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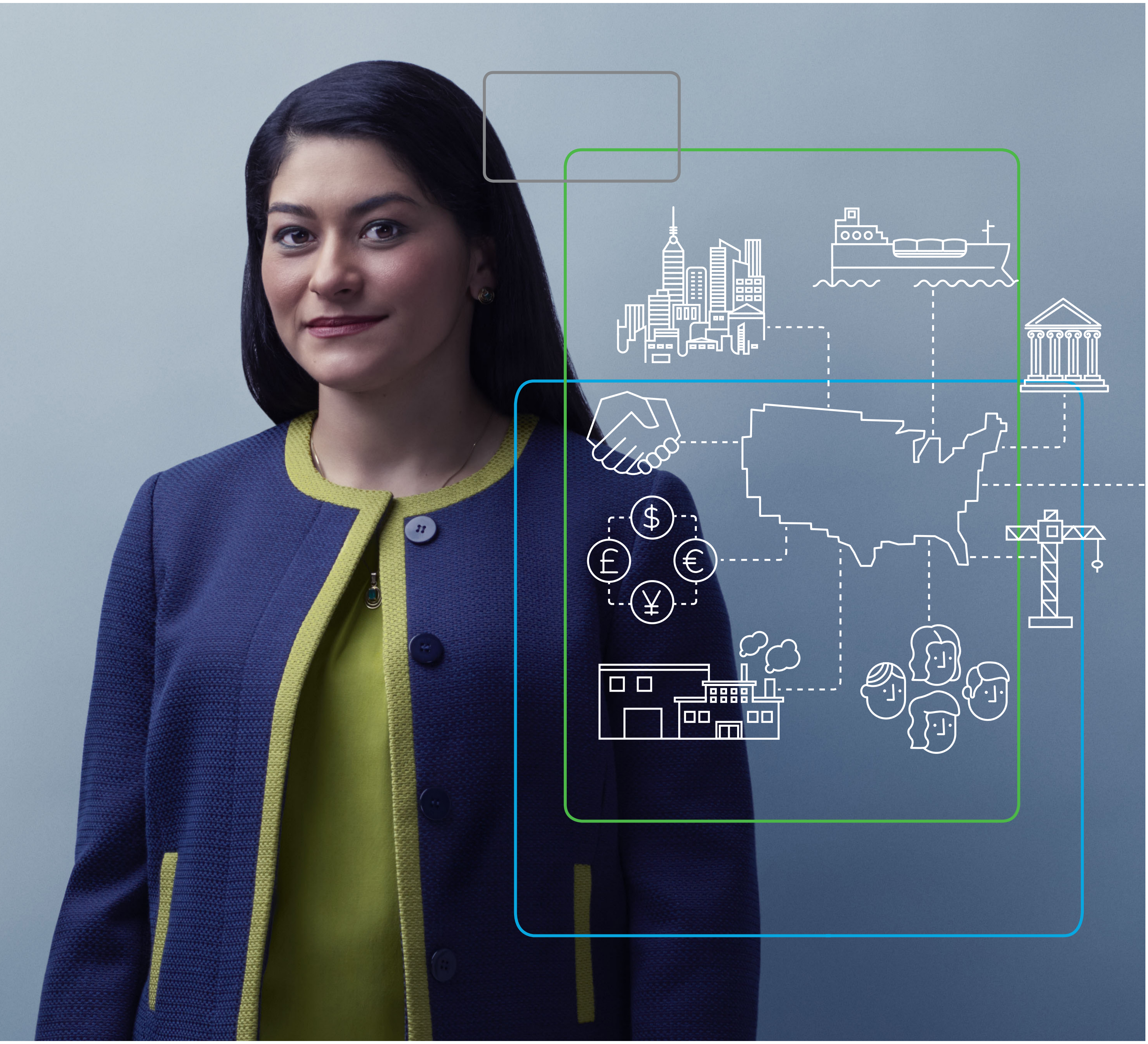

# DOING BUSINESS IN THE UNITED STATES

## A guide to entering the U.S. market

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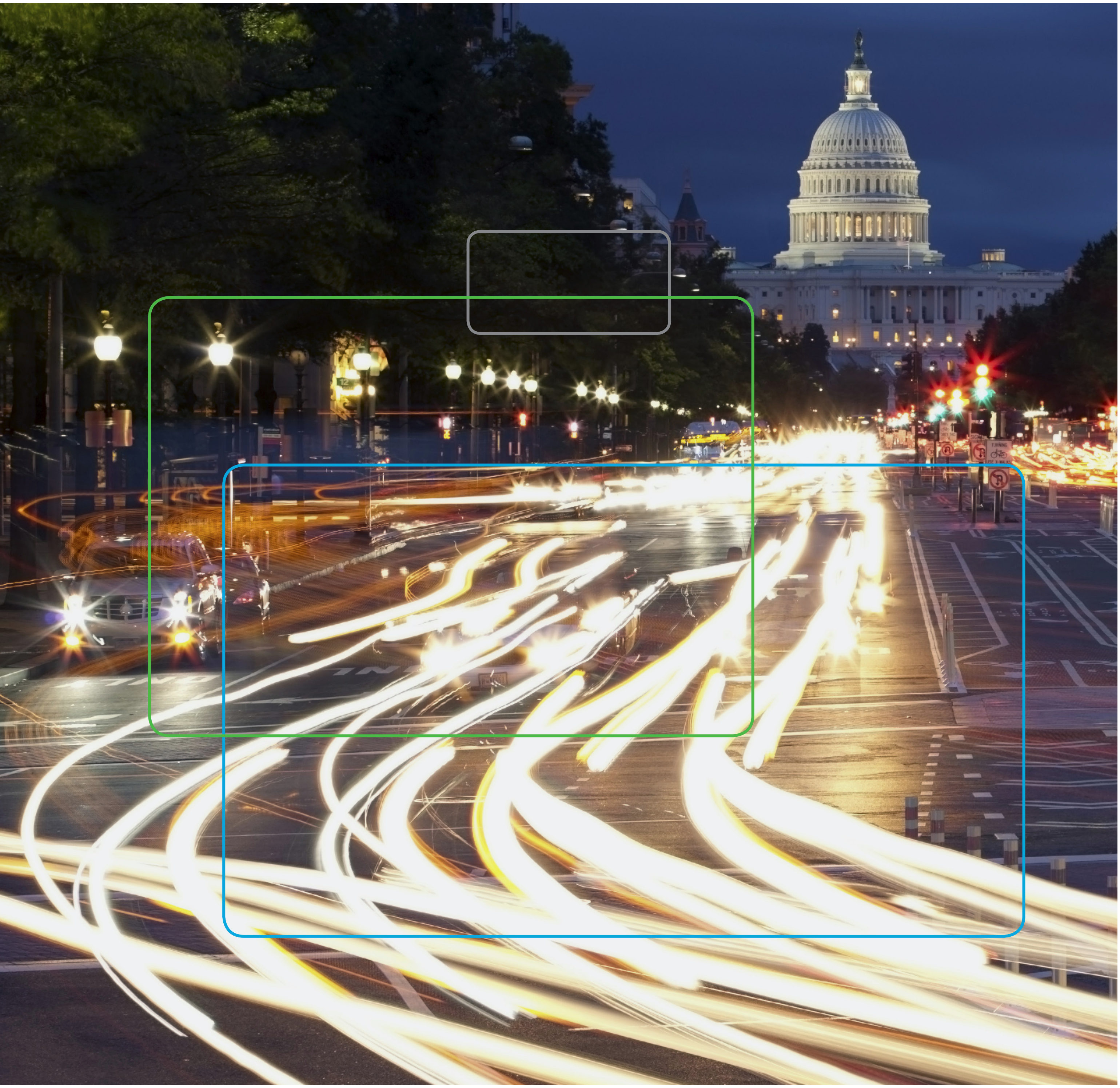

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ACCORDING TO THE U.S. CENSUS BUREAU, THE U.S. IMPORTS OF GOODS IN 2018 TOTALED $2.54 TRILLION, WHILE EXPORTS THAT YEAR TOTALED $1.66 TRILLION.[1] CHINA, CANADA, MEXICO AND JAPAN ACCOUNTED FOR JUST OVER 50% OF U.S. IMPORTS DURING THE PERIOD.

# WELCOME TO THE UNITED STATES!

The U.S. is clearly a prominent market for foreign investment. With so many companies from across the globe planning to enter this market, understanding key considerations for doing business in the United States is important to their long-term success.

RSM US LLP supports hundreds of global companies with operations in the United States with audit, tax and consulting services. Working with our RSM International colleagues across the globe, we provide the global professional services that international companies need for success.

The United States accounts for almost half the world's total production and is the world's largest consumer market. Estimates for 2018 indicate there are more than 135 million households in the United States, each with a median household income of approximately $57,652.[2] The United States is the world's largest and most concentrated market for almost every product and service.

The U.S. government welcomes foreign investment in almost all sectors, offering one of the most favorable regulatory environments in the world. With few exceptions, foreign companies are entitled to the same rights and opportunities as U.S. nationals.

In addition, the United States' highly educated and skilled workforce of more than 160 million people[3] is attractive to many foreign investors.

The United States has a highly developed infrastructure for transportation, communication and electrical power which supports its advanced industrial, commercial and agricultural activities. Technology, manufacturing and service industries are important sectors of the U.S. economy. Unemployment in the United States is low, resulting in tight labor markets.

## Government in the United States

The United States is a federal republic composed of 50 states and the District of Columbia (Washington, D.C.). The original American colonies achieved independence from England in 1776, and the country today operates under a nearly 250-year-old constitution.[4]

The individual states exercise a high degree of autonomy and play an important role in business regulation.

The state governments legislate and administer civil and criminal laws within their jurisdictions and regulate activities such as education, utilities, insurance and state banking. County and municipal governments, acting within state guidelines, operate public facilities and services such as law enforcement and public safety, clean water and wastewater systems, and local roads. Separate school districts have operational authority over publicly supported education at the local level.

Of particular significance for foreign entrepreneurs is the wide diversity of regulations, services and taxes at the state and local levels, and the competition among various jurisdictions to attract business and investment. Since each of the 50 states makes its own rules, including 50 different tax regimes, understanding the patchwork of state regulations can present challenges. State laws and regulations are transparent and evenly applied within each state. With few exceptions, local bureaucracies work in a cooperative and helpful manner with businesses.

## Multitude of markets

Foreign investors often overlook the fact that the United States is really a multitude of local and regional markets, each with different requirements.

- States such as New York, Illinois, California and Texas are richer and larger in geography and population than many countries in the world.
- It may not be obvious to the occasional visitor, but the different regions of the United States have distinctive cultural and economic characteristics. Failure to recognize these can spell failure to the foreign business that assumes the various states and regions of America are all the same.
- Diverse ethnic populations represent large and distinct markets across the country.
- The overall geographic size of the country presents special logistical challenges in serving and supplying customers.

## The regulatory environment

Compared to many countries, the United States is a country of limited regulation, free trade and equal treatment before the law. It is important to understand that the states, counties and municipalities enact many of the laws and regulations affecting business where the company is located or conducting business.

Business formation and direct investment are extremely easy in the United States. The types of common legal entities and the business formation process are described in the business organizations section of this guide.

Many traditional government functions or regulated monopolies, such as public transportation, energy and water supply, have been privatized or opened to competition. This action has led to a substantial growth in private investment, both by domestic and foreign business interests. While some state and federal regulations place restrictions on foreign persons and companies in areas relating to national security, in most cases, foreign individuals and enterprises are entitled to the same treatment and rights as U.S. citizens. It is always prudent to determine the regulations that apply to your business before making investments or launching business activities.

## Business regulation

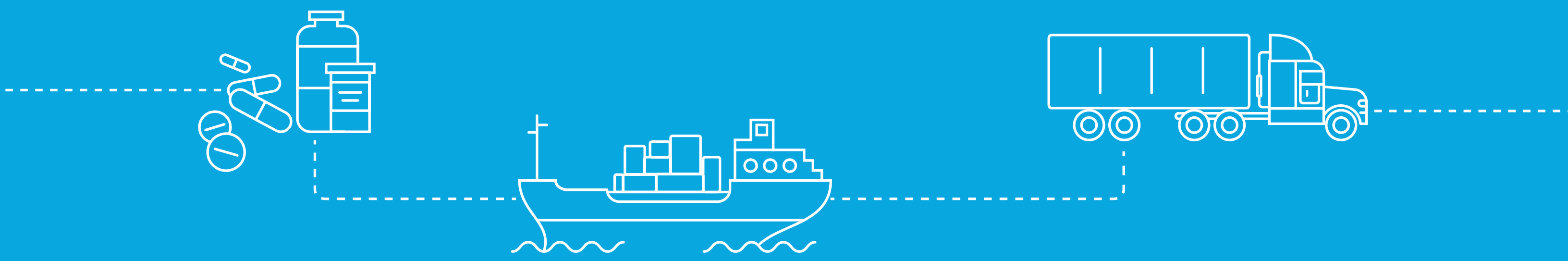
As mentioned earlier, business regulation tends to be less burdensome in the United States than in most other countries—generally, there are fewer restrictions, they are easy to understand and are applied equally, and there is limited bureaucracy encountered in the course of compliance. However, this is not to say that companies will encounter a totally laissez faire environment, or that they will not at times be surprised and confused by the regulatory structure.

