar-year corporate taxpayer generally must file an annual tax return (generally Form 1120) by the 15th day of the fourth month following the close of its tax year (April 15). Such C corporations also receive a six-month automatic extension to file if a timely request is filed. Failure to timely file may result in penalties.

Information returns to be filed by partnerships. (generally Form 1065) are due by 15th day of the third month following the close of its tax year (March 15). Form 7004 may be filed to obtain an automatic six-month extension).

In recent years, the U.S. tax authorities have increased its scrutiny and enforcement of U.S. tax reporting requirements relating to foreign-owned entities. A U.S. corporation that is owned directly or indirectly by a 25% or more foreign shareholder must report related party transactions with its foreign shareholder and with foreign companies that are related to a foreign shareholder. Additionally, there are U.S. tax reporting requirements for the payment of U.S. source income to foreign persons. These reporting obligations apply regardless of whether there are withholding taxes on the payments. Further, foreign financial accounts of U.S. persons and entities must be reported if, in the aggregate, the highest balances of these accounts are greater than $10,000 at any time during the year. The U.S. tax authorities have proposed that these reporting requirements for foreign financial accounts may apply to non-U.S. persons "doing business" in the U.S. There are significant taxpayer penalties for noncompliance with applicable reporting requirements.

A taxpayer's tax liability generally must be prepaid throughout the year in four equal estimated payments and fully paid by the original due date of the tax return. For calendar year corporations, the four estimated payments are due by the 15th days of April, June, September, and December. For fiscal-year corporations, the four estimated payments are due by the 15th days of the fourth, sixth, ninth, and 12th month of the tax year. Generally, no extensions to pay are allowed. Failure to pay the tax by the due dates can result in estimated tax and late payment penalties as well as interest charges.

The installment payments must include estimates of regular corporate income tax and, for foreign corporations, U.S. effectively connected income. To avoid a penalty, corporations must calculate the installment payments based on at least 25% of the lesser of (i) the tax shown on the current tax return, or (ii) the prior year's tax liability, provided that the tax liability was a positive amount in the prior year and that such year consisted of 12 months.

Withholding and Financial and Non-Financial Foreign Entities (FACTA)

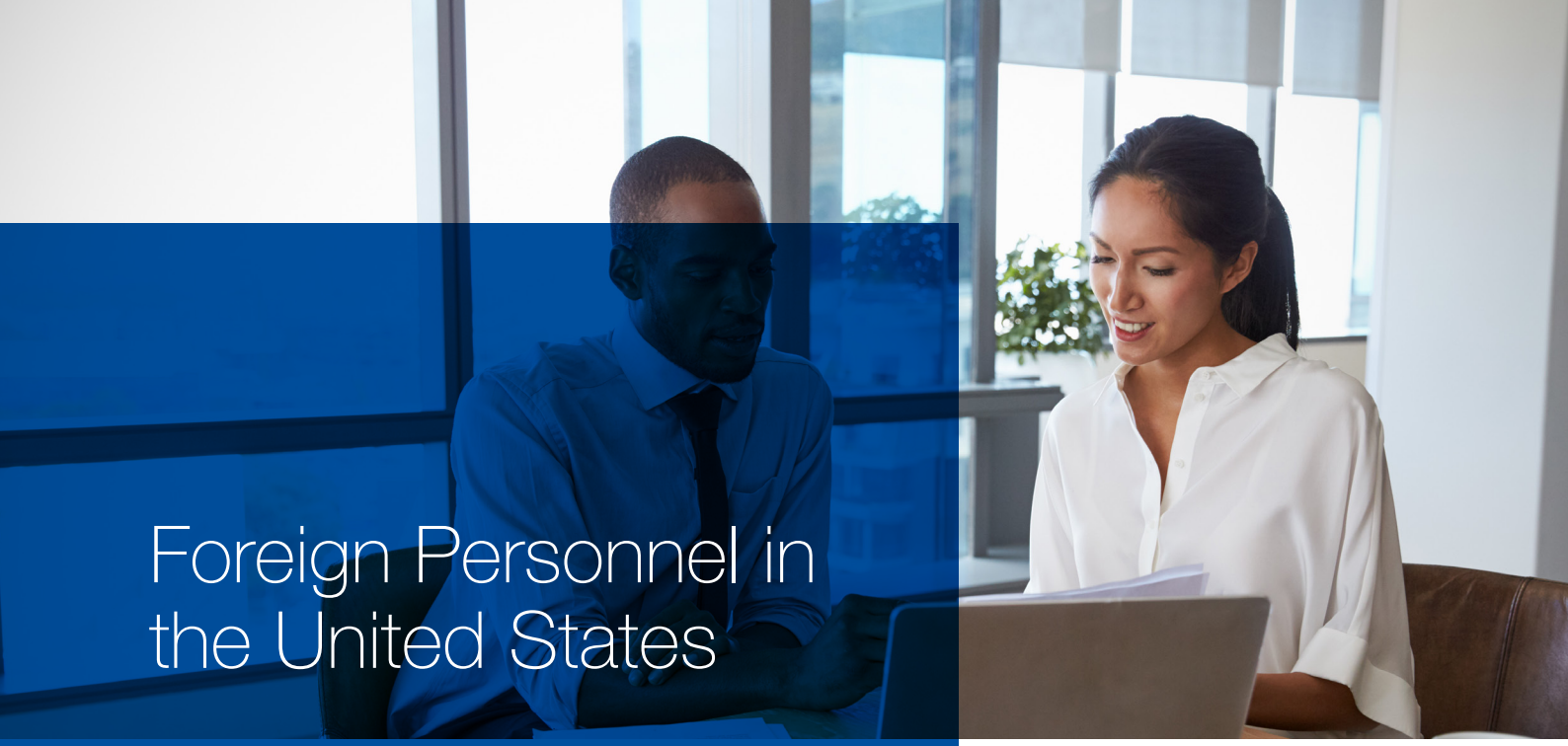
FATCA, the Foreign Account Tax Compliance Act, was enacted in 2010 to prevent and detect offshore tax evasion by U.S. persons. FATCA seeks to compel disclosure of U.S. persons' ownership of foreign accounts, interests, and assets. While the name may imply that FATCA is directed at financial institutions, many global companies outside the financial services industry may be affected if they have entities in their worldwide network falling under the purview of FATCA because they are investment entities, holding companies, or other types of entities that fall within the broad definition of 'financial institution' found in the FACTA regulations. Companies also may be subject to FATCA where they hold financial accounts outside the United States or have operational units that make or receive payments subject to FATCA.

