

Doing Business in the US

Exploring opportunities and challenges in American markets

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Agenda

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Current Taxation Status



Current Taxation Status

1. **No Traditional Treaty:** The U.S. cannot enter into a standard tax treaty with Taiwan because of the lack of formal diplomatic recognition. As a result, there is no comprehensive agreement in place to address issues such as double taxation, reduced withholding rates, or mutual agreement procedures for tax disputes between the U.S. and Taiwan.

2. **Domestic Law Applies:** In the absence of a treaty, cross-border tax matters between the U.S. and Taiwan are governed by the domestic tax laws of each jurisdiction. This means that U.S. persons with income from Taiwan, and Taiwanese persons with income from the U.S., may be subject to full domestic rates of tax in both countries, potentially resulting in double taxation.

3. **No Treaty Benefits:** U.S. withholding taxes on payments to Taiwan residents (such as dividends, interest, and royalties) are generally imposed at the statutory rates under the Internal Revenue Code, and vice versa for U.S. persons earning income in Taiwan.

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Current Taxation Status

Recent Developments:

1. **Legislative Efforts:** There is active legislative movement in the U.S. Congress to address double taxation with Taiwan. Lawmakers have proposed bills, such as the United States-Taiwan Expedited Double-Tax Relief Act, which would provide treaty like benefits to Taiwan residents, contingent on reciprocal treatment for U.S. citizens in Taiwan. This approach is designed to circumvent the diplomatic barrier by authorizing a tax agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States.

2. **Proposed Provisions:** The proposed legislation would allow for treaty like benefits (such as reduced withholding rates and relief from double taxation) for Taiwan residents, provided Taiwan offers reciprocal benefits to U.S. persons and authorize negotiations for a tax agreement through the respective representative offices, rather than through formal diplomatic channels.

3. **Status of Legislation:** As of early 2024, the relevant bill has passed the U.S. House of Representatives but has not yet been enacted into law, having failed a procedural vote in the Senate. Negotiations and legislative efforts are ongoing, with bipartisan support for resolving double taxation issues between the U.S. and Taiwan.

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Worldwide vs. Territorial Tax Regime



Worldwide vs. Territorial Tax Regime

1. **Worldwide Taxation**: The U.S. taxes its citizens, residents, and domestic entities on their worldwide income, regardless of where the income is earned. This includes individuals living abroad and U.S. corporations with foreign operations. The U.S. system is unique in that it imposes worldwide taxation on its citizens and green card holders even when they are tax residents of other countries, which is not the international norm.

2. **Territorial Taxation**: In contrast, a pure territorial system taxes only income sourced within the country. The U.S. does not have a true territorial system. The Tax Cuts and Jobs Act (TCJA) of 2017 introduced a participation exemption for certain foreign earnings of U.S. corporations (IRC §245A), but anti-abuse rules (GILTI, BEAT, subpart F) mean the U.S. still taxes some foreign income.

3. **Current System**: The U.S. system is best described as a “worldwide anti-abuse system,” not a territorial one, because foreign-source income is still subject to U.S. tax under various regimes.

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Entity Overview and Implications



Entity Overview and Implications

1. C-Corporation (C-Corp)
   - C-Corporations are separate legal entities taxed at 21% federally and face double taxation on dividends.
   - Taxed as a separate entity: Subject to federal corporate income tax on worldwide income (IRC §11).
   - Participation exemption: May deduct certain dividends from foreign subsidiaries (IRC §245A).
   - Subject to GILTI, BEAT, and subpart F: These anti-abuse rules can result in current U.S. taxation of certain foreign earnings.

2. LLC (Limited Liability Company) / LP (Limited Partnership)
   - LLCs provide liability protection and flexible tax treatment options including partnership or corporation status.
   - LPs operate as pass-through entities, allowing income and losses to flow directly to partners.
   - Default classification: Single-member LLCs are disregarded entities; multi-member LLCs and LPs are treated as partnerships unless an election is made to be taxed as a corporation (Treas. Reg. §301.7701-3).
   - Pass-through taxation: Income, deductions, and credits flow through to owners, who report them on their personal returns.
   - Foreign operations: U.S. owners are taxed on their share of worldwide income, and foreign taxes may be creditable subject to limitations.

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Entity Overview and Implications

3. Direct branches are not separate legal entities and may face branch profits tax up to 30%, reduced by treaties.
    - No separate legal entity: The U.S. company is directly liable for foreign branch income and losses.
    - Worldwide reporting: All branch income is included on the U.S. return; foreign taxes may be creditable (IRC §901). Foreign compliance: The branch may be subject to local tax, registration, and reporting requirements.

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Common Business Hurdles



Common Business Hurdles

1. **Business Registration**
   - Registering with state authorities is a crucial first step and may require multiple registrations for multi-state operations.
   - U.S. registration: Formation with the Secretary of State (or equivalent) in the chosen state.
   - Foreign registration: May be required for branches or subsidiaries operating abroad; local business licenses and tax registrations are often necessary.

2. **U.S. Bank Account**
   - Opening a US bank account requires an EIN and registration documents to facilitate financial transactions.
   - Essential for operations: Required for payroll, vendor payments, and tax compliance.
   - Challenges for foreign-owned entities: U.S. anti-money laundering rules and the USA PATRIOT Act can make opening accounts difficult for non-residents.

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Common Business Hurdles

3. **Tax and Administrative Compliance**
   - The EIN is essential for tax filings, hiring employees, and meeting other administrative requirements.
   - Required for all entities: Needed for tax filings, opening bank accounts, and hiring employees (IRC §6109; see also IRS Pub. 583).