Some of the areas of regulation are mentioned briefly below and others are described more thoroughly in sections dealing with employment, taxes and business organization.

**Currency regulation.** In general, there are no U.S. exchange controls or restrictions on the exchange or remittance of business income or capital, except on transactions involving a short list of countries to which restrictions apply for political reasons.

**Zoning and building codes.** Land use and building code requirements are adopted and enforced by local governments at the municipal, county and state levels. In general, there is no federal (national) oversight of commercial and manufacturing operations. Exceptions can arise in heavy industry, power generation and other uses affecting the environment. Also, installations located on federal lands are generally subject to federal, rather than local regulation.

**Environmental.** All industrial facilities must comply with environmental protection laws that limit emission, chemical and radiation sources and regulate waste disposal. Both federal and local laws can apply in these situations.



**Product safety.** Federal and state consumer safety laws apply to the design, packaging and labeling of many products.

**Food and drug regulation.** The regulations of the federal Food and Drug Administration (FDA) apply to the import and marketing of food, drugs and cosmetics, which are subject to inspection at the point of entry into the United States. Clearance may be sought in advance by submitting samples to the FDA.

**Agricultural.** Imported plant and animal products are subject to federal quarantine regulations and fresh produce imports must meet standards of size, grade and maturity. Some states, such as California, Arizona and Florida, also regulate the movement of certain agricultural products across state lines in order to limit the introduction or spread of pests and plant diseases.

## Trade policy

### Imports

With limited exceptions, the United States promotes and practices free trade. Most goods and products can be imported into the United States under favorable terms and minimal restrictions. As in most other countries, however, many agricultural products and derivatives continue to be subject to import restrictions in the form of duties, exclusions and quotas. Restrictions also exist regarding the conduct of such licensed professions as medicine, law and engineering.

The United States has many bilateral trade and tax treaties. In addition, federal legislation provides trade concessions to a number of geographic blocks, such as the neighboring Caribbean region, in order to promote economic development and stability.

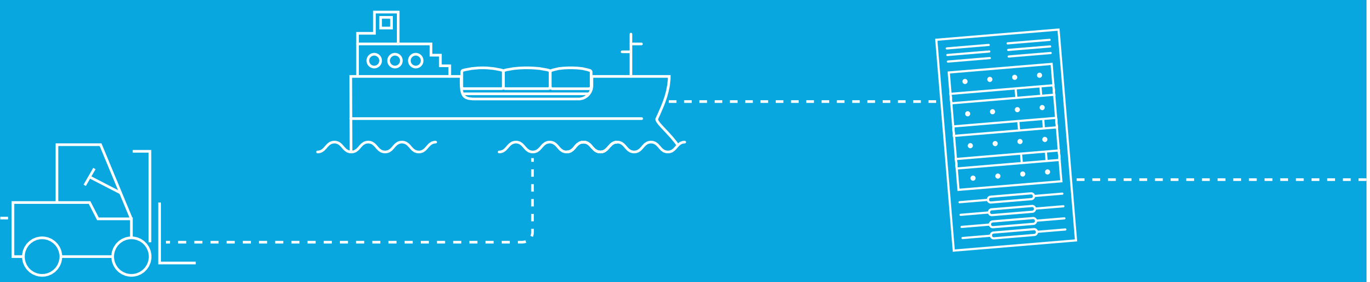
The country's most significant trade treaty is the North American Free Trade Agreement (NAFTA) with Mexico and Canada. NAFTA has realigned trade priorities, and in many respects, has converted the three-country region into a single economic market. Since the adoption of NAFTA in 1995, trade and direct investment within the region have grown. As of December 2016, Canada and Mexico are, respectively, the second- and third-largest trading partners with the United States (China occupies the No. 1 position).[5]

While the United States has been slow to adopt other regional treaties, both Canada and Mexico have advanced in this area. In 2000, Mexico entered into a NAFTA-like treaty with the European Union, and both Mexico and Canada have bilateral or multilateral trade pacts with South American countries and regions like Chile and Mercosur , an economic and political bloc comprising Argentina, Brazil, Paraguay, Uruguay and Venezuela. In many cases, these treaties can provide a favorable, backdoor means of access into the U.S. market.

Of course, any company considering the export of goods into the United States should research the tariff rates and possible import restrictions.

As in most export-import situations, the specific characterization of a product determines the tariff rate applied. Incorrect characterization can result in very significant penalties. Companies can request a formal advance ruling from the United States Commissioner of Customs. Such a ruling is binding on both the importer and the U.S. government. Also, if goods imported into the United States are subsequently exported, the importer may be eligible for tariff drawbacks.

The United States has strong anti-dumping laws, and these are vigorously enforced. These laws apply in cases where it is deemed that products are offered in the United States at less than fair value, as calculated by the United States International Trade Commission. Counteracting this restriction to some degree is the United States Generalized System of Preferences (GSP).[6] The GSP is a program designed to promote economic growth in the developing world. It provides preference duty-free entry for thousands of products from 120 designated beneficiary countries and territories. The GSP program was instituted Jan. 1, 1976, with congressional authorization recently extending the program until Dec. 31, 2020.



**Duty-free zones.** Duty-free or foreign-trade zones are designated sites licensed by the Foreign-Trade Zones (FTZ)[7] Board at which special customs procedures may be used. FTZ procedures permit goods from abroad to be warehoused or altered as if they were outside U.S. Customs territory. Subzones are special-purpose zones, usually at manufacturing plants. Goods stored in FTZs enjoy duty-free status until they enter the Customs territory of the United States, and they can also be transferred from one FTZ to another without duty charges being assessed. Duty is paid only on goods ultimately imported into the United States.

**Maquiladoras.** Over 3,000 companies operate under special provisions of Mexican law permitting duty free, in-bound manufacturing, typically for re-export to the United States.[8] Under the maquiladora program, components are imported duty-free into Mexico for processing or assembly and then shipped back to the United States. Mexican law allows these operations to bring in most capital equipment and machinery from abroad. U.S. duties are collected only on the value added in Mexico. Most maquiladora facilities are located along the U.S.-Mexico border, though plants in central and southern Mexico have grown in popularity in recent years.

Many Caribbean and Central American countries have also implemented maquiladora regimes and actively market these to U.S. and foreign manufacturers seeking low production costs and favorable access to the U.S. market.

## Exports

With the exception of a limited number of strategic items, goods exported from the United States are not subject to export licenses or regulations of any kind. It is always prudent, however, to research in advance to determine whether restrictions apply with regard to specific items or specific countries.

Business formation in the United States is easy and businesses can be organized without regard to the citizenship or residency of the owner. As stated earlier, there are many different types of legal entities available in most U.S. jurisdictions. The entity type most often used by companies from abroad is the business corporation, but other entity types may also have a role.

Consultation with an experienced international tax specialist is advisable and can often result in very significant, long-term global tax savings. Once an entity choice has been made, the process of registering the entity can be very fast—as little as one day. An attorney should be used to perform this function and to advise on other legal requirements applying in the jurisdiction where the entity is established.

Corporations, limited liability companies and other entity forms are more fully described in the following sections.

# BUSINESS ORGANIZATIONS

## Corporations

The most prevalent form of legal entity used in the United States is the business corporation. A business corporation is a company owned by shareholders who buy shares of the company's stock. The liability of the shareholders is limited to their investment in the shares of stock they own.

In the United States, there is no national law regarding corporations. Corporations are organized under the laws of one of the 50 states or the District of Columbia. The laws of these jurisdictions tend to be similar, but they are not identical. Companies incorporated in one state can do business in the others, subject to varying additional registration and licensing requirements. States offering the most favorable requirements for incorporation are Delaware and Nevada. However, for convenience, companies often organize their corporations under the law of the jurisdiction where their most important office or operation is located.

Corporations issue shares of stock representing fractional ownership. A corporation can have as few as one shareholder. All states require a board of directors, and specify the minimum number of directors and officers. Many, but not all, states permit corporations to have a single director, a feature favored by foreign companies establishing a U.S. corporation. There are no nationality or residency requirements for shareholders, directors or officers. Most states require that annual shareholders meetings be held and recorded.

Corporations of all sizes must meet the reporting requirements of the state in which they are incorporated and also those requirements of the states in which they do business. There also are requirements to file financial information with the U.S. Securities and Exchange Commission (SEC) for:

a) corporations with shares traded on any national exchange,

b) corporations with more than 2,000 shareholders with stock traded over-the-counter, and

c) corporations with 500 or more unaccredited shareholders and more than $10 million in assets with stock traded over-the-counter.

Certain other companies also may be subject to reporting requirements.

### Corporation

The U.S. entity known as a corporation or business corporation is the business form most comparable to limited liability entities found in other countries, and continues to be the most common legal form used in the United States. Corporations are governed by state law. Ownership is represented by shares issued by the corporation. In most cases corporations pay federal income tax based on their earnings. Most states (but not all) also impose an income tax and franchise taxes on corporations registered in their jurisdictions. However, in certain circumstances, corporations can elect to be treated like a partnership, so that the corporate income is attributed to, and income taxes are paid by, the shareholders. Corporations making this election are known as S corporations—a name derived from a section of the federal Internal Revenue Code.

## Limited liability company (LLC)

The term limited liability company causes confusion for many people from outside the United States, who have a difficult time understanding how an LLC differs from a business corporation. Indeed, both entities provide owners with limited liability, but the corporation entity in the United States is similar in form and operation to standard shareholder companies common in most other parts of the world.

The LLC legal entity is a recent development, first appearing in the United States in 1977. It is a creation of state statutory law and combines favorable characteristics of traditional business corporations and of partnerships.

An LLC is generally treated as a partnership for U.S. income tax purposes and, in certain settings, can result in tax advantages for the owners. However, the entity may not result in advantages where owners are not U.S. taxpayers. The determination of whether or not to use the corporation or LLC form is one best made with the consultation and assistance of an international tax specialist.

## Partnerships

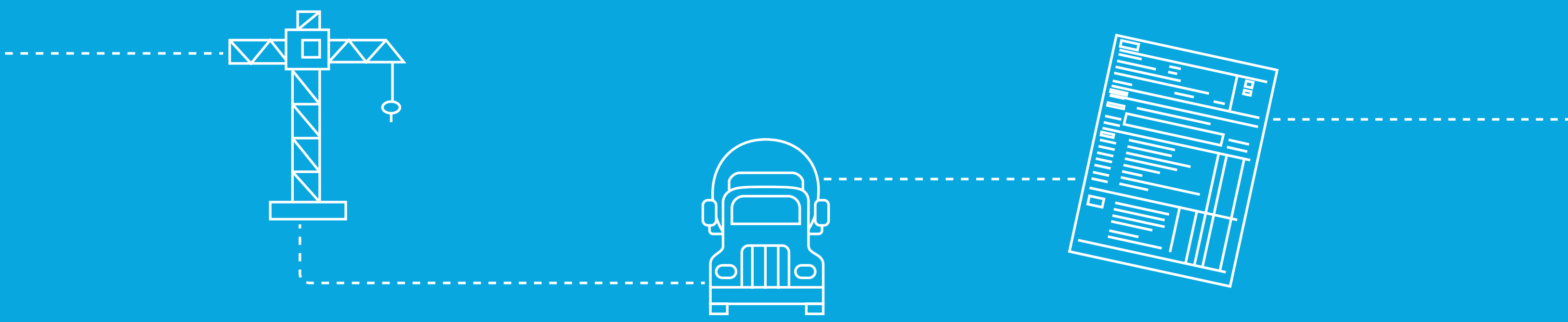
Partnerships are formed by agreement between two or more individuals or other business entities. The contributions, duties and allocations of losses, profits and liabilities are specified in the agreement. These agreements are governed by state laws on partnerships. The state laws frequently allow for various kinds of partnerships.

In a type of partnership known as general partnership, all partners are personally liable for the debts and obligations of the entity. In limited partnerships, at least one general partner has unlimited liability, and the other partners (limited liability partners) have liability limited by the agreement—usually to the extent of their capital contributions. A third type of partnership, called a limited liability partnership (LLP), is also permitted by many states. An LLP has many characteristics in common with an LLC, but in some states, only professional groups (such as lawyers, doctors and accountants) are permitted to organize under this type of entity.

Partnership agreements are not recorded with the state, but the names and addresses of partners are normally filed with a records office. With regard to federal and state income tax, the partnership entity is required to file information returns on earnings and distributions. However, responsibility for taxes falls on the partners.

