MOORE STEPHENS
NORTH AMERICA, INC.

Doing business in the US

2012/2013

www.msnainc.org

PRECISE. PROVEN. PERFORMANCE.

MSNA U.S. MEMBER FIRM KEY LOCATIONS*

Location	Website
Alabama	
Offices Statewide	
Carr, Riggs & Ingram, LLC	www.cricpa.com
Huntsville	
Decosimo	www.decosimo.com
Arkansas	
Little Rock	
Frost, PLLC	www.frostpllc.com
California	
San Francisco Bay Area	
Armanino McKenna LLP	www.amllp.com
Mohler, Nixon & Williams	www.mohlernixon.com
Central Valley Area	
Frazer LLP	www.frazerllp.com
Los Angeles/Southern California	
Eadie & Payne LLP	www.eadiepaynellp.com
Holthouse, Carlin & Van Trigt LLP	www.hcvt.com
Frazer LLP	www.frazerllp.com
Connecticut	
Norwalk	
Citrin Cooperman & Company, LLP	www.citrincooperman.com
Florida	
Greater Miami Area	
Moore Stephens Lovelace	www.mslcpa.com
Orlando/Tampa Bay Area	
Carr, Riggs & Ingram	www.cricpa.com
Moore Stephens Lovelace	www.mslcpa.com
Panhandle/Northern Florida	
Carr, Riggs & Ingram, LLC	www.cricpa.com

* Please refer to the Moore Stephens international website (www.moorestephens.com) for a complete list of **all** office locations.

Georgia
Atlanta and Surrounding Areas

Carr, Riggs & Ingram, LLC	www.cricpa.com
Decosimo	www.decosimo.com
Moore Stephens Tiller LLC	www.mstiller.com

Offices Statewide

Moore Stephens Tiller LLC	www.mstiller.com

Illinois
Chicago

Bansley & Kiener, LLP	www.bk-cpa.com
Armanino McKenna	www.amllp.com

Indiana
Indianapolis and Surrounding Areas

Blue and Co, LLC	www.blueandco.com

Kentucky
Lexington and Louisville

Blue & Co., LLC.	www.blueandco.com

Louisiana
Metairie, New Orleans and Shreveport

Carr, Riggs & Ingram	www.cricpa.com

Massachusetts
Boston

DiCicco, Gulman & Company LLP	www.dgccpa.com
G.T. Reilly	www.gtreilly.com

Michigan
Grand Rapids

Beene Garter LLP	www.beenegarter.com

Detroit

Doeren Mayhew, PC	www.moorestephensdm.com

Mississippi
Jackson

Carr, Riggs & Ingram, LLC	www.cricpa.com

Missouri
St. Louis and St. Charles

Brown Smith Wallace, LLC	www.bswllc.com

New Jersey
Cranford

MSPC	www.mspc-cpa.com

Marlton

Asher & Co., Ltd	www.asherco.com

Springfield

Citrin Cooperman & Company, LLP	www.citrincooperman.com

New Mexico
Albuquerque

Atkinson & Co.	www.atkinsoncpa.com

New York
New York City

Citrin Cooperman & Company, LLP	www.citrincooperman.com
Grassi & Co.	www.grassicpas.com
MSPC	www.mspc-cpa.com

Long Island

Grassi & Co.	www.grassicpas.com

Westchester

Citrin Cooperman & Company, LLP	www.citrincooperman.com

Upstate New York

The Bonadio Group	www.bonadio.com

North Carolina
Raleigh/Durham

Frost, PLLC	www.frazerfrost.com

Ohio	
Cleveland/Akron Area	
Apple Growth Partners	www.applegrowth.com
Rea & Associates	www.reacpa.com
Cincinnati	
Decosimo	www.decosimo.com
Columbus	
Blue & Co.	www.blueandco.com
Rea & Associates, Inc.	www.reacpa.com
Other Offices Statewide	
Rea & Associates	www.reacpa.com
Oregon	
Portland	
Armanino McKenna	www.amllp.com
Pennsylvania	
Philadelphia	
Asher & Company, Ltd.	www.asherco.com
Citrin Cooperman & Co, LLP	www.citrincooperman.com
Tennessee	
Offices Statewide	
Decosimo	www.decosimo.com
Nashville	
Carr, Riggs & Ingram	www.cricpa.com
Texas	
Austin and Georgetown	
Carr, Riggs & Ingram	www.cricpa.com
Dallas and San Antonio	
TravisWolff	www.traviswolff.com
Houston	
Doeren Mayhew, PC	www.moorestephensdm.com
Washington State	
Seattle	
Peterson Sullivan, LLP	www.pscpa.com
Bellevue	
Armanino McKenna LLP	www.amllp.com

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction

This booklet provides guidance for doing business in the United States (U.S.). In addition to background information on the U.S., it includes relevant information about business operations and taxation matters. This guide will assist organizations that are considering establishing a business in the U.S., either as a separate entity or as a subsidiary of an existing foreign company. It will also be helpful to anyone who is planning to work or live permanently in the U.S.

The U.S. has a number of external territories, which include Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa. These external territories have their own legal systems and tax codes, which are not covered in this guide. Refer to the Internal Revenue Service (IRS) for guidance on U.S. territories.

Unless otherwise noted, this information is believed to be accurate as of October 1, 2012. Special rules govern tax advice in the U.S., particularly when a taxpayer seeks protection for relying on advice from professionals. We are required by Internal Revenue Service Circular 230 to advise you that general communications such as this booklet cannot be used, and are not intended to be used, for the purpose of avoiding penalties under United States federal tax laws.

This guide is distributed by Moore Stephens North America, Inc. (MSNA), a leading accounting and consulting association. MSNA's independently owned, operated and managed member firms have direct access to the resources of the Moore Stephens International Limited (MSIL) global organization, which was founded in 1907, and MSNA, which was founded in 1974. Since that time, MSIL has grown to be one of the largest international accounting and consulting alliances worldwide, with more than 12,600 principals and staff members in over 300 independent firms with over 600 offices in nearly 100 countries. Further information may be obtained at MSIL's website: www.moorestephens.com.

The service region of MSNA comprises the United States of America, Canada, Mexico, and countries in the Caribbean. MSNA is one of six such regions within the Moore Stephens organization. The other regions are: Europe, Asia Pacific, Australasia, Latin America, Middle East and South Africa. For more information, go to MSNA's website: www.msnainc.org

How to Use This Guide

This guide provides an overview of relevant U.S. information for your business or personal needs. It is not an authoritative guide and should not be relied on solely for tax research and analysis. It is essential that before any business is undertaken, advice should be obtained from local professionals, such as CPAs, CAs and lawyers.

It should also be noted that background information on the U.S. is available through U.S. government data. Details are available on the Internet, so we have provided the reader with a resource tool in Appendix A that contains a list and brief description of some of the most valuable and informative websites.

Acknowledgements

The principal authors and editors of this guide are:

- Martin Doerr, CPA; Member-in-Charge – Tax – Brown Smith Wallace LLC
- Doug Eckert, CPA; Member, Tax; International Tax Practice Leader – Brown Smith Wallace LLC
- David Erard, CPA; Tax Partner – Holthouse Carlin Van Trigt LLP
- Geoffrey Gunn, CPA; Tax Partner – TravisWolff
- Kim Lawrence, CPA; Tax Partner – Decosimo
- Andrew Rotter, CPA; Tax Partner – Citrin Cooperman & Company LLP
- Jeff Slavet, CPA; International Tax Partner – Citrin Cooperman & Company LLP
- Claude Titche, CPA; Tax Partner – Beene Garter LLP
- Steven E. Sacks, CPA, ABC; Executive Director – Moore Stephens North America, Inc.

Additional contributions were made by:

- Ron Klasko, Esq.; Klasko, Rulon, Stock & Seltzer, LLP

Table of Contents

1. The United States of America
A General Overview....11
Population....11
Geography and Climate....11
Government....12
Religion....12
Education....12
Communications and Information Technology....13
Times, Weights and Measures....13
Currency....13
Inflation....13
Gross Domestic Product....14

2. Forms of Business Organization....15
Business can be conducted in the U.S. through:....15
Costs of Creating an Entity....16
Branch Operations....16
Representative Offices....16
Registrations....16
Shelf Companies....17

3. Entity Formation and Statutory Requirements....18
Corporations....18
Share Capital....18
Memorandum and Articles of Association....18
Procedure for Formation....18
Information on Public Record....18
Limited Liability Companies....19
Capital....19
Procedure for Formation....19
Liabilities of Members....19
Information on Public Record....19
Partnerships....19
Capital....19
Procedure for Formation....19
Liabilities of Partners....20
Information on Public Record....20

4. Audit and Accounting....21
Financial Statements....21
Accounting Period....21
Audit – Public Companies....21
Audit – Private Companies....22
Accounting....22

Table of Contents - Continued

5. Labor Relations and Working Conditions 24
   Employee Benefits 24

6. Income Taxation 26

7. Corporate and Business Taxes (Income and Franchise) 27
   U.S. Federal Tax Rate 27
   Withholding by Flow-Through Entities 28
   Filing of Tax Returns 28
   Payment and Collection 29
   State and Local Income Taxes 29
   Grouping/Consolidated Returns 30
   Corporate Residence and Territoriality 30
   Permanent Establishment 30
   Investment in U.S. Real Property 31
   Multinational Corporations 31
   Withholding Tax 31
   Dividends 32
   Royalties 32
   Interest 32
   Losses 32
   Start-Up and Organizational Costs 32

8. Payroll Taxes and Social Security 34
   Payroll Taxes 34
   Social Security Tax 34
   Totalization Agreements 34

9. VAT / GST / Sales and Use Tax 36

10. Special Interest Issues 38
   Transfer Pricing 38
   Controlled Foreign Corporation Taxation 38
   Passive Foreign Investment Companies 39
   Investing in U.S. Real Estate 40
   Foreign Account Reporting 41
   Distributions and Dividends 43
   Thin Capitalization 43
   Corporate Liquidations 43
   State and Local Governmental Incentives 44
   Worker Classification 44

11. Personal Income Taxation 45
   Individual Income Tax 45
   State Income Tax 46

Table of Contents - Continued

12. Estate and Gift Taxes 48
Estate Tax 48
Gift Tax 49

Appendix A 51
A Select List of Useful Websites 51

Appendix B 53
A Review of U.S. Tax System for Incoming Foreign Executives 53

Appendix C 57
U.S. Immigration Options for Hiring and Transferring Foreign Personnel 57

1. The United States of America – A General Overview

Population

The United States of America comprises 48 contiguous states and two noncontiguous states, Alaska and Hawaii. Washington, D.C., formally the District of Columbia and commonly referred to as Washington, "the District," or simply D.C., is the capital of the United States, located between the states of Maryland and Virginia.

Additionally, the U.S. includes several holdings — the Commonwealth of Puerto Rico, the Virgin Islands of the U.S. in the Caribbean Sea, and the islands of American Samoa and Guam in the Pacific Ocean.

Based on the U.S. Census Bureau's "Statistical Abstract of the United States: 2012," the 2009 population as of July 1, 2009 was approximately 308,745,000, making it the third most populous country, after China and India. This represents a 9.7 percent increase since 2000. Approximately 13 percent of the population is foreign born.

The ten largest metropolitan areas, as ranked by population in Section 1 of the "Statistical Abstract of the United States: 2012" were:

1. New York City, New York
2. Los Angeles, California
3. Chicago, Illinois
4. Dallas, Texas
5. Philadelphia, Pennsylvania
6. Houston, Texas
7. Washington, DC
8. Miami, Florida
9. Atlanta, Georgia.
10. Boston, Massachusetts

America is both vast and dense. The continental United States, which excludes Alaska and Hawaii, is about the size of Australia. At the same time, the population of the New York City metropolitan area—also referred to as the "tri-state area" (50 miles radiating from the Empire State Building)—is approximately 21 million people.

English is the predominant language, although, as of 2010, about 8.6 percent of the population spoke little or no English.

Geography and Climate

The land mass is 9.6 million square kilometers, or 3.7 million square miles, and is third in size after Russia and Canada. The contiguous 48 states are bound on the

west by the Pacific Ocean; on the north by Canada; on the east by the Atlantic Ocean; and on the south by Mexico and the Gulf of Mexico.

The climate is as diverse as the topography. Regions of the country, which include Hawaii and parts of Florida, are tropical. It is humid in the East and Southeast and arid in the West.

