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# USA –
# Corporate and Individual tax guide 2020

# USA

The United States (US) is located in North America and is bordered on the north by Canada, on the east by the Atlantic Ocean, on the south by the Gulf of Mexico and Mexico, and on the west by the Pacific Ocean. The United States does not have an official language at the federal level; however, English is the *de facto* national language. The currency is the United States dollar (USD).

The United States is a constitution-based federal republic. Its federal government is comprised of a legislative branch, executive branch, and judicial branch. The legislative branch has an elected House of Representatives and Senate. The executive branch is led by an elected President and an appointed cabinet of leaders of federal agencies that administer the laws enacted by the legislative branch. The judicial branch is organised into circuits with the power to review the decisions of the district courts. Ultimate review of lower court decisions is handled by the US Supreme Court.

Geographically, the United States is divided into 50 states and one federal district, Washington, DC, the capital city. The state governments mirror the structure of the federal government in that they all have legislative, executive, and judicial branches. Each of the states has county (parish), city, and municipal governments. The United States also has 14 dependent territories. These territories also may have lower governmental bodies.

All of the levels of government, from federal to state to municipality, have authority to tax, legislate, and regulate. A complex system determines which has primary authority over an issue.

The federal court system is based on English common law. Each state has its own unique legal system, of which all but one is based on English common law (the Louisiana legal system is influenced by the Napoleonic Code). A primary component of the judicial system is the judicial review of legislative and executive acts.

The United States is a member of a number of international organisations, including being a permanent member of the United Nations (UN) Security Council, a member of the North Atlantic Treaty Organization (NATO), a member of the G-7, a member of the North American Free Trade Agreement (NAFTA), a member of the Organisation for Economic Co-operation and Development (OECD), and a member of the World Trade Organization (WTO).

## Corporate - Taxes on corporate income

US tax reform legislation enacted on 22 December 2017 (P.L. 115-97) moved the United States from a 'worldwide' system of taxation towards a 'territorial' system of taxation. Among other things, P.L. 115-97 permanently reduced the 35% CIT rate on resident corporations to a flat 21% rate for tax years beginning after 31 December 2017.

US taxation of income earned by non-US persons depends on whether the income has a nexus with the United States and the level and extent of the non-US person's presence in the United States.
Prior to enactment of P.L. 115-97, a non-US corporation engaged in a US trade or business was taxed at a 35% US CIT rate on income from US sources effectively connected with that business (i.e. effectively connected income or ECI). However, as noted above, P.L. 115-97 significantly revised the federal tax regime. P.L. 115-97 permanently reduced the 35% CIT rate on ECI to a 21% flat rate for tax years beginning after 31 December 2017. Certain US-source income (e.g. interest, dividends, and royalties) not effectively connected with a non-US corporation's business continues to be taxed on a gross basis at 30%.
Alternative minimum tax (AMT)

AMT previously was imposed on corporations other than S corporations (*see below*) and small C corporations (generally those with three-year average annual gross receipts not exceeding 7.5 million US dollars [USD]). The tax was 20% of alternative minimum taxable income (AMTI) in excess of a USD 40,000 exemption amount (subject to a phase-out). AMTI was computed by adjusting the corporation's regular taxable income by specified adjustments and 'tax preference' items. Tax preference or adjustment items could arise, for example, if a corporation had substantial accelerated depreciation, percentage depletion, intangible drilling costs, or non-taxable income.

P.L. 115-97 repealed the corporate AMT effective for tax years beginning after 31 December 2017 and provided a mechanism for prior-year corporate AMT credits to be refunded by the end of 2021.

**S corporations**
Corporations with 100 or fewer eligible shareholders, none of whom may be corporations, that meet certain other requirements may elect to be taxed under Subchapter S of the Internal Revenue Code (IRC or 'the Code') and are thus known as S corporations. S corporations are taxed in a manner similar, but not identical, to partnerships (i.e. all tax items [e.g. income, deductions] flow through to the owners of the entity). Thus, S corporations generally are not subject to US federal income tax.

**Gross transportation income taxes**
Foreign corporations and non-resident alien individuals are subject to a yearly 4% tax on their US-source gross transportation income (USSGTI), which has an exception for certain income treated as effectively connected with a US trade or business. Transportation income is any income derived from, or in connection with, (i) the use (or hiring or leasing for use) of a vessel or aircraft, or (ii) the performance of services directly related to the use of a vessel or aircraft.

**Base erosion and anti-abuse tax (BEAT)**
P.L. 115-97 created a new US federal tax called the 'base erosion and anti-abuse tax' (BEAT). P.L. 115-97 targeted US tax-base erosion by imposing an additional corporate tax liability on corporations (other than regulated investment companies [RICs], real estate investment trusts [REITs], or S corporations) that, together with their affiliates, have average annual gross receipts for the three-year period ending with the preceding tax year of at least USD 500 million and that make certain base-eroding payments to related foreign persons during the tax year of 3% (2% for certain banks and securities dealers) or more of all their deductible expenses apart from certain exceptions. The most notable of these exceptions are the net operating loss (NOL) deduction, the new dividends received deduction (DRD) for foreign-source dividends, the new deduction for foreign-derived intangible income (FDII) and the deduction relating to the new category of global intangible low-taxed income (GILTI), qualified derivative payments defined in the provision, and certain payments for services.

The BEAT is imposed to the extent that 10% (5% for the 2018 calendar year) of the taxpayer's 'modified taxable income' (generally, US taxable income determined without regard to any base-eroding tax benefit or the base-erosion percentage of the NOL deduction) exceeds the taxpayer's regular tax liability net of most tax credits. The above percentages are changed to 11% and 6%, respectively, for certain banks and securities dealers.

A base-eroding payment generally is any amount paid or accrued by the taxpayer to a related foreign person that is deductible or to acquire property subject to depreciation or amortisation, or for reinsurance payments. The category also includes certain payments by 'expatriated entities' subject to the anti-inversion rules of Section 7874.

The provision is effective for base-erosion payments paid or accrued in tax years beginning after 31 December 2017. For tax years beginning after 31 December 2025, the percentage of modified taxable income that is compared against the regular tax liability increases to 12.5% (13.5% for certain banks and securities dealers) and allows all credits to be applied in determining the US corporation's regular tax liability. Special rules apply for banks, insurance companies, and 'expatriated entities'.

**State and local income taxes**
CIT rates vary from state to state and generally range from 1% to 12% (although some states impose no income tax). The most common taxable base is federal taxable income, which is modified by state provisions and generally is apportioned to a state on the basis of an apportionment formula consisting of one or more of the following: tangible assets and rental expense, sales and other receipts, and payroll. Many states are moving away from a three-factor formula in favour of a one-factor receipts apportionment methodology. State and municipal taxes are deductible expenses (capped at USD 10,000) for federal income tax purposes.

## Corporate - Corporate residence

A corporation organised or created in the United States under the law of the United States or of any state is a domestic corporation. A domestic corporation is a resident corporation even though it does no business or owns no property in the United States.

**Permanent establishment (PE)**
A PE generally is defined as a fixed place of business.

## Corporate – Other taxes

**Sales taxes**
No provisions exist for a sales tax or value-added tax (VAT) at the federal level; however, sales and use taxes constitute a major revenue source for the 45 states that impose such taxes and the District of Columbia. Sales and use tax rates vary from state to state and generally range from 2.9% to 7.25% at the state level. Most states also allow a 'local option' that permits local jurisdictions, such as cities and counties, to impose an additional percentage on top of the state-level tax and to keep the related revenues.

In general, a sales tax is a tax applied to the retail sale of tangible personal property and certain enumerated services. Although the form of the tax may vary, it is usually imposed directly upon the receipts from the retail sale of the taxable item. The person engaged in the business of making retail sales of the taxable item generally collects the sales tax from the purchaser and remits such amounts to the state. The use tax complements the sales tax and is usually assessed on purchases made out of state and brought into the jurisdiction for use, storage, or consumption. Typically, either a sales tax or a use tax can be assessed on a transaction, but not both.

The states generally impose a sales tax collection and remission liability on a seller once a minimum threshold is met with respect to either the number of sales transactions into or within a state or the dollar amount of sales into or within a state.

Liability for state and local sales taxes was governed by a physical presence nexus standard prior to the US Supreme Court's decision *South Dakota v. Wayfair* (21 June 2018). That decision voided the physical presence nexus standard and upheld South Dakota's statutory nexus standard of delivery into the state of more than USD 100,000 of sales or 200 or more transactions. Since the decision, most states that impose sales taxes have adopted similar standards.

**Customs duties and import tariffs**
All goods imported into the United States are subject to entry and are dutiable or duty-free in accordance with their classification under the applicable items in the Harmonized Tariff Schedule of the United States. The classification also identifies eligibility for special programs and free trade agreement preferential duty rates. The President has authority under US law to increase tariffs in certain cases (e.g., to address national security concerns).

When goods are dutiable on an 'ordinary' basis, *ad valorem*, specific, or compound duty rates may be assessed. An *ad valorem* rate, which is the type of duty mechanism most often applied, identifies the percentage of tax that will be assessed on the value of the merchandise, such as 7% *ad valorem*. A specific rate is a specified amount per unit of weight or other quantity, such as 6.8 cents per dozen. A compound rate is a combination of both an *ad valorem* rate and a specific rate, such as 0.8 cents per kilo plus 8% *ad valorem*. In addition to ordinary duties, select products also may be subject to punitive tariffs that are imposed in response to specific trading conditions and for specified time periods. In such cases, the punitive tariffs are assessed in addition to the ordinary duties. Customs requires that the value of the goods be properly declared regardless of the dutiable status of the merchandise.

Liability for the payment of duty and other customs fees becomes fixed at the time an entry is filed with US Customs and Border Protection (CBP), although the amount of duty owed may change subsequently if any of the information declared on entry is later determined to be erroneous. The obligation for payment is upon the person or firm in whose name the entry is filed, the importer of record.

**Excise taxes**
Excise taxes (including retail excise taxes) are generally imposed by the federal and state governments on a wide range of goods and activities, including gasoline and diesel fuel used for transportation, air transportation, wagering, foreign insurance, and manufacturing of specified goods (e.g., certain sporting goods, firearms and ammunition, alcohol, and tobacco).

The excise tax rates are as varied as the goods and activities upon which they are levied. For example, a federal excise tax of 7.5% is levied on domestic commercial air passenger transportation, whereas the federal excise tax imposed on motor fuel generally is 18.3 cents per gallon of gasoline and 24.3 cents per gallon of diesel fuel. These taxes usually are imposed on the manufacturer, importer, or provider of the goods and activities and then passed through to the purchaser.

**Property taxes**
Most states and local governments impose a variety of property taxes on real property. Most states also impose a tax on business personal property.

**Stamp taxes**
No provisions exist for a stamp tax at the federal level; however, state and local governments frequently impose stamp taxes at the time of officially recording a transaction involving real property (commonly referred to as transfer taxes). Such taxes generally are based upon the value of the real property being transferred. The tax generally is imposed on the direct sale of real property, but some state and local governments also impose such a tax on the sale of a controlling interest of real property, which is the sale of a direct or indirect ownership of the real property.

**Capital gain taxes**
On current transactions, the long-term capital gains tax rate is the same as the tax rates applicable to ordinary income. Thus, the maximum rate is 21%, excluding the additional phase-out rates.

**Accumulated earnings tax**
Corporations (other than S corporations, domestic and foreign personal holding companies, corporations exempt from tax under Subchapter F of the Code, and passive foreign investment companies) accumulating earnings and profits for the purpose of avoiding shareholder personal income tax (PIT) are subject to a penalty tax in addition to any other tax that may be applicable. The accumulated earnings tax is equal to 20% of 'accumulated taxable income'. Generally, accumulated taxable income is the excess of taxable income with certain adjustments, including a deduction for regular income taxes, over the dividends paid deduction and the accumulated earnings credit. Note that a corporation can justify the accumulation of income, and avoid tax, based on its reasonable business needs.

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

**Payroll taxes**
Employers are subject to federal unemployment tax (FUTA) of 6% on the first USD 7,000 of wages paid to employees meeting certain criteria. For 2020, employers also are subject to social security tax of 6.2% on the first USD 137,700 (up from USD 132,900 in 2019) of wages paid to employees and Medicare tax of 1.45% on all wages (collectively, FICA taxes). Employers are required to withhold an equivalent amount of FICA taxes from employee wages, federal income tax at graduated rates, and Additional Medicare tax of 0.9% on wages in excess of USD 200,000. In addition, states may impose state income tax, state unemployment tax, workers' compensation insurance tax, and other state-level benefit requirements at varying rates depending on state law and the nature of employees' activities. The
federal supplemental withholding rates, when applicable, remain at 22% on supplemental income below USD 1 million in the aggregate and 37% on supplemental income in excess of USD 1 million in the aggregate.