### LLC

Another common type of business entity, and one that has become very popular in America, is the limited liability company or LLC. LLCs have characteristics in common with both corporations and partnerships. These entities are formed under the law of one of the states and operate like corporations, in many respects. However, LLCs are not subject to income tax. As in partnerships, the income of an LLC is attributed to the owners in proportion to their ownership stake, and these owners are responsible for the payment of income tax. LLCs can provide many advantages for business owners, but various elements of U.S. tax law can create serious disadvantages, if the owner is a foreign company.



## Partnerships

Partnerships generally are created by contract. They are governed by state law. Generally speaking, partnership entities are not subject to income tax. Instead, the earnings of a partnership flow through to the partners, and any federal or state income tax is the obligation of the partners in proportion to their partnership interest. There are general partnerships and limited partnerships. In general, every partner is legally responsible (liable) for the obligations of the partnership. In a limited partnership, legal liability is limited to the partner's capital contribution to the partnership.

## Branch operations

Foreign companies can establish unincorporated branches in the United States. In such cases, legal liability flows through to the parent corporation. However, given the ease and moderate expense of forming a formal U.S. entity, and the possible tax and legal advantages, most foreign companies choose to organize under one of the entity arrangements described above.

## Contractual joint ventures

Joint ventures are usually formed for specific, limited purposes, such as a construction project or mineral exploration. Joint ventures can be undertaken between any two or more business entities or persons. The operating entity can be either a partnership or a corporation.

## Holding companies

A holding company is a corporation formed for the principal purpose of owning the stock and securities of other legal entities. A U.S. holding company permits certain costs of searching for and starting a new business to be charged against present or future profits for tax purposes. Where two or more operations are contemplated, a holding company may allow the losses of one to be charged against the profits of the others.

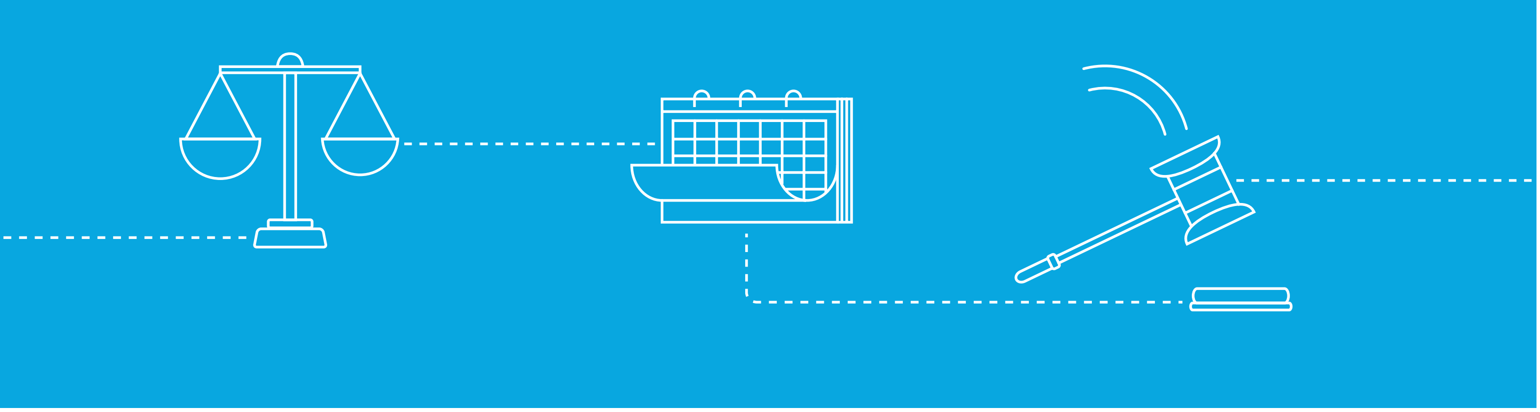
## Sole proprietorships

It is not infrequent for very small businesses in the United States to be set up as sole proprietorships. All assets and liabilities belong to the owners, and all business and personal assets are at risk. However, this risk can be limited through liability insurance. This approach is seldom used by foreign companies with operations in the United States.

## Required company records

Both businesses and individuals subject to U.S. and state taxes are required to maintain records adequate to verify tax returns. Companies must satisfy the reporting requirements of states having jurisdiction over their operations. Publicly traded companies must file annual reports with the federal SEC. Financial statements required by the SEC must be audited.

Generally, there are no uniform national requirements as to the type of accounting and reporting systems used. Business systems should follow U.S. generally accepted accounting principles (GAAP) and meet the specific accounting and management information needs of the business. The SEC issues guidelines for those companies whose shares are publicly traded. There are also various tax accounting rules, and regulated industries frequently are subject to statutory reporting. GAAP accounting records can be modified to satisfy tax or statutory reporting requirements.



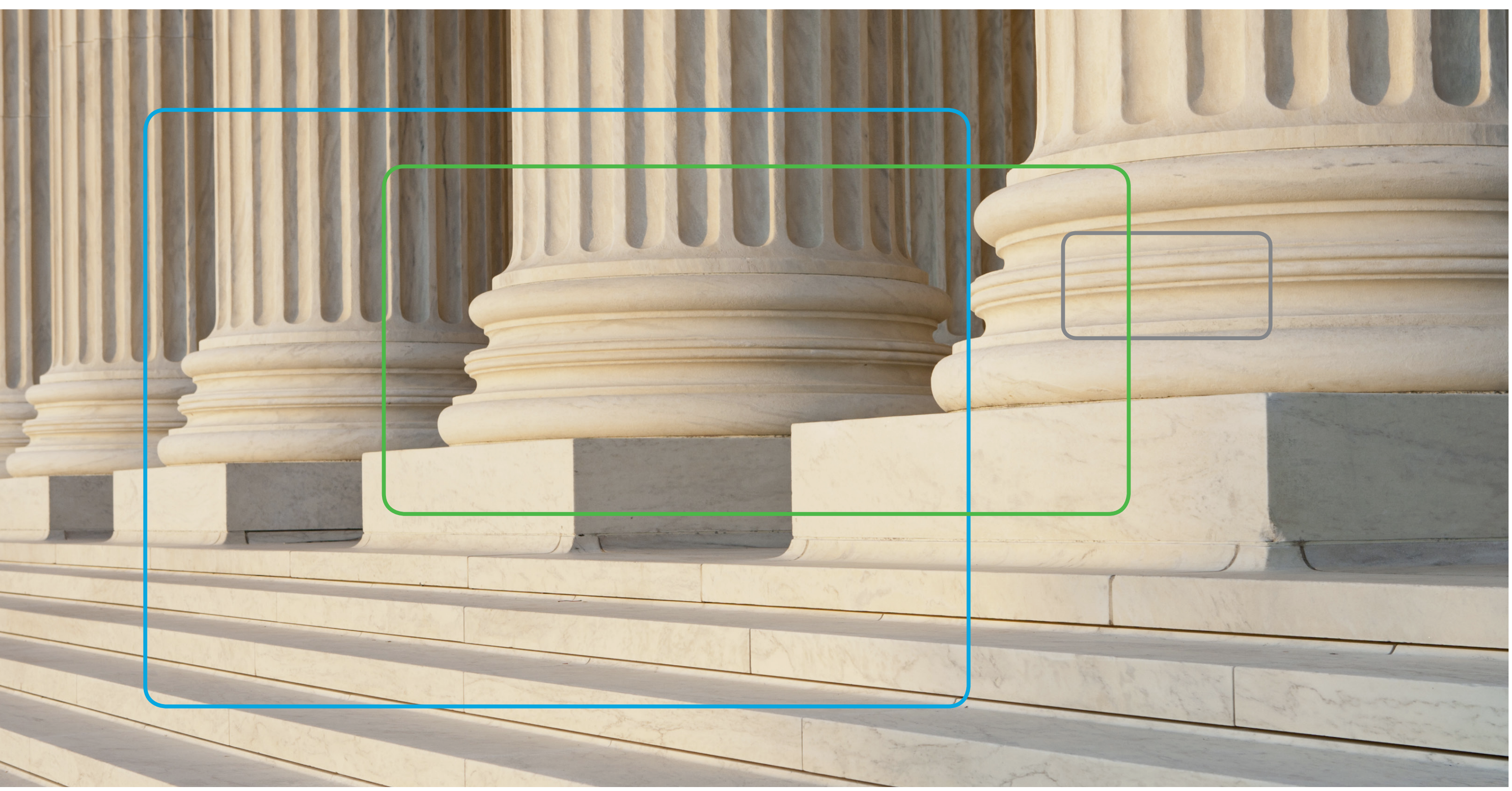
## Acquiring a business

Buying an existing business can be accomplished by a purchase of assets or the purchase of ownership interests in the entity. While either method is possible, the tax consequences should be carefully weighed.

Private tenders for 5% or more of a class of publicly traded securities or of corporations with 500 or more shareholders must be filed with the SEC. The filing must state the source of funds, purpose of the tender, future plans, and present beneficial interest and shares acquired within the last 60 days. Public tenders require additional information.

Since having a beneficial interest of more than 10% in listed companies must also be reported to the SEC, disclosure cannot be avoided by arranged third-party purchases. Some states also have information filing requirements on tender offers directed toward firms that have substantial assets within their borders.

The time and expense of preparing a public stock offering to raise capital can be substantial, requiring the assistance of key personnel and outside professionals. Such registrations require full and detailed disclosures, and financial information meeting U.S. regulatory requirements.



# TAX SYSTEM

In the United States, almost any unit of government may charge a tax. In fact, there are nearly 10,000 tax jurisdictions in America. Complying with all these laws and rules can be a monumental challenge.

At the same time, cash-strapped federal, state and local tax collectors are becoming more vigilant in ensuring compliance with this sometimes confusing array of tax codes.

The taxes include income taxes, gross receipts taxes, payroll-related taxes, taxes on transactions, property taxes (real estate, personal property and intangible property), estate and gift taxes, and excise taxes on certain goods and services. However, the federal government does not charge a sales tax or a property tax.

The United States is one of the few countries that does not make use of value-added taxes. However, most states impose a sales tax on retail sales of goods and certain enumerated services to customers within the state. The sales tax is generally based on purchase price and is typically collected by the seller from the final consumer and remitted to the state. A seller who makes retail sales to customers in a state in which it has nexus must register with that state's taxing authority and report and pay sales tax due.

Most states also impose a use tax on the storage, use or consumption of goods and certain enumerated services within the state. The use tax is complementary to the sales tax and is only imposed when the state's sales tax, or an equivalent tax at the same or a higher rate, was not collected by the seller as a sales tax collection agent for the state, which most often occurs when the seller does not have nexus within the state of use. The use tax is typically based on the cost of the taxable good or service, and the purchaser must report and pay use tax due directly to the state.

### Framework of the law

The Internal Revenue Code is the basic law for the federal income tax. This federal law undergoes frequent change and amendment. The Treasury Department implements federal tax statutes, and the Internal Revenue Service (IRS), a division of the Treasury Department, is the federal tax collection agency and charged with enforcing the code.

The IRS, under the supervision of the Treasury Department, issues regulations and other guidance, with respect to the application and interpretation of certain provisions of the federal tax law. In some instances, taxpayers with questions about specific transactions may submit a written request to the IRS for an interpretation of the law as it applies to that fact pattern.


## Federal corporate income tax

### Consolidated filings

Generally, every corporation that is subject to federal income tax must report its tax liability on a separate return. A group of corporations can elect to report its tax liability on a single, consolidated return.

The privilege of filing a consolidated return is only granted to an affiliated group of corporations. This affiliated group has to be a chain of one or more corporations that is connected through stock ownership to a common parent. Generally, the parent corporation of the group must own 80% or more of the stock of each of its subsidiaries, either directly or through one or more of its 80%-owned subsidiaries. The principal advantage to a consolidated filing is that the profits from the profitable corporations may be offset by the losses of the loss corporations.

An affiliated group must continue to file on a consolidated basis for all succeeding tax years unless the group no longer remains in existence or permission is granted to cease filing as such.

### Due dates

Any corporation, whether a single corporation or a member of a consolidated group, usually must file its tax return on Form 1120 by the 15th day of the third month following the close of its taxable year. An automatic six-month extension is available if one applies for it. The tax return must also clearly reflect income in U.S. dollars.

### Extensions

A corporation needing an extension of time to file its tax return uses Form 7004. The extension must be filed no later than the original due date of the return. There is no extension of time to pay the tax liability.

### Estimates

A corporation is required to pay estimated taxes in four installments during the course of its taxable year. Installments are due in the fourth, sixth, ninth and 12th months of its taxable year.