Government

The U.S. Constitution defines a federal system of government in which certain powers are delegated to the federal government, while others are reserved for the states. The federal government consists of the executive, judicial and legislative branches. They are designed, through separation of powers and a system of checks and balances, to ensure that no branch of government is superior to the other two. All three branches are interrelated; each with overlapping, yet quite distinct, authority.

The federal government includes a number of independent administrative agencies that have been created by the legislative branch or by executive order. These agencies include the IRS, the U.S. Securities and Exchange Commission, and the U.S. Customs Service. The U.S. Customs Service is now part of the *U.S. Department of Homeland Security*. These agencies have generally been given the power to create and enforce rules and impose penalties for non-compliance.

The state governments have structures that closely parallel the structure of the federal government. Each state has a governor, a legislature and a judiciary. The state government is usually housed in each state's capital city. Each state (and most cities, counties and towns) has its own system to provide for local government services. States are subdivided into counties, cities and towns; and each subdivision generally has its own form of local government.

Religion

The different religious beliefs in the U.S. outnumber the variety of ethnicities, nationalities, and races. Approximately 76 percent identify themselves as Christian, with the two largest subgroups being Catholics and Baptists. Another 3.8 percent are other religions, including Judaism, the second largest religion in the U.S., comprising 1.18 percent of the population; followed by Islam (0.59 percent) and Buddhist (0.52 percent). Some 14.8 percent of the population is nonreligious, secular, atheist, agnostic, or have no known religious affiliation.

Education

American public education is primarily the responsibility of the states and individual school districts, unlike the nationally regulated and financed education systems of many other industrialized societies. In 2009, states contributed 47 percent of the elementary and secondary school revenues, and local school districts contributed 43.8 percent. The federal government provided 9.45 percent. Private sources contributed 0.5 percent.

The public system serves a large portion of the school-age population. In 2010, 87 percent of Americans age 25 and over had graduated from high school; 55 percent had completed some college, with 29 percent earning at least a bachelor's degree.

While the clear majority of Americans attend public schools, in 2009-2010, approximately 11 percent attended private elementary and private high schools. The majority of these private schools were Catholic schools.

Post-secondary education is not dominated by public institutions, but by a mix of public and private institutions, many of which have church and religious origins.

Communication and Information Technology

Personal and mass communications are pervasive in American culture. Approximately 95.7 percent of American households have land-line telephone service, and 59.4 percent have at least one cellular telephone. Almost 99 percent have at least one color television, and 74 percent have cable TV or a satellite dish. Of the 76.7 percent of American households that have a computer, 71 percent have internet access.

Times, Weights and Measures

Most areas of the U.S. currently observe daylight savings time. The exceptions are Arizona and Hawaii, and the territories of Puerto Rico and the U.S. Virgin Islands.

The U.S. customary system of units is used for weights and measures, although many consumer goods must be labeled using the metric system as well. The U.S. Congress had enacted legislation that requires eventual transition to the metric system. Currently, there has been no action taken to make the transition.

Currency

The U.S. dollar ($) is the unit of currency. The smallest unit of currency is the penny or cent (¢). The dollar is equal to one hundred cents. The Federal Reserve System is the central banking system that manages the currency.

Inflation

The inflation rate was 2.4 percent as of June 30, 2012. Other recent yearly inflation rates are as follows: for 2011 was 3.2 percent; 2010 – 1.6 percent; 2009 – 2.9 percent; 2008 – 3.9 percent; 2007 – 2.9 percent; 2006 – 3.2 percent; 2005 – 3.4 percent; and 2004 – 3.2 percent.

Please refer to the resource tool in Appendix A of the guide for a list of websites, one or more of which contain updated information.

Gross Domestic Product

Gross domestic product (GDP) is the output of goods and services produced by labor and property located in the U.S. The GDP is measured on a quarterly basis, reporting the estimated percent change from the preceding period. Estimated GDP in 2011 was $15.088 trillion. The GDP increased by an estimated 2.0 percent in the first quarter of 2012 and an estimated 1.3 percent in the second quarter of 2012.

2. Forms of Business Organization

Business can be conducted in the U.S. through:

- Unincorporated branches of foreign entities
- Corporations
- Limited liability companies (LLCs)
- General partnerships, limited partnerships & joint ventures
- Trusts
- Sole proprietorships

Businesses are free to choose their preferred form of entity. Non-U.S. entities are viewed as one of the following: corporations, branches/proprietorships, or partnership-like entities for U.S. tax purposes under guidelines similar to those governing U.S. entities. However, limited liability companies can elect to be treated as either a partnership or a corporation for U.S. tax purposes if the "default" characterization is undesirable.

Business entities, regardless of their statutory form, are treated for tax purposes as corporations, trusts, partnerships or disregarded tax entities. Disregarded tax entities are 100 percent owned entities that take on the tax characteristics of their owner (i.e., they are considered a branch if the owner is a corporation or other business entity, or they are considered a sole proprietorship if the owner is an individual).

A corporation is a distinct legal entity created under state law. Delaware has historically been the most popular state in which to incorporate. However, most states have modified their corporate laws to mirror those of Delaware. Depending upon where the corporation will do business, and given Delaware's recent aggressive pursuit of escheat taxes, Delaware may no longer be the best choice.

Limited liability companies (LLCs) are considered the most flexible type of entity for use in achieving both business and tax objectives. An LLC is a hybrid entity that provides corporate-style liability protection and partnership-style "flow through" tax treatment. "Flow through" means that the owners generally pay tax on their shares of the entity's income, rather than the entity paying the tax. A corporation's profits, on the other hand, are taxed twice — once at corporate level and again at the shareholder level when the profits are distributed. In addition, LLCs can elect to be treated as partnerships or corporations for U.S. tax purposes. This option is not available to U.S. corporations. The owners ("members") of an LLC have limited liability similar to corporate shareholders. Members may participate in the management of the company pursuant to the membership agreement.

General partnerships expose all partners to unlimited liability. General partners may participate in the management of the partnership. A limited partnership requires at least one general partner who has unlimited liability. The limited partners' liability is limited to their capital contribution, but they may not participate in the management of the partnership.

Trusts include the estate of a decedent and specialized entities, which have aspects similar to that of partnerships (although not widely used). Trust use is generally limited to special purpose situations such as settlement funds, etc.

Costs of Creating an Entity

The costs of creating an entity vary widely by state and by the type of entity chosen. Additional costs may be incurred in obtaining professional advice as to the proper structure, type of entity to be used, etc.

Branch Operations

It is relatively easy to establish a branch operation in the U.S. Generally, the foreign entity must register with the state(s) and city or cities where the branch will operate, and obtain a license to do business in the state(s). The branch will be taxed on its income based on the classification of its parent. If the parent is a corporation, the branch will be taxed as a corporation. Branch profits are also subject to branch profits tax of 30 percent on after-tax profits, subject to treaty reduction.

Representative Offices

Representative offices of a foreign entity may be established for planned activities limited to those activities that are allowed under an applicable U.S. income tax treaty. Generally, to avoid subjecting the foreign entity to U.S. income tax, such activities must not include any kind of activities that would be attributed to the foreign entity under the specific treaty. If a foreign entity would be subject to U.S. taxation absent an applicable U.S. income tax treaty, the entity generally must still file a U.S. income tax return. The U.S. tax return required in this case acts as a disclosure document, informing the U.S. Internal Revenue Service that the entity is relying on the applicable treaty to avoid U.S. taxation.

Registrations

Once formed, every business entity must obtain a unique U.S. federal employer identification number (EIN). This number identifies the taxpayer/entity and is required regardless of whether the entity expects to have employees. Most states require notification, and some states assign special state numbers.

If a business employs or expects to employ workers, it must obtain several additional registrations and insurance coverage for the benefit of its workers. The requirements vary for each state. The requirements sometimes vary for local jurisdictions.

A separate state registration is often required for sales and use tax.

Shelf Companies

The concept of acquiring shelf companies is not practiced in the U.S. Typically, a new corporation or limited liability company (LLC) can be formed in 24 to 48 hours, and in some jurisdictions, online with a credit card.

3. Entity Formation and Statutory Requirements

Corporations

Share Capital

The amount of required minimum share capital varies by state. Such minimums are generally not substantial in amount. Capital contributions can be made in the form of cash, property, or in-kind services. The initial shares do not need to be fully paid up before registration. A U.S. corporation may be 100 percent owned and/or managed by foreign persons or companies.

Memorandum and Articles of Association

A foreign investor who intends to set up a subsidiary in the U.S. must form a new company or purchase the shares in an existing company already operating in the U.S.

Procedure for Formation

An incorporator, who files Articles of Incorporation with the applicable state authorities, generally forms the company. The incorporation is then ratified by the shareholders, and the directors are elected by the shareholders. Once a corporation is formed, it has the right to do business in its state of incorporation. A separate registration to do business as a "foreign" corporation should be filed in any other state in which the corporation does business. Note that "foreign" in this context means any other state of the U.S., not a foreign country.

Note that many states take the position that U.S. income tax treaties are not applicable to state taxes. Thus, a foreign entity not subject to U.S. taxation under an income tax treaty may still be subject to state and local taxes in the U.S.

Information on Public Record

The state in which the corporation is organized determines what information must be filed on public record with the state. The information may include:

- Share capital
- Names and addresses of the board of directors and the managing director(s)
- Names and addresses of shareholders with voting powers of five percent or more
- Articles of Association

Financial statements for privately held entities are generally not considered public information.

Limited Liability Companies

Capital

The amount of minimum capital required by a member varies by state. Such minimums are generally not substantial in amount. Capital contributions can be made in the form of cash, property or in-kind services. A U.S. limited liability company (LLC) may be 100 percent owned by foreign persons or companies.

Procedure for Formation

An LLC generally must file its articles of organization with the state or local jurisdiction (e.g., county or city) in which it is located or intends to do business.

Liabilities of Members

The liability of each member of an LLC is generally limited to the member's capital contribution.

Information on Public Record

The state in which the LLC is organized determines what information must be filed on public record with the state. The information may include:

- Amount of each member's initial contribution to capital
- Names and addresses of each member
- Rights of each member to the LLC's profits

Partnerships

Capital

The amount of minimum capital required by a partner varies by state. Such minimums are generally not substantial in amount. Capital contributions can be made in the form of cash, property, or in-kind services. A U.S. partnership may be 100 percent owned by foreign persons or companies.

Procedure for Formation

A partnership can be created without a written document, although a written agreement is always highly recommended. A partnership is generally required to register with all states or local jurisdictions (e.g., county or city) in which it intends to do business.

Liabilities of Partners

Each partner in a general partnership is jointly liable for all debts and obligations of the partnership. To limit the partners' liabilities, the parties may instead want to consider using a limited liability company, a limited liability partnership or a limited partnership. Although taxed differently, a corporation can also be used to limit liability.

Information on Public Record

The state in which the partnership is organized determines what information must be filed on public record with the state. The information may include:

- Amount of each partner's initial contribution to capital
- Names and addresses of each partner
- Designation of each partner as either a general or limited partner
- Rights of each partner to the partnership's profits

4. Audit and Accounting

Financial Statements

The management of each business is generally responsible for the maintenance of reasonable accounting records and for the preparation of annual accounts covering each accounting period. In a corporation, the officers are responsible. The officers are elected by the directors. In the case of a small privately held business, the owners, officers and directors is often the same individual. In the case of a partnership or LLC, the managing partner or managing member is generally the responsible party.

Generally, the annual accounts are accepted by the owners (shareholders, partners, or members) at the annual general meeting.

The trustee of a trust—like a sole proprietor—has similar statutory responsibilities under the law to keep books and records.

Accounting Period

As a general rule, corporations may adopt a tax year ending on the last day of any calendar month; however, most businesses in the U.S. have calendar year-ends. Partnerships and LLCs must generally adopt a tax year that is the same as the year-end of a majority of the partners or members.

Audit – Public Companies

Publicly traded companies are required to file quarterly and annual reports with the Securities and Exchange Commission (SEC). The annual reports include financial statements audited by an independent certified public accountant (CPA). The CPA must be registered with the Public Company Accounting Oversight Board (PCAOB).

The interim financial statements of public companies included in the quarterly reports must be reviewed by an independent CPA.

In 2002, the U.S. Congress passed the Sarbanes-Oxley Act (SOX), which created the PCAOB and established internal control, governance and other requirements for public companies.

The PCAOB establishes auditing and related attestation, quality control, ethics, and independence standards and rules to be used by registered CPA firms.