**Environmental tax**
Importers, manufacturers, and sellers of ozone-depleting chemicals (ODCs), or imported products manufactured using ODCs, are subject to environmental taxes calculated per weight of the ODC. These taxes are reported on Forms 6627 and 720. The ODC tax on imported products is determined under an exact method by weight or via the table method based on the listed product (such table is provided in the instructions to Form 6627). If the weight cannot be determined, the tax is 1% of the entry value of the product. Note: The former tax on crude oil and petroleum products (the oil spill liability tax) expired on 31 December 2018, but legislation has been proposed to reinstate this tax, and we expect that legislation to be enacted.

**Other state and municipal taxes**
Other taxes that states may impose, in lieu of or in addition to taxes based on income, include franchise taxes and taxes on the capital of a corporation. State and municipal taxes are deductible expenses for federal income tax purposes.

## Corporate - Branch income

US tax law imposes a 30% branch profits tax on a foreign corporation's US branch earnings and profits for the year that are effectively connected with a US business, to the extent that they are not reinvested in branch assets. Thus, the taxable base for the branch profits tax is increased (decreased) by any decrease (increase) in the US net equity of the branch. The branch profits tax on profits may be reduced or eliminated entirely if a relevant treaty so provides (subject to strict 'treaty shopping' rules). The purpose of the branch profits tax is to treat US operations of foreign corporations in much the same manner as US corporations owned by foreign persons. With certain exceptions, a 30% (or lower treaty rate) branch profits tax also will be imposed on interest payments by the US branch to foreign lenders. In addition, the tax will apply if the amount of interest deducted by the branch on its US tax return exceeds the amount of interest actually paid during the year.

## Corporate - Income determination

**Inventory valuation**
Inventories generally are stated at either cost or the lower of cost or market on a first-in, first-out (FIFO) basis. Last-in, first-out (LIFO) may be elected for tax purposes on a cost basis only and requires that LIFO also be used in financial reports issued to shareholders and creditors.

The tax law requires capitalisation for tax purposes of several costs allocable to property produced and property acquired for resale, including costs that frequently are expensed as current operating costs for financial reporting (e.g. a portion of general and administrative costs, cost variances) and differences between book and tax costs (i.e. the excess of tax depreciation over financial statement depreciation). When inventory is sold, the cost of goods sold is subtracted from sales to compute gross income. Amounts included in cost of goods sold are not subject to the BEAT unless the payments are made to an 'expatriated entity'.

**Capital gains**
Gains or losses on the sale or exchange of capital assets held for more than 12 months are treated as long-term capital gains or losses. Gains or losses on the sale or exchange of capital assets held for 12 months or less are treated as short-term capital gains or losses. The excess of net long-term capital gain over net short-term capital loss is considered net capital gain. Capital losses are allowed only as an offset to capital gains. An excess of capital losses over capital gains in a tax year may be carried back three years and carried forward five years to be used to offset capital gains.

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

An exception to capital gain treatment exists to the extent that losses on business assets were recognised in prior years. A net loss from the sale of business assets is treated as an ordinary loss. Future gains, however, will be treated as ordinary income to the extent of such losses recognised in the five immediately preceding years.

*See Capital gain taxes in the Other taxes section for more information*.

**Dividend income**
For tax years beginning before 31 December 2017, a US corporation generally may deduct 70% of dividends received from other US corporations in determining taxable income. The dividends received deduction (DRD) is increased from 70% to 80% if the recipient of the dividend distribution owns at least 20% but less than 80% of the distributing corporation. Generally, dividend payments between US corporations that are members of the same affiliated group (*see the Group taxation section*) are deferred or eliminated until a transaction with a third party occurs. With minor exceptions, a US corporation may not deduct dividends it receives from a foreign corporation. For tax years beginning after 31 December 2017, P.L. 115-97 reduces the 70% DRD to 50% and the 80% DRD to 65%.

A 100% DRD is provided for the foreign-source portion of dividends received by a US corporation from certain foreign corporations with respect to which it is a 10% US shareholder. The 100% DRD applies to certain distributions made after 31 December 2017 (provided a minimum holding period is satisfied along with certain other requirements).

**Stock dividends**
A US corporation can distribute a tax-free dividend of common stock proportionately to all common stock shareholders. If the right to elect cash is given, all distributions to all shareholders are taxable as dividend income whether cash or stock is taken. There are exceptions to these rules, and extreme caution must be observed before making such distributions.

**Interest income**
Interest income is generally includible in the determination of taxable income.

**Rental income**
Rental income is generally includible in the determination of taxable income.

**Royalty income**
Royalty income is generally includible in the determination of taxable income.

**Partnership income**
The income (loss) of a partnership passes through to its partners so that the partnership itself is not subject to tax. Thus, each partner generally includes in taxable income its distributive share of the partnership's taxable income (or loss).

**Foreign income (Subpart F income) of US taxpayers**
In the case of controlled foreign companies (CFCs), certain types of undistributed income are taxed currently to certain US shareholders (Subpart F income). More specifically, in situations in which a foreign corporation is a CFC, every US shareholder owning 10% or greater of the total value of shares of all classes of stock or the total combined voting power of all classes of stock entitled to vote of such a foreign corporation (US shareholder) must include in gross income its *pro rata* share of the Subpart F income earned by the CFC, regardless of whether the income is distributed to the US shareholders.

With certain exceptions, Subpart F income generally includes passive income and other income that is readily movable from one taxing jurisdiction to another (i.e. income that is separated from the activities that produced the value in the goods or services generating the income). In particular, Subpart F income includes insurance income, foreign base company income, and certain income relating to international boycotts and other violations of public policy.

There are several subcategories of foreign base company income, the most common of which are foreign personal holding company income (FPHCI), foreign base company sales income (FBCSI), and foreign base company services income (FBCSvI). FPHCI is passive income (e.g. dividends, interest, royalties, and capital gains). FBCSI and FBCSvI are sales and services income earned in cross-border, related-person transactions. There are a number of common exceptions that may apply to exclude certain income from the definition of Subpart F income, including exceptions relating to highly taxed income, certain payments between related parties, and active business operations.

In situations in which the US shareholder is a domestic corporation, the domestic corporate shareholder may claim a foreign tax credit (discussed below) for foreign taxes paid or accrued by a CFC. Furthermore, certain rules track the earnings and profits of a CFC that have been included in the income of US shareholders as Subpart F income to ensure that such amounts (known as previously taxed income or PTI) are not taxed again when they are actually distributed to the US shareholders.

P.L. 115-97 also requires a US shareholder to include in income the 'global intangible low-taxed income' (GILTI) of its CFCs, effective for tax years of foreign corporations beginning after 2017. Despite the name, this provision is not limited to low-taxed income from intangible assets. Rather, it applies to the shareholder’s pro rata share of the CFC’s total net income (apart from certain specified categories such as Subpart F income and income effectively connected with a US trade or business), less a deemed 10% return on the CFC’s tangible assets.

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

## Corporate - Deductions

**Depreciation and amortisation**

Depreciation deductions are allowances that may be taken for capital outlays for tangible property. For property placed in service after 1986, capital costs must be recovered by using the modified accelerated cost recovery system (MACRS) method. Depending on the type of tangible property, the general cost recovery periods are three, five, seven, ten, 15, 20, 27.5, and 39 years (31.5 years for property placed in service before 13 May 1993). The cost recovery methods and periods are the same for both new and used property. Most tangible personal property is in the three, five, or seven year class. Property placed in the three, five, seven, or ten year class is depreciated by first applying the 200% declining-balance method and then switching to the straight-line method at such a time as when use of the straight-line method maximises the depreciation deduction. Property in the 15 or 20 year class is depreciated by using the 150% declining-balance method and later switching to the straight-line method. An election may be made to use the alternative depreciation system (basically, the straight-line method over prescribed lives). Residential rental property generally is depreciated by the straight-line method over 27.5 years. Non-residential real property is depreciated by the straight-line method over 39 years (31.5 years for property placed in service before 13 May 1993).

An election to use the straight-line method over the regular recovery period or a longer recovery period also is available. Alternatively, taxpayers may elect to use the 150% declining-balance method over the regular recovery period for all property other than real property. This method was required for AMT purposes. However, corporate AMT is repealed for tax years beginning after 31 December 2017.

For most tangible personal and real property placed in service in the United States after 1980 but before 1 January 1987, capital costs were recovered using the accelerated cost recovery system (ACRS), which applied accelerated methods of cost recovery over periods specified by statute. The general ACRS recovery periods were three, five, ten, 15, 18, and 19 years.

Special rules apply to automobiles and certain other 'listed' property. Accelerated depreciation deductions can be claimed only if the automobile is used 50% or more for qualified business use as defined in related regulations. Further, for automobiles placed in service after 1986, the allowable yearly depreciation deduction cannot exceed specific dollar limitations.

Separate methods and periods of cost recovery are specified by statute for certain tangible personal and real property used outside the United States.

Rapid amortisation may be allowable for certain pollution control facilities.

Tax depreciation generally does not conform to book depreciation. Tax depreciation generally is subject to recapture on the sale or disposition of certain property, to the extent of gain, which is subject to tax as ordinary income.

The cost of most intangible assets is capitalised and amortisable rateably over 15 years.

**Section 179 deduction**

Corporations can elect to expense, up to a statutory amount per year, the cost of certain eligible property used in the active conduct of a trade or business. This is commonly referred to as the Section 179 deduction.

Varying amounts ahd thresholds applied to tax years beginning before 1 January 2018.

For property placed in service in tax years beginning after 31 December 2017, P.L. 115-97 increases the dollar limitation to USD 1 million, while increasing the cost of property subject to the phase-out to USD 2.5 million. The new dollar limitations are indexed for inflation for tax years beginning after 31 December 2018. In addition, the deduction under this election is limited to the taxable income of the business.

**Bonus depreciation**

A 50% special first-year depreciation allowance (i.e. bonus depreciation) applies (unless an election out is made) for new (i.e. property with respect to which the original use begins with the taxpayer) MACRS property with a recovery period of 20 years or less, certain computer software, water utility property, and certain leasehold improvements acquired after 31 December 2007. The special allowance applies for regular income tax and AMT purposes. No AMT adjustment is made if the special allowance is used. The special allowance does not apply to property that must be depreciated using the alternative depreciation system or to 'listed property' not used predominantly for business. The special allowance reduces basis before regular depreciation is figured. Additionally, claiming bonus depreciation on automobiles may affect the first-year depreciation limits on such automobiles.

P.L. 115-97 replaced 50% bonus depreciation with 100% bonus depreciation for eligible property, and also repealed the original use requirement that now results in used property being eligible for 100% bonus depreciation. Thus, for certain new and used property acquired and placed in service after 27 September 2017 and before 1 January 2023 (with an additional year for certain aircraft and longer production period property), taxpayers may expense immediately the entire cost of such property. For qualified property placed in service in calendar years 2023, 2024, 2025, and 2026 (2024, 2025, 2026, and 2027 for certain aircraft and longer production period property), 100% is reduced to 80%, 60%, 40%, and 20%, respectively. For any property acquired prior to 28 September 2017, the pre-Act bonus depreciation rules apply. P.L. 115-97 also made additional categories of property eligible for bonus depreciation —e.g., film and used property — if applicable requirements are met.

**Depletion**

For natural resource properties other than timber and certain oil and gas properties, depletion may be computed on a cost or a percentage basis.

Cost depletion is a method of depletion applied to exhaustible natural resources, including timber, which is based on the adjusted basis of the property. Each year, the adjusted basis of the property is reduced, but not below zero, by the amount of depletion calculated for that year. The current year cost depletion deduction is based on an estimate of the number of units that make up the deposit and the number of units extracted and sold during the year.

Percentage depletion is a method of depletion applied to most minerals and geothermal deposits, and, to a more limited extent, oil and gas. Percentage depletion is deductible at rates varying from 5% to 25% of gross income, depending on the mineral and certain other conditions. Percentage depletion may be deducted even after the total depletion deductions have exceeded the cost basis. However, percentage depletion is limited to 50% (100% for oil and gas properties) of taxable income from the property (computed without allowance for depletion). Generally, percentage depletion is not available for oil or gas wells. However, exceptions exist for natural gas from geopressurised brine and for independent producers of oil and gas.

**Goodwill**
The cost of goodwill generally is capitalised and amortised rateably over 15 years, beginning in the month the goodwill is acquired.

**Start-up expenses**
Generally, start-up expenditures must be amortised over a 15-year period; however, certain taxpayers may elect to deduct some expenses in the tax year in which the trade or business begins.

**US manufacturing deduction**
Over the last several decades, various tax incentive systems have been enacted in the United States to encourage exports and were later repealed, including the extraterritorial income (ETI) regime, which was repealed as a result of a World Trade Organization (WTO) ruling that the ETI regime favoured US goods and violated the national treatment provisions of the General Agreement on Tariffs and Trade. In response, the United States enacted the American Jobs Creation Act of 2004, which introduced a phase-out repeal of ETI and introduced the domestic production activities deduction under Section 199, seeking to compensate US manufacturers for the loss of ETI benefits.

