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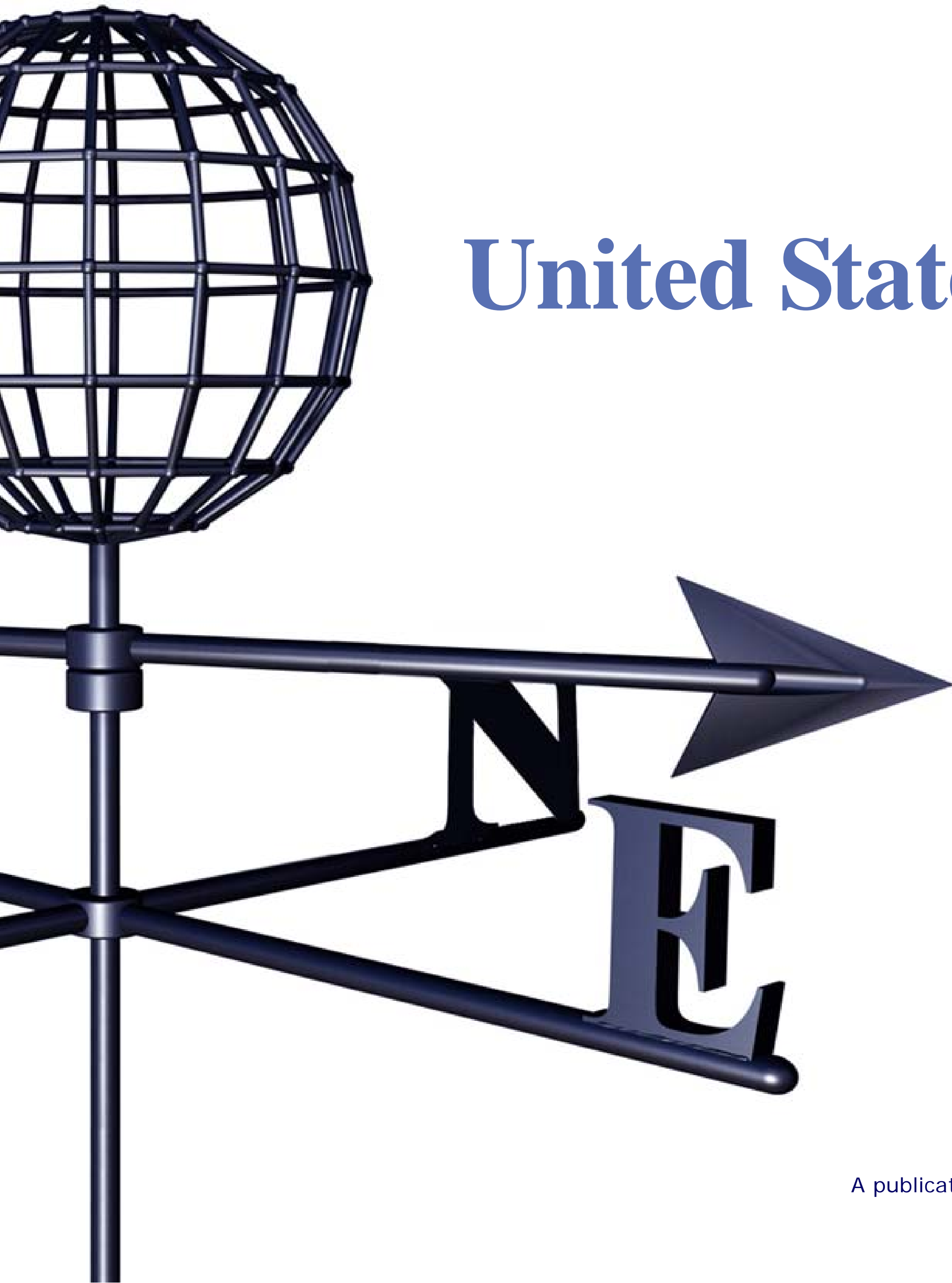

United States

A publication of Deloitte Touche Tohmatsu Limited

United States International Tax and Business Guide

Tax professionals of the member firms of Deloitte Touche Tohmatsu Limited have created the Deloitte International Tax and Business Guides, an online series that provides information on investment conditions, tax regimes and regulatory requirements, along with information for executives working abroad. The Guides are supplemented by the Highlights series, an at-a-glance summary of basic information, including tax rates, for over 120 jurisdictions.

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1.0 The investment climate

Political background

The US is a federal republic. Powers are constitutionally divided between the executive, legislative and judicial branches of the government, and between federal and state governments. The president heads the executive branch. The federal legislature, Congress, consists of the House of Representatives, whose members are elected for constituencies based on population, and the Senate, whose members are elected from each of the 50 states (two per state).

1.1 Economic structure

The US has a diverse economy. Leading industries include motor vehicles, aerospace, telecommunications, chemicals, electronics and computers. Services account for the bulk of GDP, and the most important are distributive trades, real estate, transportation, finance, healthcare and business services.

1.2 Banking and financing

The national market includes financial holding companies that operate nationwide, dominant regional banks and smaller independent banks. In addition to commercial banks, investment banks and savings and loan associations, there are many specialised institutions that are important sources of financing.

1.3 Foreign trade

Major destinations for US exports (and sources of US imports) include Canada, the EU, Mexico, Japan and China. The US government has increasingly turned to bilateral or regional free trade agreements to promote liberalisation of trade and capital flows.

2.0 Business regulations

2.1 Registration and licensing

No government approval is needed for foreign licensing of technology in the US, but firms operating in the US are subject to export controls on the transfer of certain technology abroad. The government imposes no controls or limitations on remittances of royalties and fees or restrictions on paying a parent company. US antitrust laws, however, apply to licensing agreements. The general approach is to evaluate the effect on competition.

Patent licensing and technical assistance agreements need not be recorded in the Patent and Trademark Office to have legal effect, but if an assignment, grant or conveyance of a patent is not registered within three months of its taking place, it might be void against a subsequently recorded purchase. A few states have prescribed certain formalities to be observed concerning the sale of patent rights.