Audit – Private Companies

Most private companies are not legally required to have audited financial statements. However, many private companies want or need audits to provide the highest customary level of assurance regarding the financial statements to their owners, lenders, management and other users of the financial statements.

Private companies are audited by CPAs under standards established by the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA).

In lieu of an audit, the objective of which is the expression of an opinion of the financial statements taken as a whole, private companies may engage a CPA to perform a review, which consists of inquiries of company personnel and analytical procedures applied to financial data.

Another alternative for private companies is to engage a CPA to perform a compilation, which is limited to presenting in the form of financial statements information that is the representation of management. A CPA performing a compilation may or may not necessarily be independent with respect to the client, whereas a CPA performing an audit or a financial statement review must be independent.

Accounting

Generally accepted accounting standards (U.S. GAAP) are principally established by the Financial Accounting Standards Board (FASB). Private companies may also prepare financial statements on other comprehensive basis of accounting (OCBOA), such as cash basis or tax basis, if such basis is acceptable for the primary users of their financial statements.

The FASB has worked with the International Accounting Standards Board (IASB) to converge U.S. GAAP and International Financial Reporting Standards (IFRS) in a number of areas, such as the accounting for business combinations. It is anticipated, though not guaranteed, that the FASB and IASB plan to issue substantially converged standards on revenue recognition, financial instruments and leases in 2013 or 2014.

Over the past few years, the SEC has considered whether to replace U.S. GAAP with IFRS. A recent SEC staff report released in July, 2012 does not make a recommendation as to whether, when or how IFRS should be incorporated into the U.S. financial reporting system. This topic will continue to be evaluated by the SEC.

International Financial Reporting Standards (IFRS) may also become U.S. GAAP in the near future. The FASB currently has a joint project with the International Accounting Standards Board (IASB) to converge U.S. GAAP and IFRS, after which time the SEC will decide whether to incorporate IFRS into the U.S. domestic

reporting system. The latest SEC statement indicates a potential implementation date of 2015 or 2016.

Certain foreign issuers have been allowed by the SEC to present financial statements using IFRS without reconciliation to U.S. GAAP. However, there is no current indication that the SEC will allow all or require all companies, including U.S. public companies, to present their financial statements using IFRS.

5. Labor Relations and Working Conditions

The Secretary of Labor, appointed by the president, has the administrative responsibility for the U.S. Department of Labor (DOL). The purpose of the DOL is to foster, promote and develop the welfare of wage earners of the U.S.; to improve their working conditions; and to advance their opportunities for profitable employment.

Regulation by the DOL offers protection with regard to work hours, minimum wages, benefits and non-discrimination. Private industry is permitted to set individual work conditions within regulations. Federal and state labor relations laws guarantee to workers the right of free association in unions. Since the mid-1980s, however, the power of organized labor has decreased considerably. More and more people have become employed in service organizations rather than in manufacturing, which has reduced union membership. This process has been heightened by other economic and political factors.

Employee Benefits

Information released in March, 2012 by the DOL's Bureau of Labor Statistics provides a helpful snapshot of today's benefits picture in private industry. Access to employer-provided benefits was greater in medium and large private industry establishments than in small establishments. For example, access or availability of a benefit was 57 percent for medical care benefits in small establishments (those with fewer than 100 employees) compared with 89 percent in large establishments (those with 500 employees or more). Retirement benefits were available to 50 percent of workers in small establishments, 79 percent of workers in medium-size establishments (those employing between 100 and 499 workers), and 86 percent of workers in large establishments.

Paid leave benefits followed a similar pattern. The difference was more pronounced in the availability of paid sick leave, which was offered to 52 percent of workers in small establishments and 82 percent in large establishments. Paid holidays and paid vacations were available to 69 percent of workers in small establishments and 91 and 90 percent, respectively, to workers in large establishments.

The following are typical paid holidays: New Year's Day, Memorial Day (last Monday in May), Independence Day (July 4 or the Monday closest to the 4th), Labor Day (first Monday in September), Thanksgiving Day (third Thursday in November), and Christmas Day. Depending on company policies, additional holidays include President's Day (third Monday in February), Good Friday, Columbus Day (October), and Veteran's Day (November). Many employers offer personal days for birthdays or floating holidays for religious observance that vary each year.

Paid vacations vary and are usually based on an employee's length of service. Additional benefits being offered in the modern American workplace today include educational assistance benefits, subsidized commuting, child care, adoption assistance, long-term care insurance, wellness programs, and flexible workplace (allowing employees to work flexible hours and/or from home).

6. Income Taxation

There are two basic U.S. income tax regimes for business entities: the partnership *flow-through* regime and the *corporate tax* regime.

Under the partnership flow-through regime, the business entity is not subject to direct income taxation. Instead, the entity's profits "flow through" to its owners and are taxed in most ways as if earned directly by the owners. Partnerships and most limited liability companies are treated as flow-through entities for U.S. tax purposes. However, as previously noted, partnerships and limited liability companies can elect to be taxed as corporations for federal (and usually state and local) tax purposes. Nearly all owners, including foreign owners of a flow-through entity, must file a U.S. income tax return. The exceptions are certain, relatively rare types of investment partnerships.

A foreign person investing in the U.S. through a partnership is considered to be in the trade or business of the partnership and is subject to U.S. taxation. The partnership is generally required to remit withholding tax for income allocable to foreign partners at the highest applicable tax rate attributable to that partner. The foreign partner must file a U.S. tax return to report the income and claim any available refund of the withholding tax, if any.

The corporate tax regime is often preferable for foreign owners because it isolates U.S. operations, and most foreign owners can either use tax credits for taxes paid by a U.S. corporation when dividends are remitted home or exclude the dividend from local country taxation. Owners of entities taxed as corporations do not have to file U.S. tax returns. However, direct owners must provide proof of beneficial ownership and treaty residence to reduce the 30 percent U.S. withholding tax on dividends to the applicable treaty rate.

The flow-through regime is generally more advantageous for U.S. non-corporate owners because income is only taxed once, at the ownership level, rather than twice; once when earned by the corporation, and again when distributed to the U.S. owner. Of course, each investor's tax strategy must be tailored to his or her individual circumstances, and other factors may apply in each particular investment situation.

Trusts, certain electing domestically owned corporations called "S corporations," and other special flow-through tax regimes exist. Some are industry specific. Because of their complexity, client specific application and limited use, these regimes are not discussed in this general guide.

Please contact a Moore Stephens North America (MSNA) tax professional for further information. As reflected on pages 1-3, MSNA firms are located in a number of key locations to provide international tax services. Visit the individual firm websites for more information.

7. Corporate and Business Taxes (Income and Franchise)

U.S. Federal Tax Rate

For 2012, taxable income—including capital gains—is subject to a federal corporate income tax at graduated rates as follows:

Taxable Income Over:	But Not Over:	The Tax is:	Of the Amount Over:
0	$50,000	15%	0
$50,000	75,000	$7,500 + 28%	$50,000
75,000	100,000	13,750 + 34%	75,000
100,000	335,000	22,250 + 39%	100,000
335,000	10,000,000	113,900 + 34%	335,000
10,000,000	15,000,000	3,400,000 + 35%	10,000,000
15,000,000	18,333,333	5,150,000 + 38%	15,000,000
18,333,333	--	35%	0

A corporation organized in the U.S. is subject to federal corporate income tax on its worldwide income. The foreign tax credit, subject to various limitations, is designed to minimize the effects of any "double" taxation by the U.S. and a foreign jurisdiction.

Groups of corporations with greater than 80% common ownership are only entitled to benefit from the lower tax brackets above (i.e., 15%, 28%, 34%) once per year and thus must share the use of such lower brackets among the members of the group (generally in any manner that they formally elect).

The federal tax rate is identical for corporations and branches. An alternative minimum tax of 20 percent applies if a substantial amount of a corporation's deductions are "preference items," such as accelerated depreciation and certain other front-loaded deductions.

Various tax incentives are available under U.S. laws that have the effect of reducing the federal income tax rate. Many of these incentives are available only for specific industries (such as oil and gas extraction), while others are broadly available. For instance, a tax credit is available for (qualifying) expenditures made in research and development and—perhaps most important—companies that manufacture in the U.S. may qualify for the domestic production activities deduction.

A foreign corporation that owns a U.S. branch, or all or a part of a flow-through entity, files and pays corporate income taxes. In most cases, a withholding or "branch profits" tax is also due when earnings are repatriated or deemed returned to a foreign parent company. An individual owner of a U.S. branch or flow-through entity files and pays individual income tax. (See section 11.)

Withholding by Flow-Through Entities

If the U.S. entity is a partnership or LLC that does not elect to be taxed as a corporation, each partner or member is subject to U.S. income taxation on its share of the entity's profits. In some instances, the partnership or LLC is required to withhold and remit U.S. and state income taxes on a quarterly basis. These "withholdings" are based on profits allocated to foreign partners—**not** actual cash or property distributions—and generally are paid to the IRS for the account of the owner at the highest rate of tax; accordingly, they are generally greater than the actual tax due. A refund can normally be obtained by filing a tax return.

Filing of Tax Returns

Corporate tax returns must be filed annually. The federal tax return is due on the fifteenth day of the third month after the end of the tax year (i.e., March 15 for calendar year corporations). If the due date falls on a Saturday, Sunday or federal holiday, then the due date becomes the next business day.

Although partnerships and LLCs are generally not directly subject to U.S. taxation, they must file informational federal tax returns that are due on the fifteenth day of the fourth month after the end of the tax year. Since these entities are flow-through entities, their owners are obligated to pay tax on their proportionate share of the entity's income. Owners must file and pay taxes based on their fiscal year and organization type (i.e., individual and corporate*)*. While foreign owners are often subjected to a "withholding tax" on their share of earnings as discussed above, this is a tax deposit, not a payment of tax, which can only be done by filing a tax return.

A corporation may request an automatic six-month extension to file its tax return. Payment of any corporate tax due with the return is required to be paid at the time of the original due date of the return prior to extension. Underpayments result in the imposition of interest and possible penalties from the original due date to the actual date of filing and payment. The federal tax return of a foreign corporation with no office or fixed place of business in the U.S. is due on the fifteenth day of the sixth month after the end of the tax year. An automatic six-month extension can be requested.

A partnership (including most domestic LLCs that are treated as partnerships) may request an automatic five-month extension to file its tax return (i.e., September 15 for calendar year-end entities).

State and local income tax return due dates generally follow federal due dates, although in some cases, they lag the federal due dates by one month. Some states allow partnerships and LLCs to file a single "composite" income tax return on behalf of all the owners who are not residents of a particular state.

Payment and Collection

Corporate income tax is generally paid in advance, on a quarterly basis. Interest and penalties are generally charged on any underpaid or unpaid installments. The state and city income/franchise payment rules are generally similar to the federal rules.

Partnerships and LLCs are required to withhold and remit taxes on behalf of their partners and members in certain situations. Often, they are required to remit tax based on the entity's earnings, not on actual distributions. These situations include earnings attributable to foreign partners or foreign members for U.S. federal tax purposes and earnings attributable to partners or members not resident in the entity's state for state income tax purposes. These rules, especially at the state level, are relatively new and are evolving quickly. Thus, they must be actively monitored, since tax generally must be withheld. However, there are exceptions and exemptions that can be applied for by the knowing, tax compliant partner/member.

Foreign partners in a U.S. partnership and foreign members of a U.S. LLC are generally required to file federal and state income tax returns and report their shares of the entity's profit or loss on a U.S. federal tax return. The taxes withheld as described above are credited against the liability computed on the return, and the partner or member pays any additional taxes due or receives a refund of any overpayment of taxes.

State and Local Income Taxes

Almost all states (and some cities and counties) impose a corporate income or franchise tax in addition to the federal income tax.

State rates vary and can be as high as nearly 18 percent (effectively about 11 percent after a reduced federal tax base), including certain city/local income taxes that can apply. Generally, each state computes taxable income differently, but most of them begin with federally taxable income. Many states also tax capital, either as a separate tax or through an alternative tax base in which the business pays the higher of the income tax or the capital tax. The most common adjustments states make to federal taxable income to arrive at state taxable income involve add backs for state income tax deductions, loss carryforwards, deductions related to certain related-party transactions, and adjustments for federal/state depreciation differences. Most states use a three-factor formula based on a percentage of sales, payroll, and property attributed to their state to apportion income for a corporation doing business in their state and to their state. In recent years, however, several states have moved to a single sales-based apportionment factor.