For tax years beginning before 1 January 2018, Section 199 generally provided taxpayers with a 9% deduction for qualified production activities (QPA) income (subject to a taxable income limitation). The deduction was available to all taxpayers actively engaged in QPA. For most corporate taxpayers, the deduction generally meant a federal income tax rate of 31.85% on QPA income, although certain oil- and gas-related QPA received a less generous reduction that equated to a federal income tax rate of 32.9%. Importantly, the deduction also applied in calculating the AMT.

There was a limit on the amount of the deduction equal to 50% of W-2 wages allocable to domestic production gross receipts (DPGR). The deduction generally was not allowed for taxpayers that incurred a loss from their production activities or had an overall loss (including a carryover loss) from all activities. A taxpayer's QPA income was calculated using the following formula: DPGR less the sum of cost of goods sold allocable to such receipts and other expenses, losses, or deductions that are properly allocable to such receipts.

P.L. 115-97 repealed Section 199 for tax years beginning after 31 December 2017.

**Interest expense limitation**
Under P.L. 115-97, new Section 163(j) limits US business interest expense deductions to the sum of business interest income, 30% of ‘adjusted taxable income’ (ATI), and floor plan financing interest of the taxpayer for the tax year, effective for tax years beginning after 31 December 2017.

The new Section 163(j) interest limitation broadly applies to the ‘business interest’ of any taxpayer (regardless of form) and regardless of whether the taxpayer is part of an ‘inbound’ group or an ‘outbound’ group. That is, unlike prior-law Section 163(j), new Section 163(j) applies regardless of whether the interest payment is made to a foreign person or a US person, and regardless of whether such person is related or unrelated to the taxpayer. ATI is roughly equivalent to earnings before interest, taxes, depreciation, and amortisation (EBITDA) (similar to prior-law Section 163(j)) for tax years beginning before 1 January 2022. For tax years beginning on or after that date, ATI would be roughly equivalent to earnings before interest and taxes (EBIT).

Disallowed business interest expense can be carried forward indefinitely.

**Bad debt**
Bad debt resulting from a trade or business may be deducted in the year the debt becomes worthless. Determining the date the debt becomes worthless may present difficulty.

**Charitable contributions**
Deductions for allowable charitable contributions may not exceed 10% of taxable income computed without regard to certain deductions, including charitable contributions themselves. Deductions for contributions so limited may be carried over to the five succeeding years, subject to the 10% limitation annually.
Employee benefit plans (pension plans and expenses)

Through the Code, the government provides incentives for employers to provide qualified retirement benefits to workers. Usually, the employer will be allowed a current deduction for contributions made to a trust, and the employee's tax liability will be deferred until the benefit is paid. For-profit, non-government employers generally have two types of available plans, which generally are subject to the reporting and disclosure requirements set forth under the Employee Retirement Income Security Act of 1974 (ERISA). Qualified plans are required to provide benefits for a broad group of employees (and not only executives) and there are annual limits on the amount of benefits that can be earned by the participants. The first category of tax-qualified retirement plans is a defined benefit plan, or more commonly known as a pension plan, to which an employer contributes money, on an ongoing basis, to cover the amount of retirement income owed to retired employees under the plan (which will vary based on years of service, average salary, age at retirement, and other factors). Any investment gains or losses will not affect the amount of benefits paid to participants but will affect the amount an employer needs to contribute in order to cover its obligation.

The second category of employee benefit plans is the defined contribution plan, or more commonly known in the United States as a '401(k) plan', to which an employee can contribute compensation (up to an annual limit) on a pre-tax basis to an account in the employee's name. Employers also can contribute amounts to these accounts, such as matching contributions or profit sharing contributions. Investment gains or losses and the history of contributions will affect the value of a participant's account at retirement but will not affect an employer's contributions since the employer is not obligated to ensure any specified level of benefit in the plan. Small employers have similar options available but may be subject to different requirements.

Non-profits, including churches and government entities, have similar employee benefit plans, except different requirements apply. Self-employed individuals also may set up retirement plans, but these are subject to separate requirements.

**Foreign-derived intangible income (FDII)**
Under P.L. 115-97, for tax years beginning after 2017 and before 1 January 2026, new Section 250 allows as a deduction an amount equal to 37.5% of a domestic corporation's FDII plus 50% of the GILTI amount included in gross income of the domestic corporation under new Section 951A (*discussed in the Income determination section*). For tax years beginning after 31 December 2025, the deduction is reduced to 21.875% and 37.5%, respectively. If, in any tax year, the domestic corporation's taxable income is less than the sum of its FDII and GILTI amounts, then the 37.5% FDII deduction and the 50% GILTI deduction are reduced proportionally by the amount of the difference.

FDII is determined by subtracting a deemed 10% return on the domestic corporation's tangible assets from its deduction-eligible income (DEI), which comprises its total net income (apart from certain specified categories such as Subpart F and GILTI inclusion income, foreign branch income, and CFC dividends). This net amount is then multiplied by a fraction, the denominator of which is the corporation's DEI and the numerator of which is its net income from sales of property to foreign persons for foreign use or from services provided to persons, or with respect to property, located outside the United States. Thus, despite its name, FDII is not limited to sales or licenses of intangible property, or services provided using intangible property.

**Research and experimental (R&E) expenditures**
For tax years beginning before 1 January 2022, corporations can continue to elect under Section 174 to expense all R&E expenditures that are paid or incurred during the tax year or to defer the expenses for 60 months. Taxpayers also can make a special election under Section 59(e) to amortise their research expenditures over 120 months. A portion of the research expenditures may qualify for a research tax credit, *which is described in the Tax credits and incentives section*.

For tax years beginning after 2021, P.L. 115-97 repealed expensing of R&E expenditures, including software development costs, under Section 174 and required such expenditures to be capitalised and amortised over a five-year period, beginning with the midpoint of the tax year in which the specified R&E expenditures were paid or incurred. R&E expenditures that are attributable to research that is conducted outside the United States will have to be capitalised and amortised over a period of 15 years.

**Bribes, kickbacks, and illegal payments**
An amount paid, directly or indirectly, to any person that is a bribe, kickback, or other illegal payment is not deductible.

**Fines and penalties**
No deduction generally is allowed for fines or penalties paid to the government for violation of any law for amounts paid or incurred before the enactment date of P.L. 115-97 (i.e. before 22 December 2017).
For amounts paid on or after the enactment date of P.L. 115-97 (i.e. on or after 22 December 2017), all payments to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law are non-deductible, unless such payments clearly reflect amounts paid for restitution or to come into compliance with the law and are identified as such in the underlying agreement.

**Taxes**
State and municipal taxes imposed on businesses are deductible expenses for federal income tax purposes.

**Other significant items**
No deduction generally is allowed for a contingent liability until such liability is fixed and determinable. Costs incurred for entertainment must meet strict tests to be deductible. The deduction for business meal and entertainment expenses generally is 50% of the expenses paid or incurred before 1 January 2018. Under P.L. 115-97, for amounts paid or incurred after 31 December 2017, this deduction generally is no longer available (note, however, that business meals without entertainment remain 50% deductible). There also are limitations on the deductibility of international and domestic business travel expenses.

Royalty payments, circulation costs, mine exploration and development costs, and other miscellaneous costs of carrying on a business are deductible, subject to certain conditions and limits.

Compensation paid by a publicly traded corporation to its the CEO, CFO, and three additional officers is generally subject to a USD 1 million per-year deduction limit. P.L. 115-97 eliminated the prior-law exception for performance-based compensation and extended the deduction limit to all compensation payments, including payments after termination of employment. The limitation now also applies to certain privately held corporations that have public debt and foreign corporations that trade on US exchanges through American Depository Receipts (ADRs).

**Net operating losses (NOLs)**
An NOL is generated when business deductions exceed gross income in a particular tax year. NOLs generated in tax years ending before 1 January 2018 may be carried back to offset past income and possibly obtain a refund or carried forward to offset future income. Generally, a loss generated in tax years ending before 1 January 2018 may be carried back two years and, if not fully used, carried forward 20 years.

Special rules regarding NOLs generated in tax years ending before 1 January 2018 may apply (i) to specified liability losses or (ii) if a taxpayer is located in a qualified disaster area.

NOLs generated in tax years ending after 31 December 2017 generally may not be carried back and must instead be carried forward indefinitely. However, for NOLs generated in tax years beginning after 31 December 2017, the NOL deduction is limited to 80% of taxable income (determined without regard to the deduction). Note that a technical correction may be needed regarding the elimination of NOL carrybacks for tax years ending after 31 December 2017 because the conference report for P.L. 115-97 says the provision applied to tax years beginning (not ending) after 31 December 2017.

Complex rules may limit the use of NOLs after a re-organisation or other change in corporate ownership.

Generally, if the ownership of more than 50% in value of the stock of a loss corporation changes, a limit is placed on the amount of future income that may be offset by losses carried forward.

**Payments to foreign affiliates**
Subject to certain limitations, a US corporation generally may claim a deduction for royalties, management service fees, interest charges, and other items paid to foreign affiliates, to the extent the amounts are actually paid and are not in excess of what it would pay an unrelated entity (i.e. they are at arm's length). US tax, collected through withholding, on these payments generally is required. Under certain circumstances, however, such payments may give rise to a BEAT liability for the US payer (*as discussed in the Taxes on corporate income section*).

## Corporate – Group taxation

An affiliated group of US 'includible' corporations, consisting of a parent and subsidiaries directly or indirectly 80% owned, generally may offset the profits of one affiliate against the losses of another affiliate within the group by electing to file a consolidated federal income tax return. A foreign incorporated subsidiary may not be consolidated into the US group, except for (i) certain Mexican and Canadian incorporated entities, (ii) certain foreign insurance companies that elect to treated as domestic corporations, and (iii) certain foreign corporations that are considered 'expatriated' under the so-called 'anti-inversion' rules and are thus deemed to be domestic for income tax purposes. A partnership may not be included in a consolidated return, even if it is 100% owned by members of an affiliated group, since a partnership is not a corporation. However, a member's earnings that flow through from a partnership are included as part of the consolidated group's taxable income or loss. Filing on a consolidated (combined) basis is also allowed (or may be required or prohibited) in certain states.

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

**Transfer pricing**
Transfer pricing regulations govern how related entities set internal prices for the transfers of goods, intangible assets, services, and loans in both domestic and international contexts. The regulations are designed to prevent tax avoidance among related entities and place a controlled party on par with an uncontrolled taxpayer by requiring an arm's-length standard. The arm's-length standard generally is met if the results of a controlled transaction are consistent with results that would have been realised if uncontrolled taxpayers had engaged in a similar transaction under similar circumstances. If a company is not in compliance with the arm's-length standard, the IRS may raise taxable income and tax payable in the United States. After a transfer pricing adjustment, a multinational company may face double tax, paying tax twice on the same income in two countries. Multinational companies may request competent authority relief from double taxation through a tax treaty.

In order to avoid potential transfer pricing penalties, one avenue available to companies may be to obtain an advance pricing agreement (APA) with the IRS, unilaterally, or with the IRS and another tax authority, bilaterally, covering inter-company pricing.

**Country-by-country (CbC) reporting**
US multinational enterprises (MNEs) have to report certain financial information on a CbC basis. The CbC report will be exchanged under bilateral Competent Authority Arrangements (CAAs) negotiated between the US Competent Authority and foreign tax administrations.

Under final regulations issued by the IRS on 29 June 2016, parent entities of US MNE groups with USD 850 million or more of revenue in a previous annual reporting period file IRS Form 8975, Country-by-Country Report. Form 8975 is used to report a US MNE group's income, taxes paid, and other indicators of economic activity on a CbC basis.

Form 8975 must be filed for the US MNE group's first reporting period in the tax year that starts on or after 30 June 2016. It must be filed with the income tax return of the parent entity in which the reporting period ends and cannot be filed as a stand-alone return. Form 8975 can be filed for reporting periods that begin before the first required reporting period. Form 8975 and its schedules can be filed in the Modernized e-File (MeF) XML schema format. Parent entities not permitted to file returns electronically must file Form 8975 with their paper income tax return.

The IRS will exchange Form 8975 information automatically with tax authorities with which the United States enters into a bilateral CAA. However, a US MNE group's information will be exchanged only with countries in which the US MNE group reports doing business. Exchanged information is confidential and protected pursuant to the applicable legal instrument permitting exchange.