### Statute of limitations

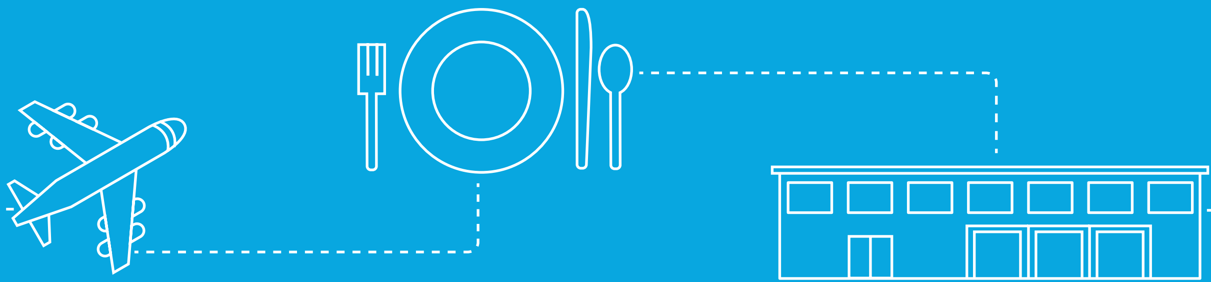
The IRS generally has three years after a tax return is filed in which to assess tax or start a proceeding in court, without assessment, for the collection of the tax. Similarly, if a corporation wishes to change its tax return, it has three years to file for a refund. If a taxpayer fails to file a return or files a return with the intent to evade tax, a tax liability may be assessed at any time.

### Separate state and local filings

In addition to federal tax filings, a corporation may be subject to filings in several other taxing jurisdictions. For further discussion, see the state and local discussion in this guide.

### Computation of income

U.S. corporations are subject to federal income tax on their worldwide income. A taxpayer's federal income tax liability is calculated as a percentage of federal taxable income. Most normal business expenses are deductible. However, book-tax differences arise when the book and financial statement rules for certain income or expense items differ from the tax treatment, as promulgated by the code.



## Book-tax differences

The following is a brief description of some of the common book-tax differences.

**Charitable contributions.** Deductions for charitable contributions are limited to 10% of a corporation's taxable income.

**Taxes.** Almost all taxes are deductible, including payroll taxes, foreign taxes, and state and local income taxes. However, neither federal income taxes nor penalties are deductible on either the federal return or most state returns.

**Meals and entertainment.** Up to 50% of allowable meal expenses are deductible by a corporation. The 50% rule applies to meals on the employer's premises, as well as the cost of meals of employees traveling away from home. Other entertainment expenses, such as cover charges for admissions to nightclubs or tickets to sporting events, are no longer deductible after 2017 as a result of tax reform unless the activity meets one of the listed exceptions. In any event, an entertainment expense, including a meal-related entertainment expense, only qualifies as a deduction if there is a substantial bona fide business activity during, directly following or directly preceding the meal. There are also special substantiation requirements for meal and entertainment expenses.

**Officer's life insurance.** Premiums paid on any life insurance policy are not deductible if for an endowment or annuity contract for which the taxpayer is directly or indirectly a beneficiary.

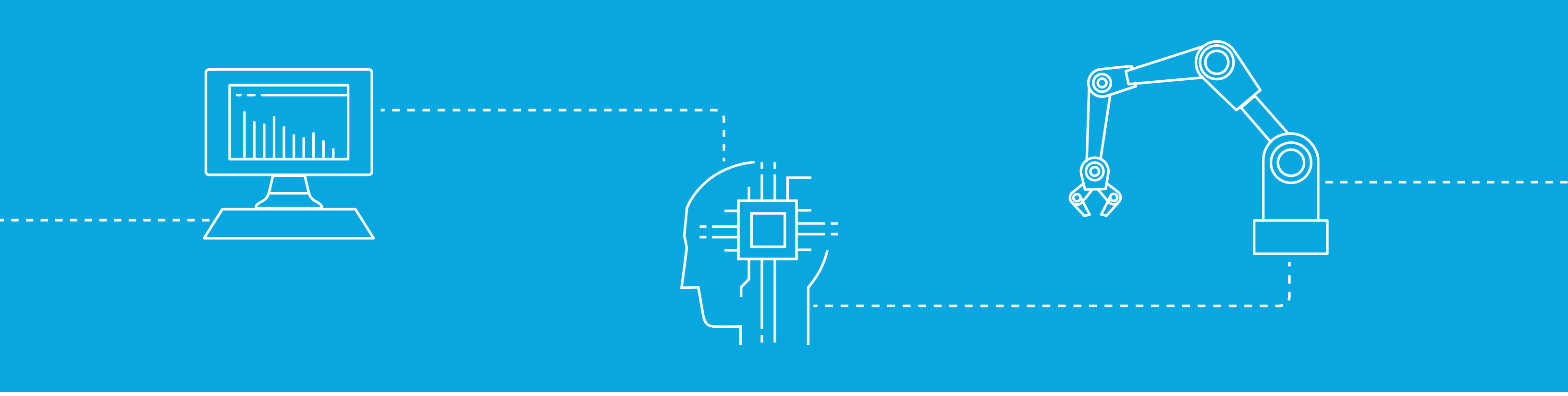
**Depreciation expense.** A depreciation deduction is allowed for most property used for a trade or business or held in the production of income. Land is not depreciable. Depreciation expense is generally calculated using the modified accelerated cost recovery system (MACRS).

**Section 179.** A taxpayer can take a section 179 deduction, which allows the taxpayer to expense the cost of depreciable property during the year of purchase, rather than depreciate the property over several years. The section 179 deduction is subject to a ceiling and an investment limitation. The deduction is further limited to the aggregate taxable income derived from the active trade or business.

**Bonus depreciation.** In recent years, several tax acts have been passed to allow an additional depreciation deduction of 30% to 100% of a qualified property's depreciable basis. This deduction is claimed during the year it's placed in service, with the applicable percentage determined by the property's acquisition date. The adjusted basis of the qualified property is reduced by the bonus depreciation allowance before calculating regular depreciation. Many states do not allow this additional deduction for bonus depreciation. Taxpayers must take bonus depreciation, unless they follow specific requirements to elect out in the year the asset is placed into service.

**Startup and organization costs.** A corporation that incurs business startup costs and, subsequently, enters that trade or business can elect to expense up to $5,000. The $5,000 expense deduction is reduced dollar for dollar when these startup expenses exceed $50,000. The balance is amortized over 180 months, starting with the month the business begins.

**Accruals and reserves.** Expenses must meet the all events tests before they are allowed as deductions. These tests require that costs be both fixed and determinable. Additionally, a liability cannot be treated as incurred any earlier than the taxable year in which economic performance occurs with respect to the liability. Certain liabilities, such as those related to warranties, rebates, refunds and insurance, must be paid for economic performance to occur.



**Inventories.** Inventory is most commonly valued using:

- Last-in, first-out (LIFO) method
- First-in, first-out (FIFO) method
- Burden rates
- Specific identification

Regardless of the method chosen, it has to be applied consistently. The IRS requires producers and large resellers to capitalize certain expenses not normally associated with inventory and certain self-constructed assets, resulting in these costs not being deducted during the year the costs were incurred. These include certain warehousing, purchasing, and general and administrative costs.

## Capital losses

A capital loss arises on the sale of a capital asset. A capital asset is broadly defined as an asset held for a long period of time and not bought or sold in the normal course of business. For corporations, capital losses are only deductible to the extent of capital gains. Any amounts unused in the year generated generally can be carried back three years or carried forward five years.

## Net operating losses

Most taxpayers no longer have the option to carryback a net operating loss (NOL). For most taxpayers, NOLs arising in tax years ending after 2017 can only be carried forward. The two-year carryback rule in effect before 2018, generally, does not apply to NOLs arising in tax years ending after Dec. 31, 2017. Exceptions apply to certain farming losses and NOLs of insurance companies other than a life insurance company. Also, for losses arising in taxable years beginning after Dec. 31, 2017, the NOL deduction is limited to 80% of taxable income (determined without regard to the deduction).

## Incentives and credits

The United States' worldwide system of taxation creates several credits and various exclusions and other benefits to promote activity within its own country and with other countries. Those listed below are not intended to be an exclusive list.

**Domestic production activities deduction.** Businesses engaged in manufacturing and other qualified production activities in whole, or significant part, in the United States can claim a deduction equal to the lowest of three amounts:

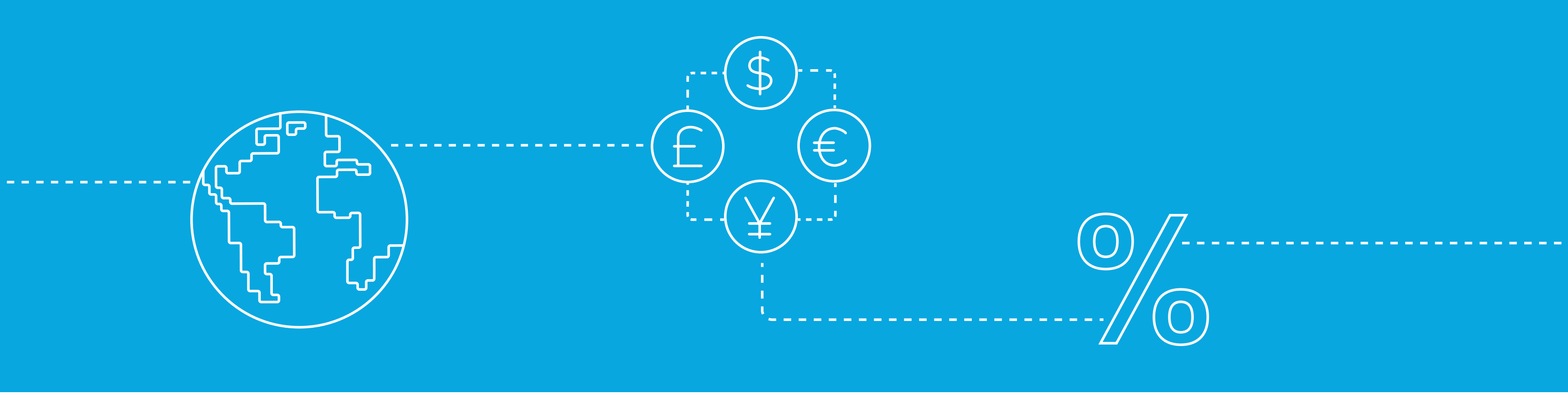
1. 9% of qualified production activity income
2. 9% of taxable income
3. 50% of IRS Form W-2 wages allocable to domestic production

**Research and development credit (R&D).** To encourage corporations to increase the amount they spend on research and experimental activities, corporations may take a credit equal to a certain percentage by which research expenses exceed a base amount. The research must:

1. be technological in nature
2. be intended to resolve technical uncertainty
3. involve a process of experimentation
4. be useful in the development of new or improved function, performance, reliability or quality of one or more business components

## Foreign tax credit

If a taxpayer paid or accrued foreign taxes to a foreign country on foreign-source income and is subject to U.S. tax on that same income, the taxpayer may deduct foreign income taxes paid or accrued, or elect to claim the payments as a credit against its U.S. tax liability. The amount of the credit may not exceed the U.S. tax liability.



## Foreign investment in the United States

Foreign investors are generally subject to U.S. income tax under one of two different tax regimes.

The first is a withholding regime that taxes certain types of U.S.-sourced income at the source. A 30% rate of withholding is applicable if the income is not considered effectively connected with a U.S. trade or business. For example, this type of income would include dividends or royalties paid to a foreign investor. The 30% rate can be reduced to the extent that the foreign recipient qualifies for a reduced rate under a double tax treaty with the recipient's country of residence.

The second regime taxes income that is effectively connected with a U.S. trade or business. This income is subject to taxation at regular graduated corporate tax rates. Furthermore, foreign corporations may be subject to a second level of taxation upon distribution of income from a U.S. corporation or upon a distribution of earnings from a U.S. branch business at a 30% or lower treaty rate.

## Foreign corporations doing business in the United States

A foreign corporation can conduct business in the United States without the establishment of a U.S. corporation. This business can be conducted as an unincorporated branch operation or, alternatively, by investing in a U.S. partnership or LLC, which may be particularly useful to accommodate certain investors' tax-planning needs.