Also, some cities impose corporate income and/or franchise taxes (*e.g.*, New York, Philadelphia and several cities in Michigan and Ohio), after incorporating the state adjustments. Cities may also impose a personal property tax.

Grouping/Consolidated Returns

Certain affiliated corporations may elect to file a single, consolidated federal income tax return for all members of the affiliated group. The consolidated tax return is a tax computation mechanism, and it does not convert the group into a single corporation. Each member of the group is severally liable for the entire tax of the consolidated group.

Generally, only U.S. corporations are permitted to be included in a consolidated tax return. Under very limited conditions, Mexican and Canadian corporations can be included in the filing of a consolidated return. An affiliated group consists of a common U.S. parent corporation and at least one other U.S. corporation in which the parent owns at least 80 percent of the total voting power and total value of the stock. Any other U.S. corporations that are connected to each other or to the parent under the same percentage of ownership tests are to be included in the consolidated return. Brother-sister corporations, related through ownership by individuals, are not permitted to file a consolidated return.

A foreign corporation that controls several U.S. subsidiaries, some of which generate profits and others that sustain losses, will often derive tax advantages by establishing a U.S. holding company to hold the stock of its U.S. subsidiaries. This allows the group of U.S. companies to file a consolidated return to offset any operating losses of members against the taxable income of other members. If a consolidated return is not filed, a foreign corporation may find its profitable U.S. subsidiaries paying tax and its unprofitable U.S. subsidiaries deriving no current benefit from losses generated.

Most states tax each corporation separately. Some states allow consolidated or combined returns to be filed. Many states require an affiliated group of corporations that operate as a “unitary business” to report income on a combined basis. Although mechanically different, this has the same effect as filing a consolidated return.

Corporate Residence and Territoriality

A corporation is resident in the U.S. for tax purposes if it is incorporated in the U.S. A U.S. corporation is subject to corporate income tax on its worldwide profits, including capital gains. A foreign tax credit mechanism, subject to various limitations, is available to alleviate the possibility of double taxation of income that is also taxed in a foreign jurisdiction.

Permanent Establishment

Non-resident companies conducting business in the U.S. through a permanent establishment (e.g., a branch) located in the U.S. are subject to income tax on all income attributable to or received from such permanent establishment. Non-resident companies from a country which has a bilateral tax treaty with the U.S. and that conduct business in the U.S., but do not have a permanent establishment,

are not subject to tax in the U.S. They are, however, still required to file a corporate income tax return and still may be subject to state and local taxes.

The branch profits tax generally applies to the branch's earnings (after income tax) that are deemed repatriated to the home office. The tax rate is generally 30 percent, unless modified or eliminated under an applicable U.S. income tax treaty. In addition, a branch is required to withhold 30 percent of the interest actually paid or deemed paid by the branch to the home office or a non-U.S. lender. This withholding tax may also be modified or eliminated under a U.S. income tax treaty.

Investment in U.S. Real Property

All non-residents, including individuals and corporations, are subject to U.S. income tax on income from real property situated in the U.S., whether the real property is owned directly or through a business entity, including a corporation. Non-residents must file a U.S. tax return to declare such income when title to real property is transferred directly or indirectly through the sale of a U.S. business entity. The tax is based on the gross rental income, unless an election is made for the tax to be computed on a net basis.

Multinational Corporations

In general, U.S. parent corporations are able to "defer" the earnings of their non-U.S. subsidiaries until these earnings are distributed as dividends to the U.S. parent.

However, the so-called "subpart F" rules require a "deemed dividend" of earnings that have not yet been physically distributed to a U.S. parent in some cases (See page 38.) These rules, which have been a part of the U.S. tax system since 1962, are highly complex and are generally viewed as not in keeping with the ways in which multinational corporations operate.

Accordingly, when establishing a multinational corporation, strong consideration should be given to locating the parent company outside of the U.S. At the very least, the subpart F-deemed dividend rules should be one of the many factors that are considered when a multinational structure is established that has U.S. operations.

Withholding Tax

Certain types of payments constituting U.S. source income made to non-residents are subject to U.S. withholding tax, and other types of payments may be tax exempt if paid to a foreign person. The non-treaty withholding rate is 30 percent, which may be reduced under an applicable income tax treaty. Most new U.S. income tax treaties contain a "limitation on benefits" article, which is designed to limit treaty benefits to qualified residents of the two countries. A U.S. payer is required to obtain information for its files from the payee to support a treaty rate of withholding, or to explain that no withholding is due because of the foreign status of the entity to be paid. This information is generally provided through the use of the

W-8 series of forms. In addition, the payer may be required to report the payments to the IRS. The withholdings must be remitted to the IRS within a specified period of time (depending on the amount of the withholdings) or penalties and interest can be charged.

Dividends

All dividends paid by a corporation to its non-U.S. shareholders are subject to a 30 percent withholding tax, unless modified or eliminated under a U.S. income tax treaty.

Royalties

A 30 percent withholding tax is applicable to all royalty payments for the use—or the right to use—patents, trademarks, designs or models, plans, secret formulas or processes; or information concerning industrial, commercial or scientific processes, unless modified or eliminated under a U.S. income tax treaty. Payments for the purchase of underlying intangible assets are generally not subject to withholding tax. However, payments for access to know-how may be deemed to be a license subject to withholding tax.

Interest

Interest payments made to non-residents are generally subject to a 30 percent withholding tax, unless they are for bank interest, qualify as portfolio debt or are modified or eliminated under a U.S. income tax treaty. See also the section entitled "Thin Capitalization."

Losses

Generally, a tax loss must be carried back two years and then forward for 20 years to offset other taxable income.

In corporate acquisitions, the use of the acquired company's tax loss carryforwards and certain other favorable tax attributes are generally limited or forfeited.

Start-Up and Organizational Costs

A taxpayer may elect to deduct up to $5,000 of start-up and $5,000 of organizational expenditures in the taxable year in which the trade or business begins. However, each $5,000 is reduced (but not below zero) by the amount the cumulative cost of start-up or organizational expenditures exceeds $50,000. Start-up and organizational expenditures that are not deductible in the year in which the trade or business begins are amortized over a 15-year period.

Costs associated with investigating a new business are considered start-up costs.

Costs associated with raising capital are not deductible, but are included in the investor's basis and used to decrease the gain (or increase the loss) upon sale or liquidation of the entity.

8. Payroll Taxes and Social Security

Payroll Taxes

Employers are subject to several types of employment taxes. In some cases, the employer is acting as the tax collector for the government. In other cases, the employer is paying its own tax costs. Employers are required to deduct and withhold federal, state, and local income taxes from the salaries and wages of their employees. The federal government also imposes Social Security taxes on both employees and employers (see below). There are also certain federal, state and local taxes and related insurance costs that are assessed and collected as part of the payroll process. These include payments for worker's compensation (on-the-job injuries) and unemployment insurance, which is charged at both the federal and state level.

Social Security Tax

The Social Security tax is imposed on employers and employees under the Federal Insurance Contributions Act (FICA). It is also imposed on self-employed individuals under the Self-Employment Contribution Act (SECA). The FICA tax is imposed at the same rate on both the employee and the employer. The employer is required to collect the employee's portion of the tax through a payroll deduction and then promptly remit the withholding along with the employer's portion of the tax to the government.

For 2012, employment income up to $110,100 is taxed at 13.30 percent. Employment income in excess of $110,100 is taxed at 2.9 percent (1.45 percent is paid by the employer and 1.45 percent is paid by the employee). The base amount is indexed annually.

SECA is imposed on the self-employment income of self-employed individuals if their earnings equal or exceed $400 for the taxable year. The same annual FICA earnings ceiling limits (see above) apply to earnings subject to SECA, although the self-employed individual is responsible for both the employer and employee portions. One-half of this amount is generally deductible in arriving at federal taxable income.

Note that some foreign countries have Social Security totalization agreements with the U.S., which may reduce or eliminate the U.S. FICA tax and SECA tax (see the following).

Totalization Agreements

The United States currently has International Social Security "Totalization" agreements with Australia, Austria, Belgium, Canada, the Czech Republic, Chile, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Poland, Portugal, South Korea, Spain, Sweden, Switzerland, and the United Kingdom.

Agreements are pending or under negotiation with Argentina, Israel, Mexico and New Zealand.

The agreements generally provide, among other things, that one country, but not both, will impose its Social Security tax and ultimately provide the benefits, thereby eliminating double Social Security taxation on a worker's earnings and the need to coordinate benefits at a later date.

In order for an individual to be covered by a totalization agreement, affirmative action is required. The agreements are neither automatic nor retroactive, and only cover wages earned after the appropriate taxing agency has issued a Certificate of Coverage.

9. VAT / GST / Sales and Use Tax

The United States equivalent to VAT or GST is the sales and use tax. Sales and use taxes are imposed at the state and local level. Forty-five states, the District of Columbia, and many local jurisdictions impose sales and use taxes. The rules vary by jurisdiction, and typically range from five to eight percent of the retail selling price.

Generally speaking, sales tax is imposed on the sale or purchase of tangible property and some services.

A business is responsible for collecting the sales or use tax on its sales to the extent that the business has “nexus” within the jurisdiction that imposes the tax. Sales tax nexus is created by a "physical presence," temporarily or permanently, within the jurisdiction. Some examples of activity that create this physical presence include an office, owning property, or traveling into a jurisdiction to solicit sales. It is much easier to create sales tax nexus than income tax nexus, and controversy reigns over whether “physical presence” or a broader concept of “economic presence” will be used in the future to create liability and compliance exposure.

Once nexus is established, the business will need to determine if the product or service sold is subject to sales tax. The applicable state (and local in some instances) laws need to be examined for the sales tax implications. States typically exempt wholesale sales, or sales for resale. Many states have exemptions for government entities, educational institutions, and non-profit entities. Typically, customers provide the vendor with an exemption certificate to claim an exempt status. If a sale is not exempt, sales tax should be charged as part of the transaction and remitted to the state.

If taxable property or services are purchased from a vendor and the vendor does not charge the corresponding sales tax, the purchaser is liable to pay use tax directly to the state or local jurisdiction. The use tax is a complementary tax to the sales tax and is intended to tax products or services when the vendor does not have nexus within the jurisdiction.

Several states joined together to create a Streamlined Sales and Use Tax Agreement. The purpose of the agreement is to simplify and modernize sales and use tax administration in the member states to substantially reduce the burden of tax compliance. The agreement is intended to encourage sellers without a physical presence in the state to voluntarily register and begin collecting tax in response to the simplifications. The member states hope that Congress will eventually grant them the authority to compel sellers to collect and remit tax on mail, phone and Internet sales to customers where the seller does not otherwise have nexus. Additional information on the Agreement may be found at http://www.streamlinedsalestax.org.

Businesses that are required to collect and remit sales tax (or pay use tax) do so by filing separate sales tax returns, which can be audited by state authorities,

generally within three years. If no returns are filed, there is no statute of limitations for auditing and collecting past-due taxes.

10. Special Interest Issues

Transfer Pricing

The United States, like most developed countries, has established rules and regulations regarding the ability of the IRS to allocate gross income, deductions, and credits between "related" taxpayers to the extent necessary to prevent evasion of taxes, or to clearly reflect the income of related taxpayers.

The U.S. regulations are based on the principle that transactions between related parties (controlled transactions) should be evaluated on an “arm’s-length basis.” In other words, the pricing between related parties is evaluated against data supporting how unrelated parties would structure a similar transaction. Without these provisions, taxpayers could engage in abusive transactions with affiliates to minimize or eliminate taxes in higher-tax jurisdictions.

The transfer pricing regulations provide taxpayers with guidelines to follow and enumerate the permissible methods that can be used in supporting the transfer price. Failure to follow the transfer pricing guidelines can result in adjustments to taxable income and in some cases the imposition of substantial penalties. Obtaining evidence supporting a pricing position in advance of filing a tax return can be expensive, but it also can prevent penalties that can often be as much as 40 percent of the understated tax plus interest from the original due date.