**Thin capitalisation**
*See Interest expenses in the Deductions section*.

**Controlled foreign companies (CFCs)**
Under the Subpart F regime of the IRC, a CFC is any foreign corporation with respect to which US shareholders (*defined below*) own more than 50% of either the voting power of all classes of stock entitled to vote or the total value of all classes of the corporation's stock on any day during the foreign corporation's tax year. For these purposes, a US shareholder is any US person owning (directly, indirectly through foreign intermediaries, or constructively) 10% or more of the total value of shares of all classes of stock or of the total combined voting power of all classes of stock entitled to vote of a foreign corporation (P.L. 115-97 added the value threshold to the definition).

## Corporate – Tax credits and incentives

**Foreign tax credit (FTC)**
Generally, in any year, a taxpayer can choose whether to take as a credit (subject to limitation) or as a deduction foreign income, war profits, and excess profit taxes paid or accrued during the tax year to any foreign country or US possession. An FTC reduces US income tax liability dollar for dollar, while a deduction reduces the US income tax liability at the marginal rate of the taxpayer. For taxpayers with NOLs, the FTC is of no value in such year. However, a benefit might be received either in an earlier year (through a refund of previously paid taxes) or a later year (through a reduction of future taxes). It also should be noted that a taxpayer has an ability to switch from deduction to credit at any time in a ten-year period commencing when the foreign taxes were paid or accrued. Generally, an FTC may be carried back one year and, if not fully used, carried forward ten years.

In addition, the FTC goes beyond direct taxes to include foreign taxes paid 'in lieu of' a tax upon income, war profits, or excess profits, which would otherwise generally be imposed. It also includes deemed-paid (indirect) taxes paid for certain US corporate shareholders of non-portfolio foreign corporations. FTCs (and foreign tax deductions) are disallowed for foreign taxes paid on amounts that are eligible for the new 100% DRD. Furthermore, the FTC system has numerous other limitations to mitigate the potential abuses of the credit by the taxpayer.

**General business credit**
Various business credits are available to provide special incentives for the achievement of certain economic objectives. In general, these credits are combined into one 'general business credit' for purposes of determining each credit's allowance limitation for the tax year. The general business credit that may be used for a tax year is limited to a tax-based amount. In general, the current year's credit that cannot be used in a given year because of the credit's allowance limitation may be carried back to the tax year preceding the current year and carried forward to each of the 20 years following the current year.
In general, the current year business credit is a combination of the following credits for 2019:

- Investment credit.
- Work opportunity credit.
- Alcohol fuels credit.
- Research credit.
- Low-income housing credit.
- Disabled access credit for certain eligible small businesses.

- Renewable electricity production credit.
- Indian employment credit.
- Employer social security credit.
- Orphan drug credit (reduced by P.L. 115-97 from 50% to 25%).
- New markets tax credit.
- Small employer pension plan start-up cost credit for eligible employers.
- Employer-provided child care credit.
- Railroad track maintenance credit.
- Biodiesel fuels credit.
- Low sulphur diesel fuel production credit.
- Distilled spirits credit.
- Non-conventional source fuel production credit.
- New energy efficient home credit.
- Energy efficient appliance credit.
- A portion of the alternative motor vehicle credit.
- A portion of the alternative fuel vehicle refuelling property credit.
- Mine rescue team training credit.
- Agricultural chemicals security credit.
- Employer differential wage payments credit.
- Carbon oxide sequestration credit.
- A portion of the new qualified plug-in electric drive motor vehicle credit for vehicles that will vary based on the date of purchase.

**Employment credits**

A 'work opportunity tax credit' is available through 2019 for qualified wages paid to certain types of workers. 'Qualified' wages generally are the first USD 6,000 of wages paid to each qualified employee for the year. The credit is 40% of qualified wages, for a maximum credit of USD 2,400 per qualified employee.

**Research credit**

The Credit for Increasing Research Activities under Section 41 (R&D credit) is available for companies that incur qualified research expenditures (QREs) to develop new or improved products, manufacturing processes, or software in the United States. The R&D credit was enacted in 1981 on a temporary basis to help increase R&D spending in the United States. Since then, the R&D credit has been extended on a temporary basis about 16 times, but was extended, retroactively to 1 January 2015, on a permanent basis as part of the Consolidated Appropriations Act, 2016.

The R&D credit generally is computed by calculating current-year QRE over a base. The base is calculated using either the regular research credit (RRC) method or the alternative simplified credit (ASC) method. Under the RRC method, the credit equals 20% of QREs for the tax year over a base amount established by the taxpayer in 1984 to 1988 or by another method for companies that began operations after that period. The ASC equals 14% (for the 2009 tax year and thereafter) of QREs over 50% of the average annual QREs in the three immediately preceding tax years. If the taxpayer has no QREs in any of the three preceding tax years, the ASC may be 6% of the tax year's QREs. The taxpayer must make a timely ASC election on Form 6765 attached to an originally filed return filed by the due date for that return (including extensions), or, pursuant to final regulations published in February 2015, an amended return (subject to certain limitations).

Taxpayers may take a 20% credit for incremental payments made to qualified organisations for basic research. For tax years ending after 8 August 2005, taxpayers also may take the Energy Research Consortium Credit, which provides a 20% credit for expenditures on qualified energy research undertaken by an energy research consortium.

The deduction for R&D expenditures under Section 174 must be reduced by the entire amount of the R&D credit unless an election is made to reduce the amount of the credit.

**Inbound investment incentives**

There generally are limited incentives related to inbound investment at the federal level, such as certain portfolio debt and bank deposit exceptions and trading safe harbours. The portfolio debt exception enables non-residents and foreign corporations to invest in certain obligations (which must meet certain statutory and regulatory requirements to qualify as 'portfolio debt') in the United States without being subject to US income (or withholding) tax on the interest income. The bank deposit exception allows non-US investors to deposit funds in US banking institutions without being subject to US tax on the interest earned, provided that the investment meets the statutory definition of a ‘deposit’ and the funds are held by persons carrying on a banking business, or certain other supervised institutions. There also are statutory securities and commodities trading safe harbours that provide exceptions from being treated as engaged in a US trade or business for non-US persons trading in stocks, securities, or commodities through a resident broker, commission agent, custodian, or other independent agent. Certain state and local benefits may also be available.

**Qualified private activity bonds**

Interest income received on certain qualified private activity bonds generally is exempt from federal income tax. This enables a business enterprise to issue the bonds at a lower interest rate.

**Other tax incentives**

State and local governments provide numerous incentives to encourage business investment and, thus, employment in their jurisdictions. Credits and incentives can assist in the reduction of costs and may provide cash to help offset costs related to investments, job creation, expansion, and the opening of new facilities. Some of the most common credits and incentives include cash grants, property and sales/use tax abatement, utility rate reductions, and other tax benefits such as credits and tax holidays.

## Corporate - Withholding taxes

US domestic tax laws, a foreign person generally is subject to 30% US tax on the gross amount of certain US-source (non-business) income. All persons making payments  to foreign persons ('withholding agents') generally must report and withhold 30% of the gross US-source payments, such as dividends, interest, and royalties. In other situations, withholding agents withhold at reduced rates either based on operation of the US tax code or based on a tax treaty between the foreign person's country of residence and the United States. when the foreign person certifies its eligibility for the lower rate. Reporting is always required even if no withholding applies due to exemption or treaty.

Withholding also may be required on the purchase from a non-US person of an interest in US real estate (which may include shares in a US company holding primarily US real estate) or a partnership interest if the partnership is or has been engaged in the conduct of a US trade or business.

The United States has entered into various income tax treaties with countries in order to avoid double taxation of the same income and to prevent tax evasion. The table below, from the IRS website, summarises the benefits resulting from these treaties. Note that the information in this table may change due to changes to existing treaties.

| Recipient | WHT (%) | | | |
|---|---|---|---|---|
| | Dividends paid by US corporations in general (1) | Dividends qualifying for direct dividend rate (1, 2) | Interest paid by US obligors in general | Royalties * |
| Non-treaty | 30 | 30 | 30 | 30/30/30/30/30 |
| Treaty rates: | | | | |
| Australia (3) | 15 (22) | 5 (22, 24) | 10 (5, 6, 15, 21) | NA/5/5/5/5 |
| Austria (3) | 15 (9) | 5 (9) | 0 (15, 19) | NA/0/0/10/0 |
| Bangladesh (3) | 15 (22) | 10 (22) | 10 (11, 15, 19) | NA/10/10/10/10 |
| Barbados (3) | 15 (9) | 5 (9) | 5 | NA/5/5/5/5 |

| | | | | |
|---|---|---|---|---|
| Belgium (3) | 15 (22, 27) | 5 (22, 24, 27) | 0 (15, 19, 30) | NA/0/0/0/0 |
| Bulgaria (3) | 10 (22, 27) | 5 (22, 27) | 5 (15, 19, 21, 27) | NA/5/5/5/5 |
| Canada (3) | 15 (22) | 5 (22) | 0 (15, 19) | 10/0/0/10/0 |
| China, People's Republic of (3) | 10 | 10 | 10 | 7/10/10/10/10 |
| Commonwealth of Independent States (CIS) (8) | 30 | 30 | 0 (7) | 0/0/0/0/0 |
| Cyprus (3) | 15 | 5 | 10 (21) | NA/0/0/0/0 |
| Czech Republic (3) | 15 (9) | 5 (9) | 0 (15) | 10/10/10/0/0 |
| Denmark (3) | 15 (22, 27) | 5 (22, 24, 27) | 0 (15, 20) | NA/0/0/0/0 |
| Egypt | 15 (4) | 5 (4) | 15 (4) | NA/30/15/NA/15 (3) |
| Estonia (3) | 15 (9) | 5 (9) | 10 (15, 20) | 5/10/10/10/10 |
| Finland (3) | 15 (22, 27) | 5 (22, 24, 27) | 0 (15, 20) | NA/0/0/0/0 |
| France (3) | 15 (22) | 5 (22, 24) | 0 (5, 15) | NA/0/0/0/0 |
| Germany (3) | 15 (22, 27) | 5 (22, 24, 27) | 0 (15, 19) | NA/0/0/0/0 |
| Greece (4) | 30 | 30 | 0 | 0/0/0/30/0 |
| Hungary (3) | 15 | 5 | 0 | NA/0/0/0/0 |
| Iceland (3) | 15 (22, 27) | 5 (22, 27, 30) | 0 (15, 20) | NA/5/0/5/0 |
| India (3) | 25 (9) | 15 (9) | 15 (12) | 10/15/15/15/15 |
| Indonesia (3) | 15 | 10 | 10 | 10/10/10/10/10 |
| Ireland (3) | 15 (22) | 5 (22, 30) | 0 (15) | NA/0/0/0/0 |
| Israel (3) | 25 (9) | 12.5 (9) | 17.5 (12, 17) | NA/15/15/10/10 |
| Italy (3) | 15 (22) | 5 (22) | 10 (15, 23) | 5/8/8/8/0 |
| Jamaica (3) | 15 | 10 | 12.5 | NA/10/10/10/10 |
| Japan (3, 25) | 10 (22, 25, 27) | 5 (22, 24, 25, 27) | 10 (15, 25, 26, 27) | NA/0/0/0/0 |
| Kazakhstan (3) | 15 (16) | 5 (16) | 10 (15) | 10/10/10/10/10 |
| Korea, South (3) | 15 | 10 | 12 | NA/15/15/10/10 |
| Latvia (3) | 15 (9) | 5 (9) | 10 (15, 20) | 5/10/10/10/10 |
| Lithuania (3) | 15 (9) | 5 (9) | 10 (15, 20) | 5/10/10/10/10 |
| Luxembourg (3) | 15 (9, 28) | 5 (9) | 0 (4, 5, 15) | NA/0/0/0/0 |
| Malta (3) | 15 (22, 27, 30) | 5 (22, 27, 30) | 10 (15, 19) | NA/10/10/10/10 |
| Mexico (3) | 10 (22, 27) | 5 (22, 24, 27) | 15 (15, 18, 25, 27) | 10/10/10/10/10 |
| Morocco (3) | 15 | 10 | 15 | NA/10/10/10/10 |
| Netherlands (3) | 15 | 5 (24, 29) | 0 (6, 30) | NA/0/0/0/0 |
| New Zealand (3) | 15 (22) | 5 (22, 24) | 10 (15, 19, 21) | NA/5/5/5/5 |
| Norway (3) | 15 | 15 | 10 | NA/0/0/NA/0 |
| Pakistan (4) | 30 | 15 | 30 | NA/0/0/NA/0 |
| Philippines (3) | 25 | 20 | 15 | NA/15/15/15/15 |
| Poland (3) | 15 | 5 | 0 | NA/10/10/10/10 |
| Portugal (3) | 15 (9) | 5 (9) | 10 (5, 15) | 10/10/10/10/10 |
| Romania (3) | 10 | 10 | 10 | NA/15/15/10/10 |
| Russia (3) | 10 (16) | 5 (16) | 0 (15) | NA/0/0/0/0 |
| Slovak Republic (3) | 15 (9) | 5 (9) | 0 (15) | 10/10/10/0/0 |
| Slovenia (3) | 15 (22) | 5 (22) | 5 (15) | NA/5/5/5/5 |
| South Africa (3) | 15 (9) | 5 (9) | 0 (15, 19) | NA/0/0/0/0 |
| Spain (3) | 15 (22, 27) | 5 (22, 24, 27, 30) | 0 (15, 19, 30) | NA/0/0/0/0 (10, 30) |
| Sri Lanka (3) | 15 (29) | 15 (29) | 10 (15, 19) | 5/10/10/10/10 |
| Sweden (3) | 15 (22, 27) | 5 (22, 24, 27) | 0 (15) | NA/0/0/0/0 |
| Switzerland (3) | 15 (9) | 5 (9) | 0 (15, 19) | NA/0/0/NA/0 |
| Thailand (3) | 15 (9) | 10 (9) | 15 (12, 15) | 8/15/15/5/5 |

| | | | | |
|---|---|---|---|---|
| Trinidad & Tobago (3) | 30 | 30 | 30 | NA/15/15/NA/0 (14) |
| Tunisia (3) | 20 (9) | 14 (9) | 15 | 10 (13)/15/15/15/15 |
| Turkey (3) | 20 (9) | 15 (9) | 15 (6, 12, 15) | 5/10/10/10/10 |
| Ukraine (3) | 15 (16) | 5 (16) | 0 | NA/10/10/10/10 |
| United Kingdom (3) | 15 (22, 25) | 5 (22, 24, 25) | 0 (15, 20, 25) | NA/0/0/0/0 |
| Venezuela (3) | 15 (22) | 5 (22) | 10 (15, 20, 21) | 5/10/10/10/10 |

