

United States

Introduction

Our Location Offer

With more than 300 million people and the largest economy in the world, the United States is an attractive investment destination for any company. The American workforce ranks as one of the best educated, most productive and most innovative in the world. As a place to do business, the United States offers a predictable and transparent legal system, outstanding infrastructure, and access to the world's most lucrative consumer market. Key elements of the U.S. location offer include:

- * **Economy:** The United States has the largest economy in the world, with a per capita GDP of approximately \$46,500. The systems of regulation and taxation in the United States give foreign investors ample operational freedom, and the United States consistently ranks at or near the top of major indicators of an attractive business and investment climate.
- * **Consumer Market:** The United States accounted for 42 percent of the global consumer goods market in 2007, with a per capita disposable income of approximately \$35,000. The United States also maintains free trade agreements with 17 partner countries with a combined GDP of approximately \$5 trillion, giving foreign investors in the United States unparalleled access to large and diverse markets.
- * **Research and Development:** The United States is the global center for innovation, responsible for 40 percent of total worldwide research and development expenditure, and ranking first in the world for availability of venture capital. It is home to nearly three-fourths of living Nobel laureates, publishes over 60 percent of the world's "highly cited publications," and is responsible for nearly 40 percent of patented new technology created within the OECD.
- * **Education and Workforce:** The United States is home to the best higher education and research centers in the world, with more than 4,000 universities and colleges. More than 600,000 international students enroll in American institutions every year. Many community colleges in the United States have training programs tailored to investors who locate facilities in their area, while federal, state and local governments also spend billions of dollars on workforce training each year. The highly adaptable U.S. workforce leads the world in labor productivity per person employed.
- * **Transportation/Infrastructure:** The United States has the largest paved roadway system and railway network in the world, as well as the world's largest number of airports. Three of the world's top ten airports by air cargo volume are in the United States, including the busiest cargo airport in the world. The United States is also home to some of the world's busiest international bulk cargo and container ports.

Introduction to investment regime

It is the policy of the United States government to regulate foreign investment as little as possible. An open investment regime fosters economic growth, increases the competitiveness of companies, and promotes job creation. As international competition for capital intensifies, it becomes increasingly important for countries to offer investors a stable and non-discriminatory policy and regulatory environment. The United States continues to offer such an investment environment, and it seeks to encourage the development of similar policy regimes in other economies.

U.S. policies on foreign investment have changed little over the past several decades. The U.S. investment regime is characterized by a high degree of openness, and is based on the principle of national treatment. Foreign investors benefit from an open, transparent, and non-discriminatory investment climate. The United States also offers foreign investors non-discriminatory legal recourse in the event of an investment-related dispute; free transferability of capital and profits; guarantees against uncompensated expropriation; and advanced physical and financial infrastructure.

Investment priority plan/equivalent policy

The United States does not have a general policy of economic planning, nor does it as a general policy matter seek to influence the flow of private investment into specific areas of economic activity. Individual government programs may, however, provide incentives (in the form of grants or tax credits, for example) that encourage investment in particular areas of economic activity. For example, federal government programs include incentives for investment in research and development in the areas of renewable energy, high-speed rail, information technology, and broadband infrastructure. A multitude of additional incentive programs are administered by individual U.S. states.

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More information

Information about incentives and programs available to investors, including links to programs administered by U.S. states, is available at the website of the Department of Commerce's Invest in America program: <http://www.investamerica.gov>.

Regulation of foreign investment

Process for foreign entities/nationals to invest in our economy

The United States does not screen foreign investment. The United States has a longstanding policy of welcoming foreign investment and provides foreign investors non-discriminatory treatment both as a matter of law and policy. Foreign investors are generally free either to establish new businesses or to acquire existing ones, subject only to laws and regulations that are applicable to all firms, irrespective of nationality.