Controlled Foreign Corporation Taxation

As stated above, the general rule is that income of a foreign subsidiary of a U.S. parent is not taxable (i.e., it is “deferred”) until physically remitted to the U.S. However, the U.S. has had a Controlled Foreign Corporation (CFC) anti-deferral tax regime since 1962. Under this regime, certain income earned by a CFC, referred to as “subpart F income,” is taxed currently to the U.S. shareholders of the CFC, rather than at the time of distribution of such earnings. Undistributed taxed earnings are deemed to be distributed and re-contributed to capital, so the shareholder’s basis is increased to the extent that income taxation is accelerated. Additionally, under these rules, the character of gains on the sale of CFC shares is often partly considered dividend income and partly capital gain.

A foreign corporation is a CFC if “United States shareholders” own more than 50 percent of the total combined voting power or value of the foreign corporation. A “United States shareholder” is a U.S. person (a U.S. citizen or resident individual, corporation, partnership, estate or trust) owning at least 10 percent of the voting power or value of the foreign corporation. The ownership rules are complex and often consider related entities and families as a single owner. If an entity is a CFC, Form 5471 may be required by the United States shareholders.

The four most common types of subpart F income are as follows:

1. Passive income, such as interest, dividends, rents, royalties, annuities and net gains from the sale of assets producing the passive income. Rents and royalties are excepted if they are generated from an active business. Interest and dividends are excepted if they are received from a related person located in the same country as the CFC.

2. Income from the manufacture and sale of goods outside the CFC's country of incorporation, if the goods are sold to or purchased by a related party.

3. Income from the performance of services for a related party, outside the CFC's country of incorporation.

4. A CFC's earnings that are invested in U.S. assets.

Generally, the income is not considered subpart F income if either: (1) the income is subject to a foreign tax rate of greater than 90 percent of the maximum U.S. tax rate; or (2) the CFC's subpart F income is less than the lesser of: (a) five percent of the CFC's gross income; or (b) $1,000,000.

All calculations related to the CFC's activities are made using U.S. tax accounting principles in U.S. dollars. For example, depreciation must be recalculated using U.S. rules; only 50 percent of meals and entertainment expenses are deductible under U.S. tax law. Thus, in many cases, the income computed under U.S. tax principles is greater than the income computed under local (foreign) law.

Strict annual disclosure rules apply to all CFC's and may apply to any greater-than-10-percent owner, director or officer in a foreign corporation.

Passive Foreign Investment Companies

The passive foreign investment company (PFIC) rules apply to any U.S. shareholder of a PFIC, regardless of the total U.S. ownership percentage.

A PFIC is any foreign corporation that meets either an income test or an asset test. Under the income test, at least 75 percent of the corporation's income must be passive income (dividends, interest, rents and royalties, as discussed above). Under the asset test, at least 50 percent of the corporation's assets must be held for the production of passive income.

If either test is met, regardless of their percentage ownership in a PFIC, the U.S. shareholders must either elect to include in income annually their share of the PFIC's earnings, or be charged interest on the amount of tax due when a large distribution is received or the shares of the PFIC are sold at a gain. All calculations are made using U.S. tax accounting principles in U.S. dollars.

Until recently, a U.S. person, who is a direct or indirect shareholder of a PFIC, was not required to file additional information regarding the PFIC with the Internal Revenue Service unless the U.S. person: (1) recognized a gain on a direct or indirect disposition of PFIC stock; (2) received certain direct or indirect distributions from a PFIC; or (3) made an election to treat the PFIC as a Qualified Electing Fund (i.e., generally as a pass-through entity for U.S. tax purposes), in which case the U.S. person was required to file Form 8621, *Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*, with the government.

Congress recently enacted a new law, which will require a U.S. person who is a shareholder of a PFIC to file an annual return with the IRS. The new reporting requirement will not apply until the IRS develops the rules and the forms to implement the new reporting requirement. Until then, the IRS has stated that persons who were required to file Form 8621 under the pre-existing law must continue to file Form 8621 as provided in the form's instructions.

Investing in U.S. Real Estate

Investors in U.S. real estate (U.S. real property) encounter an alphabet soup of general and special purpose entities that can dramatically change how they are taxed and how much tax they will pay if their investment meets with success — and sometimes regardless of results. LLC (Limited Liability Company); LP (or GP, for limited and general partnership); Inc. (or sometimes "Corp" for corporation); and REIT (Real Estate Investment Trust) are only a few of the popular monikers to go along with RIC, REMIC, UP-REITS and countless variations on the theme for real estate and related investing.

The choice of entity, or a special purpose entity interposed between the foreign investor and the U.S. real estate, is situation specific. If real estate is about location, location, location, then planning to own it in the U.S. is *structure, structure, structure*.

The structure depends on factors such as the type of foreign investor (e.g., individual, corporation, trust, syndicate, etc.); the nature of the investment (e.g., long-term hold, net lease, development to sell, etc.); financing; the tax status of the investor; and whether widely held public companies or simply private investors are involved. Projections and plans are essential, since conflicting structures often produce marginally or significantly better results based on the outcome. The flexibility of the U.S. tax and entity system makes the best structure a fact-driven decision. One thing that is virtually certain, however, is that a tax will be due when the property is sold to a third party at a profit due to special anti-avoidance legislation for real estate. The rules from the Foreign Investment in Real Property Tax Act (FIRPTA) apply to all real property and its derivative forms, including mineral interests and most leaseholds and companies that own the property. The tax can be deferred, but sooner or later it will be due.

Like most countries, the U.S. also has special rules that both favor and manage tax avoidance in connection with foreign investment in real estate. Two are worth highlighting.

Gains from real estate can be rolled over through “like-kind exchanges,” which are also known by the Code section 1031 that permits them. The process is regimented and investors must follow strict rules to never receive the cash on a sale. This is typically accomplished by using a qualified intermediary, such as title companies, trust companies, banks or other special purpose entities that are in the business of accommodating like-kind exchanges on any sale that precedes a purchase. Cash received is taxed currently when sale proceeds are not fully reinvested through the intermediary. Strict timing and adherence to statutory form is essential for identifying properties that are being acquired within 45 days in exchange for properties that are being sold, and the exchange must be complete within 180 days or the sale is taxable. Nevertheless, through this technique, successful investments in U.S. real estate can be rolled forward into virtual perpetuity. In some cases, the cash flow from operations and refinancing can be enjoyed tax free for years.

In the anti-avoidance area, in addition to FIRPTA, the U.S. has strict anti-earnings stripping rules that apply to all but totally independent debt financing. Even if a foreign-related person makes a special request of the domestic U.S. lender to provide any form of assurance of repayment, interest on the debt is only deductible to the extent of half the adjusted taxable income of the U.S. taxpayer.

In spite of the current concern over sub-prime credit and securitizations, and the more or less consistent run up in prices since 1991—that have undergone a significant downward trend beginning in 2007—the U.S. is reported to have significant attractive real estate investment opportunities for foreigners. These investments appear particularly cheap to some at today’s exchange rates. There is a desirable structure to optimize any of these property investment opportunities.

Foreign Account Reporting

Each U.S. person who has a financial interest in or signature authority, or other authority over any financial accounts, including bank, securities or other types of financial accounts in a foreign country, must annually report details of the accounts to the U.S. Department of the Treasury, if the aggregate value of the financial accounts exceeds $10,000 at any time during the calendar year. This information is reported on Form TD F 90-22.1 “Report of Foreign Bank and Financial Accounts” and must be filed annually if, at any point during the calendar year, a U.S. person has such ownership. Form TD F 90-22.1 (FBAR) is due and must be received by the IRS by June 30 of the year following the date the requirements are met.

Failure to file the FBAR could result in civil and criminal penalties. The civil penalty for willful violations is the greater of $100,000 or 50 percent of the amount of the transaction, or the balance of the account, at the time of the offense. The maximum civil penalty for non-willful failure to file is $10,000 per violation. If the amount of the transaction or the balance of the foreign account is reported on the taxpayer’s Form 1040, the penalty may be eliminated as a result of the “reasonable cause” exception. If the failure to file is deemed to be a criminal violation, the penalty can include a fine of up to $250,000, imprisonment for up to five years, or both. If the failure to file is deemed to be part of other criminal activity, the fine

increases to $500,000, and the possibility of imprisonment increases for up to 10 years.

A U.S. person who has an interest in or, authority over, a foreign financial account worth more than $10,000 must file the FBAR. This includes all U.S. citizens and resident aliens and all U.S. estates, trusts, partnerships and corporations. Any "U.S. person" does not include nonresident aliens. There may be multiple FBARs required to be filed. The entity and individual shareholders or members may have filing requirements.

The income tax "substantial presence" test may cause an individual to be required to file the FBAR. This test provides that an individual becomes a U.S. tax resident (regardless of immigration status) if he or she is present in the U.S. during the current tax year for at least 31 days and for a total of 183 or more weighted average days over a three-year period that includes the two preceding calendar years. The weighted average is calculated by counting one day for each day in the current year, 1/3 of a day for the previous year and 1/6 of a day in the second preceding year. Days of arrival and departure are counted as full days, no matter how brief the presence.

Any type of account that holds liquid assets or marketable securities meets the definition of "financial account" for reporting purposes. This includes everything from a cash account to a foreign mutual fund and certain foreign pension and insurance policies.

The ability to order the distribution or disbursement of funds by signing a document providing such direction qualifies the individual as having "signature authority" over the account. Individuals who can make investment decisions, but who do not have the ability or discretion to make disbursements, do not have a FBAR reporting requirement. For example, a Director who does not operate or solely control management should not be required to file a form for an account on which he or she was not a signatory. In addition, an individual has a financial interest in every account for which the individual is the owner of record or has legal title.

As mentioned earlier, a taxpayer is required to file Form TD F 90-22-1 with the U.S. Department of the Treasury by June 30 of the year following the calendar year in which the taxpayer meets the $10,000 filing requirement. For tax years beginning after March 18, 2010, Congress enacted an additional filing requirement for individuals who exceed a $50,000 threshold. The new law requires an individual who holds any interest in foreign financial assets, as specified under the Internal Revenue Code, to attach the required information for each asset to their tax return if the aggregate value of all of the specified assets exceeds $50,000 during the tax year.

Form 8938, Statement of Specified Foreign Financial Assets, may be required to be filed by individuals in addition to the FBAR form. Filing requirements vary depending on the taxpayer's income tax filing status and whether or not the taxpayer is domiciled within or outside the U.S. Currently, only individuals are

required to file this form; however, there is legislation pending to subject entities to the filing requirements as well.

Distributions and Dividends

Corporate distributions are first considered taxable dividends under U.S. tax principles to the extent of the corporation's "earnings and profits" (E&P). Distributions in excess of E&P are tax-free returns of capital to the extent of the shareholder's basis in the shares. Distributions in excess of basis are considered capital gains, which may or may not be taxable to a foreign person. Earnings and profits reflect primarily the corporation's cumulative taxable income plus certain adjustments. It is not identical to "earned surplus" or "retained earnings." There are special rules, discussed earlier, for companies that principally own U.S. real estate.

Thin Capitalization

The classification of a corporate obligation as debt or equity is of great importance in U.S. corporate taxation. Only interest is deductible against taxable income by the paying corporation. Dividends are not tax deductible by the payor. The retirement of a debt instrument is usually tax free, but the redemption of stock is generally taxable to the recipient. Treating an obligation as debt or equity is often critical in determining which of several provisions of U.S. tax law apply. While the form of the transaction executed by the taxpayer will typically prevail, U.S. tax law in this area provides broad authority for the IRS to re-cast a structure based on its economic substance over its self-serving form. Thus, in order to determine the federal tax implications, the substance of an obligation must be carefully evaluated in the planning stage before a transaction is consummated.

A U.S. tax deduction may be deferred for interest accrued by a corporation to a related person (generally a 50 percent or greater shareholder) that is not fully subject to U.S. income tax on the interest income. In order to receive a tax deduction, the interest must be paid to the related party. Additionally, there may be limitations on the deductibility of the interest for the U.S. corporation if the debt to equity ratio exceeds 1.5 to 1. This limitation can be calculated on Form 8926.

The deduction for interest paid to third parties may be deferred if the indebtedness is guaranteed in any way, directly or indirectly, by a foreign related person. A deduction for interest that is deferred is carried forward and may be deducted in future years. This "anti-earnings stripping" provision applies when the U.S. corporation realizes tax losses or insufficient amounts of taxable income prior to all interest charges, depreciation and certain other adjustments, if the U.S. corporation's debt-to-equity ratio exceeds a prescribed ratio. Interest paid that is exempt from tax or subject to a treaty-reduced tax rate is subject to these deferral provisions.