Applicable to payments made after 2012 or instruments outstanding two years after March 18, 2012, a 30% withholding tax on any "withholdable payment" made to a "foreign financial institution" applies unless the institution agrees with the U.S. Internal Revenue Service to do all of the following:

1. Obtain information from each holder of each account maintained by the institution as is necessary to determine which, if any, of such accounts are "United States accounts";
2. Comply with verification and due diligence procedures of the U.S. Treasury;
3. Report on an annual basis information regarding U.S. accounts of the institution;
4. Comply with U.S. Treasury Secretary for additional information requests;
5. Withhold a 30% tax on payments to (a) accounts held by persons who do not cooperate with requests for information or (b) accounts held by other foreign financial institutions that have not entered into a similar agreement with the IRS to the extent that such payments are allocable to withholdable payments ("passthru payments")

U.S. persons making payments of “withholdable payments” after 2012 to a foreign person that is a non-financial foreign entity are required to obtain from the beneficial owner either (a) a certification that the beneficial owner of the payment does not have any substantial U.S. owners or (b) the name, address, and TIN of each substantial U.S. owner from the beneficial owner. The withholding agent is required to report this information to the IRS. If the withholding agent does not obtain such a certification or information or knows or has reason to believe it is false, the withholding agent is required to withhold a 30% tax from the payment. These rules do not apply to publicly traded corporations and affiliates, foreign governments, and foreign central banks.

Withholdable payments include U.S.-source fixed or determinable annual or periodical (“FDAP”) income, e.g., U.S-source dividends, interest, rents, royalties, and payments for services performed inside the U.S. as well as gross proceeds from the sale of assets that produce U.S.-source interest and dividends.



Foreign Personnel in the United States

Entry In to the United States

Foreign nationals seeking entry into the United States as non-immigrants are required to have visas that can be applied for at a U.S. Consular Office. A foreign national is referred to as an “alien” and, for U.S. income tax purposes, is classified as either a resident or nonresident alien. In the year of entry or departure, an alien may be classified as both a resident and a nonresident, and will have the option to file a part-year return, commonly referred to as a “dual status” return. The correct identification of the alien’s status is critical to determine the proper tax liabilities for the year.

An alien is categorized as a nonresident alien unless he or she meets one of the two residency tests. The first test automatically classifies an alien as an income tax resident in the United States if the person is a “lawful permanent resident,” a status obtained by holding a Green Card at any time during the year. The second test that would give the alien resident status is the substantial presence test. In order to meet the test, the alien must be physically present in the United States for at least 31 days during the current year and 183 days over a three-year look-back period. The 183 days test considers all days present in the current year, one-third of the days present in the first preceding year and one-sixth of the days present in the second preceding year. Partial days are counted as full days for the computation under this test. A tax resident’s income generally is subject to tax in the same manner as a U.S. citizen and must report all interest, dividends, wages, or other compensation for services, income from rental property or royalties and other types of income on the U.S. tax returns. All income from sources within and outside the U.S. must be reported. On the other hand, a nonresident alien usually is subject to U.S. income tax only on U.S. source income.

Income tax treaty definitions of residency can be used to override these residency definitions under U.S. tax rules. For example, the closer connection to a foreign country rule may apply in certain cases. This override is generally only guaranteed to be available with respect to Federal taxes as States are not bound to such treaties. In addition, if certain conditions are met, an alien can elect to be treated as a U.S. resident for the entire tax year – which can be advantageous under certain circumstances. While exceptions exist, many aliens who work in the United States are required to obtain sailing permits before leaving the country. These permits are issued by the IRS and serve as a certificate of compliance with U.S. tax rules and regulations.

U.S. taxation of resident aliens

A resident alien must report, and is taxed on, worldwide income in the same manner as a U.S. citizen. The U.S. worldwide income taxation system also assumes that new tax resident aliens have been a U.S. taxpayer their

entire lives. For example, sale of property acquired prior to the nonresident alien becoming a resident alien will take into consideration the original cost of the property when acquired even if many years before become a U.S. tax resident. For that reason, nonresident aliens that anticipate the possibility of becoming tax residents should strongly consider U.S. tax planning before establishing tax residency.