4. **Local Permits and Licenses**
   - Businesses must obtain local permits like sales tax permits and comply with ordinances, varying by jurisdiction.
   - State and local tax IDs: May be required for sales/use tax, payroll tax, and other state-level obligations.

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Recordkeeping and Payroll Compliance



Recordkeeping and Payroll Compliance

1. Importance of Accurate Recordkeeping

- Accurate financial records ensure compliance with federal and state tax laws and support IRS and state audits.
- Required for all businesses: Must maintain records that clearly show income and expenses (IRC §6001; see also IRS Pub. 583, 334).
- Retention: Records must be kept for as long as they may be needed for tax administration, generally at least 3 years after the return is filed.

2. Payroll Reporting Requirements

- Employers must report wages, withhold taxes, and file payroll returns timely.
- Federal and state filings: Form 941 (quarterly), Form W-2 (annual), and state equivalents.

Compliance and Penalties

Noncompliance with employment tax rules can lead to significant penalties and legal consequences.

Accounting Systems and Professional Help

Implementing robust accounting systems and using professional services helps ensure compliance and accuracy.

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Direct Taxation



Direct Taxation

1. **Federal Tax Filing**
   - Annual returns: Form 1120 (C-corp), Form 1065 (partnership), Form 1040 with Schedule C (sole proprietors/LLCs), etc.
   - Estimated tax payments: Required if tax due exceeds certain thresholds (IRC §6654, §6655).

2. **State and Local Tax Compliance**
   - Businesses must understand tax obligations in each state with varying income, franchise, and other taxes.
   - Nexus rules define when a business has a taxable presence in a state requiring tax filing and payments.
   - Corporate income/franchise tax: Varies by state; some states do not impose a corporate income tax.
   - GILTI and FDII conformity: States differ in whether they conform to federal GILTI and FDII rules. For example, as of 2025, California does not tax GILTI or conform to FDII, while New York does tax GILTI but does not conform to FDII.

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Direct Taxation

1. **International Disclosures and Considerations**
   - FDII, BEAT, and GILTI provisions impact taxes on foreign-derived and international income streams.

2. **FDII (Foreign-Derived Intangible Income)**
   - IRC §250: Allows a deduction for certain income from the sale, lease, or license of property or services to foreign persons. I.e., export incentive.
   - State conformity: Varies; some states allow the deduction, others do not.

3. **BEAT (Base Erosion and Anti-Abuse Tax)**
   - IRC §59A: Imposes a minimum tax on large corporations that make deductible payments to foreign related parties.

4. **GILTI (Global Intangible Low-Taxed Income)**
   - IRC §951A: Requires U.S. shareholders of CFCs to include in income their share of certain low-taxed foreign earnings.
   - State conformity: Varies; some states tax GILTI, others do not.
   - Other International Disclosures: Forms 5471 (CFCs), 8865 (foreign partnerships), 8858 (foreign disregarded entities/branches), 8938 (specified foreign financial assets), 1116 / 1118 (foreign tax credit), 8992 (GILTI reporting) and 8993 (FDII and GILTI §250 deduction).

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Indirect Taxation



Indirect Taxation

1. **Sales and Use Taxes**
   - States impose sales tax on goods and services, requiring businesses to register, collect, and remit payments. Use tax applies to out-of-state purchases used within the state.
   - State-level taxes: Imposed on sales of tangible personal property and certain services; registration and collection obligations depend on nexus and economic thresholds (Wayfair decision).

2. **Payroll Tax Obligations**
   - Employers must withhold and remit payroll taxes including Social Security, Medicare, and unemployment taxes, complying with federal and state laws.
   - Federal: Social Security, Medicare (FICA), and federal unemployment tax (FUTA).
   - State: State unemployment insurance, disability insurance, and other payroll-related taxes.
   - Foreign: May be required to withhold and remit foreign social security and payroll taxes for employees working abroad.

3. **Other Indirect Taxes**
   - Additional indirect taxes include excise taxes, property taxes on business assets, and industry-specific levies, which require careful management for compliance.
   - Excise taxes: May apply to certain goods and services (e.g., fuel, communications, wagering).

4. **Tax Compliance and Management**
   - Businesses must implement systems to track taxable transactions, ensure accurate reporting, and meet filing deadlines to maintain compliance.

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Other Tax Considerations



Other Tax Considerations

1. **FDAP (Fixed Determinable Annual or Periodical) Withholding Tax**
   - FDAP income paid to foreign persons is subject to a 30% withholding tax, which can be reduced by tax treaties.
   - IRC §871(a), §881(a): U.S.-source income paid to foreign persons (e.g., interest, dividends, royalties) is generally subject to withholding.

2. **ECI (Effectively Connected Income) Withholding Tax**
   - ECI income is connected with US trade or business and taxed at graduated rates, with withholding depending on income type.

3. **Branch Profit Tax**
   - Branch profit tax applies to foreign corporations operating US branches, with rates up to 30% and possible treaty reductions.

4. **Tax Planning and Compliance**
   - Careful planning and documentation are essential to comply with taxes and benefit from treaty provisions to avoid liabilities.

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Summary



Summary

- The U.S. tax system remains fundamentally worldwide in scope, with significant anti-abuse provisions that reach foreign income of U.S. persons and entities.
- Entity choice, registration, and compliance with both federal and state/local rules are critical, as are international reporting and withholding obligations.
- Businesses must also be mindful of indirect taxes and the complex interplay between U.S. and foreign tax systems, especially when operating cross-border.
- Proper recordkeeping, timely filings, and awareness of both direct and indirect tax obligations are essential for compliance and risk mitigation.

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