2.2 Price controls

Price controls apply to some regulated monopolies in the US (e.g. utilities and the postal service), and certain states and localities control residential rents.

2.3 Monopolies and restraint of trade

The US government may challenge the abuse of monopoly power and market dominance. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) generally apply the same market principles to foreign competitors as they do to domestic firms. If foreign firms import competing products into the relevant market, they are included in the market. In interpreting the resulting market share and concentration data, the DOJ and the FTC consider factors such as trade restraints and the excess capacity of foreign firms.

If the DOJ suspects an antitrust violation, it may file a civil complaint before a US court asking that the challenged practice be declared illegal and enjoined. The DOJ may institute a criminal proceeding after investigation by a grand jury, or it may undertake both civil and criminal options, simultaneously or successively. The DOJ also may sue for damages on behalf of the government as an injured purchaser of goods or services from an antitrust violator.

Government guidelines on collaboration among competitors allow the DOJ and FTC to rule combinations illegal *per se* when they have no pro-competitive implications and when they may

harm consumers. The agencies may also investigate and bar other combinations whose effects are more ambiguous. Antitrust guidelines for international operations attempt to outline the applicability of US antitrust law to the activities of foreign firms in the US and those of US firms abroad. In general terms, US antitrust law applies to conduct that has a direct, substantial and reasonably foreseeable effect on US domestic commerce or the export activities of US firms.

2.4 Intellectual property

The US has a well developed system of licensing that protects patents, trademarks and copyrights. Each has its own set of rules and procedures. The holder of a US patent, trademark or copyright may sue the infringer through the US federal court system. The holder may also obtain an injunction and may sue for damages. A foreign patent holder who licenses a patent in the US may be able to sue an infringer directly if the licence agreement allows.

Patents

The Patent and Trademark Office issues patents and trademark registrations. A US patent may be obtained by any person who invents or discovers a new and useful process, machine, manufacture or composition of matter, or any new and useful improvements of these. US patent laws make no distinctions based on the inventor's citizenship. Patents are issued to individual inventors, who may assign or license their rights. It is legal to require employees to assign their patent rights to their employers.

US patent law also protects owners of US process patents - any person who, without authority, imports into the US or sells or uses in the US a product made outside of the country but using a process patented in the US may be liable for infringement. Moreover, as a result of the Trade-Related Aspects of Intellectual Property (TRIPs) agreement, US patent law includes the importation and offer for sale of patented products and processes as acts of infringement.

The Tariff Act of 1930, as amended, is an alternative to federal patent litigation involving international trade. Under this act, the International Trade Commission (ITC) investigates infringement claims. The ITC must conclude its investigation as quickly as possible and must, within 45 days of its start, establish a target date for issuing a final declaration.

Copyrights

Copyrights may be filed with the Copyright Office of the Library of Congress. US copyright protection, however, is automatically extended to "original works of authorship" at the time of their creation. This provides the owner with exclusive rights to reproduce and sell a work. Works that can be copyrighted include motion pictures, sound recordings and computer software.

The Copyright Act does impose certain limits on holders' rights. Limitations on the exclusive rights of copyright owners include the doctrine of "fair use," which permits the use of copyrighted information for news reporting, teaching, research and a few other pursuits, and an allowance for "compulsory licensing" when royalty payments are made.

Trademarks

A US trademark relates to any word, name, symbol or device used in the trade of goods or services to indicate the source or origin of the goods or services and to distinguish them from the goods or services of others. Trademarks may be obtained to prevent others from using confusingly similar marks, but they may not be used to keep others from manufacturing the item or offering the services concerned. Criminal penalties are imposed for trafficking in goods or services bearing a counterfeit mark.

Trademark rights in the US are acquired through common law "use requirements" and not, as in many countries, through first registration. Nevertheless, US law does allow for the filing of an intent-to-use application, which provides a constructive first use date based on the filing date. A trademark's continued use is necessary for the protection to remain in effect. A US trademark right is acquired through adoption and by use of a mark on goods or in connection with services, or by filing an intent-to-use application that is supported by later use.

Trade secrets

Trade secrets are considered a form of property and the DOJ has jurisdiction over the protection of trade secrets. Under the general outline of the trade secret doctrine, the owner of a trade secret has the right to use it to the owner's economic advantage. The law also protects the holder of a trade secret against disclosure gained by some improper means. Trade secrets

law does not offer protection, however, against discovery by fair and honest means, for example by independent invention, accidental disclosure or reverse engineering.

2.5 Mergers and acquisitions

Guidelines issued by the DOJ, in conjunction with the FTC, on horizontal mergers are used to determine whether to challenge a merger. The criteria include the level of concentration in the market and the market share.

Regulations and legislation governing acquisitions and pre-merger notifications specify that the parties in commerce must be of requisite size to file with the DOJ and the FTC. One party must have sales or assets of at least USD 100 million; the other, at least USD 10 million. (In certain cases involving non-manufacturing companies, only assets are considered.) Besides the minimum-size requirement, parties must file when acquiring more than USD 15 million worth of voting securities or assets, or a combination of the two. If less than USD 15 million in voting securities is acquired, the parties must still file when acquiring 50% or more of the voting securities of an issuer that has USD 25 million or more in either assets or sales.

For a regular (that is, consensual) transaction, there is a 30-day waiting period (unless the transaction is a cash tender offer, which has a 15-day wait). This period may be extended by FTC requests to the parties for further information. Many specific exemptions exist, e.g. the acquisition of less than 10% of voting securities solely for the purpose of investment, or the acquisition of goods or real estate in the ordinary course of business.

3.0 Foreign investment

3.1 Foreign investment incentives and restrictions

Foreign investment is usually welcome in the US. There are no general federal laws that govern new investments or expansions by domestic or foreign enterprises, although most acquisitions must be reported to the Department of Commerce. Foreign investors generally need not register with the federal government, but the Treasury's "Committee on Foreign Investment in the United States" monitors acquisitions by non-US interests. The US maintains restrictions on investment in specific sectors deemed sensitive to national security. Moreover, a foreign acquisition of a 10% or greater voting interest (or the equivalent) in any new or existing US business enterprise with assets of USD 1 million or more must be reported by that enterprise to the Bureau of Economic Analysis (of the Department of Commerce) as a "foreign direct investment." An initial report is due upon the establishment of an enterprise or upon an acquisition or merger that results in a 10% or greater foreign interest.