The U.S. tax system provides for unilateral relief from double taxation via its foreign tax credit rules. If the alien's income is subject to double taxation, the foreign tax credit system is designed to mitigate double taxation even if no income tax treaty with the foreign country exists. It is possible that if the foreign country has a higher tax rate than the United States or timing discrepancies between the receipt of the foreign income and the payment of foreign income taxes, a full credit will not be available. A taxpayer can take a foreign tax credit in the tax year he paid or accrued the foreign taxes, depending on the method of accounting.

Generally, a tax return is due by April 15 for the income earned in the prior calendar tax year. Resident aliens are eligible to claim the same deductions as U.S. citizens. Part-year resident aliens must allocate deductions between the resident and nonresident periods. State and local income tax may also apply. The U.S. tax rate brackets are adjusted annually to reflect inflation. The rates range from 10 percent to 37 percent on taxable income. The benefit of personal exemptions was available until 2017 but eliminated from 2018 to 2025. Certain itemized deductions are limited once adjusted gross income exceeds a certain threshold.

Reporting requirements for resident and nonresident aliens

Resident aliens are required to file an annual Federal tax return reporting their worldwide income for the previous calendar year. Most States will also require an annual tax return from its residents reporting their worldwide income. Finally, a few cities also require their residents to file annual tax returns. As a result, residents will have from one to three separate annual tax return filing requirements, and all generally due April 15 of the following year.

With few exceptions, resident aliens are generally not required to report U.S. or worldwide assets. The exceptions generally apply to the reporting of international assets such as non-U.S. bank and financial accounts and substantial ownership in non-U.S. entities or trusts where significant information may be required to be reported on an annual basis. Penalties for non-reporting of such information are significant.

Nonresident aliens are required to file an annual Federal tax return reporting their U.S. source income for the previous calendar year. Most States will also require nonresidents to file an annual return and pay taxes on income source in the particular state. State income sourcing rules are complex and need to be considered on a State by State basis. Nonresident alien returns are generally due by April 15 of the year following the earning of the income.

Estate and gift tax

A U.S. transfer tax (estate and gift tax) may be imposed on the transfer of property from a donor/decedent to their donee/heir and applies to both resident and nonresident aliens. For a resident alien, the gross estate includes all property of the decedent at the time of death, including real property located outside the United States. For a nonresident alien, the estate consists only of property situated in the United States, including shares of stock in U.S. corporations.

Residency for transfer tax purposes is determined differently than for income tax purpose; the "domicile" of the individual is the controlling factor, not the objective income tax residency rules. Domicile is generally understood to be a place where a person is living without a definite intention of leaving at any point in the future. Domicile is not determined as an objective test, but rather determined based on the individual facts and circumstance of each case.

Property is included in the estate at the fair market value at the date of death (or alternate date six months later), and certain deductions and liabilities may be claimed against the gross estate. An unlimited deduction may be claimed for transfers to a surviving spouse, but only if he or she is a U.S. citizen or legal permanent resident. For a resident alien only, the deduction can be obtained for an alien spouse by using a qualified domestic trust.

A credit is available against the estate tax liability of a U.S. citizen or a resident alien. The credit for 2020 $11,580,000 is sufficient to allow total property of $23,160,000 to be passed on without tax for a married couple. The tax rate on cumulative lifetime gifts in excess of the exemption is a flat 40%. The credit for 2021 is $11,700,000 per individual, while a married couple could shield $23,400,000 from federal estate or gift tax.

Nonresidents are entitled to only $60,000 in credit and so, given such a low threshold, estate tax planning for nonresidents is critical. The use of foreign corporations to hold U.S. property can be an efficient planning strategy in some cases, but not in all as in some cases the holding of the property directly by a nonresident could yield better short term tax results. Also, U.S. estate tax treaties generally provide more favorable treatment.

There are various reporting requirements for foreign gifts to U.S. donees and for transfers by U.S. donors to foreign trusts. These requirements are designed to keep the U.S. government informed of cross-border transfers of funds.

Employees' rights

Over its history, the U.S. Congress has enacted a number of laws giving specific protection and rights to employees. Additional protections were added by agency rulemaking and court decisions. Individual states and local governments also enacted laws that complement or extend benefits beyond those mandated by the federal government. These restrictions on businesses and benefits to the employees include:

- minimum wage and maximum hour rules,
- nondiscrimination in employment practices,
- pension guarantees,
- collective bargaining rights,
- notice of termination protection,
- health and safety requirements,
- unemployment compensation,
- disability benefits, and
- nondiscrimination against lower-compensated employees in the benefits provided.

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability or genetic information. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

The most financially significant of these programs is the Social Security Act that provides retirement, disability and health benefits. The program is funded by a payroll tax imposed on both the employer and the employee at a tax rate of 7.65 percent. The 6.2 percent Federal Insurance Contributions Act (FICA) rate applies to the first $142,800 of 2021 wages (indexed for inflation). The Medicare rate (1.45 percent) applies to all wages,

since there is no limit on the amount of earnings subject to the Medicare portion of the tax. Self-employed individuals pay self-employment tax based on a tax rate of 12.4 percent on income up to $142,800 in 2021 and a Medicare rate of 2.9 percent on all self-employed income. Resident and nonresident aliens with U.S. source wages or salary compensation income are subject to these taxes.

Totalization agreements on social security

A network of bilateral Social Security agreements coordinate the U.S. Social Security program with comparable programs in other countries. These “totalization agreements” eliminate dual Social Security taxation, occurring when a worker from one country works in another country and is required to pay Social Security taxes to both countries on the same earnings. The agreements also help fill gaps in benefit protection for workers who divided their careers between the United States and another country. If a Social Security agreement assigns coverage of the employee’s work to the U.S., the Social Security Administration issues a U.S. Certificate of Coverage. The certificate serves as proof that the employee and employer are exempt from the payment of Social Security taxes to the foreign country.