Corporate Liquidations

A corporate distribution to its shareholders in complete liquidation is generally treated as a sale or exchange by the shareholders of a capital asset. Except in the

case of a U.S. real property interest, a foreign shareholder is generally not subject to U.S. taxation on the receipt of liquidating distributions, or any other capital gains.

The liquidating corporation generally recognizes a gain or loss on a distribution of its assets in complete liquidation, or on the sale of its assets in conjunction with a complete liquidation. An exception applies for the liquidation of subsidiaries: the liquidating corporation and its 80-percent-or-greater corporate shareholder generally do not recognize gain or loss upon such a liquidating distribution. However, the liquidating corporation does generally recognize gain or loss if the parent corporate shareholder is foreign.

State and Local Governmental Incentives

State and local governments have historically provided various incentives to businesses in an attempt to induce them to locate in their business in a particular area.

Some of these incentives are tied to the number of jobs a business will create and have taken the form of a reduction in the tax rate for a specified period of time; tax credits; assistance in training the workforce; and/or property tax reductions or exemptions. These incentives may not even be publicized. Learning about these incentives and obtaining them often involves contacting the appropriate state and local governments for details and negotiating with them to obtain the subsidy.

Other recently emerging state and local incentives include “green programs” to promote energy efficient construction and renewable energy projects.

Worker Classification

The proper classification of a worker as an employee or an independent contractor can have significant effects on a business and its workers. The determination of the proper classification of workers is a “facts and circumstances” test that has been the subject of much controversy and litigation. A worker is generally considered an employee when the employer has the right to control and direct the individual who performs the work. Control seems to be the largest factor for distinguishing between the two classifications.

The abundant case law has created six areas the Internal Revenue Service focuses on when determining whether an individual is an employee or an independent contractor:

1. Details of the work performance
2. Expenses of the work performance
3. Compensation for the work performance
4. Duration of the work position
5. Structure of the work position
6. Location of the work performance

Even with all of this history, the answer is often far from clear and is based on the unique facts and circumstances in each case.

11. Personal Income Taxation

For 2010, the U.S. imposed a maximum individual income tax rate of 35 percent on ordinary income. For 2011, the maximum individual income tax rate imposed was 39.6 percent. The rates have recently been changing with an increased frequency. In addition, several major changes are currently being contemplated, including the extension of the provision for the research and development tax credit; and the rollback of the estate and gift tax rates that were in effect 2001. For a more detailed list of expiring tax provisions, see HR 4213 on the U.S. House of Representatives website (www.house.gov).

The 2012 graduated tax rates for single persons, excluding net long-term capital gains, are as follows:

Taxable Income Over:		**But Not Over:**		**The Tax is:**		**Of the Amount Over:**
Nil		$8,375		10%		Nil
$8,700		35,350		$870.00 + 15%		$8,700
35,350		85,650		4,867.50 + 25%		35,350
85,650		178,650		17,442.50 + 28%		85,650
178,650		388,350		43,842.50 + 33%		178,650
388,350				112,683.50 + 35%		388,350

Tax rates for 2013 will be changing. Please consult current information for the current tax rates.

There are separate tax rate tables for married persons filing jointly, married persons filing separately, and unmarried people with qualifying dependents (usually children) called “heads of household.”

Special advantageous rules apply to long-term capital gains (assets held more than one year), which are generally taxed at 15 percent. Currently, “qualified” dividends are also subject to a maximum 15 percent rate.

An alternative minimum tax of 26 percent or 28 percent applies if a substantial amount of an individual’s deductions or income excluded from current taxation is due to “preference items,” such as a deduction for state and local income taxes, or the difference between the fair-market value and the amount paid for certain stock (i.e., “share”) options.

State income taxes, if applicable, are in addition to the above federal income tax amounts.

Individual Income Tax

Individual income tax returns are almost always filed on a calendar-year basis, and the tax return is due on or before April 15 of the following year. An automatic six-month extension of time to file (not pay) can be requested, extending the filing date

of the return to October 15. If there is estimated tax due, payment is required with the extension. Underpayments of tax may be subject to a penalty and interest is assessed from April 15 to the date of filing.

A special rule allows certain individuals who live abroad to file on June 15, but interest is charged on any underpayments from April 15 to the date of payment. An extension is available and must be filed by June 15, to extend the filing date of the return to October 15. If the due date falls on a Saturday, Sunday or federal holiday, then the due date becomes the next business day.

Since U.S. tax is based on aggregated results of all activity, estimated tax payments may be required. Individuals generally make estimated tax payments if their income is not subject to withholding or if the withholding is not sufficient to cover the tax liability. An employer is required to withhold tax on wages, and this often satisfies the tax liability on the wages, unless an employee receives large lump sums like bonuses. The estimated tax payments are due on April 15, June 15, September 15 and January 15 of the next succeeding year. The payments can be equal installments based on the prior year's tax liability, or if the taxpayer has significant differences in income during the year, the payments can be based on the actual taxable income earned each quarter.

State Income Tax

State income taxes, if applicable, are in addition to federal income tax amounts. State and local income taxes vary by location. The state rates vary from zero (Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming) to more than nine percent (California, Hawaii, New Jersey, Oregon and Rhode Island). Some states replace income tax with wealth taxes, sales taxes and/or other types of taxes. It is often important to evaluate the entire tax system of the state(s) in which the business is located, or will be located, to quantify the tax costs of living and/or doing business in the U.S., and to perform effective tax planning. City income taxes also vary and can be as high as four percent (New York City).

The U.S. taxes its citizens and permanent residents (i.e., "green card' holders) on their worldwide income regardless where they reside. The foreign tax credit is designed to minimize the effects of any "double" taxation by the U.S. and a foreign jurisdiction.

In the year of arrival and the year of departure, the U.S. taxes foreign individuals who move to or from the U.S. as nonresidents, part-year residents or full-year residents. Part-year residents and full-year residents are taxed on their worldwide income during the period of residency. Nonresidents are generally taxed only on their U.S. source income. Note, however, that U.S. source income includes all income from the performance of personal services in the U.S. if the income earned each year is more than $3,000, regardless of the residence of the payer. Thus, tax planning should occur before an individual moves to the U.S. In addition, the U.S. tax rules regarding trusts can be complex and the tax results can be surprising to foreign individuals. If applicable, the U.S. income tax rules regarding trusts should be addressed before an individual takes up U.S. residency. Special rules also

apply in the year of departure, for three years thereafter and for certain long-term permanent resident aliens, for up to 10 years post departure. Tax treaties with an individual's home country often reduce the exposure and complexity, but they must be considered for each particular set of facts. Knowing the rules regarding departure can prevent unexpected taxes or consequences in later years.

12. Estate and Gift Taxes

The estate and gift tax is not an income tax, but rather a wealth transfer tax. The *transfer tax* regime applies to taxable gifts of property made by an individual during his or her life and taxable bequests made at death. The estate and gift tax regime is separate from the income tax regime. The U.S. estate and gift tax regime is assessed on the giver or transferor of the property (including the decedent, who is considered the transferor at the time of death). In general, the recipient is not taxed on the receipt of the property. The recipient is taxed under the income tax regime on the income earned by the property post-receipt, as well as the gain from the property's appreciation in the event of a future sale.

The federal estate tax which was to have been repealed for the year 2010 was impacted by the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act (TRA 2010) signed into law on December 17, 2010. This new law provided changes to the estate and gift tax for tax years 2010, 2011 and 2012. Estates and gifts have a maximum tax rate of 35%. The credit for transfers made by gift is unified with the credit for transfers made at death. In 2012 both receive a combined unified credit of $1,772,800 ($5,120,000 exclusion amount).

Estate Tax

For an estate of any decedent dying during calendar year 2012, the basic exclusion from estate tax amount is $5,120,000, up from $5,000,000 for calendar year 2011. Also, if the executor chooses to use the special use valuation method for qualified real property, the aggregate decrease in the value of the property resulting from the choice cannot exceed $1,040,000, up from $1,020,000 for 2011.

The federal estate tax has been repealed for the year 2010 only. However, this is coupled with a change to the income tax basis adjustment rules. Previously, most of a decedent's assets had an income tax basis adjusted to fair market value at the date of death. This was true regardless of the size of the estate. Now the estate is allowed $1.3 million (plus an additional adjustment for married couples) to add to the decedent's cost basis. The adjusted amount becomes the income tax cost basis for the heirs.

There are two separate estate and gift tax regimes, one for U.S. citizens and U.S. residents, and a second regime for nonresident aliens. To further complicate matters, the definition of U.S. residency for estate and gift tax purposes is different from the definition for income tax purposes. A foreign citizen is considered a U.S. resident for estate and gift tax purposes if the individual's "domicile" is in the U.S. Domicile is defined as the place where the individual resides with an intention to remain indefinitely. A tax imposed upon long-standing resident aliens who permanently leave the U.S. has recently been enacted and should be reviewed. The tax impact of the resident's state and states in which taxable property resides should be reviewed.

U.S. citizens and U.S. domiciled foreign citizens are taxed at death on the fair market value of all of the decedent's worldwide assets less certain deductions.

One of the deductions allowed is the marital deduction for transfers to the decedent's spouse, but only if the spouse is a U.S. citizen or if the property is transferred to a special trust for the benefit of the spouse who is a non-U.S. citizen. Otherwise, U.S. estate tax generally applies to any U.S. estate of $60,000.

Only certain property situated in the U.S. owned by a foreign citizen not domiciled in the U.S. at the time of death—and not a U.S. citizen—is subject to U.S. estate tax. Generally, stocks (i.e., "shares") and bonds of U.S. corporations, U.S. real estate, and pensions including deferred compensation accounts are included in a U.S. estate. Deposits in a U.S. bank and proceeds from a life insurance policy are generally not included in a U.S. estate. Estate tax treaties may mitigate the inclusion of certain U.S. situated assets in a nonresident alien's gross estate. For example, several treaties exclude stock and debt of U.S. corporations owned by nonresident aliens in treaty countries.

Gift Tax

U.S. citizens and U.S. domiciled foreign citizens are subject to gift tax on the fair market value of all gifts made during a lifetime, unless an exclusion exists. For example, an unlimited exclusion is available to pay for any third-party medical or educational expenses. For this exclusion to apply, the bills must be paid directly, not as reimbursements to a friend or a relative.

An individual can also make multiple gifts of $13,000 each in 2012 to separate recipients. These gifts are not included in the total amount of the donor's taxable gifts during that year. The annual exclusion amount is indexed annually for inflation. Married couples can treat the gift as if each made one-half of the gift.

Doing so can double the amount that can be transferred annually tax free to any one recipient. All gifts between spouses who are both U.S. citizens are tax free (similar rules apply to divorce settlements). For 2012, the annual limit on tax free gifts to a non-citizen spouse is $139,000. This exclusion amount is indexed for inflation each year and does not need to be reported.

Gifts made by foreign citizens, who are not domiciled in the U.S., are generally exempt from U.S. gift taxes. U.S. gift tax applies only to gifts of U.S. real property and tangible personal property. Gifts of U.S. tangible property, including cash, U.S. stocks (i.e., shares) and bonds, are generally not subject to U.S. tax, as long as the gift is not made in the U.S.

A recipient's basis in a gift for U.S. income tax purposes is generally equal to the transferor's basis in the item prior to the gift.

Gifts of less than $14,723 received by U.S. citizens and U.S. residents (as defined under the income tax regime) from foreign citizens are not taxable in the U.S. However, aggregate gifts of over $14,723 received during a calendar year must be reported to the Internal Revenue Service on Form 3520.

When a donor does not pay gift tax, the receiver may have “transference liability” in some cases. Failure to report gifts can be subject to a penalty of five percent of the gift for each month, up to a maximum of 25 percent.

For 2012, the unified rate schedule for the estate and gift tax is as follows:

Column A		Column B		Column C		Column D
Taxable Income		**Taxable Amount**		**Tax on Amount**		**Rate of Tax On Excess Over Amount**
Over:		**Not Over:**		**in Column A**		**In Column A**
						Percent
$0		$10,000		$0		18
10,000		20,000		1,800		20
20,000		40,000		3,800		22
40,000		60,000		8,200		24
60,000		80,000		13,000		26
80,000		100,000		18,200		28
100,000		150,000		23,800		30
150,000		250,000		38,800		32
250,000		500,000		70,800		34
500,000		750,000		155,800		37
750,000		1,000,000		248,300		39
1,000,000		1,250,000		345,800		41
1,250,000		1,500,000		448,300		43
1,500,000		2,000,000		555,800		45
2,000,000		2,500,000		780,800		45
2,500,000		3,000,000		1,025,800		53
Over 3,000,000				1,290,800		55
Special range for 5% surtax to phase out the benefit of graduated tax rates						
10,000,000		17,184,000		Maximum surtax: 5% x $7,184,000= $359,200		5% surtax means a 60% marginal tax rate in this range

A credit is given against the calculated tax of $345,800. This effectively exempts the first $1,000,000 (per person) of assets from the tax.