The foreign investment policy is "neutrality with encouragement." The generally open economic system fosters investment inflows without according special privileges to foreigners. Nevertheless, state and local officials court large investment projects with tax exemptions, subsidised loans and employment grants.

Federal law bars or limits (e.g. ownership percentages or licensing) foreign investment in certain industries, including among others: coastal or freshwater shipping enterprises; domestic air transportation firms; hydroelectric power companies; certain nuclear materials; banking; government contracts and broadcasting. Most states impose only minor (usually reciprocal) restrictions against foreign investors, and federal laws or treaties sometimes preempt state legislation. State and local regulations affecting foreign investment generally pertain to ownership and use of land and natural resources, supervision of professions and matters related to intrastate commerce.

3.2 Exchange controls

The Treasury Department prescribes regulations on capital and exchange controls in the US. It imposes no general restrictions on remittances of profits, dividends, interest, royalties or fees to nonresidents. Sanctions and embargoes apply to listed countries, with restrictions on foreign payments, remittances and other types of contracts and trade transactions (although exceptions may be obtained from the federal government).

The Treasury also restricts payments, remittances and other dealings with a number of companies and individuals around the world - entities from (or acting on behalf of entities from) embargoed countries, or entities associated with terrorism, narcotics or diamonds from conflict zones.

All US citizens, permanent resident aliens, companies in the US and overseas branches of US companies are required to comply with these sanctions and embargo rules. The US also has extensive currency transaction reporting and recordkeeping requirements.

4.0 Choice of business entity

4.1 Principal forms of doing business

The principal forms of business entities in the US are the corporation, limited liability company, partnership, limited partnership, branch of a foreign corporation, joint venture and sole proprietorship. The most common form for foreign investors is the corporation.

Foreign investors face no particular problems establishing companies in the US. There is no federal company law in the US; each state has its own statute governing the incorporation process but similarities in state legislation make it possible to provide the following outline of requirements to set up a corporation.

Capital. No minimum for manufacturing companies, except for funds needed to start operations and obtain credit. Most states requiring minimum paid-in capital specify USD 1,000. Minimum capital requirements are in effect, however, for banking, insurance and related activities. The banking industry uses capital requirements set by the Bank for International Settlements in Basle, Switzerland; requirements for the insurance industry are established by the National Association of Insurance Commissioners. Most states require that subscribed capital be fully paid in before authorised shares are issued. There are no legal reserve requirements.

Founders. Traditionally, a minimum of three; a growing number of states permit one (often corporate) incorporator. Some states have residence or citizenship requirements for founders; in practice, these do not present an obstacle since incorporators are needed only for organisational formalities.

Board of directors. Frequently, a minimum of three; many states allow one. Generally, no restrictions on residence or citizenship apply. For publicly listed firms, the firm's chief executive officer and chief financial officer must certify all financial reports filed with the Securities and Exchange Commission (SEC). A firm may not lend funds to any of its directors or executive officers unless the loans are made in the ordinary course of the firm's lending business. Terms must be the same as those offered to the general public. The SEC may prohibit any person found guilty of fraud from serving as an officer or director of a firm. Directors may not purchase, sell or otherwise transfer securities under their individual account retirement plans. Changes in directors' and executive officers' share ownership must be filed with the SEC within two business days.

Management. No nationality or residence requirements. No stipulations that labour be represented on the board of directors or in management.

Disclosure. Financial data must be published by all companies the year they are established; thereafter, data are required only of those listed on national securities exchanges. Some states require annual filings (containing minimal information) by foreign corporations licensed to do business in the state. If a firm has 500 or more shareholders and more than USD 1 million in assets, it is subject to the reporting requirements of the Securities and Exchange Act of 1934 and to various state reporting requirements. (The Securities and Exchange Act and its amendments pertain primarily to publicly owned corporations, dictating corporate disclosures made in annual reports, insider trading reports, balance sheets, income statements, proxy material and other public reporting.)

Taxes and fees. Generally low, taxes and fees on incorporation vary by state. In states with the simplest filing procedures, it may cost as little as USD 40 to start a company with capital of up to USD 100,000. The most common procedure is to file a certificate with a county clerk to create a legal entity with the prefix "dba" (which stands for "doing business as").

Types of shares. Both common and preferred shares may be issued; holders of preferred shares usually receive fixed interest plus certain voting rights. Dividend payments are not deductible for the payer, and distributions of capital are normally not permitted if there are undistributed earnings and profits. Both bearer and registered shares are allowed. Many states do not require a stated par value per share. Corporations may also issue bonds and other debt instruments.

Control. Shareholder meetings must normally be held every year, sometimes within the state of incorporation. Those meetings typically take place in April or May. Voting is usually by proxy if the company's shares are widely distributed. Ownership of 25% of a company's shares constitutes a controlling interest; ownership of 5% or more of a company's shares requires notification to the SEC, with some statement about the shareholder's intentions. Collective action on proxy votes can significantly increase the voting power of smaller groups.

Limited liability company

A limited liability company (or LLC) combines features of a corporation and a partnership. Owners of LLCs are shielded from liabilities, while income, deductions, credits gains and losses flow through to the owners. The LLC form requires at least two owners and is governed by state statutes.

4.2 Establishing a branch

As a rule, foreign firms operate in the US through local subsidiaries rather than through branches, for reasons of convenience or because of legal and tax considerations. Branches of foreign corporations are generally subject to corporate rates on a net basis, as well as a 30% tax on profits ("dividend equivalent amount") sourced in the US. This "branch profits tax" is intended to approximate the 30% tax that would be withheld on a dividend if the branch were a subsidiary and distributed its profits. There is also a branch interest withholding tax that may apply to prevent avoidance of the profits tax. Applicable tax treaties may reduce or eliminate the 30% rate.