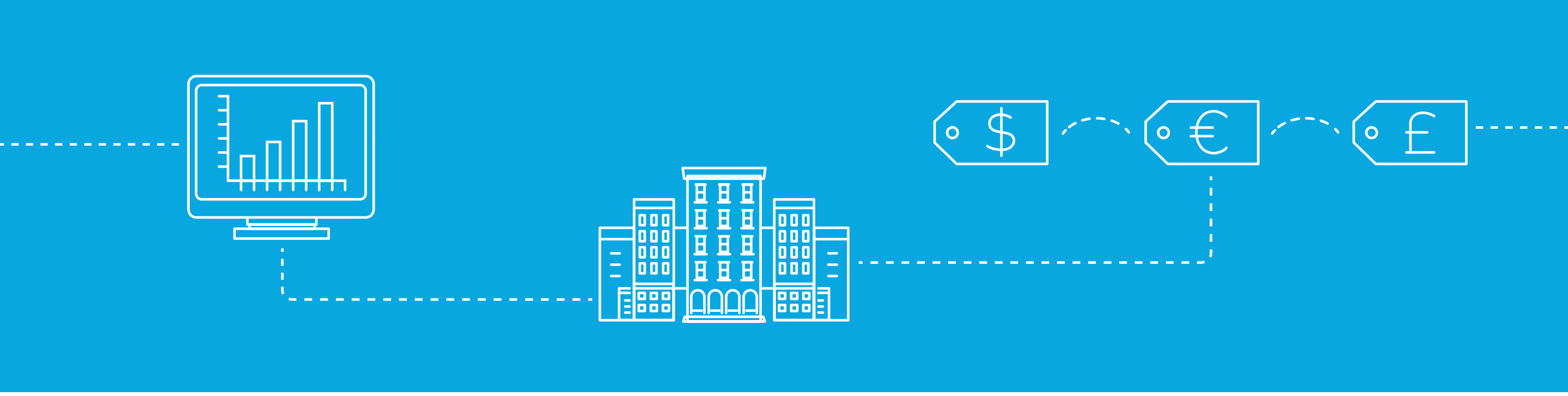
Foreign investors are subject to U.S. income tax, at normal tax rates, on income that is considered effectively connected with a U.S. trade or business. Effectively connected income generally includes one of the following:

- Capital gains and other fixed or determinable annual or periodic (FDAP) income are effectively connected income if they are considered to be earned by a U.S. trade or business
- All non-FDAP U.S.-source income that is connected with a U.S. trade or business
- Certain other statutorily defined categories (e.g., gain from the disposition of U.S. real property interest)
- Foreign-source income earned by a foreign taxpayer is not generally subject to U.S. income tax unless it is effectively connected with a U.S. trade or business

The code does not provide a detailed definition of what activities constitute a U.S. trade or business, so taxpayers must analyze each case based upon the facts and circumstances. In contrast, U.S. income tax treaties often provide a more specific definition of what activities constitute a permanent establishment. Generally speaking, taxpayers with no permanent U.S. establishment are not subject to U.S. income tax on effectively connected income.

Taxpayers who claim treaty protection must file a corporate tax return and disclose the activities taking place in the United States and the basis for the treaty position exempting those activities from U.S. tax. However, U.S. income tax treaties do not bind individual U.S. states, so it is possible for a foreign corporation to be exempt from U.S. federal income tax, but still have individual state income tax liabilities.

A foreign taxpayer's investment in a U.S. partnership or an LLC taxed as a partnership may constitute a U.S. trade or business. The foreign investor's earnings from the operations of those investments could therefore be subject to U.S. tax at the normal corporate or individual tax rates, depending upon the investor's status. The foreign investor in this case will be required to file U.S. tax returns. In addition, the U.S. partnership could be required to withhold and remit tax to the tax authority based upon the earnings of the foreign partner, regardless of whether or not there is an actual cash distribution to the partner. The foreign taxpayer may claim a credit for amounts withheld toward any U.S. tax liability.



### Branch profits tax

Under special rules, a foreign corporation engaged in a U.S. trade or business may be subject to an additional tax on earnings of the U.S. branch. In concept, the practice is meant to provide tax parity between operating in a branch form and operating in a corporate subsidiary form. In the latter case, a dividend distribution is subject to a statutory withholding tax of 30%, or lower, if an applicable reduced treaty rate applies. With the application of the branch profits tax, the branch operations are generally subject to the same potential double taxation regime that would apply if the foreign investor operated in the United States using a corporate subsidiary.

The amount subject to the branch profits tax is calculated using U.S. tax principles and generally tracks net decreases in U.S. equity after taking into consideration the current year's operations. Because the calculation takes into account changes in U.S. net equity, the timing and application of this tax is sometimes difficult to control when compared to the certainty of a dividend declaration.

## Special tax regimes and considerations

### U.S. real estate investments

Foreign investors who realize gains from the disposition of U.S. real estate are subject to a special tax regime. While U.S.-based capital gains (e.g., from the sale of corporate stock) are generally not subject to U.S. tax in the hands of a foreign taxpayer, gains from the sale of a U.S. real property interest (USRPI) are treated as effectively connected with a U.S. trade or business. Such gains are therefore subject to tax at graduated tax rates.

USRPIs include direct ownership and indirect ownership of U.S. stock in a corporation that is or was a U.S. real property holding corporation (USRPHC). A USRPHC is defined as a company that has USRPIs with a fair market value that is 50% or more of the entire corporation's fair market value. U.S. real property is defined to include not only the land, but also improvements and personal property associated with the real property. Domestically controlled (more than 50% owned) real estate investment trusts (REITS) and 5% or less interests in a publicly traded company are not considered USRPIs.

Similar to other nonresident withholding regimes, the buyer of any USRPI is generally required to withhold 15% of the consideration of the transaction. This withholding tax represents only a prepayment and can, by procedures initiated by the seller, be reduced to an amount that more appropriately represents the seller's anticipated U.S. tax liability resulting from the sale. In order to receive the reduced withholding tax liability, the seller must initiate, before the transaction, a request with the IRS for a reduced rate that is supported by preliminary calculations.

### Thin-capitalization rules and earnings stripping rules

The United States imposes restrictions on the deductibility of interest expense in certain circumstances. Generally, a taxpayer may not deduct interest to the extent it exceeds 30% of the taxpayer's adjusted taxable income plus the taxpayer's business interest income and certain other amounts.

Adjusted taxable income is U.S. taxable income adjusted to more closely approximate a cash-basis taxable income. Unlike the tax systems in many other countries, the application of this limitation is not a permanent disallowance of the expense. Any excess interest expense is available for future deduction in years when the limitation does not apply.

### Transfer pricing

Similar to most developed tax systems, the United States has detailed and stringent transfer pricing laws requiring arm's-length pricing in related-party transactions. Related-party transactions are all transactions between a company and its units and include intercompany purchases, royalties, interest, management fees, etc.

IRS regulations specify 10 elements that are required to comprise a complete transfer pricing study. The existence of a complete transfer pricing study does not preclude the IRS from proposing an adjustment to intercompany transactions, but a fully compliant study can be used to avoid potential penalty imposition in circumstances where the proposed adjustment is substantial.

In situations in which certainty is desired, the IRS has the authority to agree to advance pricing agreements with businesses.

### U.S. tax treaties

The United States has entered into bilateral income tax treaties with many countries with which it has significant trading activity. These treaties affect the taxation of business and shipping activities, as well as provide for reduced withholding taxes on certain types of U.S.-source income (i.e., dividends, interest and royalties).

In addition to these factors, the U.S. treaties are typically complex limitations on benefits articles. These complex rules attempt to prevent foreign investors from claiming treaty benefits that would not otherwise be available to the foreign investor by structuring transactions through a third country.

### U.S. tax reporting and compliance

U.S. tax reporting requirements are extremely detailed and comprehensive and the IRS has dramatically increased its scrutiny of foreign-related compliance over the last several years.

One particular area of note for inbound foreign investors relates to payments subject to withholding (generally FDAP payments). These payments are often subject to reduced withholding rates granted under a tax treaty, but in order to allow the reduced rate, the U.S. payor must obtain certain documentation from the payee to prove entitlement to benefits.

This is accomplished by the recipient providing an IRS Form W8-BEN or W8-BEN-E. In order to properly complete this form, the payee may be required to obtain a U.S. taxpayer identification number. The procedure to acquire a U.S. taxpayer identification number can be lengthy. In addition to properly documenting and remitting the correct tax liability associated with the payment, the U.S. payor will also be required to file annual year-end statements providing the details of the payments (IRS Form 1042 series).

## State and local taxation

Forty-six states and the District of Columbia, as well as numerous localities, impose some type of income-based tax on corporations. Additionally, many states impose franchise taxes for the privilege of doing business in the state. The tax base for franchise taxes varies among the states. Typically, however, franchise taxes are based on net income, net worth, gross receipts or a combination of these tax bases.

State and local tax laws are complex and can vary significantly among the states. As such, it is imperative that a corporation or any other business entity reviews the laws for each state in which it does business to ensure compliance with the applicable law.

## Nexus

Companies need to understand what causes them to be subject to a state's tax jurisdiction. The state in which a business is organized has the jurisdiction to tax the company, regardless of the amount of business activity that is conducted within the state. However, whether a state has the right to tax the income of a business that is organized in another state depends on the relationship between that state and the company. In state tax parlance, a corporation that conducts business in more than one state will be subject to income tax in a state other than the state of organization if sufficient nexus is established between that state and the corporation or transaction to be taxed. Simply stated, nexus describes the degree of business activity that must be present before a state taxing jurisdiction has the right to impose a tax.

A state's jurisdiction to tax is subject to three principal limitations: the U.S. Constitution's limitations found in the due process clause and the commerce clause, limitations imposed by federal law (Public Law 86-272) under the federal government's power to regulate interstate commerce and limitations that a state may voluntarily impose.

The requisite analysis can vary considerably from state to state and is independent of whether the company has a permanent establishment in the United States for treaty purposes.

## Tax base

In general, most states imposing a net income tax use federal taxable income, either before or after NOL special deductions, as the starting point. In addition, each state has its own modifications that must be made to federal taxable income in order to calculate the state tax base. Following are some of the more common modifications:

- Additions
  - *Municipal interest*—some states provide that obligations of their own state are not required to be added back. These types of bonds are referred to as double exempt bonds.
  - *State income taxes deducted in computing federal taxable income.* Most states require only state income taxes be added back. Additionally, some states only require the add-back of their own taxes.
- Subtractions
  - *Interest on federal obligations*—this exemption applies to interest earned on U.S. obligations, such as Treasury notes or bills, but generally does not apply to interest earned on Ginnie Maes and Fannie Maes.
  - *Refunds of state income taxes*

Additionally, some states may have specific rules for calculating depreciation and depletion, charitable contributions, interest deductions and NOLs.

## Apportionment

When a corporation has business activities in more than one state, a decision needs to be made on how to assign income to the multiple states. The commerce clause requires tax to be fairly apportioned among the states. However, there is no requirement for each of the states to accomplish this apportionment under uniform rules, and substantial state-to-state variations exist.

Although this process is generally called apportionment, states have developed different allocation and apportionment methods to source different types of income. Allocation generally applies to nonbusiness income, which is income generated by activities not in the regular line of business, while apportionment applies to business income, which is any income other than nonbusiness income. However, in some states, specifically enumerated types of income (e.g.,


dividends) are allocated, regardless of whether the income is business or nonbusiness, and some states ignore the business-nonbusiness distinction entirely. Additionally, to confuse matters even more, some states use their own unique terminology, and allocation may be called apportionment and vice versa.

Generally, nonbusiness income subject to allocation is specifically allocated to a single state, which may be the state of legal or commercial domicile or the state where the transaction has the most substantial connection. For example, a sale of nonbusiness real property would generally be sourced 100% to the state where the property is located. On the other hand, business income subject to apportionment is sourced based upon a formula that compares one or more factors representing overall business activities within the state over business activities everywhere. In general, a state's apportionment formula is calculated as the average of the ratios of the corporation's in-state sales, property and payroll to the corporation's total sales, property and payroll. Although the three factors are generally weighted equally, recent trends have increased the weight of the sales factor or eliminated the property and payroll factors entirely. Additionally, many states provide for special factors applicable to certain industries, such as transportation, broadcasting and print media, and many states reserve the power to require a corporation to utilize a different apportionment method when the standard method is distortive. Lastly, significant issues can arise in relation to the inclusion of partnership apportionment factors, the treatment of foreign income and sourcing of sales other than sales of tangible personal property.

## State filing methods

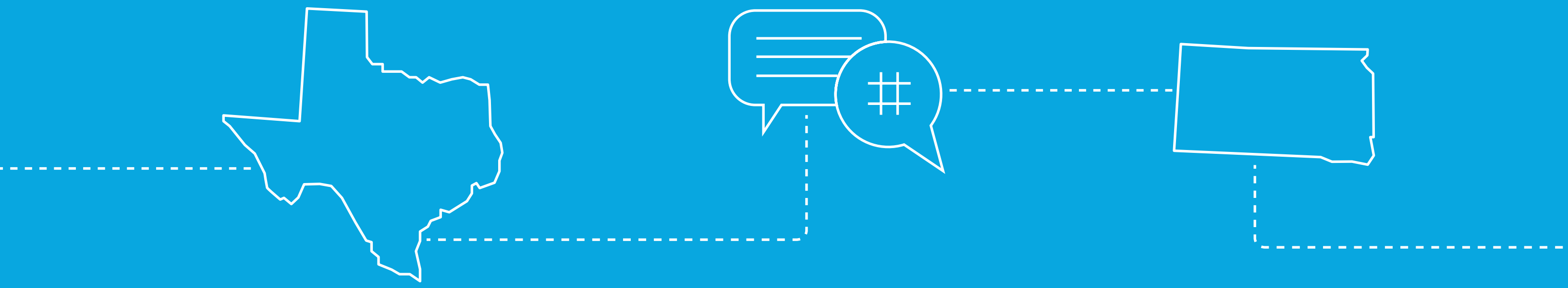
The states impose a large variety of filing methods on groups of commonly controlled corporations. Some states require separate corporate returns of all corporations engaging in business in their state, whereas other states require the combination of some or all of the commonly controlled corporations. The types of combinations (generally referred to as consolidated or combined returns) vary significantly among the states. Generally, consolidated returns include corporations that are owned 80% or more by a common owner, and combined returns generally include corporations that are 50% or more commonly owned and that comprise a unitary business.