Appendix A:

A Select List of Useful Websites

Listed below are some websites that contain extensive information and further details on issues related to the U.S., particularly on matters of business, the economy, taxes and commerce. Most of these sites contain multiple links to other sources that may be helpful. Several of the sites include information in more than one language, as well. This is by no means intended to be the definitive list of Websites related to U.S. information. There are hundreds, even thousands, more. These are intended to narrow your search to the government-sponsored sites on the select matters contained in this guide.

*www.msnainc.*org - Visit our website to find out more about Moore Stephens North America, Inc., including the services our member firms provide, and the locations of member firms.

www.moorestephens.com - Visit the Moore Stephens International Limited global website to find out about our global services and the worldwide locations of our member firms.

www.fedstats.gov – Provides access to key statistical sources within the U.S. government (multiple bureaus and agencies). Also includes a statistical profile of each state.

- Economics and Statistics Administration – *www.esa.doc.gov.*
- Bureau of Economic Analysis (BEA) – *www.bea.gov*. The BEA promotes a better understanding of the U.S. economy by providing timely, relevant, and accurate economic accounts data in an objective and cost-effective manner.
- Bureau of Labor Statistics – www.bls.gov. Principal fact-finding agency for the Federal Government in the broad field of labor economics and statistics.
- Census Bureau – *www.census.gov*. Includes in-depth population figures, nationally, by state, ethnicity, *etc*. Includes data from most recent nationwide census (2010), as well as archived data. Also includes much economic and international trade data.
- International Trade Administration (ITA) – *trade.gov/index.asp.* Ensures fair trade through the rigorous enforcement of U.S. trade laws.

www.usa.gov – Provides information on many topics, including, jobs and education; money and taxes; consumer protection; and environment and energy.

www.ustreas.gov – This is site for the U.S. Department of the Treasury. In addition to accounting and budget information, this site includes international section with trade and market information.

www.irs.gov – Internal Revenue Service site includes a section on foreign tax information and guidance, including "Essential Concepts of International Taxation."

www.ssa.gov/international – Social Security Administration site contains information about the SSA's Office of International Programs, including social security programs in other countries.

dir.yahoo.com/Government/U_S__Government/Taxes/State_Tax_Agencies/ – Yahoo! maintains a list of websites with information for the various states.

www.dol.gov – Official site of the U.S. Department of Labor includes information on workforce issues.

www.sec.gov – The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

www.pcaob.com - The PCAOB is a non-profit organization created to oversee the auditors of public companies and to protect the interest of investors and the general public.

www.fasb.org – The mission of the FASB is to establish and improve standards of financial accounting and reporting for the guidance and education of the public, including issuers, auditors, and users of financial information.

www.aicpa.org - The mission of the AICPA is to provide members with the resources, information, and leadership that enable them to provide valuable services in the highest professional manner to benefit the public as well as employers and clients.

Appendix B:

A Review of the U.S. Tax System for Incoming Foreign Executives

The following is a general outline of tax issues faced by foreign executives coming to the U.S. The U.S. tax law with respect to the taxation of foreign individuals is complex, and a competent tax advisor should be engaged to ensure full compliance with the tax laws.

Often, the type of tax is blurred because the defining pronouns (federal, state, sales, FICA, etc.) that are familiar to most Americans are confusing, vague or unknown to the foreign person. These topics should be reviewed with a tax professional familiar with local customs, since there are literally tens of thousands of taxing jurisdictions with separate rules throughout the U.S. Typically, only a few are visible to the taxpayer, but the person new to the system often needs to know about the taxes that are controllable and those that will affect the executive's family.

1. **Income tax.** Estimates to pay this tax are generally withheld from payroll by every employer whenever the company pays employee compensation. Compensation includes salary, bonus, and most fringe benefits, such as housing and the personal use of employer-owned automobiles.

   These taxes are subtracted from each paycheck, but these "withholdings" are not tax payments; they are deposits on account. These withholdings are reported to the government when the employee files an annual income tax return reporting wages and withholdings, along with all other forms of taxable income. Some types of income are subject to withholding and some are not. All income is taxable to residents, subject to special exceptions, exclusions, deductions and credits.

   Accordingly, by filing an income tax return with the annual self-assessment of tax, the employee's taxes are officially "paid" by crediting the wage withholdings along with any quarterly estimated tax payments that are tendered by taxpayers who do not have sufficient overall withholdings to meet their expected tax liability. If the employee has overpaid the tax liability, a refund in cash can be requested or the employee can apply it to the next year. If the employee has underpaid the liability, the employee must pay the additional tax before April 15 to avoid expensive interest/underpayment penalties, even if an extension of time to file is requested.

   The adequacy of tax payments during the year is the employee's responsibility. If he/she under-contributed, modest underpayment penalties must be paid, which are based on market interest rates. A separate tax return and accounting is prepared and submitted to each government where the employee works, lives and/or has sources of income. This includes:

- Federal Income Tax
- Resident State Income Tax
- Work/office State's Income Tax, if different from the employee's resident state
- Other states/city income taxes, where applicable

2. **Payroll tax.** A federal tax is paid by all employees based on wages and withheld from all compensation payments. The employer pays a matching amount. These taxes are paid and subtracted from each paycheck. This is a tax assessment and no further tax return is filed.

   - FICA tax, which is for the U.S. retirement system, generally referred to as Social Security tax, is normally charged at 6.2% of the first $110,100 for 2012, adjusted annually. For 2012, there is a 2% reduction in the percentage withheld from the employee's paycheck so that only 4.2% will be withheld instead of the normal 6.2%.

   - Medicare tax, which provides health care for elderly persons, disabled workers, and certain survivors (children and spouses) of wage earners, is charged at 1.45 percent of all compensation.

3. **Sales/use tax.** Sales/use tax is commonly called "sales tax." This tax is added to the purchase price of most consumer items. It is paid by consumers, who normally do not need to file a tax return or account to the government for the tax, except under unusual circumstances. Occasionally, sales tax also applies to services.

   There are thousands of systems and definitions in use by each U.S. state and locality of what is taxable and what is exempt. Historically, like the VAT system in Europe, most of the responsibility for calculating, collecting, and paying the tax rests on vendors. For this reason, the sales/use tax system is somewhere from opaque to invisible to most individuals. Most tax was historically collected by businesses at the point of retail sale and remitted to the government by the merchant.

   Unlike the VAT, sales/use tax is not due with every transaction — only at the point of retail sale. There are a lot of exceptions, which vary from state to state and jurisdiction to jurisdiction. Payment of the tax by the consumer at the time of purchase is generally simple and straightforward. Unfortunately, the underlying tax rules and concepts are quite complex to apply when exceptions occur, and the individual becomes directly responsible for the process or the payment.

   Two common traps confuse and complicate the life of the general public in this area:

   1. Real property construction or improvement is generally not subject to sales/use tax on the end consumer. This includes buying or

remodeling a home. (Other taxes relating to buying or selling a home are discussed later as Real Property and Transfer Taxes.) Instead, someone, usually the vendor/contractor, must pay tax on the purchase of materials used to make the improvements. The sale of the materials to the person making the capital improvement is considered a taxable sale to the end user. Since material cost is a small fraction of home construction/renovation costs compared with labor and contractor's profit, this is a good deal and a savings.

2. Purchases made outside of the purchaser's home state are generally subject to use tax in the home state if the out-of-state vendor does not collect the taxes at the point of sale. Examples: (1) Purchaser living in New York makes a purchase through the internet from a vendor located solely in Texas that ships the purchased goods to New York; (2) New York resident purchases clothing from a store while on vacation in Las Vegas, Nevada; (3) New York resident purchases items during a business trip in France. All of these purchases are fully taxable in New York. A credit is generally given if the vendor collected sales/use tax in another state, but not for foreign VAT.

These sales/use taxes were largely uncollected for years, but the explosion of internet and catalog shopping in the past 20 years has cost states meaningful amounts of lost tax revenues. Thus, state tax collectors are now aggressively pursuing these revenues. Many states, such as New York, have added a line to their individual income tax returns (See section 1) to collect this tax. Other states require a separate set of forms to self-assess and remit tax, quarterly or annually.

4. **Real Property tax**. Real property tax is commonly referred to as "real estate tax" and is charged to owners of real property. For example, homeowners are taxed annually by the community they live in so that the local government can provide local services, such as schools, sanitation, fire and police.

These taxes are *prorated* when a house is purchased or sold. Thereafter the owner receives a bill from the local community once or twice a year and must make the payment directly. Sometimes, the payments can be made quarterly. It is important to pay these bills on time as they are completely the homeowner's responsibility, even if the government forgets to send the bill or does not change its records from the old to the new owner. Each homeowner should actively monitor this, especially when changes occur.

Some mortgage companies take on the responsibility of paying real estate taxes because the government's lien for real estate taxes is superior to their claim. In such instances, the mortgage company collects payments from the homeowner, holds them in escrow and pays the bills when due. Escrow statements should be reviewed annually when this system is being

used to make sure transactions are being handled correctly, especially because paying the mortgage company may not relieve the homeowner of the liability (e.g., if the mortgage company does not pay the local government).

5. **Personal property tax**. Some states, such as Connecticut, have an annual personal property tax on some important, expensive items, such as automobiles. Often, states will mail out partially completed forms for taxpayers to self-assess. People in these states need to be aware of the tax and their responsibility.

6. **Transfer tax**. Transfer tax and mortgage recording taxes are common fees charged in connection with the purchase and sale of a home or other real property. These are calculated and paid as part of the purchase or sale transaction and should be reviewed with a representative in connection with the transaction.

7. **Excise and other taxes**. There are a lot of other minor taxes, customs duties, and transaction fees charged by the various governments that all coexist in the United States. Generally, the responsibility for payment of these items vests with the manufacturer or merchant, and they are invisible to the consumer and require no other action other than paying the bill from the vendor. The vendor adds the charges for these items to the cost of the products, as is the case with any airline ticket or telephone bill. Others are not covered here because they are limited to a very few jurisdictions. The rules of every state one lives, works or has business in should be checked.

Appendix C:

U.S. Immigration Options for Hiring and Transferring Foreign Personnel
By H. Ronald Klasko *

One of the critical concerns of foreign-owned companies establishing U.S. operations and of U.S. businesses with operations overseas is the speed and certainty with which the U.S. immigration process can be facilitated for executives, managers and key employees. This concern is shared by domestic companies hiring foreign nationals. With advance planning, companies should find U.S. immigration laws flexible enough to meet their needs in most cases. This outline will summarize the available visa options that allow employment of foreign nationals in the United States.

Each of the visa options discussed will be analyzed keeping in mind several key issues, including:

- Whether overseas operations are required
- Importance of ownership of the company
- Type of position offered
- Employee background required
- Salary offered
- Length of time employee is needed in the United States
- Timing of obtaining visa

It is prudent for employers to use the services of U.S. immigration lawyers experienced in dealing with business immigration issues to navigate through this process, and to provide advice regarding the best options for particular needs, possible hurdles, risks, timing and other issues beyond the scope of this guide.

- H. Ronald Klasko (rklasko@klaskolaw.com) is the managing partner of Klasko, Rulon, Stock & Seltzer, LLP, with offices in Philadelphia and New York. He is a former national president of the American Immigration Lawyers Association (AILA) and served for three years as that association's General Counsel. He is a past chair of AILA's Business Immigration Committee, Department of Labor National Liaison Committee and its Task Force on H and L Visas. Mr. Klasko has been selected for inclusion in Best Lawyers in America every year since 1991. He was selected by his peers as one of the top two most respected corporate immigration lawyers in the world every year since 2007 by the International Who's Who of Business Lawyers. Mr. Klasko is a member of the Alliance of Business Immigration Lawyers.