Notes
* Please note the tax rates and associated footnotes appearing in the 'Royalties' column in the table address five types of royalties, as denoted in the most recent IRS publication. These five are industrial equipment royalties, know-how/other industrial royalties, patent royalties, motion picture and television royalties, and copyright royalties. The slashes '/' between each figure and associated footnote(s) are meant to demarcate these five types of royalties, respectively. For rates indicated as 'NA', if the enterprise earns income from the leasing of equipment in the conduct of a trade or business, it is covered by the Business Profits article. For passive income from the leasing of equipment, and not in the Royalty article, it is covered by the Other Income article, if any.

1. No US tax is imposed on a dividend paid by a US corporation that received at least 80% of its gross income from an active foreign business for the three-year period before the dividend is declared.
2. Dividends paid by a subsidiary to a foreign parent corporation that has the required percentage of stock ownership are subject to a reduced rate, usually 5%, and, under some treaties, WHT may be eliminated entirely. In some cases, the income of the subsidiary must meet certain requirements (e.g. a certain percentage of its total income must consist of income other than dividends and interest).
3. The exemption or reduction in rate does not apply if the recipient has a PE in the United States and the property giving rise to the income is attributable to this PE. Under certain treaties, the exemption or reduction in rate also does not apply if the property producing the income is attributable to a fixed base in the United States from which the recipient performs independent personal services. Even with the treaty, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a PE in the United States under IRC Section 894(b).
4. The exemption or reduction in rate does not apply if the recipient is engaged in a trade or business in the United States through a PE that is in the United States. However, if the income is not effectively connected with a trade or business in the United States by the recipient, the recipient will be considered as not having a PE in the United States to apply the reduced treaty rate to that item of income.
5. Interest determined with reference to the profits of the issuer or one of its associated enterprises typically is taxed at 15%.
6. Contingent interest that does not qualify as portfolio interest is treated as a dividend and is subject to the rates under those columns, as appropriate.
7. The exemption applies only to interest on credits, loans, and other indebtedness connected with the financing of trade between the United States and the CIS member. It does not include interest from the conduct of a general banking business.
8. The tax rates in the US treaty with the former USSR still apply to the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.
9. The rate in column 2 applies to dividends paid by a regulated investment company (RIC) or a real estate investment trust (REIT). However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is an individual holding less than a 10% interest (25% in the case of Portugal, and Tunisia) in the REIT.
10. The rate is 0% for royalties received in consideration for the use of, or the right to use, containers in international traffic. With respect to payments in consideration for copyrights of scientific work,

whether a payment is in consideration for a copyright of a scientific work will be determined in accordance with the domestic law of the source state.

11. The rate is 5% for interest (i) beneficially owned by a bank or other financial institution (including an insurance company) or (ii) paid due to a sale on credit of any industrial, commercial, or scientific equipment, or of any merchandise to an enterprise.
12. The rate is 10% if the interest is paid on a loan granted by a bank or similar financial institution. For Thailand, the 10% rate also applies to interest from an arm's-length sale on credit of equipment, merchandise, or services.
13. This is the rate for royalties for the use of, or the right to use, industrial, commercial, and scientific equipment. The rate for royalties for information concerning industrial, commercial, and scientific know-how is subject to the rate in column 5 ('other royalties').
14. The rate is 15% for copyrights of scientific work.
15. Exemption or reduced rate does not apply to an excess inclusion for a residual interest in a real estate mortgage investment conduit (REMIC).
16. The rate in column 2 applies to dividends paid by a RIC. Dividends paid by a REIT are subject to a 30% rate.
17. An election can be made to treat this interest income as if it were industrial and commercial profits taxable under article 8 of this treaty.
18. The rate is 4.9% for interest derived from (i) loans granted by banks and insurance companies and (ii) bonds or securities that are regularly and substantially traded on a recognised securities market. The rate is 10% for interest not described in the preceding sentence and paid (i) by banks or (ii) by the buyer of machinery and equipment to the seller due to a sale on credit.
19. The rate is 15% (10% for Bulgaria and Spain; 30% for Austria, Germany, and Switzerland) for contingent interest that does not qualify as portfolio interest.
20. The rate is 15% for interest determined with reference to (i) receipts, sales, income, profits, or other cash flow of the debtor or a related person, (ii) any change in the value of any property of the debtor or a related person, or (iii) any dividend, partnership distribution, or similar payment made by the debtor to a related person.
21. Interest received by a financial institution is tax exempt. For Venezuela, the rate is 4.95% if the interest is beneficially owned by a financial institution (including an insurance company).
22. The rate in column 2 applies to dividends paid by a RIC or REIT. However, that rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (i) an individual (or pension fund, in the case of France or New Zealand) holding not more than a 10% interest in the REIT, (ii) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (iii) a person holding not more than a 10% interest in the REIT and the REIT is diversified.
23. Interest paid or accrued on the sale of goods, merchandise, or services between enterprises is exempt.
24. Interest paid or accrued on the sale on credit of industrial, commercial, or scientific equipment is exempt.
25. Dividends received from an 80%-owned corporate subsidiary are exempt if certain conditions are met.
26. Exemption does not apply to amount paid under, or as part of, a conduit arrangement.
27. Interest is exempt if (i) paid to certain financial institutions, or (ii) paid on indebtedness from the sale on credit of equipment or merchandise.
28. Amounts paid to a pension fund that are not derived from the carrying on of a business, directly or indirectly, by the fund are exempt. This includes amounts paid by a REIT only if the conditions in footnote 22 are met. For Sweden, to be entitled to the exemption, the pension fund must not sell or make a contract to sell the holding from which the dividend is derived within two months of the date the pension fund acquired the holding.
29. The exemption does not apply if the recipient of the gain is an individual who is present in the United States for more than 119 days during the year.
30. The rate applies to dividends paid by a REIT only if the beneficial owner of the dividends is (i) an individual holding less than a 10% interest in the REIT, (ii) a person holding not more than 5% of any class of the REIT's stock and the dividends are paid on stock that is publicly traded, or (iii) a person holding not more than a 10% interest in the REIT and the REIT is diversified.
31. 15% rate applies if income is attributable to a PE that that enterprise has in a third state, if the tax that is actually paid with respect to such income in the third state is less than 60% of the tax that would have been payable in the treaty country if the income were earned by the enterprise and were not attributable to the PE in the third state, unless derived in the active conduct of a trade or business in that third state.

## Corporate - Tax administration

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

**Tax returns**
The US tax system is based on the principle of self-assessment. A corporate taxpayer is required to file an annual tax return (generally Form 1120) by the 15th day of the fourth month following the close of its tax year. A taxpayer can obtain an additional six-month extension of time to file its tax return. Failure to timely file may result in penalties.

**Important tax return due dates**

| Form No. | Title | Purpose | Due date |
|---|---|---|---|
| W-2 | Wage and Tax Statement | Employers must provide employees with statements regarding total compensation and amounts withheld during year. | Must be sent to employees on or before 31 January. |
| 1099 series | Various | Information returns to be provided to the IRS and recipients of dividends and distributions, interest income, miscellaneous income, etc. | Must be sent to the recipients on or before 31 January. Must be filed with the IRS on or before 31 January, 28 February, or 31 March, depending on the type of filing and whether the filing is electronic or on paper. |
| 1120 series, including 1120S (for S Corps) | US Corporation Income Tax Return | Income tax returns for domestic corporations or foreign corporations with US offices. | 15 April for C corporations, 15 March for S corporations (Form 7004 may be filed to obtain an automatic six-month extension). |
| Schedule K-1 | Partner's Share of Income, Deductions, Credits, Etc. | Information returns to be provided to partners. | 15 March. |
| 1065 | US Return of Partnership Income | Information returns to be filed by partnerships. | 15 March (Form 7004 may be filed to obtain an automatic six-month extension). |
| State tax returns | Various | Income tax returns for states where corporation carries on trade/business. | Varies, often 15 April. |

**Payment of tax**

A taxpayer's tax liability generally is required to be prepaid throughout the year in four equal estimated payments and fully paid by the original due date of the tax return. However, because a corporation that expects its tax liability for the tax year to exceed the small sum of USD 500 is required to make estimated tax payments, almost all corporations are required to pay their full estimated tax liability for the year in four estimated tax payments. For calendar year corporations, the four estimated payments are due by the 15th day of April, June, September, and December. For fiscal year corporations, the four estimated payments are due by the 15th day of the fourth, sixth, ninth, and 12th month of the tax year. Generally, no extensions to pay are allowed. Failure to pay the tax by the due dates as indicated above can result in estimated tax and late payment penalties and interest charges.

The instalment payments must include estimates of regular CIT, AMT, and, for foreign corporations, the tax on gross transportation income, although not all of these taxes are reported through the Form 1120. (Although some of these other taxes are reported on forms other than the 1120 series, they may require similar estimated payments through regular deposits of taxes throughout the year.)

To avoid a penalty, corporations must calculate the instalment payments based on at least 25% of the lesser of (i) the tax shown on the current tax return or (ii) the prior year's tax liability, provided that the tax liability was a positive amount in the prior year and that such year consisted of 12 months. However, corporations with taxable income of at least USD 1 million (before use of NOLs or capital loss carryforwards) in any of the three preceding years are not permitted to calculate the instalment payments based on the prior year's tax liability, except in determining the first instalment payment. Instead, such corporations must calculate the instalment payments based on the tax shown on the current tax return.

**Penalties**

Civil and criminal penalties may be imposed for failing to follow the Code when reporting and paying US taxes. The civil penalty provisions may be divided into four categories: delinquency penalties; accuracy-related penalties; information reporting penalties; and preparer, promoter, and frivolous-filing penalties. Many, but not all, have exception provisions to cover reasonable cause. In addition, many have provisions directing how the penalties interact with the other penalties.

These four main civil penalty categories may further be divided. First, the delinquency penalties may be divided into failure to file, failure to pay, and failure to make timely deposits of tax. Failure to make timely deposits of tax applies to taxpayers required to make instalment payments and WHT payments.
Second, the penalties relating to the accuracy of tax returns are divided into the negligence penalty, the substantial understatement penalty, substantial overstatement of pension liabilities, substantial estate or gift tax valuation underestimate, and the valuation penalties. These penalties are coordinated, along with the fraud penalty, to eliminate any stacking of the penalties. Again, like other provisions, the fraud penalty is not intended to be imposed as a stacked penalty.

The third category of penalties is the information reporting penalties. These penalties may be imposed upon those who only have a duty to report information to the IRS.

The fourth and final major categories of civil penalties are the preparer, promoter, and frivolous-filing penalties. Currently, the most notable of these is the return preparer penalty for which there is a penalty for a position on a return for which the preparer did not have substantial authority and there was a failure to disclose the transaction on the return. Also included in this provision is a penalty for wilful or reckless attempt to understate the tax liability of another person. Additionally, return preparer penalties may be imposed for failure to furnish a copy of a return or claim for refund to the taxpayer, sign the return or claim for refund, furnish one’s identifying number, or file a correct information return.