The Committee on Foreign Investment in the United States (CFIUS) is an inter-agency committee authorized to review mergers, acquisitions, and takeovers that could result in control of a U.S. business by a foreign person ("covered transactions"), in order to identify and mitigate any risk to U.S. national security posed by any such transaction. CFIUS reviews examine only M&A transactions, not greenfield investments, and generally commence with the voluntary submission of a notice by the parties to a proposed or pending transaction. CFIUS has up to 30 days to conduct an initial review of a notified covered transaction, focusing solely on genuine national security considerations. CFIUS concludes consideration of most covered transactions after only an initial review. If, however, national security concerns remain after the 30-day review, and in certain other circumstances, CFIUS may initiate a subsequent 45-day investigation. Only the President may prohibit a transaction. In those very rare cases in which CFIUS refers a case to the President for a final decision, the President has up to 15 days after CFIUS completes its investigation to make a decision.

More information about CFIUS, including links to, and summaries of, the applicable statute, executive order, and regulations, as well as additional published guidance on the CFIUS process is available at the website of the U.S. Department of the Treasury: <http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx>.

Does this apply to all investment or, are there differential treatment?

Foreign investors are generally free either to establish new businesses or to acquire existing ones, subject only to non-discriminatory, generally-applicable laws and regulations. Federal-level measures that treat foreign and domestic investors and investments differently are discussed in the next section.

Conditions of investment

Federal-level measures treat foreign and domestic investors and investments differently in only a small number of sectors. In most cases, the extent of differential treatment is narrow and does not prohibit foreign investment in the particular sector or subsector. A full description of each of these measures is available in the non-conforming measures annexes of recent U.S. BITs and FTAs, available at www.ustr.gov.

U.S. state and local governments maintain laws and regulations that can affect the operations of investments located in their territories. State laws outside the areas of company law, real estate, banking, and insurance (areas in which Congress has specifically delegated regulatory authority to the states) generally apply equally to all persons residing in a state and to all companies or other entities doing business in its territory. Most differences in the treatment of domestic and foreign investors at the state or local level are minor and can frequently be eliminated through incorporation in a particular state or locality. A few U.S. states restrict foreign ownership of land. The U.S. GATS schedule provides detail on such measures.

Investment promotion and facilitation

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The United States government encourages foreign investment as a matter of policy, but does not maintain an investment promotion agency. The Department of Commerce's Invest in America program, established in 2007, performs functions such as facilitating foreign investment inquiries and educating international investors about investment in the United States. As part of their work on broader issues of economic development, several federal government agencies engage in activities that encourage investment in the United States. The Economic Development Administration (EDA) of the U.S. Department of Commerce, for example, provides financial assistance to economically disadvantaged regions in the form of business loan guarantees and revolving loan funds. Other federal agencies that provide financial assistance for economic development are the Small Business Administration and the U.S. Department of Agriculture. Foreign-owned firms and foreign investors in the United States generally receive national treatment with respect to the limited number of federal government fiscal or financial incentives that are used to stimulate investment, productivity, and employment in the domestic economy. There are no significant programs at the federal level that provide non-financial economic development incentives.

The vast majority of incentives and other policy initiatives promoting domestic and foreign investment in the United States are maintained by state and local governments. State-level incentives are offered on a national treatment basis. State governments typically offer some combination of the following incentives to potential investors: financial incentives, such as direct loans, loan guarantees, and grants; incentives in relation to corporate income taxes, sales and use taxes, and property taxes; special incentives such as "enterprise zones" (which offer packages of incentives for businesses locating in a certain area), development credit corporations (which offer capital for business construction and expansion), and employment training; issue-specific programs such as high technology development; and non-financial assistance such as business consulting and research and development assistance. Some states also offer special services to foreign firms in the areas of language training, relocation assistance, and cultural assimilation.

More information about the process of investing in our economy

Information about foreign investment in the United States, including links to state-level investment promotion agencies, is available at the website of the Department of Commerce's Invest in America program: <http://www.investamerica.gov>.