The unitary business concept is a subjective term. Generally, states will look to the relationship between the corporations to determine if a unitary business relationship exists. Typically, the states will look at factors such as economies of scale, functional integration, line of business and centralization of management to determine if a unitary business relationship exists. The use and meaning of the terms consolidated, combined and unitary varies among states. Additionally, the inclusion of foreign entities adds another layer of complexity. As such, it is imperative that the particular state laws be analyzed to ensure proper filing.

## State and local sales and use taxes

Forty-five states and the District of Columbia, as well as nearly 10,000 local jurisdictions, impose sales and use taxes. Sales taxes are generally imposed on retail sales of tangible personal property and selected services, whereas the use tax is generally imposed on the use or consumption of the same items. Sales and use taxes are typically collected by the seller (to the extent the seller has a physical presence in the state) and then remitted to the state. To the extent the seller does not collect the tax, the purchaser may be required to self-assess the use tax and remit it directly to the state.

Sales and use taxes apply to all corporations in every industry, in virtually every state. They apply irrespective of whether the corporation incurs NOLs each year. In addition, sales and use tax laws are constantly changing. As such, it is imperative that the particular state laws be analyzed to ensure a corporation is in compliance.



States allow for various sales and use tax exemptions. These exemptions may vary either slightly or significantly from state to state. Following, however, are a couple of the more common exemptions that many states follow:

- **Resale exemption**—this is the most common and widely accepted exemption. This exemption applies due to the fact that the purchaser is purchasing the property or service in order to resell it and is not considered the final user or consumer. Issues can arise when the purchaser takes items out of inventory for its own use, as this generally triggers an imposition of the use tax. Additionally, resale exemptions may not apply to all businesses. For example, in many states, construction contractors are required to pay use tax on the purchase of taxable property and services used in performing contracts.
- **Industrial machinery and equipment exemption**—many states allow an exemption for the purchase of industrial machinery and equipment. To qualify, the equipment must usually be directly and primarily involved in processing tangible personal property into an item to be sold. The equipment must produce some direct effect on the product or cause a direct effect. Some states also extend the exemption to repairs of qualifying equipment and electricity and natural gas used in industrial processes.

Other common exemptions include purchases for use in research and development, tax-advantaged (enterprise) zones, pollution control and the provision of renewable energy. Additionally, some industries, such as government contracting, may benefit from specifically applicable exemptions.

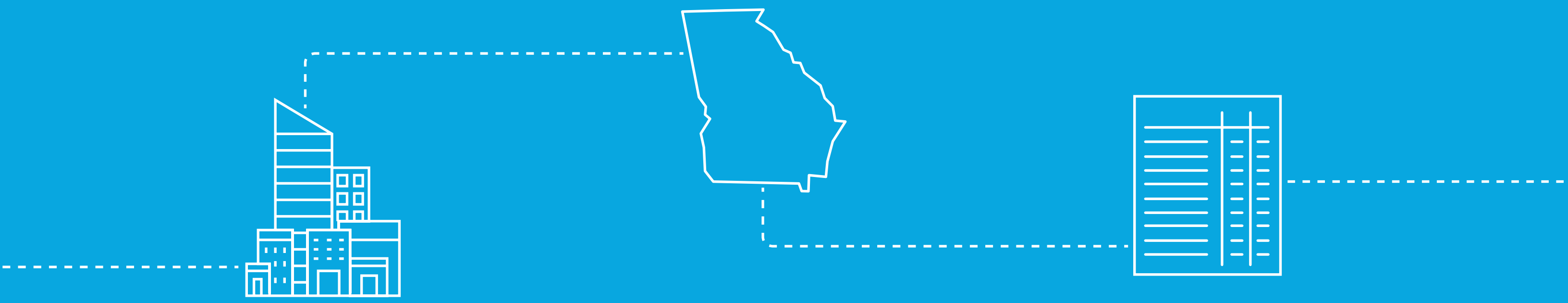
The sales tax is highly form-driven, and the applicability of the tax depends on the nature of the taxable property or service and the location to which the sale is sourced. There are, however, significant state-to-state variations, particularly in relation to developing industries. For example, many states are presently struggling with the applicability of sales and use tax to cloud computing. The states are asking: (1) whether cloud computing is a transfer of tangible property, a service, an intangible, amusement, communications or some hybrid of these, and (2) if taxable, where taxable use occurs when simultaneous use can happen in multiple locations across the country. The answer to these questions can vary, not just on a state-by-state basis, but also on a contract-by-contract basis, which can all too often catch sellers and purchasers by surprise.

## State tax nexus and the *South Dakota v. Wayfair* U.S. Supreme Court decision

U.S. state and local tax nexus is most often addressed in the context of analyzing what a company does and determining where, in the United States, the company could arguably have established sufficient contacts to be required to file state income and franchise, sales and use, or gross receipts tax returns. However, the question of where a company has to file only scratches the surface of the importance of nexus.

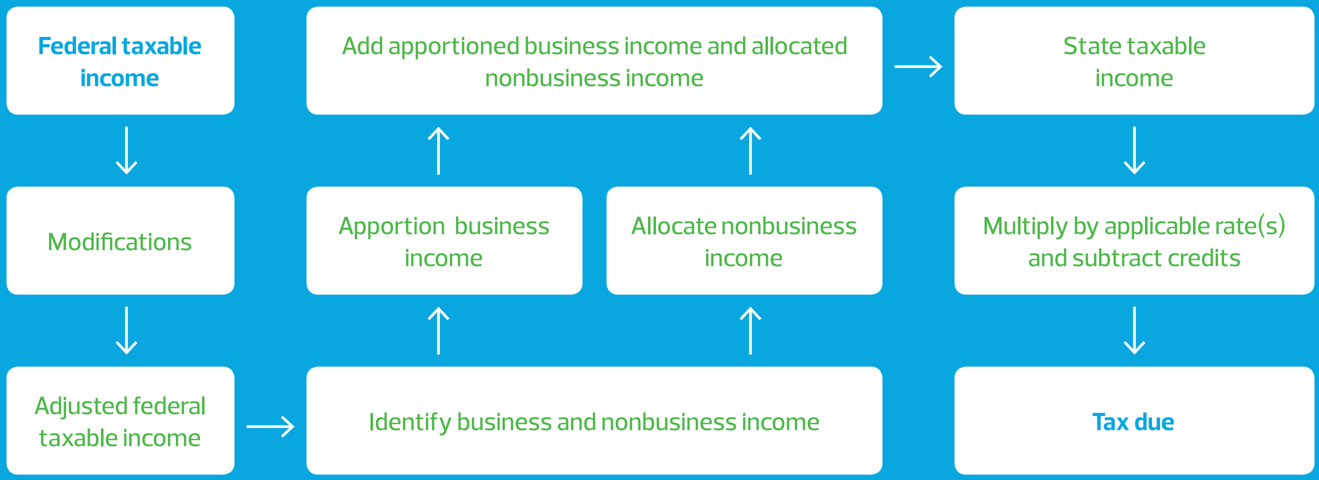
On June 21, 2018, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair*, overturning the long-standing physical presence nexus standard established through *Quill v. North Dakota* in 1992. With the *Wayfair* decision, the court opened up the possibility for states to impose sales and use tax collection and remittance responsibilities on remote sellers based solely upon their economic presence in a state. This decision and resulting changes to the sales and use tax nexus landscape will have wide-ranging impacts on most taxpayers in most industries. Most of the states have provided new laws or guidance in response to *Wayfair* through early 2019. It is anticipated that the decision will also affect how states approach income and franchise tax nexus.

All businesses selling inbound into the United States should remain observant of how the states they sell into react to the *Wayfair* decision. This decision does not only affect U.S. domestic entities, but also foreign entities, and new collection, remittance and reporting requirements can arise for those entities that may not have had such a responsibility historically.



## State income tax calculation flowchart

In general, the following flowchart summarizes how a state income tax is calculated:




### Other state and local taxes

State and local jurisdictions may impose many additional types of taxes, fees and other filing requirements. These taxes, fees and other filings relate to, among other things, payroll, property, unclaimed property, licenses, industry-related taxes, taxes on special types of businesses, gross receipts, real property transactions, and net worth taxes.

## Federal taxation of individuals

Individuals fall into one of two categories for U.S. income tax purposes: residents and nonresidents.

### U.S. tax residents

A resident is a U.S. citizen, a U.S. green cardholder, a nonresident who has elected to be treated as a U.S. resident for tax purposes or an alien who satisfies the requirements of the substantial presence test.

The substantial presence test asserts that an individual will be treated as a U.S. tax resident if he or she has resided in the United States for:

- 31 days in the current calendar year
- 183 days, counting all days in the current calendar year, one-third of the days in the preceding calendar year and one-sixth of the days in the second preceding year

Certain types of students and exchange workers can exclude days in the United States for the purposes of this test if they are in the United States on an F, J, Q or M visa.

An individual is treated as a resident for the whole calendar year in which the person became a citizen of the United States. An individual who is a U.S. tax resident by virtue of obtaining a green card during that year is treated as a U.S. resident from the first date of presence in the United States during that year. An individual achieving U.S. tax residency under the substantial presence test is treated as becoming a U.S. resident on their first day of physical presence in the United States during that year. Any temporary visit of less than 10 days will be ignored when establishing this start date.

An individual whose residency start date is during the year may be considered a dual-status taxpayer for that initial year. Essentially, this treats the individual as a part-year nonresident and part-year resident for tax purposes; and this can have a significant impact on the filing status and available exemptions and deductions. Nonresident individuals may be able to elect full-year residency if certain conditions are met. A U.S. resident is taxed on worldwide income and is allowed to deduct from that income:

- Medical, health and retirement contributions (subject to certain limits)
- Fixed-amount exemptions for certain dependents
- Either the fixed amount standard deduction or itemized deductions, if larger, which include mortgage interest, real estate taxes, state income taxes, charitable donations and work-related expenses (subject to certain limits)

The adjusted taxable income is subject to graduated rates of tax that depend on the taxpayer's filing status (single, married, etc.). Credit will be given, subject to certain limitations, for any taxes correctly paid on non-U.S.-sourced income. Any excess foreign tax credits can be carried back one year or forward 10 years to be utilized in a year when the individual has excess foreign source income.

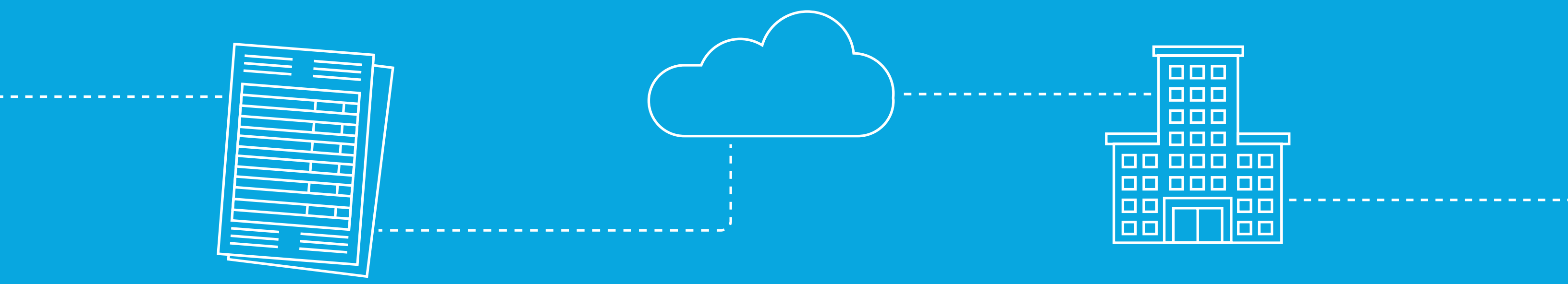
Residents should also be aware of a parallel income taxing system known as the alternative minimum tax (AMT). AMT is imposed at a flat rate on an individual's alternative minimum taxable income. Generally, AMT income is computed by adding certain preference income items and disallowing certain deductions from regular taxable income and then reducing the amount by a significant exemption. If this amount is higher than the regular tax calculated above, the AMT is imposed. Historically, the tax has primarily applied to individuals who have significant itemized deductions. However, more and more individuals are finding themselves subject to the tax, since the exemption has not been increased commensurately with inflation.

### Non–U.S. tax residents

Nonresidents are taxed only on certain U.S. sources of income, namely:

- FDAP income
- Income effectively connected with a U.S. trade or business

Nonresidents are also subject to U.S. taxes at graduated rates, but it should be noted that deductions and exemptions available to nonresidents are limited. Additionally, some FDAP income may be subject to flat, lower rates of tax if the recipient is resident in a country with which the United States has a tax treaty that provides for such application.



Nonresidents are generally not subject to U.S. taxes on gains from the sale of assets unless those assets are effectively connected with a U.S. trade or business or are USRPIs.