Directors

For corporations, at least one director is required. Certain states may require a Board chair position and, where the corporation is held by more than one shareholder, more than one director. Certain states may also require statutory officers such as President, Chief Financial Officer, Treasurer and Secretary. For an LLC, the entity must be managed by the members, or managed by a manager appointed in the operating agreement. An in-country director is not a requirement in the U.S.

State and Local

Introduction

U.S. tax reporting requirements and methods vary between the 50 states and the District of Colombia. Most states tax based on taxable net income with the federal taxable income as a starting point for the tax calculation. Many states, however, require adjustments to get from Federal taxable income to taxable income in the state. Other states tax based upon gross receipts or gross margin, or some variation thereon. It is also noteworthy that many states do not consider themselves bound by the provisions of U.S. mutual income tax treaties. Taxpayers need to analyze whether states follow U.S. mutual income tax treaties. Some states limit the application of tax treaties to certain provisions. The following is a summary of key concepts in U.S. state taxation.

Nexus

Nexus refers to a taxpayer's minimum contacts or activity within a state jurisdiction such that the jurisdiction may legally levy a tax against the entity. This is sometimes referred to as a "doing business" standard because many jurisdictions levy income/franchise taxes for the privilege of doing business in the jurisdiction. Often the definition of what is considered doing business is expansive and includes broad language such as "any act whatsoever of man in furtherance of profit." However, these nexus or doing business standards are applied in much more fundamental terms as the presence of employees, ownership of real (immovable) or personal (tangible) property or the generation of revenue within the jurisdiction. Any of these three will make it permissible for a state to impose a tax. Some states have gone even further than this "physical presence" triumvirate and hold that nexus may even occur in the absence of physical presence in a jurisdiction. This may occur when a business derives income from intangibles (inchoate rights) such as royalties and interest income from contracts or other rights within a jurisdiction. For example, many states utilizing the economic nexus standard will seek to tax entities deriving income from royalties for the use of trademarks or patents in a state even though no physical property or employees of the taxpayer are present.

Conformity

Almost all states impose an income/franchise tax that has a U.S. federal income tax starting point for purposes of calculating the state tax base. Every state jurisdiction is following its own approach for conforming with federal tax rules and regulations. Thus, taxpayers and their advisors have to analyze conformity for each state jurisdiction. For instance, although the federal Tax Cuts and Jobs Act (TCJA) has been enacted in 2018, many states have yet to issue guidance explaining how they conform to key provisions of the law, particularly those

pertaining to international income. State taxation of GILTI (Global Intangible Low Taxed Income) can be far more aggressive than on the federal level as states might not accept the 50% percent deduction or foreign tax credits paid. Also, some states might not allow a deduction for Foreign Derived Intangible Income.

Sales tax

Almost every state levies a tax for the purchase or use of goods or services within their jurisdiction. This is known as the sales and use tax. The tax is typically collected by the vendor of goods or provider of services on behalf of the purchaser and remitted directly to the state. This is called the sales tax. In some instances, especially those where a vendor does not have sufficient nexus with a jurisdiction to be subject to the collection and remittal obligations, the purchaser is required to remit a use tax for goods and services first used and stored in the jurisdiction. As a result of the Wayfair decision in June of 2018, many states now have laws that provide that sales tax nexus is created if certain dollar/transaction thresholds are exceeded from retail sales into the state. A remote seller including vendors located outside the U.S. or out-of-state vendors are required to register for sales tax purposes in a state when the sales and/or transaction thresholds are exceeded.

The general rule is that all sales of personal (tangible) property are subject to the sales and use tax unless specifically exempted (many states provide exemptions as incentives for manufacturers or other important industries) and all sales of services are exempt unless specifically taxed. It is noteworthy to mention that wholesales are exempt from sales tax in many states as well. However, vendors need to collect a sales tax exemption certificate from purchaser and many states require wholesalers to register for sales tax purposes and remit sales tax returns although these might be nil-returns when they only do wholesale.

Income/Franchise tax

As already mentioned, states levy an income and/or franchise tax. The franchise tax is typically imposed for the privilege to do business in a state. Taxpayers typically pay both or the higher of the two in states where both taxes are imposed. Income taxes are levied on a net income tax calculation that has a starting point of either Line 28 or Line 30 of the U.S. Corporation Income Tax Return (Form 1120). From this starting point, certain items of income or expense may be required to be deducted or added back to the federal calculation. This will yield state taxable income. Franchise taxes are taxes levied for the privilege of exercising corporate franchise (doing business in corporate form or as a limited liability entity) and are levied on the amount of capital apportioned to the jurisdiction or other indicators.

Both income and franchise taxes (income/franchise) are apportioned. That is, the state seeks to tax only the portion of income or capital from within its borders – this is called apportionment of income. States apportion income by using up to three different factors (property, payroll and receipts) that are measured by a fraction the numerator of which is the amount of the factor in a given state and the denominator is the amount of the factor in all states. The three factors are then averaged together or weighted in some manner. During the last decade more and more states have abandoned using three equally-weighted factors and now use only a single-factor based on receipts. This is believed to favor in-state business over out-of-state businesses because in-state businesses are not penalized for having more property and employees in the state relative to their out-of-state competitors.

Cities may also impose income taxes.