Investment protection

Protection of property rights and conditions for expropriation

Property rights are protected in the United States by the United States Constitution and by the constitutions of individual states, as well as under federal, state, and local laws. The United States recognizes the sovereign power of governments to take private property for public use without the owner's consent (sometimes called the power of "eminent domain" or the power to expropriate). The "Takings Clause" of the Fifth Amendment of the U.S. Constitution limits the federal government's power of eminent domain by providing that private property shall not "...be taken for public use, without just compensation." Within its own jurisdiction, each state also possesses the power of eminent domain, subject to the limits in its constitution and the limits imposed by the Fifth Amendment. Federal and state laws provide procedures by which governments can take various forms of property.

U.S. trade and investment agreements and U.S. takings jurisprudence address two types of expropriation: direct and indirect. The U.S. Supreme Court has not established a fixed standard or test for determining the point at which regulation of property becomes a taking for which just compensation is due (an indirect expropriation). The Court has, however, identified several factors that it will examine when determining whether governmental regulation of property constitutes a taking: 1) the economic impact of the regulation on the owner; 2) the extent to which the regulation interferes with the owner's reasonable, investment-backed expectations; and 3) the character of the governmental action. Only in rare circumstances have non-discriminatory regulatory actions that were designed and applied to protect legitimate public health and welfare objectives (such as public health, safety, and the environment) been found by U.S. courts to constitute indirect expropriations.

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The legislature normally determines what constitutes "public use" for purposes of a government's execution of its eminent domain power. Courts are usually deferential to the legislature's "public use" determination. As long as the legislature has authority over an activity, it may exercise its eminent domain power with respect to that activity. The legislature may authorize the exercise of this power of eminent domain directly, may delegate this power to another governmental entity, or may delegate the power to private corporations promoting a public interest (e.g., public utilities). Both tangible and intangible interests (e.g., patents) have been found by U.S. courts to be property for the purposes of the Takings Clause.

The "just compensation" provision of the Takings Clause has been interpreted by U.S. courts to require that the owner of taken property be restored to the same pecuniary position he occupied just prior to the taking. Just compensation for a permanent taking is typically the fair market value of the property at the time of the taking. When compensation occurs after a taking, interest is typically paid to the owner to compensate for the delay. Property owners that successfully challenge a taking in litigation are entitled to be reimbursed for reasonable costs and expenses, which may include attorney fees, that are incurred as a result of such litigation.

More information

Protection of IPRs

Intellectual property is effectively protected by a comprehensive system of federal and state laws in the United States. The federal government has exclusive competence regarding patents, copyrights, and integrated circuit layout designs. Trademarks and service marks are principally protected by federal law, although state laws and common law also provide additional protection, particularly for unregistered marks. In addition, many states provide protection for trade names, either by statute or through the common law. Trade secrets are protected by state statute or common law. The majority of states have adopted the Uniform Trade Secrets Act.

The United States is a party to a large number of international intellectual property conventions, including the Paris Convention for the Protection of Industrial Property (Stockholm, 1967); the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971); the Universal Copyright Convention (Paris, 1971); the Patent Cooperation Treaty; the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite; the WIPO Copyright Treaty; the WIPO Performances and Phonograms Treaty; the International Convention for the Protection of New Varieties of Plants (1991); the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms; and the Convention Establishing the World Intellectual Property Organization.

The United States has fully implemented its obligations under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). The United States, for example, provides twenty years of patent protection from date of filing for all inventions, whether products or processes, in all fields of technology, provided that they satisfy statutory requirements for novelty, utility, and non-obviousness. The United States provides ten years of renewable protection for registered trademarks and service marks and imposes no special requirements encumbering the use of such marks. Geographical indications are protected in the United States through the trademark system. Federal statutes also protect industrial designs and plant varieties. The United States provides copyright protection consistent with the Berne Convention for literary and artistic works, including computer programs and data bases. For works created after 1978, the duration of copyright protection is the life of the author plus 70 years; where the work is anonymous, pseudonymous, or a work for hire, copyright protection extends 95 years from first publication or 120 years from creation, whichever expires first. Sound recordings are protected by copyright law in a manner fully consistent with the TRIPS Agreement. Integrated circuit layout designs are protected for a term of 10 years by federal statute. The states provide TRIPS-consistent levels of protection for trade secrets by statute and common law.