## Foreign bank account and asset reporting

U.S. citizens and residents may be required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts. This form must be completed and filed by June 30 (no extensions are granted) if an individual had an interest in or signature authority over foreign bank accounts that had an aggregate balance that exceeded $10,000 at any point during the tax year.

U.S. citizens and residents may also be required to file IRS Form 8938, Statement of Specified Foreign Financial Assets, with their annual tax return. This form is required under provisions of the U.S. Foreign Account Tax Compliance Act (FATCA) to report interest in certain specified foreign financial assets if the total value of such assets exceeds certain reporting thresholds. Form 8938 does not replace or otherwise affect a taxpayer's obligation to file FinCEN Form 114.

## FATCA reporting

FATCA is part of a comprehensive U.S. anti-evasion global reporting system designed to locate income and assets held by U.S. persons in offshore accounts (either directly or indirectly through ownership of foreign entities) and ensure that this information is reported to the IRS.

FATCA requires U.S. withholding agents (USWAs) to withhold a 30% gross withholding tax on withholdable payments made to noncompliant foreign persons, foreign financial institutions (FFIs) and nonfinancial foreign entities (NFFEs). Withholdable payments include payments of U.S.-sourced fixed, determinable or annual (FDAP) income (such as interest or dividends).

FATCA imposes various complex registration, reporting, due diligence and withholding requirements for FFIs, including registering with the IRS and providing annual information on their U.S. investors and account holders.

Nonfinancial companies may also have obligations under FATCA, ranging from tax withholding and reporting information to the IRS to establishing controls and procedures that ensure appropriate payee documentation is collected, vetted and retained.

The IRS has amended many forms and procedures to conform to FATCA. Taxpayers must use IRS Form W-8 and its variants to document their foreign status for FATCA purposes.

Other governments have adopted rules similar to FATCA, such as the OECD's global Common Reporting Standard (CRS), which also affects U.S. citizens or residents with offshore financial accounts. The United States does not currently participate in CRS. However, U.S. persons holding accounts at financial institutions in countries that have adopted CRS must certify their CRS status and may be required to disclose information on their controlling persons (i.e., those with 25% or more interest), or they may be subject to reporting, account closure or penalties which vary by jurisdiction.

# EMPLOYMENT

Reflecting on the population at large, it is an exceptionally diverse workforce in terms of gender, age, race and country of origin. Hours are long, holidays are short and people often work for many years beyond the traditional retirement age of other countries.

Local economies, labor markets and the availability of skilled labor vary significantly around the United States, and conditions can change unevenly because of the diversity and dynamics of regional economies and markets. Any company considering a new venture should investigate the labor market as a part of its site selection process.

## Labor legislation

Employment regulation in the United States is far less comprehensive than in most other highly developed countries. The same is true regarding social protection. In fact, relations between employers and employees traditionally have been viewed as a private matter, subject to the agreement reached between the parties. In the United States there is no broad legal code of employment law.

Federal regulations apply throughout the United States. However, the regulations of a given state apply only within the borders of the state, and there are often tremendous differences in the level of protection, and their associated costs, from one state to another. Following is a description of key federal labor statutes, items typically covered by state law, and common labor practices that may be found throughout the United States.

## Federal laws and regulations

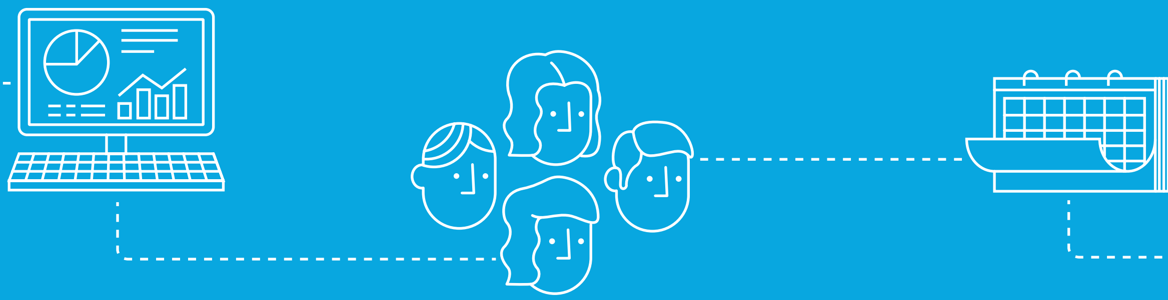
**Fair Labor Standards Act.** The federal Fair Labor Standards Act regulates minimum wage, overtime pay and child labor, and prohibits salary discrimination on the basis of gender. The federal minimum wage as of July 24, 2009, is $7.25 per hour.[9] Individual states may require higher minimum standards.

The federal minimum standards for wages, hours and working conditions are enforced by the United States Department of Labor, which is also responsible for enforcing federal laws regarding labor organizations, the negotiation of labor disputes and industry harmony in general. In addition, the Department of Labor's Bureau of Labor Statistics publishes extensive statistics on employment and wages.

**Workplace safety.** The federal Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor inspects job sites and enforce health and safety standards through the citation of violations and issuance of abatement orders.

**Social Security.** Unlike the social security programs of most countries, the United States Social Security system is primarily a retirement income program serving the elderly. The system does not provide health or income security for the general population.

The Social Security system provides supplementary income for retired people and their survivors and the disabled. Under Social Security, a system of health care insurance called Medicare provides hospital and medical insurance to the disabled and to persons age 65 and older. The Social Security system is administered by the Social Security Administration.



**Workplace discrimination.** Laws adopted by the U.S. Congress and most states make it illegal to discriminate on the basis of race, sex, religion, national origin, age, disability or genetic information in the hiring, treatment and promotion of employees.

Many observers from abroad have noted that these anti-discrimination laws are more comprehensive and more actively enforced in the United States than in most other countries, so familiarity and strict compliance with the laws are essential. Individual states are increasingly active in protecting individuals from discrimination based on sexual orientation.

**Privacy and harassment.** Federal and state laws protect employees from intrusive invasion into their personal lives and provide very strong protection against sexual harassment. The standards applied in the United States are much stricter than in most other countries and the penalties for violation of protective rules are very severe. Prohibited conduct includes oral and written communications that are sexually offensive to persons exposed to them.

**Unions.** As in most industrialized countries, labor unions play an important role in the United States, especially in government, manufacturing, health care and transportation. Union membership in 2018 accounted for about 10.5% of the labor force.[10] This was down 0.2% from the prior year.

Union membership is far higher in the public sector. Some 33.9% of public employees are union members, while only 6.4% of private employees belong to unions.[11] Union membership in the private sector has declined substantially in recent years, but unions still exercise considerable political influence.

The right of labor to organize and the rules applying to labor unions are governed by the federal Fair Labor Relations Act and are overseen by the federal Fair Labor Relations Board. In general, union-management relations in the United States in recent years have been marked by moderation and cooperation.

## Human resource programs covered by state law

**Unemployment insurance.** Generally, workers who become unemployed through no fault of their own are eligible for state unemployment insurance payments. Programs are administered by the states and jointly financed by the federal and state governments. The federal participation is uniform nationally, but state participation and benefits can vary significantly.

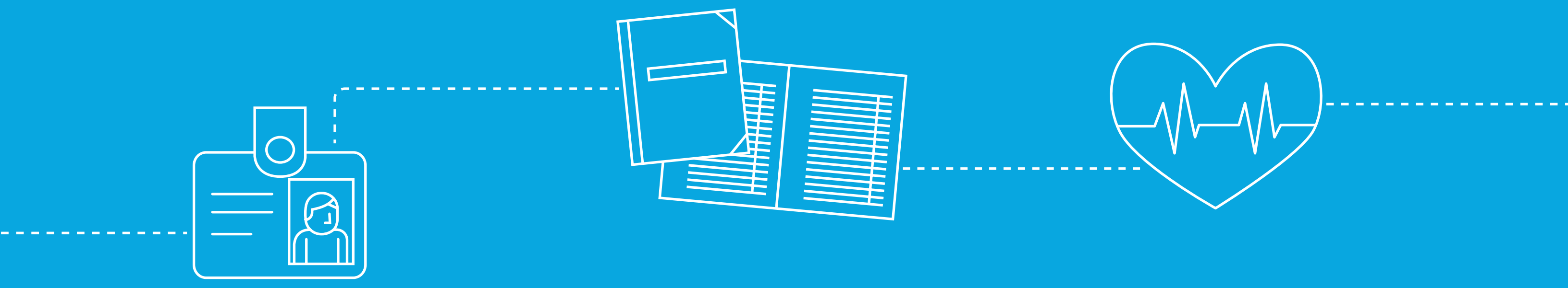
**Workers' compensation.** Compensation for job-related injuries and illness is legislated and administered by the states. Programs generally are funded by employer contributions. These required contributions can vary significantly from state to state and should be factored into site location decisions.

## Human resource customs and practices

**Some average wage rates.** National average hourly rates of pay in U.S. dollars for workers in representative occupational sectors as of May 2019 were:[12]

| | |
|---|---|
| Construction | $22.12 |
| Production (manufacturing) | $16.86 |
| Business and financial | $32.86 |
| Sales, technical products | $38.31 |
| Retail sales | $11.33 |

These averages can be deceptive in that there are substantial variations by region. Wages are generally highest in the West and Northeast and lowest in the South.



**Vacations and holidays.** Neither federal nor state laws set forth requirements for vacations, and U.S. workers generally receive less paid vacation than in other developed countries. Both vacation rights and holidays are set by the employer or agreed to by contract. Vacation policies vary by company and sector, but common practices include: one or two weeks after one year of service; two weeks after two years; three weeks after five or 10 years; and four weeks after 20 years. Full-time workers normally receive eight or nine paid holidays a year.

The four most important holidays of the year are July 4 (Independence Day), Thanksgiving (third Thursday of November), Christmas (Dec. 25) and New Year's Day (Jan. 1).

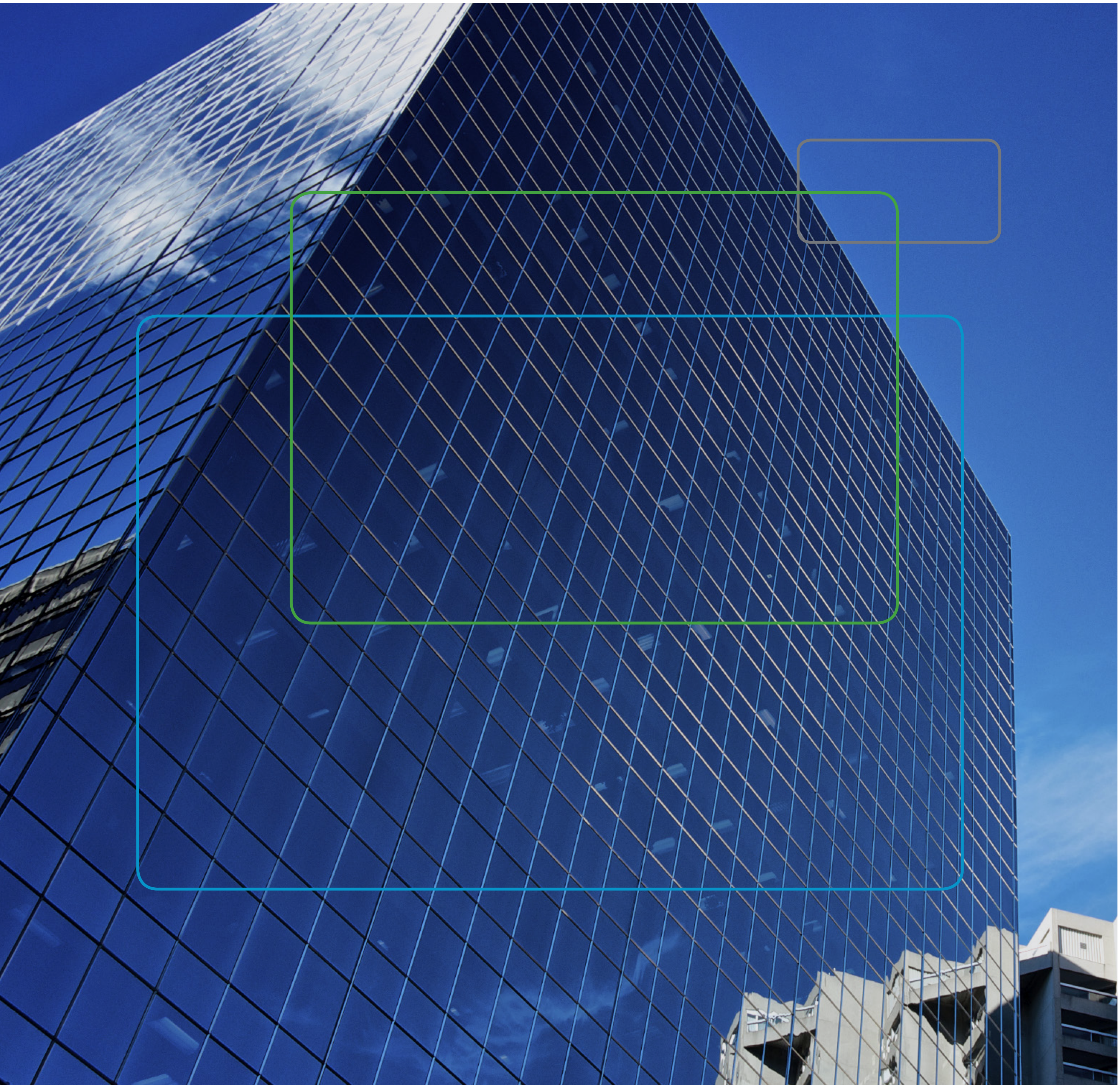
**Retirement age.** The generally accepted retirement age in the United States is 65, but earlier retirement is common. Many agreements provide for retirement after a certain number of years of employment, 20 or 30 being typical. By the year 2027, the threshold for full Social Security retirement benefits is to be raised from 65 to 67 years old.[13]