A branch of a foreign concern qualifies in the various states under the same general rules as those for an out-of-state corporation. No special requirements exist for setting up a branch operation, other than registering with local authorities. A branch must have adequate bookkeeping for tax purposes. No minimum level of capitalization is required, and no statutory audit is required. All liabilities of the branch are considered those of the foreign head office. Special provisions apply to branches of foreign-owned banks.

4.3 Setting up a company

A firm may organise under the laws of any one of the 50 states or the District of Columbia. (Special rules apply to US possessions, which are beyond the scope of this publication.) Through a fairly simple procedure, it can then set up offices, plants or permanent establishments under the corporation laws of other states. Legally, a corporation is considered domestic only in the state in which it is incorporated and is considered "foreign" elsewhere. Most firms do business in more than one state, and the state of incorporation is often different from the site or sites of operation.

The certificate of incorporation, which must be filed with the secretary of state (of the state of incorporation), generally includes a corporate name, purpose or purposes, duration (usually perpetuity), amount of capital, par value of shares (if any), location of statutory office, registered agent for service process and the number of directors.

To qualify outside the state of incorporation, a firm must take the following steps with each state where it intends to do business: file its certificate of incorporation; submit an application containing information on its activities and management (the amount of detail required depends on the state); and pay filing fees. Failure to qualify in a state where a firm is deemed to be "doing business" can result in fines and other penalties.

Interstate public share and bond offerings - by domestic or foreign firms - are legal, but offerings of more than USD 500,000 must conform to certain SEC guidelines.

5.0 Business taxation

5.1 Overview

Tax jurisdiction in the US is divided among the federal government, the 50 states plus the District of Columbia and local counties and municipalities. All residents, foreign individuals and corporations engaging in business or investment transactions in the US are subject to some form of US income taxation. A firm's tax burden depends on the jurisdictions in which it operates and earns taxable income.

Taxes in the US are levied by all three levels of government: federal, state and local. The principal federal taxes for businesses are: corporate income tax; the alternative minimum tax;

and branch profits tax. Most states and some municipalities impose corporate or individual tax. State and local income taxes generally follow the federal income tax in the way income is calculated. However, they may differ from the federal tax in that they apportion the income of an out-of-state corporation by a formula, rather than by determining specific state earnings. There is a wide variety of other state taxes, which are beyond the scope of this publication. Most taxes paid to the state and local governments by a business are deductible from income for federal income tax purposes.

5.2 Taxable income and rates

A flat tax of 35% applies to the taxable income of a corporation that has taxable income for the year equal to or greater than USD 18,333,333. Graduated rates, starting as low as 15%, apply to income of a corporation with total taxable income less than USD 18,333,333. The gradations in the rate brackets that apply to a single corporation's progressive amounts of income phase out as the corporation's total taxable income rises from USD 100,000 to USD 18,333,333. For this purpose, members of a controlled group of corporations are treated similarly to a single corporation. Capital gains are subject to tax at the same rates. These rates apply both to the worldwide income of US corporations and to the income of foreign corporations that is effectively connected with a US trade or business (ECI).

In addition to corporate income tax, corporations are liable to a 20% alternative minimum tax (AMT) to the extent income computed under the AMT exceeds the tax on normal taxable income. AMT income is calculated by making adjustments to normal taxable income, which consists of adding back all or a portion of certain deductions and tax credits that are otherwise allowable in calculating normal income tax. AMT income also includes a percentage of adjusted current book earnings. A credit against the standard corporate tax for future years is generated to the extent AMT exceeds the normal corporate tax.

Taxable income defined

A corporation organised or created in the US is a domestic corporation; all other corporations are foreign, except for certain corporations that have "expatriated" from the US. Legally, a corporation is considered resident only in the state in which it is incorporated. For example, both a Delaware company and a German corporation, each with operations in New York, are considered nonresident in New York State. For federal income tax purposes, however, the Delaware corporation is a US corporation and the German corporation is a foreign corporation.

US corporations must pay tax on worldwide income, including income from branches, whether or not repatriated. Profits from overseas subsidiaries are not usually taxed, however, unless they are remitted as dividends or fall under a US anti-deferral regime (discussed below in section 5.6). Worldwide income includes income from a business, compensation for services, fees and commissions, rents, royalties, interest, dividends, gains from dealings in property and income from a partnership. Appreciation in the value of an asset is not considered income unless the gain is recognised through a sale or other disposition.

Foreign income of resident firms is taxed at regular corporate rates. To avoid double taxation on income earned outside the US (including income repatriated in the form of dividends from non-US companies), a foreign tax credit is available for foreign income taxes paid. The extent to which a foreign income tax credit may be used to offset the US tax is subject to various limitations.

Non-US corporations are generally subject to US tax on income from US business operations. If a non-US corporation is from a country that has not concluded a tax treaty with the US, that corporation's business income is taxable only if it is "effectively connected with the conduct of trade or business within the US." This includes any gain from the sale of US real property, income connected with participation in a partnership that engages in US business or income received as a beneficiary of an estate or trust so engaged. Under various tax treaties, a non-US corporation is taxable on a net basis only on income attributable to a "permanent establishment" in the US. All non-US corporations are taxed on a gross withholding basis on US-source portfolio income, for example dividends, interest, rents and royalties that are not effectively connected. Tax treaties often reduce the 30% withholding tax rate.

A branch of a foreign corporation is taxed in the same way as a domestic corporation on income that is effectively connected to its US operations. US-source income that is not effectively connected is taxed at a flat 30% rate, unless that rate is reduced by an applicable tax treaty. The assessment of income tax is generally based on the branch's records, assuming they reflect an arm's length relationship between the branch and the head office. Expenses to be deducted

must be allocated between the branch and its head office. Branch profits remitted to the head office are subject to a 30% branch level tax, unless that rate is reduced by an applicable treaty.

Deductions

A deduction is permitted for all ordinary and necessary expenses paid or accrued (depending on the taxpayer) during the taxable year in connection with the operation of a trade or business.

Items that are not tax deductible include most dividends, going concern value, expenses related to tax exempt income, political contributions, costs for certain types of life insurance, legal penalties and costs related to corporate restructurings.