The United States provides extensive enforcement, both internally and at the border, for intellectual property rights. Severe criminal penalties (including prison sentences) are imposed on copyright pirates and trademark counterfeiters. Damages and injunctive relief (including provisional remedies) are available for infringement of patents, trademarks, service marks, copyrights, trade secrets, geographic indications of origin, plant varieties, industrial designs, and integrated circuit layout designs. The United States also provides extensive border enforcement measures for trademarks and copyrights through U.S. Customs and Border Protection and for patents and other forms of intellectual property rights through administrative proceedings before the U.S. International Trade Commission.

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More information

Additional information about U.S. intellectual property law and policy is available at the website of the United States Patent and Trademark Office: <http://www.uspto.gov/>.

Flow of funds

The U.S. exchange rate regime is free floating; the exchange rate of the dollar is determined freely in the foreign exchange market.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The U.S. exchange rate regime is free floating; the exchange rate of the dollar is determined freely in the foreign exchange market. Foreign exchange interventions are not formally ruled out in the United States, but they are rarely used. The Secretary of the Treasury is responsible for the formulation and implementation of international monetary and financial policy, including exchange market intervention policy. The Federal Reserve (Fed) has separate legal authority to engage in foreign exchange operations. The Fed's foreign exchange operations are conducted in close and continuous consultation and cooperation with the Treasury to ensure consistency with U.S. international monetary and financial policy. The Treasury and the Fed have closely coordinated their foreign exchange operations since early 1962, when the Fed commenced such operations at the request of the Treasury. Operations are conducted through the Federal Reserve Bank of New York, as fiscal agent of the United States and as the operating arm of the Federal Reserve System. Interventions are reported in the Treasury and Federal Reserve Foreign Exchange Operations quarterly bulletin.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

The United States generally imposes no restrictions on the repatriation of investment-related funds. In support of national security or foreign policy objectives (e.g. combating terrorism, limiting the proliferation of weapons of mass destruction, or restricting cross-border flows of illegal narcotics), the United States sometimes imposes restrictions on transactions between U.S. persons and designated foreign governments, entities, or persons. These restrictions could affect the repatriation of funds by foreign investors in the United States. More information on sanctions involving outflows of capital and investment can be found at the website of the Department of Treasury's Office of Foreign Assets Control (OFAC): <http://www.ustreas.gov/offices/enforcement/ofac/>.

All U.S. FTAs and BITs include an obligation to permit inward and outward transfers relating to an investment. The text of the transfers article that has been included in the investment chapters of recent U.S. FTAs and in recent U.S. BITs obliges each party to permit all investment-related transfers into and out of its territory to be made freely, without delay, and in a freely-usable currency valued at the market rate of exchange prevailing at the time of the transfer. These agreements do not include balance of payments exceptions, but they permit parties to restrict investment-related transfers in limited circumstances, including through the equitable, non-discriminatory, and good-faith application of national laws relating to bankruptcy, insolvency, or the protection of the rights of creditors; dealings in securities and other portfolio investments; criminal or penal offenses; financial reporting or record-keeping in relation to law enforcement or financial regulation; and ensuring compliance with orders or judgments in judicial or administrative proceedings.

Mechanisms to review decisions, and settle disputes

The United States does not screen foreign investment. Foreign investors are generally free either to establish new businesses or to acquire existing ones, subject only to laws and regulations that are applicable to all firms, irrespective of nationality. In general, all investment dispute settlement mechanisms available to a domestic investor are available to a foreign investor.

What, if any, mechanism do you have for foreign investors to settle disputes?

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In general, all investment dispute settlement mechanisms available to a domestic investor are available to a foreign investor. Investment disputes are usually resolved in domestic courts, although arbitration may be available depending on local law and practice and the wishes of the parties to the dispute. Investor-state disputes are also usually resolved in domestic courts, where available, although U.S. BITs and the investment chapters of U.S. FTAs permit foreign investors to opt for international arbitration in certain disputes. Under these agreements, an investor may choose to submit certain claims either to local courts or to international arbitration, but, in making such a choice, the investor may forfeit the right to bring the dispute before the other forum.