Property Tax

Counties, cities and other state governmental subdivisions also enforce and collect property taxes, typically assessed to all real property and to business use of non-real property.

Credits and Incentives

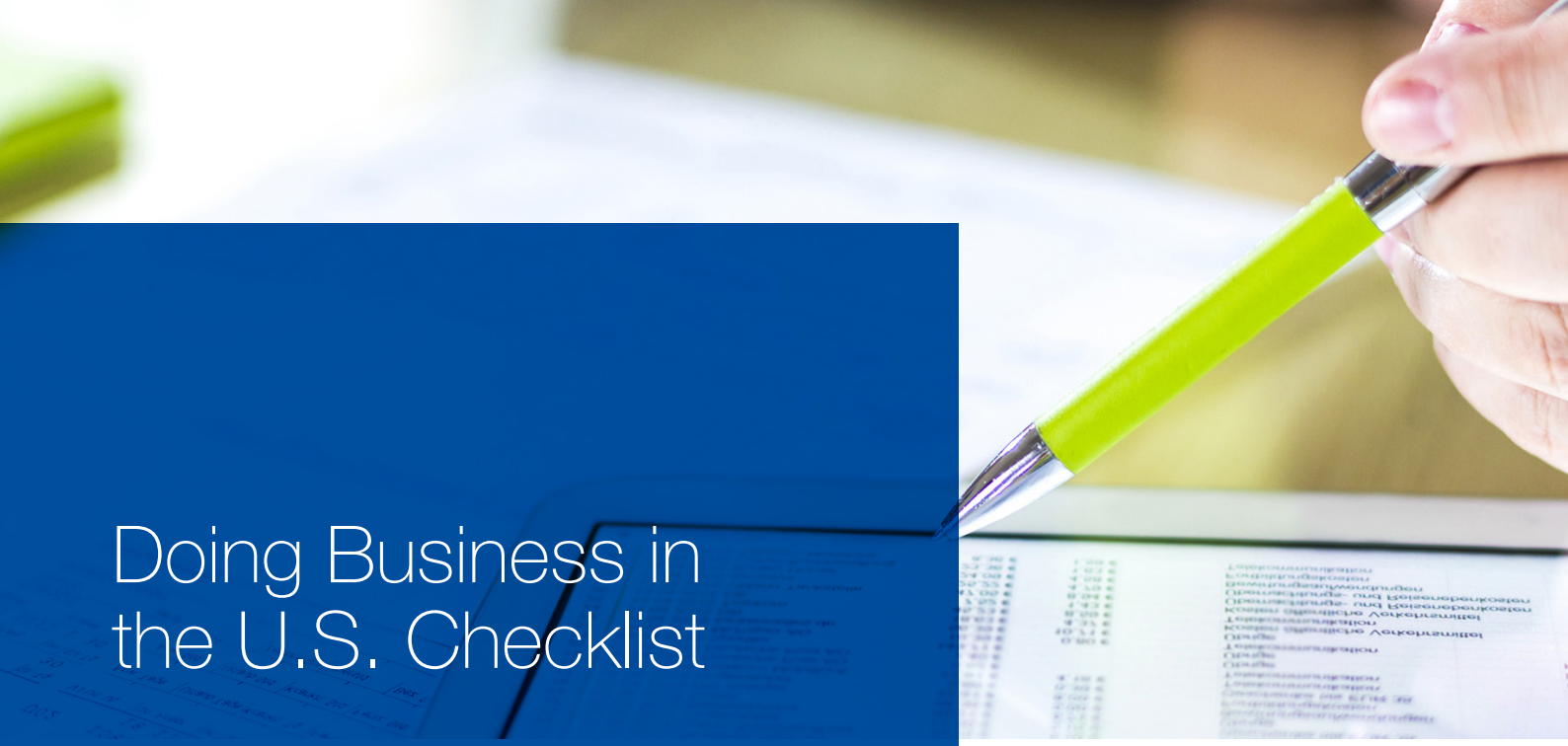
States will compete among one another and with other countries for capital investment and job creation with the use of tax credits and incentives. States will abate or refund taxes to create investment. Some incentives must be negotiated in advance of an announcement that a location decision has been made, these are commonly referred to as discretionary incentives, while other incentives may be available even after a company locates in a jurisdiction, these are called statutory incentives. A company considering making a significant capital investment or hiring should discuss credits and incentives with their tax advisors.

Energy Efficient Tax Incentives

The "Database of State Incentives for Renewables & Efficiency" (**www.dsireusa.org**) is a comprehensive source of information on incentives and policies that support renewables and energy efficiency in the U.S.. Information is provided for programs on a state and federal level. The database is operated by the North Carolina Solar Center at NC State University and information is provided by a number of governmental agencies such as the U.S. Department of Energy, the U.S. Environmental Protection Agency and the U.S. Department of Housing and Urban Development.