Depreciation

Federal law authorises a reasonable deduction (computed under various alternative systems) for the exhaustion of, or wear and tear on, property used in a trade or business or to produce income. Depreciation is permitted on tangible property - with the exceptions of inventory, stock in trade, land (apart from improvements) and certain natural resources - and on intangible assets, e.g. patents or copyrights that have limited useful lives. The cost of acquired intangible assets - for example, goodwill, going concern value, permits, franchises, trademarks or trade names - can be amortised over 15 years from the date of purchase.

Allowances are generous for depletion of natural resources, with the applicable percentage depending on the type of resource.

Losses

Subject to certain exceptions, a corporation's net operating losses may be carried back two years and forward 20 years.

5.3 Capital gains taxation

The federal government taxes net gains on the sale or exchange of assets held for investment purposes at the same rates as ordinary income (35% for the top bracket). If a net loss results from sales or exchanges by a corporation, the loss may not be deducted from ordinary income, but may be carried back three years and forward five years and deducted from capital gains.

Gains from the sale of depreciable property used in business are treated as ordinary income to the extent such gains result in the recovery of past depreciation. Certain exceptions exist for the sale of real estate. Anything exceeding that amount is taxed as described above. Net losses from sales or exchanges of such depreciable property may be deducted from ordinary income.

5.4 Withholding tax

The following taxes are imposed unless the income items are effectively connected with a US trade or business.

Dividends

Dividends paid by a US company to a foreign person generally are subject to US withholding at a rate of 30%, unless the rate is reduced under an applicable tax treaty or the income is ECI.

Interest

A 30% withholding tax is levied on interest paid from US sources to a foreign person, unless the rate is reduced under an applicable tax treaty. Certain interest on portfolio debt obligations, interest on certain bank deposits and interest on bonds issued by the states or local governments are exempt from withholding tax. Interest income may be exempt if it is ECI.

Royalties and fees

Royalty payments made to a foreign person generally are subject to the 30% withholding tax, unless the rate is reduced under an applicable tax treaty or the income is ECI.

5.5 Foreign income and tax treaties

To mitigate the double taxation that may arise from taxing the foreign-source income of a US corporation, a foreign tax credit for income taxes paid to foreign countries is available to reduce or eliminate the US tax owed on such income, subject to certain limitations. There is also an indirect credit for foreign taxes paid by some foreign subsidiaries, allowed when the taxed profits are paid as a dividend or otherwise remitted to the US shareholder.

The US has concluded numerous tax treaties that reduce or eliminate withholding taxes on payments made to residents of the treaty partner. With a few exceptions, the treaties do not lower the 30% US withholding tax rate on income from real estate rentals and natural resource royalties paid to residents of treaty countries, but they do reduce the tax rates on other types of income. Tax treaties reduce/eliminate US taxes of residents of foreign countries but generally not the US taxes of US citizens and residents; such persons are subject to US tax on worldwide income.

The table below illustrates the basic withholding tax rates applicable to residents of the countries with which the US has concluded a tax treaty. ("D" indicates that the domestic rate (30%) applies.)

Withholding tax rates under United States tax treaties (%)			
Treaty Partner	**Dividends**	**Interest**	**Royalties**
Armenia	D	D	0
Australia	0/5/15	0/10	5
Austria	5/15	0	0/10
Azerbaijan	D	D	0
Bangladesh	10/15	5/10	10
Barbados	5/15	5	5
Belarus	D	D	0
Belgium	0/5/15	0	0
Bulgaria	5/10	5	5
Canada	5/15	0	0/10
China	10	10	10
Cyprus	5/15	0/10	0
Czech Republic	5/15	0	0/10
Denmark	0/5/15	0	0
Egypt	5/15	15	15
Estonia	5/15	10	5/10
Finland	0/5/15	0	0
France	0/5/15	0	0/5
Georgia	D	D	0
Germany	0/5/15	0	0
Greece	D	0	0
Hungary	5/15	0	0
Iceland	5/15	0	0/5
India	15/25	10/15	10/15
Indonesia	10/15	10	10
Ireland	5/15	0	0

Withholding tax rates under United States tax treaties (%)			
Treaty Partner	**Dividends**	**Interest**	**Royalties**
Israel	12.5/25	10/17.5	10/15
Italy	0/5/15	0/10	0/5/8
Jamaica	10/15	12.5	10
Japan	0/5/10	0/10	0
Kazakhstan	5/15	10	10
Korea (R.O.K.)	10/15	12	10/15
Kyrgyzstan	D	D	0
Latvia	5/15	10	5/10
Lithuania	5/15	10	5/10
Luxembourg	5/15	0	0
Malta	5/15	10	10
Mexico	0/5/10	4.9/10/15	10
Moldova	D	D	0
Morocco	10/15	15	10
Netherlands	0/5/15	0	0
New Zealand	0/5/15	0/10	5
Norway	15	0	0
Pakistan	15/D	D	0
Philippines	20/25	10/15	15
Poland	5/15	0	10
Portugal	5/15	10	10
Romania	10	10	10/15
Russia	5/10	0	0
Slovakia	5/15	0	0/10
Slovenia	0/5/15	0/5	5
South Africa	5/15	0	0
Spain	10/15	0/10	5/8/10
Sri Lanka	15	10	5/10
Sweden	0/5/15	0	0
Switzerland	0/5/15	0	0
Tajikistan	D	D	0

Withholding tax rates under United States tax treaties (%)			
Treaty Partner	**Dividends**	**Interest**	**Royalties**
Thailand	10/15	10/15	5/8/15
Trinidad & Tobago	D	D	0/15
Tunisia	14/20	0/15	10/15
Turkey	15/20	10/15	5/10
Turkmenistan	D	D	0
Ukraine	5/15	0	10
United Kingdom	0/5/15	0	0
Uzbekistan	D	D	0
Venezuela	0/5/15	4.95/10	5/10

5.6 Transactions between related parties

Transfer pricing

The US operates a complex transfer pricing regime, which authorises the Internal Revenue Service to adjust the income in related party transactions involving the transfer of tangible or intangible property where the prices used by the parties are not at arm's length.