ICSID

The United States is a party to the ICSID convention, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), and the Inter-American Convention on International Commercial Arbitration (Panama Convention). The United States signed the ICSID Convention on August 27, 1965; the convention entered into force with respect to the United States on October 14, 1966.

More information

A summary of investor-State dispute settlement cases in which the United States has been a respondent party, as well as documents relating to each of these cases, is available at website of the Department of State, Office of the Legal Advisor (<http://www.state.gov/s/l/c3741.htm>). The same website also includes information about cases filed against other NAFTA parties (Canada and Mexico) under the investor-State dispute settlement provisions of that agreement.

International investment agreements

With;

Albania; Argentina; Armenia; Australia; Azerbaijan; Bahrain; Bangladesh; Bolivia; Bulgaria; Cameroon; Canada; Chile; Congo; Congo, Dem. Rep. of the; Costa Rica; Croatia; Czech Republic; Dominican Republic; Ecuador; Egypt; El Salvador; Estonia; Georgia; Grenada; Guatemala; Honduras; Jamaica; Jordan; Kazakhstan; Kyrgyzstan; Latvia; Lithuania; Mexico; Moldova, Republic of; Mongolia; Morocco; Mozambique; Nicaragua; Oman; Panama; Peru; Poland; Romania; Senegal; Singapore; Slovakia; Sri Lanka (ex-Ceylon); Trinidad & Tobago; Tunisia; Turkey; Ukraine; Uruguay;

Please provide a brief description of these IIAs, or your IIAs in general.

The United States negotiates BITs on the basis of a model, one substantively similar to the investment chapters of recent U.S. FTAs. The basic aims of the U.S. BIT program are to protect investment abroad in economies where investor rights are not already protected through existing agreements (such as modern treaties of friendship, commerce, and navigation, or free trade agreements); to encourage the adoption of market-oriented domestic policies that treat private investment in an open, transparent, and non-discriminatory way; and to support the development of international law standards consistent with these objectives.

U.S. BITs provide investors with six core benefits: 1) they require that investors and their "covered investments" be treated as favorably as the host party treats its own investors and their investments, or investors and investments from any third country. U.S. BITs afford national treatment and most-favored-nation treatment for the full life-cycle of investment - from establishment or acquisition, through management, operation, and expansion, to disposition; 2) they establish clear limits on the expropriation of investments and provide for payment of prompt, adequate, and effective compensation when expropriation takes place; 3) they provide for the transferability of investment-related funds into and out of a host country without delay and using a market rate of exchange; 4) they restrict the imposition of performance requirements, such as local content targets or export quotas, as a condition for the establishment, acquisition, expansion, management, conduct, or operation of an investment; 5) they give covered investors the right to engage the top managerial personnel of their choice, regardless of nationality; and 6) they give investors from each party the right to submit an investment dispute with the government of the other party to international arbitration.

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Note--the United States has listed here only the economies with which it has concluded BITs and FTAs with investment chapters (and only those agreements that have entered into force are listed); the entry does not include a list of economies with which the United States has concluded DTTs, information about which can be found in the next section.

More information

Information about U.S. investment agreements (BITs and FTAs) can be found at the website of the Office of Services and Investment of the Office of the United States Trade Representative (<http://www.ustr.gov/trade-topics/services-investment/investment>) and the website of the Office of Investment Affairs of the U.S. Department of State (<http://www.state.gov/e/eeb/ifd/oia/index.htm>).

The list of U.S. investment agreements identified herein includes only economies with which the United States has concluded BITs and/or FTAs with investment chapters; it does not include a list of U.S. DTT partners. Comprehensive information about U.S. DTTs, including treaty texts and a list of partner economies, is available at the website of the U.S. Internal Revenue Service: <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>.

General information about U.S. tax treaties is available at the website of the Department of Treasury's Office of Tax Policy: <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/default.aspx>.