Other promoter and frivolous-filing penalties include a penalty for promoting abusive tax shelters, aiding and abetting the understatement of tax liability, and filing frivolous income tax returns. Additionally, a court may award sanctions and costs if a person institutes or maintains a proceeding primarily for delay, takes a position that is frivolous, or unreasonably fails to pursue available administrative remedies.
In addition to these major civil penalties, international tax-related penalties for failures other than timely and accurate filing (e.g. wilful failure to report international boycott activity, failure of an agent to furnish a notice of a false affidavit relating to the WHT on dispositions of US real property interests, failure of a US

person to furnish information relating to CFCs and controlled foreign partnerships, failure of a US person to report foreign bank accounts) exist. Pension and employee benefit related tax penalties exist to protect the policy reasons for the tax incentives, including, most notably, early withdrawal of pension funds. Another group of specialised penalties apply to exempt organisations.

Criminal penalties exist for situations when the failures to stay within the tax system are more egregious and the actions arewilful. Although applicable to corporate taxpayers, they are applied more frequently to individuals.

In addition to the penalty provisions, interest at statutory rates generally applies to underpayments of tax and, in general, interest cannot be abated.

**Tax audit process**
Generally, the US tax system is based on a voluntary self-assessment of tax; however, many large and mid-size businesses are under continuous audit by the IRS and state tax authorities. The audits may include the review of the entire list of taxes for which the business is liable. Smaller businesses and persons with lower incomes are generally subject to audit on a more selective, and random basis, and subject to more limited examinations focused on only some of the issues on the return.

**Statute of limitations**
The IRS generally has three years after an original return is filed to assess income taxes. A return will be deemed to have been filed on its original due date even if the return is actually filed on an earlier date. If a return is filed on extension, the limitations period runs from the date of filing the return and not from the extended due date.

**Topics of focus for tax authorities**
Currently, the IRS continues to focus on certain activities related to Form 1120-F filing requirements, domestic manufacturing deduction, foreign earnings repatriation, repairs vs. capitalisation change in accounting method, research credit claims, transfer of intangibles/offshore cost sharing, WHTs, foreign tax credits, and certain sales of partnership interests and S corporation distributions. The IRS has also added Section 965 (the transition tax provision added by P.L. 115-97) issues to its enforcement focus as well as other new provisions added by P.L. 115-97 discussed above.

**Tax shelter**
Treasury regulations require taxpayers to disclose transactions determined to be abusive or when the transaction is substantially similar to anabusivetransaction. Current information on these transactions, known as listed and reportable transactions, is available from the IRS website (*www.irs.gov*).

**Methods of accounting**
For US federal tax purposes, the two most important characteristics of a tax method of accounting are (i) timing and (ii) consistency. If the method does not affect the timing for including items of income or claiming deductions, it is not an accounting method and generally IRS approval is not needed to change it. In order to affect timing, the accounting method must determine the year in which an income or expense item is to be reported.

In general, in order to establish an accounting method, the method must be consistently applied. Once an accounting method has been adopted for federal tax purposes, any change must be requested by the taxpayer and approved by the IRS. Changes in accounting methods cannot be made through amending returns. The two most common methods of accounting are the accrual basis and cash basis methods.

## Corporate - Other issues

**Tax accounting**
The Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) addresses financial accounting and reporting matters under US Generally Accepted Accounting Principles (US GAAP). ASC 740, *Income Taxes*, addresses how companies should account for and report the effects of taxes based on income.

Financial statements of domestic (US) Securities and Exchange Commission (SEC) registrants are required to be prepared in accordance with US GAAP. Foreign private issuers may include in their filings with the SEC financial statements prepared in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB) without reconciliation to US GAAP.

**Corporate reorganisations**

In general, a corporate reorganisation involving a merger, acquisition, or consolidation is a taxable event under the general recognition provisions of the Code. However, a corporate reorganisation that meets certain statutory and judicial requirements may qualify as a tax-free transaction, with gain or loss generally not recognised at the corporate or shareholder levels. In those cases, gains and losses are deferred to a later date through carryover basis and holding period mechanisms.

**Foreign Account Tax Compliance Act (FATCA)**

FATCA was enacted in 2010 to prevent and detect offshore tax evasion by US persons. FATCA seeks to compel disclosure of US persons' ownership of foreign accounts, interests, and assets. While the name may imply that FATCA is directed at financial institutions, many global companies outside the financial services industry may be affected if they have entities in their worldwide network falling under the purview of FATCA, or have operational areas that make or receive payments subject to FATCA.

Multinational enterprises that are withholding agents were already obligated to report, withhold, and document payees, but FATCA requires changes to these activities. FATCA mandates that multinational businesses evaluate entity payees differently, engage in withholding on certain gross US-source payments, as well as report different information to the IRS. Note that recently proposed regulations eliminate the obligation to impose FATCA withholding on gross proceeds from the sale of assets that produce US-source interest or dividends. Treasury and the IRS cite complexity and the impact of FATCA Intergovernmental Agreements on compliance as reducing the need to impose withholding on gross proceeds. Withholding agents are permitted to rely on the proposed regulations immediately (Reg-132881-17 published December 2018).

The withholding provisions of FATCA began 1 July 2014. Compliance with FATCA may require changes to existing systems and processes across business units and regions, the renewal of policies and day-to-day practices, and new tasks, such as registering with the IRS.

To mitigate certain foreign legal impediments to FATCA compliance, intergovernmental agreements (IGAs) also have been negotiated between the US Treasury and foreign governments. Under certain IGAs, including most of the IGAs signed thus far, information will be exchanged directly between the IRS and local governments. This obligates entities in IGA jurisdictions to report information to their government that may not have been required or permitted in the past.

Assessing FATCA’s impact will require identifying whether an IGA applies to the entity or payment stream at issue. Provisions in the final FATCA regulations or, if applicable, an IGA that provides more favourable results may be utilised. This likely will increase the complexity of the process, due in part to the multiple paths to compliance (e.g. regulations or an IGA). The regulators have focused on having consistent requirements in each IGA, but there are noticeable differences in the agreements signed to date.

**Common Reporting Standard (CRS) and Multilateral Instrument (MLI)**

The OECD, on 21 July 2014, released the Standard for Automatic Exchange of Financial Account Information in Tax Matters, including the Commentary on the Common Reporting Standard (CRS). CRS seeks to establish the automatic exchange of tax information as the new global standard. The automatic exchange of information involves the systematic and periodic transmission of extensive taxpayer information from the country in which a taxpayer's financial accounts are located to that taxpayer’s country of residence. As of 24 July 2019, the United States has not adopted the CRS.

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (the Multilateral Instrument or MLI) entered into force on 1 July 2018. The MLI covers recommendations from the OECD BEPS project that affect double tax treaties (DTTs). This applies both to various minimum standards and some additional recommendations. The MLI was developed under BEPS Action 15 and encompasses recommendations for Action 2 (hybrid mismatches), Action 6 (treaty abuse), Action 7 (permanent establishments), and Action 14 (dispute resolution). The United States is one of the countries that were part of the post-BEPS discussions on the MLI but have not signed the MLI. These countries, including the United States, will be expected to meet the BEPS minimum standards in alternative ways (e.g. via bilateral agreement or protocol).

**US possessions**
Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the US Virgin Islands have their own independent tax departments. Accordingly, they have their own rules.

## Individual - Taxes on personal income

The United States levies tax on its citizens and residents on their worldwide income. Non-resident aliens are taxed on their US-source income and income effectively connected with a US trade or business (with certain exceptions).

**Personal income tax rates**
For individuals, the top income tax rate for 2020 is 37%, except for long-term capital gains and qualified dividends (*discussed below*).

P.L. 115-97 reduced both the individual tax rates and the number of tax brackets. P.L. 115-97 sunsets after 2025 many individual tax provisions, including the lower rates and revised brackets, in order to comply with US Senate budget rules.

**2020 income tax rates and brackets**
**Single taxpayers (1)**

| Taxable income (USD) | Tax rate (%) |
|---|---|
| 0 to 9,875 | 10 |
| 9,876 to 40,125 | 12 |
| 40,126 to 85,525 | 22 |
| 85,526 to 163,300 | 24 |
| 163,301 to 207,350 | 32 |
| 207,351 to 518,400 | 35 |
| 518,401+ | 37 |

**Married taxpayers filing jointly (1, 2)**

| Taxable income (USD) | Tax rate (%) |
|---|---|
| 0 to 19,750 | 10 |
| 19,751 to 80,250 | 12 |
| 80,251 to 171,050 | 22 |
| 171,051 to 326,600 | 24 |
| 326,601 to 414,700 | 32 |
| 414,701 to 622,050 | 35 |
| 622,051+ | 37 |

### Head-of-household taxpayers (1, 2)

| Taxable income (USD) | Tax rate (%) |
|---|---|
| 0 to 14,100 | 10 |
| 14,101 to 53,700 | 12 |
| 53,701 to 85,500 | 22 |
| 85,501 to 163,300 | 24 |
| 163,301 to 207,350 | 32 |
| 207,351 to 518,400 | 35 |
| 518,401+ | 37 |

### Married taxpayers filing separately (1)

| Taxable income (USD) | Tax rate (%) |
|---|---|
| 0 to 9,875 | 10 |
| 9,876 to 40,125 | 12 |
| 40,126 to 85,525 | 22 |
| 85,526 to 163,300 | 24 |
| 163,301 to 207,350 | 32 |
| 207,351 to 311,025 | 35 |
| 311,026+ | 37 |

**Notes**

1.The maximum federal tax rate on capital gains is 20% for assets held for more than 12 months. The graduated rates of tax apply to capital gains from assets held for 12 months or less.
2.Non-resident aliens may not take advantage of head of household status or joint return rates.

**Alternative minimum tax (AMT)**
In lieu of the tax computed using the above rates, the individual AMT may be imposed under a two-tier rate structure of 26% and 28%. For tax year 2019, the 28% tax rate applies to taxpayers with taxable incomes above USD 194,800 (USD 97,450 for married individuals filing separately). For tax year 2020, the 28% tax rate applies to taxpayers with taxable incomes above USD 197,900 (USD 98,950 for married individuals filing separately).

Under P.L. 115-97, for tax years beginning after 31 December 2017, and before 1 January 2026, the AMT exemption amount is increased to USD 109,400 for married taxpayers filing a joint return (half this amount for married taxpayers filing a separate return), and USD 70,300 for all other taxpayers (other than estates and trusts). The phase-out thresholds increase to USD 1 million for married taxpayers filing a joint return and USD 500,000 for all other taxpayers (other than estates and trusts). These amounts are indexed for inflation. For 2019, the AMT exemption amount is USD 111,700 for married taxpayers filing a joint return (half this amount for married taxpayers filing a separate return) and USD 71,700 for all other taxpayers (other than estates and trusts), and the phase-out thresholds are USD 1,020,600 for married taxpayers filing a joint return and USD 510,300 for all other taxpayers (other than estates and trusts). For 2020, the AMT exemption amount is USD 113,400 for married taxpayers filing a joint return (half this amount for married taxpayers filing a separate return) and USD 72,900 for all other taxpayers (other than estates and trusts), and the phase-out thresholds are USD 1,036,800 for married taxpayers filing a joint return and USD 518,400 for all other taxpayers (other than estates and trusts).

The AMT is payable only to the extent it exceeds the regular net tax liability. The foreign tax credit is available for determining AMT liability to the extent of the foreign tax on the foreign-source AMT income (AMTI), subject to certain limitations.

AMTI generally is computed by starting with regular taxable income, adding tax preference deductions (claimed in the computation of regular taxable income), and making special adjustments to some of the tax items that were used to calculate taxable income. For example, the taxpayer must add back all state and local income taxes deducted in computing regular taxable income.

For non-resident aliens with a net gain from the sale of US real property interests, the AMT is calculated on the lesser of AMTI (before the exemption) or the net gain from the sale of the US real property interest.

**Medicare Contribution Tax**
For tax years beginning after 31 December 2012, a 3.8% 'unearned income Medicare contribution' tax applies on the lesser of (i) the taxpayer's net investment income for the tax year or (ii) the taxpayer's excess modified adjusted gross income over a threshold amount (generally, USD 200,000 for single taxpayers and heads of households; USD 250,000 for a married couple filing a joint return and surviving spouses; and USD 125,000 for a married individual filing a separate return). The tax, which is in addition to the regular income tax liability, applies to all individuals subject to US taxation other than non-resident aliens. Net investment income generally includes non-business income from interest, dividends, annuities, royalties, and rents; income from a trade or business of trading financial instruments or commodities; income from a passive-activity trade or business; and net gain from the disposition of non-business property.

**State and local income taxes**
Most states, and a number of municipal authorities, impose income taxes on individuals working or residing within their jurisdictions. Most of the 50 states impose some personal income tax, with the exception of Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming, which have no state income tax. New Hampshire and Tennessee (until January 1, 2021) tax only dividend and interest income. Few states impose an income tax at rates that exceed 10%.