Incentives include

- Business Energy Investment Tax Credits
- Commercial Building Revitalization Programs
- Fannie Mae Green Financing – Loan Program



Doing Business in the U.S. Checklist

Doing Business in the U.S. Checklist

	Assigned to	Due date for completion
Market research/Feasibility Study/Cost-Benefit Analysis		
Determine market strategy • Product • Pricing • Quality of the product • Distribution • Marketing		
Product evaluation and potential adjustment to the U.S. market • Compliance with relevant regulatory requirements		
Identify (professional) service providers • Tax/Accounting • Legal • Customs (tangible product import) • Insurance company • Distributor (tangible product) • Marketplace facilitator (tangible product sales)		

	Assigned to	Due date for completion
Determine how to enter the U.S. market • Without legal entity in the US — Distributor — Sales Agent • With legal entity in the US — US Corporation or partnership — Joint Venture with U.S. company — Acquisition of U.S. company This includes a discussion with the tax advisor on how to optimize the structure to minimize the overall tax burden.		
Discuss Financial and Tax DD needs with accounting firm in case it is planned to acquire a U.S. company		
Site selection for office, production site, including planning for moving in date/beginning and ending of construction, if applicable		
Determine financing needs		
R&D credits, subsidies from federal and/or states		
Financing		
Incorporation of U.S. entity		
Registrations for federal and tax purposes (Employer Identification Number, Authorizations to do business, Registrations for Sales and Use Tax and Corporate Income Tax purposes)		
Determination of filing requirements on a federal, state and local level including -----		
Determine first time filing and frequency of filing		
Discuss Transfer Pricing requirements with tax advisor including the need for annual updates		
Prepare Tax Calendar to be in compliance with due dates for filing		
Opening U.S. Bank Account		
Payroll Provider		
Staffing and recruiting agency		
Logistics company		

	Assigned to	Due date for completion
Insurance company		
Evaluate legal risks • Product liability • Leasing contracts • Patents • Trademarks		
Hiring personnel • Permissions to work in the U.S. for foreign personnel • Health Insurance, Pension • Compliance with anti-discrimination laws		
Tax planning for personnel in the US		
Tax planning for owners/shareholders of the U.S. company		
Accounting (Internal or outsourced)		
Budgeting		
Ongoing tax planning • Federal and state taxes • Expatriates • Estate planning for owners and senior management		
Ongoing controlling of U.S. activities • Early warning • Internal control system • Change in investment strategy • IT security		

PKF North America Contacts

PKF O'Connor Davies

www.pkfod.com
Tel: +1 212 286 2600

Connecticut: Shelton, Stamford, Wethersfield
Maryland: Bethesda
New Jersey: Cranford, Livingston, Woodcliff Lake
New York: New York, Harrison, Newburgh
Rhode Island: Providence

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Bob Dandrow	rdandrow@pkfboston.com

Hutchinson & Bloodgood

www.hbllp.com
Tel: +1 818 637 5000

California: Los Angeles, San Diego, El Centro, Watsonville

Georgette Green	ggreen@hbllp.com
Luba Kvitchko	lkvitchko@hbllp.com

Appendix

Reference web sites

There are substantial resources that serve as reference and education tools about the issues surrounding doing business in the United States. It is important to understand that these resources have substantial information, but may or may not address your specific situation. The professionals at PKF North America are ready to answer your questions.

Agency or Resource	Website
American Institute of Certified Public Accountants (AICPA)	http://www.aicpa.org
Corporate and Individual Tax Rates	http://www.smbiz.com/sbr1001.html
Doing Business with NASA	http://www.nasa.gov/centers/ames/business
Education Department	http://www.ed.gov
Foreign Business Doing Business in U.S.	http://www.usa.gov.business/Foreign business.shtml
Inc. Magazine, Top 25 U.S. Cities	http://www.inc.com/magazine/20050501/Bestcities.html
Internal Revenue Service (IRS)	http://www.irs.gov/business
International Federation of Accountants (IFAC)	http://www.ifac.org
Public Company Accounting Oversight Board (PCAOB)	http://www.pcabus.org
Sarbanes-Oxley Explained	http://www.aicpa.org/sarbanes/index.asp
Securities and Exchange Commission (SEC)	http://www.sec.gov
Small Business Administration (SBA)	http://www.sba.gov
Social Security Administration Totalization Agreements	http://www.ssa.gov/international/agreementsoverview.html
State Governments and State Agencies Directory	http://www.statelocalgov.net
Transportation Department Business Services	http://www.dot.gov/business.html
U.S. Commerical Service (connects U.S. and International companies)	http://www.buyusa.gov/home
U.S. Chamber of Commerce	http://www.usachamber.com/default
U.S. Citizenship and Immigration Services	http://uscis.gov
U.S. Department of State	http://www.state.gov
U.S. Government Business Portal	http://www.business.gov
U.S. Government Regulatory Information	http://www.reginfo.gov
U.S. Patent and Trademark Office	http://uspto.gov

State Addresses and Contact Information

Alabama

Alabama Development Office
Industrial Development Office
401 Adams Avenue
Montgomery, AL 36130-4106

Tel: 334.242.0400
Fax: 334.242.0415
Toll-Free: 800.248.0033
Web: http://www.dced.state.al.is

Alaska

Alaska Department of Commerce, Community & Economic Development
550 W. Seventh Ave., Suite 1770
Anchorage, AK 99501-3510

Tel: 907.269.8110
Fax: 907.269.8125
Web: http://www.dced.state.ak.is

Arizona

Arizona Department of Commerce
Business Development & Attraction
1700 W. Washington St. Ste. 600
Phoenix, AZ 85007

Tel: 602.771.1124
Fax: 602.771.1207
Web: http://www.azcommerce.com

Arkansas

Arkansas Department of Economic Development
900 West Capital
Little Rock, AR 72201

Tel: 501.682.1121
Fax: 501.682.7394
Toll-free: 800.ARKANSAS
Web: http://www.1800arkansas.com

California

California Labor & Workforce Development Agency
California Business Investment Services
801 “K” St., Suite 2101
Sacramento, CA 95814-2719