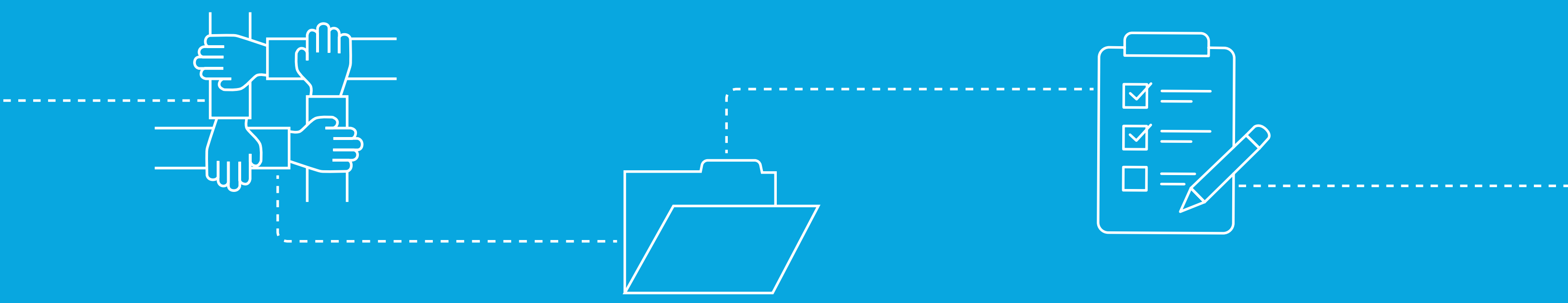
**Termination rights.** Unless there is a contract or a special law to the contrary, employees in the United States traditionally have been treated by the law as employees at will, which means that they can be terminated at any time, with or without cause. Employees who are terminated for other than cause are eligible to receive state unemployment insurance benefits, described previously in this section. Customarily, employers also provide workers with voluntary severance pay.

Federal laws provide additional protection and assistance to employees in certain instances. For example, the Federal Plant Closings Law may require companies with 100 or more employees to give advance notice of plans to lay off or dismiss 50 or more employees. Also, employees affected by plant relocation to Mexico or Canada may receive special consideration. In cases where employees are represented by a labor union, a contract between the union and the employer typically will stipulate rights and rules concerning employment termination.

**Medical, disability and retirement benefits.** Signed into law March 23, 2010, the Patient Protection and Affordable Care Act is a piece of federal health care legislation that, for the first time in the United States, broadly requires employers to provide health insurance that meets minimum value and affordability standards or risks paying penalties. Additionally, the law has provisions designed to help small businesses provide health insurance for workers through tax credits to cover costs and a centralized insurance exchange to facilitate purchasing.

Many companies provide benefits above and beyond the legal requirements; benefits vary by sector and region. In cases where employees are represented by a labor union, the labor contract typically stipulates the nature of these benefits. The most common of these "fringe benefits" is medical and hospital insurance. In some cases, the entire cost is paid by employers, but copayment by employees and the use of insurance policies with deductible payments are most common.





Benefits are typically offered as part of a total compensation package designed to attract and retain employees. Many companies also provide life and disability insurance coverage, as well as pension and profit sharing plans. Listed companies frequently offer employees stock purchase and stock option plans. Since some fringe benefits are not subject to income taxation and receive preferred tax treatment, they can be important elements in developing attractive compensation packages, especially for hard-to-replace people.

## Foreign employees

There is no limit in the number of foreigners who can be employed in a company operating in the United States, as long as the foreign employees have satisfied federal entry and work permit requirements. However, severe penalties are in place for the employment of undocumented aliens, and all employers are responsible for checking such documentation.

## Entry into the United States

Complete details on the entry requirements for various types of activities are available through U.S. consulates everywhere and from the U.S. Citizenship and Immigration Services (USCIS). Workers seeking most categories of visas must receive approval from the U.S. Department of Labor verifying a shortage of willing and able workers in the job category.

Foreigners seeking to enter the United States for purposes of working and earning U.S. wages are often advised to seek the guidance of a lawyer specializing in U.S. immigration law.

The main classes of visas are:

**Temporary business visitor (B-1).** A one-year visa permitting a survey of investment opportunities, attendance at meetings and consultation with business associates—but not income-producing employment. This visa may be extended for six months.

**Treaty trader (E-1) or treaty investor (E-2).** A one-year visa issued to individuals involved in substantial trade or investment, who are citizens of countries that have treaties of commerce and navigation with the United States. The holder must perform in an executive or managerial position or possess specialized knowledge essential to his U.S. position. These visas are renewable in one-year increments.

**Intra-company transfers (L-1).** A visa issued for up to three years to executives, managers and specialists employed for one year or more, whose services are required in a U.S. subsidiary or affiliate of the same firm. Renewal is subject to demonstration of need.

**Temporary worker, trainee (H).** H-1 visas are for scholars or professionals seeking entry to perform specialized services. H-2 visas are for individuals who perform temporary or seasonal jobs. H-3 visas are for people coming to the United States temporarily to receive training.

**Immigrant visas.** Visas for people seeking permanent residence. These individuals are subject to a system of preferences within annual quota limitations. Eligibility is based on relationships to U.S. citizens or permanent residents, profession or occupation and relationship with a U.S. employer.

# THE UNITED STATES—FACT FILE[14]

## Land

- The United States is the third-largest country in the world.
- Area: 9,8335,517 sq. km
  - Land: 9,147,593 sq. km
  - Water: 685,924 sq. km
- Note: includes only the 50 states and District of Columbia
- Comparative:
  - About one-half the size of Russia
  - Slightly larger than China
  - About two times the size of Western Europe

## Climate

- U.S. climates range from tropical in Florida, Hawaii and the Gulf Coast, to desert in the southwest and Arctic in the Alaskan interior.
- The interior of the contiguous 48 states has greater seasonal temperature ranges than coastal areas.
- Rainfall amounts generally increase west to east in central areas.
- Two major northern and southern mountain ranges affect local climates – the Appalachians in the East and the Rockies in the West.

## Terrain

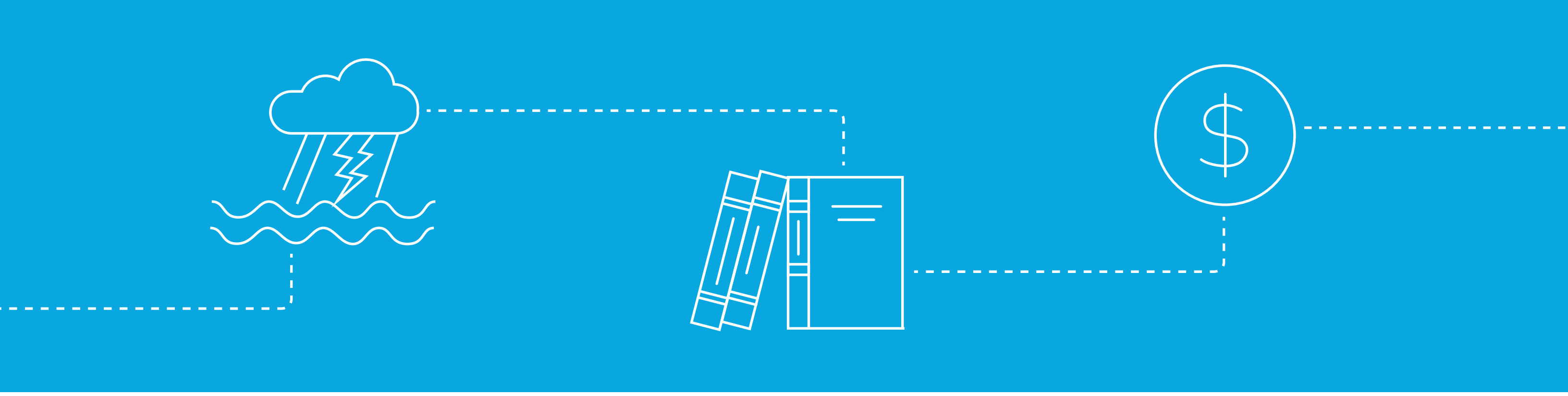
- The United States comprises of vast central plain mountains in the West and hills and mountains in the East; rugged mountains and broad river valleys in Alaska; rugged, volcanic topography in Hawaii.
- Elevation extremes:
  - Lowest point: Death Valley, –86 m
  - Highest point: Denali, 6,190 m

## Natural resources

- Coal, copper, lead, molybdenum, phosphates, uranium, bauxite, gold, iron, mercury, nickel, potash, silver, tungsten, zinc, petroleum, natural gas, timber
- The United States has the world's largest coal reserves with 491 billion short tones (27% of the world's total)

## Land use

- Agricultural land: 44.5%
  - Arable: 16.8%
  - Permanent crops: 0.23%
- Forest: 33.3%
- Irrigated land: 264,000 sq. km



## Natural hazards

- Tsunamis, volcanoes and earthquake activity around the Pacific Basin
- Hurricanes along the Atlantic coast
- Tornadoes in the Midwest
- Mudslides in California
- Forest fires in the West
- Flooding
- Permafrost in northern Alaska is a major impediment to development

## Environmental issues

- Air pollution resulting in acid rain in both the United States and Canada
- Large emitter of carbon dioxide from the burning of fossil fuels
- Water pollution from runoff of pesticides and fertilizers
- Limited natural freshwater resources in much of the western part of the country require careful management
- Desertification

## Education[15]

- Elementary and secondary educations are mandatory up to ages 16 or 18, varying by state.
- Public schools are fully subsidized.
- Enrollment:
  - 90% public
  - 10% private
- 88% of adults over 25 years of age have graduated from high school, and 37% have a bachelor's degree or higher.

## Currency

- The unit of legal tender is the U.S. dollar (100 cents to $1).
- The U.S. dollar floats and is freely convertible into the currency of other countries.

## Population

- Population: More than 329 million (2018 estimate)
- Labor force: 156 million
- Life expectancy at birth:
  - Male 77.8 years
  - Female 82.3 years

## Gross domestic product

- $19.49 trillion (2017 estimate)

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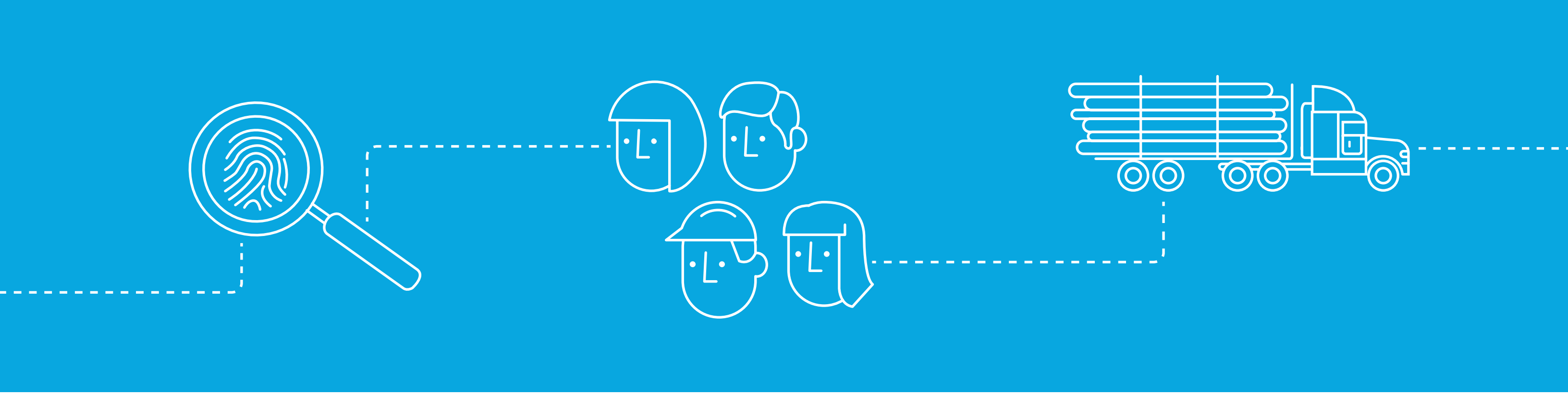


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