Specific transfer pricing methodologies must be used to determine the arm's length price, with the range of permissible methods dependent on whether the transfer is of tangible or intangible property. Documentation rules apply and scrutiny of intercompany transfers has increased considerably in recent years.

It is possible in appropriate cases to obtain an advance pricing agreement.

Controlled foreign companies

The CFC rules limit deferral on certain types of income ("subpart F income") earned by CFCs. The CFC rules apply to foreign corporations where "US shareholders" (US persons each owning directly, indirectly or constructively, at least 10% of the voting stock) own more than 50% of the voting power or value of the foreign corporation. US shareholders of CFCs must generally include in gross income their pro rata share of subpart F income for the year.

Subject to various exceptions, the following categories of CFC income are currently taxed to the US shareholders: insurance income; "base company income"; and income from illegal payments and income connected with certain countries sanctioned under the US foreign tax credit rules or international boycott rules. Base company income covers passive income (e.g. dividends, interest, rents, royalties and gains); income from certain sales between related parties; income from certain services performed outside the CFC's country of incorporation, for or on behalf of related parties; and certain oil related income.

Subject to computational limitations, the US shareholder's income inclusion occurs in the year in which the CFC earns the subpart F income. Non-subpart F income may also be currently taxed to the US shareholder if the earnings are invested in certain US property. Subpart F income inclusions become "previously taxed income" (PTI). Subsequent actual distributions of PTI are not taxed to the US shareholder. Additionally, a foreign tax credit may be available for taxes paid by the CFC on subpart F income; the credit mechanism closely resembles the indirect credit available when actual dividends are paid. Gain from the sale of CFC stock may be taxed as a dividend to the extent of the CFC's previously untaxed earnings; the remaining gain will be taxed as gain from the sale of stock.

There are no blanket exceptions from the CFC regime. The definition of "subpart F income," however, has several exceptions related to particular classes or amounts of income, including *de minimis* amounts, certain highly taxed income, income in excess of annual earnings and profits, active rents and royalties, income earned by securities dealers, income that is non-

passive under a look-through rule, income earned from related parties in the CFC's country of organization, income from some manufactured products and income earned in the active conduct of banking, financing, or similar business.

A separate anti-deferral regime, the "passive foreign investment company" (PFIC) provisions, applies to US persons who are shareholders in certain non-CFC foreign corporations whose income and assets are primarily passive.

Thin capitalisation

The US "earnings stripping" rules restrict the ability of US (and certain foreign) companies to claim an interest deduction on debt owed to, or guaranteed by, certain non-US related parties (and other persons exempt from US tax). The rules generally apply where the debt-to-equity ratio of the payer exceeds 1.5 to 1 and the payer's "net interest expense" exceeds 50% of its "adjusted taxable income" for the year. Disallowed interest that is not currently deductible may be carried forward and deducted in future years if certain conditions are satisfied.

Consolidated returns

A group of domestic affiliated corporations that meets certain requirements may file a consolidated tax return. Once a consolidated return is filed, it is generally necessary to obtain approval from the tax authorities to discontinue consolidated filing. To file a consolidated return, the group must meet the following requirements: (1) the parent company must own directly 80% or more of the stock of at least one subsidiary in the group; and (2) each subsidiary in the group must be at least 80%-owned directly by the parent and/or other group subsidiaries.

5.7 Turnover and other indirect taxes and duties

There is no general federal sales tax or value added tax (VAT) in the US. Most states and many municipalities levy sales taxes, which are generally assessed on the final consumer purchase, with wholesale transactions remaining tax exempt. This distinguishes US sales taxes from European style VAT, which is assessed on the difference between the sales price and the cost at every stage of production and distribution.

Many states and municipalities exempt certain items or charge low sales tax rates on items such as certain foods and medicines. In contrast, states and municipalities often assess special taxes on services such as cable television and telephone billings and hotel and motel lodging.

The federal government levies excise taxes on the manufacture, sale and consumption of certain commodities, for example tobacco, liquor and gasoline. Excise taxes, generally imposed at the wholesale level, are the legal responsibility of the seller. There are also excise taxes on the sale or use of any ozone depleting chemical by a manufacturer, producer or importer and a manufacturers' excise tax of up to 12% on a number of goods - both domestic (based on the manufacturer's selling price) and imported (based on the landed value). Taxes on services apply to telephone charges and airport departures.

5.8 Other taxes

Under the independent exercise of taxing powers by the 50 states and by municipalities, levies in the form of franchise, licence, stamp, estate, property and other taxes, may apply.

5.9 Tax compliance and administration

A company may generally choose its fiscal year, provided the year ends on the last day of a calendar month (except in the case of a 52/53 week year). Subsequent changes in a fiscal year normally require approval by the tax authorities, and special rules apply in determining the permitted or required taxable year of certain entities (e.g. partnerships and controlled foreign corporations).

The US operates a self-assessment system, according to which a federal income tax return must be filed by US corporations and foreign corporations engaged in a US trade or business by the 15th day of the third month after the end of the company's taxable year. Extensions of up to six months may be granted. Quarterly payments of estimated tax liability are required if the tax liability is USD 500 or more.

Penalties are fixed percentages of the tax due, ranging up to 25% (but may be applied cumulatively for a higher percentage, for example combining a late filing and a late payment). The balance of the final tax due, in excess of payments based on estimates, is payable by the due date for the tax return.

Taxpayers may request a private letter ruling, to be issued relative to a specific taxpayer and specific transaction or series of events. Pre-filing agreements and advance pricing agreements also are available in appropriate cases.

6.0 Personal taxation

As discussed above, tax jurisdiction in the US is divided among the federal government, the 50 states plus the District of Columbia and local counties and municipalities.

The principal federal tax for individuals is the individual income tax. There is also a social security tax, which is imposed on wages of US employees regardless of where they are employed and on wages of non-US employees employed in the US. In addition to the regular income tax, individuals may be subject to the alternative minimum tax (AMT), which is triggered where an individual's AMT liability exceeds that individual's regular income tax liability.

Most states and some municipalities impose individual income tax. State and local income taxes generally follow the federal income tax in the way income is calculated but they may use apportionment in some cases.