## Individual – Residence

**Last reviewed - 20 January 2020**The determination of an alien's residence status is subject to a set of relatively objective tests. These rules generally treat the following individuals as residents:
All lawful permanent residents for immigration purposes (i.e. 'green card' holders). Resident alien status generally continues until the green card is formally relinquished. Thus, individuals who hold green cards but leave the United States to live abroad indefinitely or permanently will generally continue to be classified and taxed as resident aliens until the green card is relinquished. Complex rules also apply to individuals who relinquished their green cards if they held the green card in at least eight of the 15 years prior to relinquishment. Professional tax advice should always be sought prior to obtaining or relinquishing a green card.

Individuals who meet the 'substantial presence test'. An individual meets this test if present in the United States for at least 31 days in the current year and a combined total of 183 equivalent days during the current year and prior two years. For the purposes of the 183-equivalent-day requirement, any part of a day the individual is present in the United States during the current calendar year counts as a full day; each day in the preceding year counts as one-third of a day; and each day in the second preceding year counts as one-sixth of a day. Note that an individual who has less than 183 days of US presence in the current tax year and can establish a 'tax home' in, and a 'closer connection' to, another country for the entire year still may qualify as a non-resident alien, even if the three-year, 183-equivalent-day requirement is met. Exceptions also are available for certain students, teachers, or trainees; crew members of foreign vessels; employees of foreign governments and international organisations; certain individuals with medical problems that arise while in the United States; and certain Mexican and Canadian residents who commute to work in the United States.

Special rules apply when determining the portion of the year an individual will be treated as a resident or non-resident in the first and last years of residency.

Note that resident alien status often results in lower US tax than non-resident alien status, due to increased allowable deductions and lower tax rates for certain married taxpayers. Consequently, certain non-resident aliens may choose to elect resident alien status, if specific requirements are met.
The United States has income tax treaties with a number of countries for the purpose of eliminating double taxation (*see Tax treaties in the Foreign tax relief and tax treaties section*). If there is a tax treaty in effect between the United States and an individual's country of residence, the provisions of the treaty may override the US resident alien rules. Under many of these treaties, an individual classified as an income tax resident under the internal laws of both the United States and one's home country, who can show that a 'permanent home' is available only in the home country, will generally be classified as a non-resident alien for purposes of US income tax law. A form must be filed in order to claim non-resident alien status as the result of a tax treaty.

## Individual - Other taxes

**Social security contributions**
For 2019, social security tax (old-age, survivors, and disability) will be withheld at the rate of 6.2% on the first USD 132,900 of wages paid. For 2020, social security tax (old-age, survivors, and disability) will be withheld at the rate of 6.2% on the first USD 137,700 of wages paid.

Medicare hospital insurance taxes continue to be withheld on 1.45% of all wages. The social security taxes for resident self-employed individuals are equal to 12.4% of the first USD 132,900 for 2019 and USD 137,700 for 2020. Medicare hospital insurance taxes are equal to 2.9% of all net self-employment income. Note that non-resident aliens are not subject to social security and Medicare hospital insurance taxes on self-employment income.

For wages received in tax years beginning after 31 December 2012, the employee portion of Medicare hospital insurance tax is increased by an additional 0.9% on wages received in excess of USD 250,000 for a married couple filing a joint return, USD 125,000 for a married individual filing a separate return, and USD 200,000 for all other individuals (these thresholds are not indexed for inflation).

Social security and Medicare hospital insurance taxes are not deductible when determining an employee's taxable income. However, a deduction is allowed for an amount equal to one-half of the combined self-employment social security and Medicare hospital insurance taxes that are imposed.

Note that the United States has entered into Totalisation Agreements with several nations (*see Tax treaties in the Foreign tax relief and tax treaties section*) for the purpose of avoiding double taxation of income with respect to social security taxes and allowing individuals who participate in more than one social security system to qualify for benefits that would not be available under domestic law. These agreements must be taken into account when determining whether any alien is subject to US social security and Medicare hospital insurance taxes or whether any US citizen or resident alien is subject to the social security taxes of a foreign country.

**Capital gains taxes**
The maximum federal tax rate on capital gains is 20% for assets held for more than 12 months. The graduated income tax rates apply to capital gains from assets held for 12 months or less.
There are three capital gains income thresholds. For 2020, these thresholds apply to maximum taxable income levels, as follows (amounts in USD):

For 2019, these thresholds apply to maximum taxable income levels, as follows (amounts in USD):

| Single taxpayers | Married filing jointly | Head of household | Married filing separately | Long-term capital gains rate (%) |
|---|---|---|---|---|
| Up to 39,375 | Up to 78,750 | Up to 52,750 | Up to 39,375 | 0 |
| 39,375 to 434,550 | 78,750 to 488,850 | 52,750 to 461,700 | 39,375 to 244,425 | 15 |
| Over 434,550 | Over 488,850 | Over 461,700 | Over 244,425 | 20 |

**Consumption taxes**
The United States does not have a federal level consumption tax, but most states and many municipal authorities have sales and use taxes. They are generally imposed as a percentage of the retail sales price and the combined state and local rate may rise above 10%. Each state has its own tax rate and rules regarding which purchases are taxable.

The US Supreme Court, on 21 June 2018, in the *Wayfair* case, overruled prior Court decisions that had precluded states from imposing a sales and use tax collection obligation on sellers unless they had a physical presence in the state. While many questions remain, the *Wayfair* decision generally has increased the number of states where companies must collect and remit sales and use tax.

**Net wealth/worth taxes**
The United States does not have a federal level net wealth/worth tax.

**Inheritance, estate, and gift taxes**
The United States imposes a federal estate tax on the fair market value of assets that an individual owns at death. Individuals who are domiciled in the United States are subject to federal estate tax on their worldwide assets (usually including life insurance proceeds). Individuals who are not US-domiciled are subject to US federal estate tax on only US-situs assets. Because the term 'domicile' is extremely subjective, it is often difficult to know whether a particular individual is resident or not for estate tax purposes.

The American Taxpayer Relief Act of 2012 increased the top estate, gift, and generation-skipping transfer tax rates from 35% to 40% for estates of decedents dying after 31 December 2012.

P.L. 115-97, the tax legislation signed by President Trump on 22 December 2017, maintains the estate, gift, and generation-skipping transfer taxes at the 40% tax rate. For estates of decedents dying and gifts made after 2017, P.L. 115-97 almost doubled the exemption for all three taxes; the exemption for 2020 is USD 11,580,000 per person and USD 11,400,000 for 2019. The gift and estate tax exemptions remain unified, so any use of the gift tax exemption during one's lifetime would decrease the estate tax exemption available at death. The current law allowing a 'step-up' in basis to fair market value at date of death will continue. The current gift tax exclusion for annual gifts of up to USD 15,000 per donee (in 2019 and 2020) is retained, as well as the provisions for unlimited transfers directly to educational institutions and health care providers.

The purpose of the gift tax is to prevent the lifetime transfer of assets without estate tax liability. Similarly, a generation-skipping tax exists to prevent avoidance of tax by skipping generations when making large transfers of assets.

Note that assets bequeathed to an individual's spouse are exempt from estate and gift tax until the spouse's death, if such spouse is a US citizen.

Many states have estate and gift taxes similar to the federal taxes. As an alternative, some states may have an inheritance tax, which is a tax that imposes the liability on the recipient instead of the donor.

**Property taxes**
The United States does not have a federal level property tax, but property taxes are imposed in most states on the owner of both commercial and residential real property, based on the value of the property. The tax is usually imposed at the municipality or country level, and the tax rates vary widely depending on the fiscal needs of the taxing jurisdiction. Personal property taxes are also imposed in a number of states, but usually only on automobiles. A few states impose intangible property taxes on investment assets.

**Luxury and excise taxes**
The United States does not have federal level luxury taxes. However, the federal and state governments impose excise taxes on a variety of goods. For example, a federal and state excise tax is imposed on gasoline and diesel fuel used for transportation. The excise taxes are levied item by item and lack any uniformity in rates.

## Individual - Income determination

**Employment income**
Citizens, resident aliens, and non-resident aliens are taxed on compensation earned for work performed in the United States, regardless of when or where payments are made, absent a treaty or Internal Revenue Code provision to the contrary. Employees are generally not taxed on reimbursements for either personal living expenses (i.e. food and housing) or for travel expenses while 'away from home'. However, reimbursements for similar expenses of a spouse or dependent are taxable. Note that being 'away from home' requires a temporary absence from an individual's tax home. Assignments for more than one year in a single work location are not considered to be temporary, regardless of all other facts and circumstances. After-tax dollars contributed by the taxpayer to a pension are partially taxable. The component of the pension payment that represents a return of the after-tax amount paid is not subject to tax.

**Equity compensation**
The United States recognises multiple types of equity compensation. These include stock options and various payment rights based on stock value. The taxation of these different instruments varies. If a taxpayer receives an option to buy or sell stock or other property as payment for services, the taxpayer may have income when the option is received (the grant) or when the option is exercised (used to buy or sell the stock or other property). Upon grant and exercise of a statutory stock option, however, taxpayers generally do not include any amount in income for regular tax purposes until the stock purchased by exercising the option is sold.

Foreign nationals who are granted stock options prior to the start date of their residency in the United States may be subject to US income tax at exercise on all or part of the realised income at such time. In most cases, when a foreign national who is a resident alien exercises an option to buy foreign stock, the spread between the option price and the fair market value of the stock at the time of exercise is subject to US income tax. A portion of the spread will be treated as foreign-source (to the extent allocable to services rendered in the foreign country). As a result, even though the full spread will be subject to tax in the United States, a foreign tax credit may generally be claimed to minimise the US income tax (assuming foreign tax is paid on this income).

**Business income**

When an individual works for oneself, that individual generally is deemed to have self-employment income. Self-employment income is taxed under US law in a manner similar to employment compensation. However, a self-employed individual often may claim more liberal deductions for business expenses than an employee. It is important to note that citizens and resident alien individuals may (subject to certain exceptions) be subject to increased social security contributions in the United States on self-employment income earned while resident in the United Sates (*see Social security contributions in the Other taxes section for more information*).

**Capital gains**

Capital gains of a citizen and a resident alien are included in worldwide income and are subject to US taxation (*see Capital gains tax in the Other taxes section for more information*).

Non-resident aliens are taxed at 30%, collected by withholding at the source of the payment, on US-source net capital gains if they are in the United States for 183 days or more during the taxable year in which the gain occurs. The operation of this provision is limited to situations in which an alien is not otherwise taxed as a resident under the substantial presence test (*see the Residence section for more information*). Capital gains from US real property interests are taxable regardless of US presence. Additionally, capital gains from the sale by non-residents of US partnerships with effectively connected income (ECI) now will be subject to US tax.

**Dividend income**

Dividend income received by citizens and resident aliens is subject to US tax, whether it is from US or foreign sources.

Non-resident aliens' US-source dividends are generally subject to a flat 30% tax rate (or lower treaty rate), usually withheld at source.

**Interest income**

Interest income received by citizens and resident aliens is subject to US tax, whether it is from US or foreign sources.

Non-resident aliens' US-source interest is generally subject to a flat 30% tax rate (or lower treaty rate), usually withheld at source. Note that certain 'portfolio interest' earned by a non-resident alien is generally exempt from tax.

**Rental income**

Rental income received by citizens and resident aliens is subject to US tax, whether it is from US or foreign sources.

Non-resident aliens' US-source rents are generally subject to a flat 30% tax rate (or lower treaty rate), usually withheld at source. However, a non-resident alien can elect to report real property rental income net of expenses, subject to tax at graduated rates.

**Exempt income**

Certain items are generally exempt from personal income tax. Common types of tax-exempt income include the property acquired by gift or bequest and interest from municipal bonds.

## Individual – Deductions

**Employment expenses**
For years before 2018, employees may have been able to deduct certain 'ordinary and necessary' unreimbursed work-related expenses as an itemised deduction. Common deductions included travel expenses and transportation costs (other than commuting to and from work), business entertainment and gifts, computers and cell phones if required for the taxpayer's job and for the convenience of the employer, uniforms, and home offices expenses, among others. In order to itemise such expenses, they must have been greater than 2% of adjusted gross income.

P.L. 115-97 repealed this itemised deduction.

**Personal deductions**
Citizens and resident aliens can deduct the following common items:
- Qualified residence interest.
- State and local income or sales taxes and property taxes up to an aggregate of USD 10,000.
- Medical expenses, certain casualty, disaster, and theft losses, and charitable contributions, subject to limitations.
- Child care expenses.
- Alimony (no longer deductible starting in 2019).

Non-resident aliens may deduct, subject to limitations, casualty and theft losses incurred in the United States, contributions to US charitable organisations, and state and local income taxes.

**Interest expenses**
No deduction is allowed for personal interest. However, interest paid on investment debt is deductible, but only to the extent that there is net investment income (i.e. investment income net of investment expenses other than interest). Disallowed excess investment interest expense may be claimed as a deduction in subsequent years, to the extent of net investment income.