Tel: 916.327.9064
Fax: 916.322.0614
Web: http://www.labor.ca.gov

Colorado

Colorado Office of Economic Development
International Trade Office
1625 Broadway, Suite 2700
Denver, CO 80202-4725

Tel: 303.892.3840
Fax: 303.892.3848
Web: http://www.advancecolorado.com

Connecticut

Connecticut Department of Economic & Community Development
International Division
505 Hudson Street
Hartford, CT 06106

Tel: 860.270.8067
Fax: 860.270.8016
Web: http://www.ct.gov/ecd

Delaware

Delaware Economic Development Office
Business Development Section
99 Kings Highway
Dover, DE 19901

Tel: 302.739.4271
Fax: 302.739.5749
Web: http://www.state.de.us/dedo

District of Columbia

Office of Planning & Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004

Tel: 202.727.6365
Fax: 202.727.6703
Web: http://www.dcbiz.dc.gov

Florida

Enterprise Florida Inc.
800 N. Magnolia Ave.
Suite 1100
Orlando, FL 32803

Tel: 407.956.5600
Fax: 407.956.5599

Georgia

Georgia Department of Economic Development
International Trade Division
75 Fifth Street, NW Suite 1200
Atlanta, GA 30308

Tel: 404.962.4000
Fax: 404.962.4142
Web: http://www.georgia.org

Hawaii

Hawaii Department of Business, Economic Development & Tourism
Service Trade Branch
P.O Box 2359
Honolulu, HI 96804

Tel: 808.586.2423
Fax: 808.587.2790
Web: http://www.hawaii.gov/dbet

Idaho

Idaho Department of Commerce
International Business Division
317 W. Main Street
Boise, ID 83735

Tel: 208.332.3570
Fax: 208.334.6430
Toll-free: 800.842.5858
Web: http://labor.idaho.gov

Illinois

Illinois Department of Commerce & Economic Opportunity
Office of Trade & Investment
100 West Randolph Street, Suite 3-400
Chicago, IL 60601-3218

Tel: 312.814.2828
Fax: 312.814.6581
Web: http://www.commerce.state.il.us

Indiana

Indiana Economic Development Corporation
1 North Capitol, Suite 700
Indianapolis, IN 46204-2288

Tel: 317.232.8800
Fax: 317.232.4146
Toll-free: 800.463.8081
Web: http://www.in.gov/iedc

Iowa

Iowa Department of Economic Development
International Office
200 East Grand Avenue
Des Moines, IA 50309

Tel: 515.242.4700
Fax: 515.242.4809
Web: http://www.iowalifechanging.com

Kansas

Kansas Department of Commerce
1000 SW Jackson Street, Suite 100
Topeka, KS 66612-1354

Tel: 785.296.3481
Fax: 785.296.5055
Web: http://www.kansascommerce.com

Kentucky

Kentucky Cabinet for Economic Development
Old Capital Annex
300 West Broadway
Frankfort, KY 40601

Tel: 502.564.7140
Fax: 502.564.3256
Toll-free: 800.626.2930
Web: http://www.thinkkentucky.com

Louisiana

Louisiana Economic Development
1051 North Third Street
Baton Rouge, LA 70802-5239

Tel: 225.342.3000
Fax: 225.342.5349
Toll-free: 800.450.8115
Web: http://www.lded.state.la.us

Maine

Department of Economic & Community Development
Maine Office of Business Development
59 State House Station
Augusta, ME 04333

Tel: 207.287.5701
Fax: 207.541.7420
Toll-free: 800.541.5872
Web: http://www.mainebiz.org

Maryland

Maryland Dept. of Business & Economic Development
Office of International Business
World Trade Center
401 East Pratt Street
Baltimore. MD 21202

Tel: 410.767.6300
Fax: 410.333.6792
Toll-free: 888.CHOOSEMD (888.246.6736)
Web: http://www.choosemaryland.org

Massachusetts

Massachusetts office of International Trade & Investment
Boston Fish Pier
212 Northern Avenue
East Building 1, Suite 300
Boston, MA 02210

Tel: 617.830.5400
Fax: 617.457.7851

Michigan

Michigan Economic Development Corp.
300 North Washington Square
Lansing, MI 48913

Tel: 517.335.5975
Fax: 517.241.0745
Toll-free: 888.522.0103
Web: http://www.medc.michigan.gov/som

Minnesota

Department of Employment & Economic Development
Minnesota Trade Office
First National Bank Building, Suite E200
332 Minnesota Street
St. Paul, MN 55101-1351

Tel: 651.297.4222
Fax: 651.296.3555
Toll-free: 800.657.3858
Web: http://www.exportminnesota.com

Mississippi

Mississippi Development Authority
P.O. Box 849
Jackson, MS 39205

Tel: 601.359.3155
Fax: 601.359.3605
Web: http://www.mississippi.gov

Missouri

Missouri Department of Economic Development
301 W. High St.
P.O. Box 1157
Jefferson City, MO 65102

Tel: 573.751.4962
Fax: 573.751.7384
Toll-free: 866.647.3633
Web: http://www.ded.mo.gov

Montana

Montana Department of Commerce
Business Resources Division
301 South Park Ave.
P.O. Box 200501
Helena, MT 59620-0501

Tel: 406.841.2700
Fax: 406.841.2701
Web: http://www.commerce.mt.gov

Nebraska

Nebraska Department of Economic Development
Office of International Trade & Investment
P.O. Box 94666
301 Centennial Mall South, 4th Floor
Lincoln, NE 68509-4666