The tax year for individuals is generally the calendar year, although a fiscal year or a 52-53-week year may be used in certain circumstances (if the taxpayer regularly keeps books on that basis). Individuals generally must file a tax return by 15 April after the end of the tax year. Extensions of time to file are available, but all tax payments must be made by 15 April. Penalties and interest can apply for failure to file or for late filing.

6.1 Residency

All US citizens and residents, including resident aliens, pay federal tax on their worldwide income and are allowed a foreign tax credit for foreign taxes paid or accrued. Aliens who have entered the US as permanent residents and who have not officially surrendered or lost the right to permanent US residence are taxed as US residents. Also taxed as residents are aliens who meet a "substantial presence test," which requires (1) physical presence in the US for at least 31 days during the current calendar year; and (2) presence in the US for 183 days or more, based on a weighted number of days during the current calendar year and the two immediately preceding calendar years.

Nonresident aliens pay US personal taxes on all income from US sources "effectively connected" with a trade or business in the US on a net basis at graduated rates. Investment and other fixed or determinable income not "effectively connected" with a US trade or business is taxed at a flat rate of 30% or a lower treaty rate, regardless of the amount. Special taxing rules may apply to former US citizens and long-term residents at the time of or after expatriation.

6.2 Taxable income and rates

The tax burden on individuals is low in the US compared with that of other industrialised nations. For higher-income individuals, the US tax code phases out personal exemptions and imposes a ceiling on itemised deductions.

There are six federal tax rate brackets for individual income tax purposes: 10%, 15%, 25%, 28%, 33% and 35%. The brackets are applied at different levels of income to each of the four categories of taxpayers (married filing jointly, married filing separately, single and head of household). Brackets are indexed annually to reflect inflation.

Determination of taxable income

Individuals must include in their taxable income all forms of remuneration and allowances (salaries, wages, etc.), all interest (except interest from state and municipal bonds) and the value of other perquisites (for example automobiles and free or subsidised housing). Certain dividends and long-term capital gains are considered separately and generally assessed a flat tax of 15%.

Individual taxpayers are entitled to a standard deduction from gross income in calculating taxable income or they may "itemise" deductions. For 2011 tax returns (filed in 2012), a standard deduction is available in the following amounts: USD 11,600 for married persons filing jointly; USD 8,500 for heads of households; and USD 5,800 for single taxpayers and married persons filing separately. Taxpayers are also allowed to take personal and dependent

exemptions of USD 3,700 per person, which may be reduced if adjusted gross income exceeds certain limits.

Taxpayers with documented deductible expenses exceeding these amounts must itemise them to deduct the higher amount. The following expenses are eligible for itemised deduction: certain taxes paid (state and local taxes on income, sales and property); interest paid on borrowings to make investments (limited to the amount of investment income, with a carry forward for any excess); home mortgage interest (including second-mortgage interest within certain limits); charitable contributions; medical expenses exceeding a certain threshold of adjusted gross income; theft and casualty losses exceeding certain amounts; and tuition for education necessary for one's job, union dues and other job-related expenses, and expenses for producing income, to the extent they exceed a certain threshold of adjusted gross income. The deduction for business meals and entertainment is generally 50%.

Except for investment interest, medical expenses and theft and casualty losses, itemised deductions for higher-income taxpayers are reduced by 3% of the amount by which their adjusted gross income exceeds certain thresholds. This reduction, however, may not exceed 80% of the deductions subject to the limitation.

The applicable tax rate will depend on the amount of taxable income and the return filing status of the taxpayer. The rules and allowances described in this section may be modified for non-US individuals subject to US tax.

6.3 Special expatriate tax regime

There are no special tax breaks for expatriates working in the US.

6.4 Capital taxes

For US citizens and residents, the estate tax is imposed, generally based on the assets of the deceased in excess of USD 5 million, and the heirs are generally not subject to income tax on the appreciation of the assets in the hands of the decedent. A gift tax is imposed on gifts made during a person's life. For nonresident non-citizens, estate taxes are imposed only on property situated in the US in excess of USD 60,000. Gift taxes are imposed on any transfer in excess of a USD 13,000 annual exclusion. These limits may be increased by treaty.

As part of its overall transfer tax system, the U.S. also imposes a generation-skipping tax (GST) on certain transfers. The states also impose various estate or inheritance taxes.

For federal estate tax purposes, the estates of decedents who died in 2010 may elect to pay no estate tax if the appreciation of the assets of the estate remains subject to income tax in the hands of the heirs. Similarly, the federal GST tax rate for transfers made in 2010 will be 0%.

In addition, many states impose their own inheritance or gift tax, and many localities impose property taxes of various kinds.

7.0 Labour environment

7.1 Employees' rights and remuneration

Most employment in the US is "at will," that is, there is generally no contract between the employer and the employee, and either party is entitled to end the work arrangement at any time without showing cause. The major legal exceptions to this rule are for trade union contracts, contracts for certain (generally key) employees and cases of officially barred discrimination (on the grounds of race, national origin, sex, maternal status and age, among others).

The National Labor Relations Act is the primary federal statute regulating labour relations and establishing the rights of trade unions and their members. However, many companies are experimenting with new, partnership type models. Interest in participatory management techniques is now established among both workers and senior executives.

In the area of health and safety of workers, states may choose to adopt stricter standards than those applied by the federal government. State or federal occupational health and safety standards cover virtually all types of businesses, and the onus for protecting workers generally lies with the employer. There is an array of standards across the US, ranging from equipment safety mechanisms to requirements that companies inform workers about hazardous materials.

The Department of Labor's Occupational Safety and Health Administration ensures compliance with federal health and safety regulations.

Equal opportunity laws apply to hiring, firing, promotion and pay.

Working hours

The normal working week is 40 hours in factories and offices.

Overtime pay is generally awarded at 1.5 times the regular wage to hourly wage earners who work more than 40 hours in a week. In general, an exemption from overtime protection applies only if an employee is salaried, earns a certain minimum salary per year and falls into one of several categories: executive, administrative employee, professional, computer technician and outside salesperson. States are permitted to set their own overtime rules.