Movement of persons

Treatment of foreign nations or personnel of foreign firms

The United States Immigration and Nationality Act and accompanying implementing regulations establish a clear process through which aliens may apply for entry to engage in business activities in the United States. The United States has four main entry categories applicable to the temporary entry of business persons: business visitors, traders and investors, intra-company transferees, and professionals.

Business Visitors

A temporary visitor for business must establish that he or she has a residence abroad which he or she does not intend to abandon; is coming to the United States for a defined temporary period; will depart upon the conclusion of the visit; has permission to enter a foreign area after his or her stay in the United States; and has access to sufficient funds to cover the expense of the visit and return travel. "Business" does not generally include gainful employment, but it does include almost any other legitimate commercial activity. A business visitor may come to consult with business associates, negotiate a contract, buy goods or materials, settle an estate, participate in business or professional conventions or conferences, or undertake independent research.

Traders and Investors

The entry categories for treaty traders and treaty investors are made available to nationals of countries that are parties to treaties of friendship, commerce, and navigation with the United States. Nationals of countries that are parties to certain other agreements, including free trade agreements (FTAs) and bilateral investment treaties (BITs), may also qualify. The treaty trader entry category allows a foreign national to enter the United States to carry on substantial trade, which may include trade in services or technology, principally between the United States and the treaty partner. The treaty investor entry category also allows a foreign national to enter the United States for the purpose of developing and directing the operation of a substantial and active investment in a commercial enterprise. The investor must have committed or be in the process of committing a substantial amount of capital to the investment.

Intra-Company Transferees

U.S. law provides for the temporary entry into the United States of managers, executives, and employees of a multinational firm with specialized knowledge. In order to qualify for entry, the U.S. employer must file a petition with the Department of Homeland Security (DHS) demonstrating that the employee has been employed overseas by the transferring organization for at least one continuous year within the past three years and that the employee will be performing duties in the United States for the same employer or for a subsidiary or affiliate. Upon approval of the petition, the alien may apply for the requisite non-immigrant visa.

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Professionals

With respect to professionals, the United States allows for the entry of temporary workers in specialty occupations. A specialty occupation is defined as one that requires the theoretical and practical application of a body of highly specialized knowledge and completion of a bachelor's or equivalent degree in the specialty, or experience equivalent to such a degree. U.S. employers must file an attestation of compliance with U.S. labor laws with the Department of Labor. Following that, the U.S. employer must file a petition with the DHS. Once the petition has been approved, the alien may apply for a visa at a U.S. consulate overseas.

The United States has an annual limit on the number of approvals of petitions for workers in specialty occupations. The current annual petition cap is 65,000, plus 20,000 for workers with a master's- or higher-level degree from a U.S. academic institution. (Workers in specialty occupations who are petitioned for or employed at an institution of higher education or its affiliated or related non-profit entities, a non-profit research organization, or a government research organization are not subject to a numerical cap.) Citizens of Australia may also qualify to enter the United States "to perform services in a specialty occupation" under a special visa classification. No petition is required, and the annual cap is 10,500.

In addition, citizens of Canada, Mexico, Chile and Singapore may also qualify to enter the United States as professionals under specific provisions of relevant FTAs. Citizens of Mexico and Canada may qualify for entry to the United States as professionals under provisions of the NAFTA. Citizens of Chile and Singapore may qualify for entry to the United States as professionals under provisions of the U.S.-Chile and U.S.-Singapore FTAs.

Under the NAFTA, a citizen of a NAFTA country in a professional occupation may work in another NAFTA country, provided that the profession is on the NAFTA list (NAFTA Chapter 16, Appendix 1603.D.1); the alien possesses the specific qualifications for that profession; the prospective position requires someone in that professional capacity; and the alien will engage in prearranged business activities at such a professional level for a U.S. or foreign employer. Under the U.S.-Chile and U.S.-Singapore FTAs, a citizen of Chile or Singapore may work in the United States in occupations that require the theoretical and practical application of a body of specialized knowledge and that require completion of a bachelor's or equivalent degree in the specialty. U.S. employers must file an attestation of compliance with U.S. labor laws with the Department of Labor. Following that, the alien may apply for a non-immigrant visa at a U.S. consulate overseas. Annual numerical limitations apply to professionals under these FTAs: for the U.S.-Chile FTA the numerical limitation is 1,400, and for the U.S.-Singapore FTA the numerical limitation is 5,400.