Tel: 800.426.6505
Fax: 402.471.3778
Web: http://www.neded.org

Nevada

Nevada Commission on Economic Development
555 East Washington Avenue
Suite 5400
Las Vegas, NV 89101

Tel: 702.486.2700
Fax: 702.486.2701
Web: http://www.diversifynevada.com

New Hampshire

New Hampshire Economic Development Division
Business Resource Center
172 Pembroke Road
Concord, NH 03302-1856

Tel: 603.271.2591
Fax: 603.271.6784
Web: http://www.nheconomy.com

New Jersey

New Jersey Commerce, Economic Growth &
Tourism Commission
20 West State Street
P.O. Box 820
Trenton, NJ 08625-0820

Tel: 609.777.0885
Fax: 609.633.3675
Web: http://www.newjerserycommerce.org

New Mexico

New Mexico Economic Development Department
1100 St. Francis Drive, Suite 1060
Santa Fe, NM 87505

Tel: 505.827.0300
Fax: 505.827.0328
Toll-free: 800.374.3061
Web: http://www.edd.state.nm.us

New York

Empire State Development
International Division
30 South Pearl Street
Albany, NY 12245

Tel: 212.803.2300
Toll-free: 800.STATE.NY (800.782.8369)
Web: http://www.empire.state.ny.us/default.asp

North Carolina

North Carolina Department of Commerce
301 N. Wilmington Street
Raleigh, NC 27699-4301

Tel: 919.733.4151
Fax: 919.733.9299
Web: http://www.nccommerce.com

North Dakota

North Dakota Department of Commerce
P.O. Box 2057
1600 East Century Avenue, Suite 2
Bismarck, ND 58503

Tel: 701.328.5300
Fax: 701.328.5320
Web: http://www.commerce.nd.com

Ohio

Ohio Department of Development
Office of Business Development
77 South High Street, 29th Floor
Columbus, OH 43215-6130

Tel: 614.466.4551
Fax: 614.463.1540
Toll-free: 800.848.1300
Web: http://www.odod.state.oh.us

Oklahoma

Oklahoma Department of Commerce
Global Business Services
900 North Stiles Ave
Oklahoma City, OK 73104

Tel: 405.815-6552
Fax: 405.815.5199
Toll-free: 800.879.6552
Web: http://www.okcommerce.gov

Oregon

Oregon Economic & Community Development Department
775 Summer Street, NE, Suite 200
Salem, OR 97301-1280

Tel: 503.986.0123
Fax: 503.581.5115
Web: http://www.oregon.gov

Pennsylvania

Pennsylvania Department of Community & Economic Development
Office of International Business Development
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Tel: 717.787.7190
Fax: 7 17.772.5106
Toll-free: 866.466.3972
Web: http://www.newpa.com

Rhode Island

Rhode Island Economic Development Corp.,
International Trade Division
315 Iron Horse Way, Suite 101
Providence, RI 02908

Tel: 401.278.9100
Fax: 401.273.8270
Web: http://www.riedc.com

South Carolina

South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201-3200

Tel: 803.737.0400
Fax: 803.737.0418
Web: http://www.sccommerce.com

South Dakota

Governor's Office of Economic Development
711 East Wells Avenue
Pierre, SD 57501-3369

Tel: 605.773.3301
Fax: 605.773.3256
Toll-free: 800.872.6190
Web: http://www.sdgreatprofits.com

Tennessee

Tennessee Department of Economic & Community Development
312 Rosa L Parks Avenue
11th Floor
Nashville, TN 37243

Tel: 615.741.1888
Fax: 615.741.7306
Web: http://www.tnecd.gov

Texas

Office of the Governor
Economic Development & Tourism
International Business & Recruitment
P.O. Box 12428
Austin, TX. 78711-2428

Tel: 512.936.0101
Fax: 512.936.0080
Web: http://www.governor.state.tx.us

Utah

Governor's Office of Economic Development
International Business Development
324 S. State Street, Suite 500
Salt Lake City, UT 84111

Tel: 801.538.8700
Fax: 801.538.8888
Web: http://gped.utah.gov

Vermont

Vermont Agency of Commerce & Community Development
National Life Building, 6th Floor, Drawer 20
Montpelier, VT 05620

Tel: 802.828.3211
Fax: 802.828.3383
Toll-free: 800.622.4553
Web: http://www.dca.state.vt.us

Virginia

Economic Development Partnership
P.O. Box 446
Richmond, VA 23218-0446

Tel: 804.371.8200
Fax: 804.371.8111
Toll-free: 866.248.8814
Web: http://www.dba.state.va.us

Washington

Washington State Department of Community, Trade & Economic Development
Business & Project Development
P.O. Box 42524
128 10th Ave. SW
Olympia, WA 98504-2525

Tel: 360.725.4100
Web: http://www.choosewashington.com

West Virginia

Development Office
Capitol Complex, Building 6, Room 553
1900 Kanawha Blvd. East
Charleston, WV 25305-0311

Tel: 304.558.8000
Fax: 304.558.0900
Toll-free: 800.982.3386
Web: http://www.wv.gov

Wyoming

Wyoming Business Council
214 West 15th St.
Cheyenne, WY 82002-0240

Tel: 307.777.2800
Fax: 307.777.2838
Toll-free: 800.262.3425
Web: http://www.wyomingbusiness.org

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right size
right solutions

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