**Standard deductions**
Instead of itemising deductions, citizens and resident aliens may claim a standard deduction. The basic standard deduction for 2020 is USD 24,800 for married couples filing a joint return, USD 12,400 for individuals, and USD 18,650 for heads of household. For 2019 the standard deduction is USD 24,400 for married couples filing a joint return, USD 12,200 for individuals, and USD 18,350 for heads of household. These amounts are adjusted annually for inflation. Non-resident aliens may not claim a standard deduction. Individuals, including resident aliens, who are blind or age 65 or over are entitled to a higher standard deduction. For 2019 and 2020, such an individual who is married may increase the standard deduction by USD 1,300; if such an individual is single, the additional standard deduction is USD 1,650. If an individual is both blind and age 65 or over, the standard deduction may be increased twice.

**Personal allowances**
P.L. 115-97 repealed personal exemptions after 2017.

For 2017, citizens and resident aliens were allowed a personal exemption for themselves, for their spouse (subject to exceptions), and for each of their dependents (who must be citizens or residents of the United States, Canada, or Mexico).

Non-resident aliens were entitled to only one personal exemption, except for those from Canada or Mexico who can also claim a personal exemption for their spouse if the spouse had no gross income for US tax purposes and was not the dependent of another taxpayer. In addition, taxpayers could claim exemptions for dependents who meet certain tests. Residents of Mexico, Canada, or nationals of the United States must use the same rules as US citizens to determine who is a dependant and for which dependants exemptions can be claimed.

Moreover, pursuant to tax treaties, certain residents of South Korea and certain students and business apprentices from India may have been able to claim exemptions for their spouse and dependants.
For 2017, the personal exemption amount was USD 4,050. The personal exemption phase-out applied in 2017 for taxpayers above certain income thresholds.

**Business expenses**
For years before 2018, citizens, residents, and non-resident aliens generally were able to deduct expenses incurred for the following:
Travel or personal living expenses (to the extent not reimbursed) while 'away from home' (*see Employment income in the Income determination section for more information*).

Ordinary and necessary business expenses, including those for business (or employment) connected moving.

Travel and entertainment expenses, subject to certain limitations. Note that the deductible amount for meals and entertainment expenses was limited to 50% of actual costs.

Business expenses were deductible only to the extent that, when added to other miscellaneous itemised deductions, they exceed 2% of adjusted gross income. However, unreimbursed moving expenses were not subject to the 2% floor and are deductible in arriving at adjusted gross income. Reimbursements for moving expenses may have been eligible for exclusion from an employee's income; if reimbursement of moving expenses was excluded, then the expenses were not deductible by the employee.

Non-resident aliens 'away from home' may deduct commuting expenses; however, citizens and resident aliens generally may not, because they are typically not 'away from home'.

P.L. 115-97 repealed this itemised deduction.

**Losses**
An individual's capital loss deduction is generally limited to the individual's capital gains plus USD 3,000. Losses incurred by individuals that are attributable to an activity not engaged in for profit (i.e. 'hobby losses') are generally deductible only to the extent of income produced by the activity.

P.L. 115-97 limited losses attributable to trades or businesses from flow-through entities to USD 500,000 for joint filers, with excess losses treated as part of the taxpayer's net operating loss (NOL) carryover in the following year (*see below*).

For years before 2018, taxpayers with NOLs could carry their losses forward and back to certain tax years. The general NOL carryback period was the two years preceding the year the loss was incurred. If the NOL was not fully used on the carryback, the loss could be carried forward for 20 tax years following the year the loss was incurred if the loss was not fully used on the carryback.

P.L. 115-97 limited the net operating loss deduction to 80% of income for losses occurring after 2017. The carryback also was repealed, but an indefinite carryforward is allowed.

## Individual - Foreign tax relief and tax treaties

**Foreign tax relief**
Taxpayers (generally US persons and foreign persons with effectively connected US trade or business income) may claim a credit against US federal income tax liability for certain taxes paid to foreign countries and US possessions. Foreign income, war profits, and excess profits taxes are the only taxes that are eligible for the credit. Taxpayers may choose to deduct these taxes with no limitation or, alternatively, claim a credit subject to limitations.

**Tax treaties**
The United States has tax treaties with a number of foreign countries. Under these treaties, residents (not necessarily citizens) of foreign countries are taxed at a reduced rate, or are exempt from US taxes, on certain items of income they receive from sources within the United States. These reduced rates and exemptions vary among countries and specific items of income. Under these same treaties, residents or citizens of the United States are taxed at a reduced rate, or are exempt from foreign taxes, on certain items of income they receive from sources within foreign countries. Most income tax treaties contain what is known as a 'saving clause', which prevents a citizen or resident of the United States from using the provisions of a tax treaty in order to avoid taxation of US-source income.

## Individual - Other tax credits and incentives

**Child tax credit**
Citizens, resident aliens, and non-resident aliens may claim a child tax credit if the child is a resident of the United States. Under P.L. 115-97, if the child has not reached the age of 17 by the end of the year, a tax credit is allowed for up to USD 2,000 per child (of which up to USD 1,400 is refundable). The amount of the credit is reduced once the taxpayer's income reaches USD 400,000 for married filing jointly and USD 200,000 for all others. P.L. 115-97 also provided a USD 500 (per dependant) non-refundable credit for a qualifying dependant other than a qualified child.

**New Markets Tax Credit (NMTC)**
The NMTC Program, enacted by Congress as part of the Community Renewal Tax Relief Act of 2000, is a non-permanent tax credit required to be renewed during each session of Congress. It permits individual and corporate taxpayers to receive a credit against federal income taxes for making Qualified Equity Investments (QEIs) in qualified community development entities (CDEs). P.L. 115-97 preserved the NMTC's existing authorisation.

**Other tax credits**
Numerous other tax credits exist at the federal, state, and local levels to provide an incentive for certain actions. Thus, determining if one or more of these credits would apply to a taxpayer would require a review of multiple sources of tax law.

## Individual - Tax administration

**Taxable period**
The United States tax year generally is the same as the calendar year, or 1 January through 31 December.

**Tax returns**
Individual income tax returns (Form 1040) are due on the 15th day of the fourth month after the end of the tax year (i.e. 15 April) unless that day is a Saturday, Sunday, or federal holiday, at which point the return is considered timely filed on the next business day. If the taxpayer is unable to file the federal individual income tax return by the due date, it may be possible to receive an automatic six month extension of time to file. To do so, the taxpayer must file Form 4868 (Application for Automatic Extension of Time To File US Individual Income Tax Return) by the due date for filing the return. Note that filing for an extension does not extend the time to pay taxes. If the amount due is not paid by the regular due date, interest will accrue.

Husbands and wives may generally file a joint return only if each is either a citizen or a resident. However, where only one spouse is a full-year or part-year citizen or resident, a joint return may be filed if both spouses agree to be taxed as full-year residents on their combined worldwide income.

Generally, joint filing will result in a lower tax liability than separate filing. This determination can be made with certainty only after a thorough review of the taxpayers' facts and circumstances. Married non-resident aliens (i.e. where both spouses are non-resident aliens) may not file joint returns and must use the tax table for married persons filing separate returns. Non-resident aliens may not file as heads of household.

**Payment of tax**
If federal income tax is owed, payment is due on 15 April in order to avoid interest and penalties for non-payment.

Most types of US-source income paid to a foreign person are subject to tax at a rate of 30%, collected through withholding, although a reduced rate or exemption may apply under an applicable tax treaty or statutory exemption. In general, a person that makes a payment of US-source income to a foreign person must withhold the proper amount of tax and deposit it with the US government, report the payment on Form 1042-S, and file a Form 1042 by 15 March of the year following the payment(s).

Income tax is withheld from employee compensation. Citizens, resident aliens, and non-resident taxpayers with significant income not subject to withholding (e.g. self-employment income, interest, dividends) must generally make quarterly payments of estimated tax due 15 April, 15 June, 15 September, and 15 January following the close of the tax year. Non-resident aliens who do not have any income subject to payroll withholding tax must make three estimated tax payments (rather than four) due 15 June, 15 September, and 15 January, with 50% due with the first payment.

**Tax audit process**
The tax authority in the United States is the Internal Revenue Service (IRS). An audit is an IRS review of an individual's accounts and financial information to ensure information is being reported correctly and to verify the amount of tax reported on the individual's tax return is accurate. An individual's tax return may be examined for a variety of reasons, and the examination may take place in any one of several ways. Returns are chosen by computerised screening, by random sample, or by an income document matching program. After the examination, if any changes to the individual's tax are proposed, one can either agree with those changes and pay any additional tax owed or one can disagree with the changes and appeal the decision.

In the event of a disagreement, the IRS has an appeals system. If taxpayers do not reach an agreement with the IRS Office of Appeals, or if the taxpayer simply does not want to appeal the case to the IRS Office of Appeals, in most instances the taxpayer may take the case to court.

If taxpayers overpay their tax, there is a limited amount of time in which to file a claim for a credit or refund. Taxpayers can claim a credit or refund by filing Form 1040X and mailing it to the IRS Service Center where the original return was filed. A separate form must be filed for each year or period involved, along with an explanation of each item of income, deduction, or credit on which the claim is based.

**Statute of limitations**
Generally, the IRS has three years after a return is due or filed, whichever is later, to make tax assessments. That particular date is also referred to as the statute expiration date. Statute of limitations will also limit the time taxpayers have to file a claim for credit or refund.

**Topics of focus for tax authorities**
The Treasury Department's Office of Tax Policy and IRS use the 'Priority Guidance Plan' each year to identify and prioritise the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2018/19 Priority Guidance Plan focuses resources on guidance items that are most important to taxpayers and tax administration. Published guidance plays an important role in increasing voluntary compliance by helping to clarify ambiguous areas of the tax law.

## Individual - Sample personal income tax calculation

**Assumptions**
**Calendar year 2020**
Resident alien husband and wife with two children, both of whom qualify for the child tax credit; one spouse earns all the income, none of which is foreign-source income. A joint return is filed. AMT liability is less than regular tax liability.

Calculations based on preliminary 2020 tax tables.

## Tax computation

| Gross income | | USD |
|---|---|---|
| Salary | | 150,000 |
| Interest | | 18,500 |
| Long-term capital gain (on assets held for more than one year) | | 3,000 |
| Total gross income | | 171,500 |
| Adjustments | | 0 |
| Adjusted gross income (AGI) | | 171,500 |
| Less - standard deduction | 24,800 | |
| Taxable income | | 146,700 |
| Tax thereon | | |
| On taxable income of 143,700 (146,700 less capital gain of 3,000) at joint-return rates | | 23,194 |
| On 3,000 capital gain at 15% | | 450 |
| Total tax before credits | | 23,644 |
| Less - credits (child tax credit equal to 2,000 per child) | 4,000 | |
| Net tax | | 19,644 |

## Individual - Other issues

**Treatment of flow-through business entities**
Certain legal entities are 'flow-through entities' (e.g. partnerships, S corporations). Income accrued by such entities is not taxed at the entity level. Instead, the income 'flows through' to the owners or shareholders, who then are taxed on the revenues.

P.L. 115-97 provided a 20% deduction to domestic owners of flow-through entities against their qualified business income for tax years beginning after 31 December 2017, and before 1 January 2026. Complex rules apply with respect to this new deduction.

**Foreign exchange issues**
Although the United States has no foreign exchange controls, any 'United States person' who has a foreign financial account (or a signature authority over such account) during the year may be required to file a report with the US Treasury Department by 30 June of the following year. The term 'United States person' has been expanded to include a citizen or resident of the United States or a person in and doing business in the United States. The form need not be filed if the value of all foreign financial accounts does not exceed USD 10,000 at any time during the year.

In addition, if cash equal to or in excess of USD 10,000 is brought into or sent out of the United States at any time in the year, it must be reported to the US Customs Service.

**Work permits**
Individuals who plan to move to the United States for temporary assignments must apply for and obtain, from the US Citizenship and Immigration Services (USCIS), visas that permit them to work in the United States. Typically, the visa will be a non-immigrant visa, such as an E, H, or L visa. Those who plan to remain on a non-US payroll and work for a relatively short time period in the United States (i.e. several

weeks) may be able to obtain a B-1 visa (business visitor visa). The type of visa will depend on the nature of the proposed function in the United States and the proposed duration of the stay. A visa that permits an individual to work in the United States for several years may take several months to obtain. As the USCIS rules are extremely complex, professional advice from an immigration attorney should be sought well in advance of any intended move to the United States.

A non-immigrant visa is usually limited to a fixed number of years. An immigrant visa, for permanent residence (a green card), allows individuals to remain indefinitely in the United Stated, even if they change employment or cease to work at all. Obtaining a green card is more complex than obtaining a non-immigrant visa, the process usually takes much longer, and the tax implications of having one are complex. Thus, advice should be sought prior to making application for permanent residence to make sure that all of the benefits and obligations that are involved are correctly understood.