Senior Management

U.S. BITs and the investment chapters of U.S. FTAs include an obligation on parties to allow covered investments to engage top managerial personnel of their choosing, regardless of nationality, and subject only to limited and narrowly defined exceptions. In the case of the United States, restrictions on the nationality of senior managers and board members exist in only two sectors: air transport and maritime transport.

More information

More information about U.S. visa policy and procedures is available at the website of the Department of State, Bureau of Consular Affairs: http://travel.state.gov/visa/visa_1750.html.

Taxation

Taxation of foreign nationals and foreign firms

The U.S. federal tax system has three major components: an individual income tax; a corporate income tax; and payroll, or employment, taxes (Social Security and Medicare). In general, the individual income tax is levied on taxable income, defined as gross income less certain exclusions and deductions. Graduated rates are applied to taxable income to determine tax liability, which is reduced by available credits (some of which may be refunded to the extent they exceed tax liability).

The corporate income tax applies to gross income less allowable deductions and is currently subject to a top rate of 35 percent. Social Security and Medicare taxes are generally collected through payroll withholding from employees and contributions from employers. As of late 2010, the rates on covered wages are 12.4 percent for Social Security and 2.9 percent for Medicare.

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The U.S. federal tax system uses income as the primary economic base for taxation, as opposed to using consumption (for example, through a value added tax) or wealth (for example, through property taxes). Taken together, income and payroll taxes generate approximately 93 percent of total federal revenues. Although the U.S. system taxes income, not all income is treated similarly. Individual income derived from investments, such as capital gains or dividends, is currently subject to lower rates than wage or interest income.

The Corporate Income Tax

Corporate income generally is taxed at the corporate level at rates ranging from 15 percent to 35 percent (as of late 2010). When a corporation distributes earnings to shareholders as dividends, the income generally is taxed again at the shareholder level. When shareholders sell their stock, gains from the sale are taxed as capital gains. Thus, income distributed as dividends and retained corporate income (reflected in the value of stock) can be taxed twice. In contrast, investors who conduct business activity in a flow-through business entity, such as a partnership or sole proprietorship, are taxed once on their earnings at the individual income tax rate.

Corporations (and other businesses) are provided a variety of special provisions that reduce taxes for particular types of activities, industries and businesses. Most of these provisions were intended by Congress to encourage particular types of activities, such as research and development.

The Individual Income Tax

Except as specifically excluded, all income is subject to the income tax (but only income net of personal exemptions and deductions is actually taxed). For most income, there are (as of late 2010) 6 statutory rate brackets ranging from 10 percent to 35 percent; most capital gains and dividends are (as of late 2010) subject to 0 percent and 15 percent statutory rates. Several other special rates may apply, and interactions and phase outs may produce higher effective marginal tax rates. There are many provisions that exclude, limit, or defer the tax on some items, and there are over 25 separate tax credits. A separate alternative minimum tax (AMT) can further increase tax liability.

Taxation of Foreign Persons

The United States generally taxes foreign persons (individuals not resident in the United States and foreign corporations (corporations which are organized under the laws of a foreign country or U.S. possession)) only on income originating in the United States. Two systems are provided for taxing such income. First, if a non-resident individual or foreign corporation carries on a trade or business in the United States (a "U.S. trade or business"), tax is imposed at the regular, graduated rates that apply generally to U.S. taxpayers on taxable income that is "effectively connected" with that U.S. business. Second, if a foreign person has fixed or determinable, annual or periodic income (most types of income, including interest, dividends, rents, royalties, but not gains from the disposition of property) that is from U.S. source income and is not effectively connected with a U.S. trade or business (because the person does not have a U.S. business or because the income is not related to a U.S. business), the income is subject to a gross basis tax at a rate of 30 percent (subject to reduction or elimination under an applicable income tax treaty, as discussed below). The key difference between these two systems concerns the allowability of deductions. "Effectively connected" taxable income is determined on a net basis - deductions generally are allowed for expenses that are directly connected with the effectively connected income. The 30-percent tax, however, is a gross-basis tax, and therefore no deductions are allowed.