7.2 Wages and benefits

Wages in the US are normally negotiated free of government intervention, between an employee and the employee's supervisor. For a unionised workforce, negotiation takes place through collective bargaining. Union members continue to earn more than their non-union counterparts in most industries.

Regardless of their union status, most employees are covered by the Fair Labor Standards Act of 1938 (administered by a division of the Labor Department), which regulates minimum wages, overtime pay and child labour, and requires equal pay for equal work, regardless of sex.

Pensions

Company paid pension plans, in addition to social security benefits, are generally provided under labour contracts. By law, companies must maintain certain levels of employer contribution vesting, funding requirements and fiduciary standards. Companies must also insure certain types of pension benefit plans (defined benefit pension plans) with the government. For employees not covered by labour contracts, employers usually provide retirement savings accounts such as the "401(k)" defined contribution plans. Employees and employers contribute to these funds according to the terms set by each employer, and the savings provide supplemental pension income for the employee in old age.

Social insurance

For 2011, the federal old age, survivors and disability insurance (OASDI) is imposed on the first USD 106,800 of each employee's wages at the combined rate of 10.4% (4.2% paid by the employee and 6.2% by the employer). In 2012, OASDI will return to a combined rate of 12.4%, equally paid by the employer and employee. Medicare health contributions, which are separate from social security taxes, are charged to both employee and employer at a rate of 1.45% on all of the employee's wages. (There is no salary cap on Medicare contributions.) Medicare pays for medical coverage for the aged. Self-employed persons also pay these taxes and are required to pay both the employer and employee shares.

Other benefits

Direct salary remains the largest component of compensation packages in the US. Aside from social security and unemployment insurance, which are mandated by state and federal law, typical fringe benefits include hospital and medical insurance, life insurance, disability insurance, paid leave and company paid pension plans. Executive personnel often participate in profit sharing and share option plans.

The federal unemployment insurance rate through 30 June 2011 is 6.2% on the first USD 7,000 of each employee's wages. The rate returns to 6% after this date. State unemployment insurance, mandatory in all 50 states, varies widely. The employer receives a credit, up to a maximum of 5.4%, against the federal tax for amounts paid to state unemployment insurance funds.

Workers' compensation benefits, designed to protect employees who are injured, contract a disease or die in the course of their employment, are legislated by the states. In some states, employers' contributions are not mandatory. Hospital and medical-surgical insurance are usually included in labour contracts.

The cash bonus and other forms of profit sharing are increasingly becoming a way to reward workers in lieu of fixed wage increases or as a supplement to scaled back increases.

7.3 Termination of employment

The federal government does not strictly regulate dismissal. For unionised workers, dismissal procedures are carefully defined in collective bargaining agreements. For other employees, it is customary to give two or more weeks' notice of dismissal. Employees customarily give the same notice when they plan to quit a job.

By law, companies must give employees and communities 60 days' advance notice of plant closings or large lay-offs that will extend beyond six months. Employees must be compensated for every day of notice missed. Companies are exempt from the requirements if they employ fewer than 100 workers, are in financial difficulty, are the target of a strike or close due to unforeseen circumstances.

7.4 Labour-management relations

The principal labour group in the US is the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), a confederation of 65 unions.

The National Labor Relations Act of 1935 is the primary federal statute regulating labour relations and establishing the rights of trade unions and their members. The act guarantees the right to form a union and prohibits employers from dominating unions. The formation of a union requires a petition to the National Labor Relations Board, which supervises an employee election on the issue. If a majority approves, the union is certified and becomes the official representative of the employees for purposes of negotiating the terms and conditions of employment. An employer is required to bargain in good faith with the union. The union also represents employees when grievances arise. If the employee wants to handle the problem, the union has the right to be present.

The act bans the "closed shop" (that is where workers must be union members to be hired) but allows the "union shop" agreement in labour contracts. This requires all workers to become dues paying members of the bargaining union after they have been hired. Nevertheless, union shop agreements are illegal in states that have enacted "right-to-work" legislation. Absent a union shop agreement, US law provides that benefits obtained through collective bargaining must be extended to all employees within the unit, whether or not affiliated with the union. Jurisdictional problems covering more than one union in a plant are usually resolved by the unions or referred to the AFL-CIO's internal disputes plan.

Collective bargaining is usually conducted on a plant-by-plant or company-by-company basis. Industry-wide bargaining is rare. Since unions are generally organised by industry or trade, a company may have to negotiate with several unions if different employees are engaged in various types of activities.

Contract terms usually run two or three years. If an expired contract is not renegotiated within 30 days, the Federal Mediation and Conciliation Service must be notified. No legal provision exists for compulsory arbitration, however, and the federal government does not intervene unless a strike creates a national emergency. A presidential emergency board can be appointed to forestall a strike if it threatens a substantial interruption of interstate commerce.

7.5 Employment of foreigners

Foreigners who wish to come to the US for short-term employment or a defined length of time must secure non-immigrant visas before being admitted. Visas must be applied for at US embassies or consulates abroad.

Through a network of local offices, call centres, service centres and the Internet, the Bureau of Citizenship and Immigration Services (BCIS (formerly Immigration and Naturalization Service)) handles many responsibilities related to immigration and visas, including employment-based petitions.

There are numerical limits on the category of immigrant visas that are employment-based (for both skilled and non-skilled workers). An applicant for this type of immigrant visa must also have an approved immigrant visa petition filed with the BCIS and may need a labour certification from the Department of Labor. The US Department of State must give the applicant an immigrant visa number, even if the applicant is already in the US. When the applicant receives an immigrant visa number, it means that an immigrant visa has been assigned to the applicant. The Immigration and Nationality Act provides an annual maximum of 105,000 employment-based (including entrepreneurs) immigrant visas, with five preference categories.

There are several other non-immigrant visa classifications that are used by foreign nationals to conduct business in the US. No person entering the US with a visitor's visa may be gainfully employed while in the country. US immigration law provides for fines - and in extreme cases prison terms - for employers who knowingly hire illegal aliens.

8.0 Office locations

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