L-1 (Intracompany Transferee) Visa

The L-1 visa enables overseas companies with parents, subsidiaries, affiliates or branch offices in the United States to transfer managers, executives, and "specialized knowledge" employees to the United States. The employee must have been employed abroad in a managerial, executive or specialized knowledge capacity during one of the last three years prior to transfer in an office of the foreign company; and must be employed by the same company, or a parent, subsidiary or affiliate, as a manager, executive or specialized knowledge employee in the United States. In most (but not all) cases, there must be at least a 50% common equity interest between the foreign and U.S. companies (exceptions may exist where there is a minority equity relationship, but common control). No particular salary payment is required. The company can be foreign owned or U.S. owned. No particular education background of the employee is required.

The petition is filed by the U.S. company with U.S. Citizenship and Immigration Services (USCIS); and, upon approval, is forwarded to the U.S. Consulate where an L-1 visa can be issued to the employee. Some companies with large multinational operations may qualify for blanket L-1 status, which enables the petition to be filed directly with the U.S. Consulate, thereby bypassing the petition with USCIS. L-1 visas usually allow a three-year initial entry. One extension of stay of two years is possible for a specialized knowledge employee, while managerial and executive employees may be entitled to two separate two-year extensions. In the case of a start-up business or a company doing business for less than one year in the U.S., the initial approval is limited to one year, with extensions to a total of five years (specialized knowledge) or seven years (managers and executives) possible.

USCIS is required by law to adjudicate L-1 petitions within 30 days. Employers can pay an additional $1,225 premium processing fee to be guaranteed a review of the petition within 15 days or less.

E-1 and E-2 Visas

The E-1 Treaty Trader visa and the E-2 Treaty Investor visa are only available to employees of companies owned at least 50 percent by nationals of a country that has a special treaty relationship with the U.S., or to individuals who are nationals of the treaty country. The E-1 visa is an option for companies or individuals engaged in substantial import or export, a majority of which is between the U.S. and the country of nationality of at least 50 percent of the owners of the company. The E-2 visa is available to companies which have invested a substantial amount of capital in U.S. operations. Such companies are allowed to transfer executives, supervisors, and "essential skill" employees to U.S. operations if such employees are of the same nationality. The E-2 visa is also available to individual nationals of a treaty country who make a substantial active investment in an enterprise, which creates job opportunities if they come to the U.S. to direct the investment.

Neither substantial trade nor substantial investment is subject to exact definition. Substantial *trade* takes into account both volume and dollar value of the transactions; substantial *investment* looks at the amount necessary to create a viable enterprise in the U.S. and the percentage of the investment by the foreign entity compared with the total investment in the U.S. entity.

The employee to be transferred does not have to have worked for the company overseas. No particular education or experience is required of the employee. There is also no salary test.

Applications can be made directly to the U.S. Consulate without any pre-approval by USCIS. Where a company is making the investment, as a general rule, the Consulate will first approve the company as a treaty company, and then review the application of the individual employee seeking transfer. Once the company is certified, individual employees can apply directly at the U.S. Consulate. Visas are usually issued for five years, although shorter periods may be dictated by reciprocity limitations with certain countries or at the discretion of the U.S. Consulate. Each single admission to the U.S. is limited to two years, with an indefinite number of two-year extensions possible.

H-1B Visas

The H-1B visa is available to an employee who is offered a position that requires a U.S. bachelor's or higher degree as a minimum qualification. In addition, the employee must have a U.S. or foreign equivalent degree, or a combination of education and experience that is equivalent to the required degree. The H-1B visa is available to multinational companies and purely domestic U.S. companies, irrespective of ownership.

The process is initiated by the company filing with the Department of Labor (DOL) a labor condition application attesting that the employee will be paid the higher of the actual wage paid to other similarly situated employees or the "prevailing wage." The prevailing wage is determined by accessing government or private compensation surveys to determine the average wage paid to U.S. workers by other companies in the geographic area. The second step is the filing of a petition with USCIS. Upon approval, the employee may apply for the H-1B visa at the U.S. Consulate. The normal processing time is often four to five months, although companies can obtain approval within 15 days or less by paying the premium processing fee. Initial entry is limited to three years, and one extension of stay for a maximum of three more years is possible.

The H-1B visa is subject to a more complex regulatory scheme, with more potential liabilities to employers than with other visa categories. Employers must maintain a file available for public inspection containing certain information relating to the employment of the H-1B foreign national. Notice of the filing must be provided to the collective bargaining representative or, in the absence of a collective bargaining representative, notice must be posted in conspicuous locations where H-1B employees will be employed. The employer must agree to pay the return cost of transportation of the foreign national to his or her home country in the event that

the foreign national is terminated prior to the conclusion of the approved H-1B period, and assuming the foreign national opts to leave the U.S.

Under a concept called H-1B portability, employers can commence the employment of applicants for H-1B status upon the filing of the H-1B petition if the employee was previously in H-1B status. In all other cases involving initial H-1Bs (or any other visas), the employment cannot commence until the petition is approved.

Unlike the other visa categories discussed above, there is an annual quota on H-1B visa issuance. Although not every company or every individual is subject to the quota, where the quota applies, applications can be filed beginning in April for a start date of October 1.

B-1 Visa

The B-1, or Visitor for Business visa, is a valuable option for short-term transfers or where speed of transfer is of the essence. The employee must continue to be employed and paid by the company outside of the U.S. during the employee's temporary assignment in the U.S. Examples of appropriate B-1 visa usage are employees exploring the feasibility of U.S. operations, performing liaison functions, obtaining information, investigating investment opportunities, and taking projects back to the home country. All remuneration (except for reimbursement of expenses) must be paid by the overseas company, and the foreign employee cannot be engaged in day-to-day employment responsibilities in the U.S. other than for the benefit of the overseas company.

The advantage of the B-1 visa is that it can generally be obtained very promptly at a U.S. Consulate. No petition filed with USCIS is required. Nationals of certain countries are exempt from the necessity of obtaining a B-1 visa, and can enter the U.S. without a visa for up to three months at a time.

Foreign nationals entering under B-1 visas or without a visa are often subject to greater scrutiny at the U.S. port of entry. It is prudent for such individuals to carry a letter from the company explaining the need for them to come to the U.S. and the fact that they will not be employed or paid in the U.S. foreign nationals entering without a visa cannot obtain an extension beyond 90 days. A foreign national entering with a B-1 visa is normally admitted for six months or less at a time and can apply for an extension in the U.S., if necessary.

Other Visas Allowing Employment in the United States

F-1 and J-1

Students in F-1 (Student) or J-1 (Exchange Visitor) status may be entitled to practical training with the approval of the designated school official. Following completion of studies, F-1 Students may obtain 12 months of practical training (in some cases, up to 29 months); and J-1 Exchange Visitors may receive 18 months of practical training. Practical training is approved by USCIS, which issues an

employment authorization document. No action is required on the part of the employer. Since the practical training is not extendable, employers who wish to continue the employment of a student with practical training generally must initiate the H-1B process prior to the conclusion of the practical training.

H-2B Temporary Workers

The H-2B Work visa is available for employees coming to undertake trainer or other positions in the United States which by their very nature are temporary. The company must first satisfy DOL that there are no qualified U.S. workers available and interested in the position by engaging in necessary advertising. The company must also satisfy DOL that the prevailing wage will be paid to the foreign worker. Upon certification by DOL, a petition may be filed with USCIS. Upon approval, the employee may apply for visa issuance at the U.S. Consulate. Initial entry is limited to one year, with two one-year possible, but difficult to obtain, extensions. The H-2B visa is appropriate for seasonal employees, peak-load employees, and other employees who will not need to be replaced upon the conclusion of their temporary employment. There is a semiannual quota on H-2B visas, so that such visas may not be available during certain parts of the year.

H-3 Visa

The H-3 Trainee visa is for employees being sent to the U.S. for training where any productive employment is incidental to such training. The training must equip the employee to work overseas and must generally be unavailable in the home country. The petition is filed directly with USCIS with no DOL involvement required. There is no prevailing wage requirement. Entry is limited to two years.

J-1 Exchange Visitor Visa

The J-1 Exchange Visitor visa must be sponsored by an entity approved by the U.S. Department of State. Universities, hospitals, and companies can obtain such approval after an often lengthy application process. Alternatively, U.S. companies can pay an application fee to companies that have already been approved by the Department of State and that are eligible to act as “third-party sponsors” for training programs conducted by non-approved companies. J-1 visas are issued to students, trainees, scholars, researchers, professors, and others for varying periods of stay. Trainees are generally limited to 18 months, and researchers are generally limited to five years. The sponsoring entity issues a DS-2019 Form to the employee, who applies directly at the U.S. Consulate. Some employees who enter on J-1 visas are subject to a requirement that they return to their home country for two years.

O-1 Visa

Foreign nationals with “sustained national or international acclaim and recognition” may qualify for O-1 extraordinary ability classification. This visa requires proof that the foreign national has a reputation for being “one of a few at the top” of his or her specific field of expertise. This can be proven by a combination of documents and reference letters. The employer files with USCIS a petition, which is eligible for

premium processing consideration. The O-1 visa can be issued for three years with unlimited numbers of one-year extensions possible.

TN-1

A Canadian or Mexican national may be able to obtain TN-1 status if his or her occupation appears on a schedule of occupations included in the North American Free Trade Agreement. Most of these occupations require an educational background of bachelor level or higher. TN-1 status can be granted at the port of entry without a pre-approved petition. If approved, TN-1 status can be granted for up to three years. Unlimited numbers of extensions either at the port of entry, or at USCIS, are possible, although TN-1 status is considered temporary and can be denied if it appears that a foreign national employee has abandoned his or her intention to return to a foreign residence.

E-3 Visa

The E-3 visa, available only for Australian citizens, is very similar to the H-1B visa. Differences include: not subject to H-1B quota; unlimited extensions; and spouses are permitted to work.

Spouses

Each visa category allows spouses and children (under 21) to enter the U.S. for the same length of time as the principal. Spouses of L-1s, E-1s, E-2s, E-3s and J-1s can obtain work documents. Other spouses cannot work unless they are sponsored by their own employers for one of the listed working visa statuses.

Permanent Residence Status

Some employees transferred to the United States wish to become U.S. permanent residents. The advantage of permanent residence status is that it enables the individual to remain permanently (or as long as he or she wishes) in the U.S. without having to apply for visas or extensions. The U.S. income and estate tax ramifications of obtaining permanent resident status should be considered before an application is submitted.

Most non-managerial employees are required to go through a process called a labor certification application as the first step in becoming a permanent resident. This process requires recruitment efforts on behalf of the employer and proof that no qualified U.S. worker is available to fill the position.

Three categories of employees are exempt from this “test of the labor market” requirement. Managerial and executive-level transferees may obtain permanent resident status through a petition filed by the employer directly with USCIS. If the requisite corporate relationship exists, and the employee was employed as a manager or executive overseas, and as a manager or executive with the related company in the U.S., the individual can be approved as a multinational manager or

executive, and, based upon that classification, apply for permanent residence status.

Other employees who do not have to go through the labor certification process are "aliens of extraordinary ability" and aliens with advanced degrees or "exceptional ability" performing services in the national interest of the U.S. In these instances, the company or the individual employee can file a petition with USCIS, and, upon approval, obtain permanent resident status.

Finally, investors who invest $500,000 or $1,000,000 (depending on the geographical area) in a commercial enterprise may be able to obtain permanent resident status. Investment can be made in a business that will employ 10 full-time U.S. workers or in a government-approved "regional center."

All employees applying for permanent resident status are subject to immigrant quotas. These quotas vary by country, by type of application and by level of education required for the position. In some cases, the quota will be current, meaning there will be no delay. In other cases, the quota may result in multiple-year delays in the permanent residence process.

Travel Issues

A key concern for companies transferring personnel is assurance that their employees not encounter problems traveling in and out of the United States. Holders of H-1B, L-1, E-1, E-2, E-3 and O-1 visas are not subject to the requirement of proving that they have a residence overseas to which they intend to return. Other visa categories have this requirement.

Especially since September 11, 2001, security clearances may result in delays in the visa issuance process. Sometimes these delays are predictable, and sometimes they are unforeseen. In addition to security clearance delays, U.S. Consulates often require personal interviews of applicants. There can be lengthy delays in obtaining appointments for visa issuance at some U.S. Consulates.

****

NOTES

NOTES

NOTES

NOTES

NOTES

Moore Stephens North America, Inc.
Park 80 West, Plaza II
250 Pehle Avenue, Suite 200
Saddle Brook, New Jersey 07663
Phone: 201.291.2660 • Fax: 201.368.1944
www.msnainc.org