One significant exception to the 30 percent gross-basis tax is "portfolio interest." Portfolio interest generally is interest other than from bank loans and obligations held by 10 percent or greater owners of the debtor. The 30 percent gross-basis tax is also often reduced or eliminated by treaty. The United States has bilateral income tax treaties with approximately 60 countries.

Capital Gains Tax

Foreign persons are not subject to U.S. tax on gains from the disposition of property unless the gains are effectively connected with a U.S. trade or business. The Foreign Investors Real Property Tax Act (FIRPTA), however, taxes gains on sales of U.S. real property by non-resident individuals and foreign corporations by treating the amount of any gain on a sale of a "U.S. real property interest" as effectively connected income. A U.S. real property interest includes real property located in the United States and stock of a domestic corporation if U.S. real property interests generally constitute at least 50 percent of the value of the corporation's assets.

Repatriation of Profits

United States

The United States also imposes branch profits and branch-level interest taxes if a foreign corporation conducts a U.S. trade or business through a branch. The branch taxes do not apply to income from a U.S. trade or business conducted by a non-resident individual. These branch taxes are intended to provide parity between the taxation of a foreign corporation's operations in the United States whether those operations are conducted directly as a branch or through a U.S. subsidiary. If a foreign corporation does business in the United States through a U.S. subsidiary, profits of the subsidiary are subject to two U.S. taxes - a corporate income tax when earned by the U.S. subsidiary, and a withholding tax on the dividends when these profits are repatriated to the foreign parent corporation. The branch profits tax is a tax on profits earned in the United States through a branch and deemed repatriated by the foreign corporation owning the branch. It is intended to be comparable to the withholding tax on dividends that would be applicable if the business were conducted through a U.S. subsidiary. Similarly, if a U.S. subsidiary borrows to fund its operations, interest on the debt paid is generally deductible, but is U.S. source income to the creditor, which may be subject to withholding tax if the debtor is a foreign person. The branch-level interest tax is intended to provide comparable tax results to the extent that debt of the foreign corporation is allocable to and deductible against the income from the U.S. operations.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

The United States taxes its citizens, residents, and domestic corporations on their worldwide income. (Foreign persons are only taxed by the United States on income originating in the United States.) The United States provides a foreign tax credit to relieve the double taxation which might occur when a U.S. person is also taxed by another country on the same income. The credit is only allowed for income taxes. A payment to a foreign government is considered a tax only if it is compulsory and is not a payment for a specific economic benefit received from the government. Generally, a tax is an income tax only if it is designed to reach "net gain" in the usual circumstances in which it applies. Various anti-abuse rules deny the credit for some types of foreign income taxes and taxes paid to some foreign countries.

The United States has tax treaties with a number of countries. Under these treaties, residents (not necessarily citizens) of foreign countries are taxed at a reduced rate, or are exempt from U.S. taxes on certain items of income they receive from sources within the United States. These reduced rates and exemptions vary among countries and specific items of income. Information regarding U.S. text treaty partners is available at the website of the U.S. Internal Revenue Service: <http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>.

More information

Additional information about U.S. taxes is available at the website of the Department of the Treasury's Office of Tax Policy (<http://www.treasury.gov/resource-center/tax-policy/Pages/default.aspx>) and the website of the Internal Revenue Service (<http://www.irs.gov/>). Information about U.S. tax treaties, including a list of partner countries and treaty texts, is available at the website of the U.S. Internal Revenue Service (<http://www.irs.gov/businesses/international/article/0,,id=96739,00.html>).