KPMG

Taxation of international executives: United States

March 2025

Contents

1	Overview and Introduction	4
2	Income Tax	6
3	Special considerations for short-term assignments	22
4	Other taxes and levies	24
5	Immigration	32

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01

Overview and Introduction

1 Overview and Introduction

In the United States (U.S.), foreign nationals who are U.S. residents are generally taxed on their worldwide compensation regardless of where or for whom the services are performed. Compensation includes cash remuneration and the fair market value of property or services received. Special exclusions may apply to the foreign earned income of a citizen or resident for services performed in a country/jurisdiction other than the United States.

Foreign nationals who are nonresidents are subject to U.S. tax only on income from U.S. sources. U.S.-source income that is not effectively connected with a U.S. trade or business (e.g., investment income) is taxed at a flat 30-percent rate, unless a treaty provides for a lower rate. A nonresident who is engaged in a trade or business within the United States during the taxable year is taxed on the income effectively connected with the U.S. trade or business, less allowable deductions, at the same graduated rates that apply to the income of citizens and residents. Generally, income effectively connected with a U.S. trade or business includes compensation for personal services performed in the United States.

A foreign national who changes from U.S. resident status to nonresident status or vice versa during a year (a dual-status taxpayer) is subject to U.S. tax as if the year were divided into two separate periods, one while a U.S. resident and one while a nonresident. The dual-status foreign national is generally subject to tax on worldwide income for the period of residence, and only on US-source income for the period of nonresidence.

Under domestic law, if a nonresident is in the United States for 90 days or less during a calendar year, performs services for a foreign employer that is not engaged in a U.S. trade or business, and earns 3,000 U.S. dollars (USD) or less for such U.S. services, the compensation is not subject to U.S. tax. Most treaties provide broader exemptions from U.S. tax for earned income, allowing a higher, or no, limit if the nonresident is present in the United States for no more than 183 days during a 12-month period, provided certain requirements are met.

Federal income tax rates range from 10 percent to 37 percent.

The official U.S. currency is the United States Dollar (USD).

For the purposes of this publication, the host country/jurisdiction refers to the country/jurisdiction to which the employee is assigned. The home country/jurisdiction refers to the country/jurisdiction where the assignee lives when they are not on assignment.

This publication reflects United States law as it was in effect on 1 January 2025. Note that certain thresholds and benefits are adjusted annually for inflation.

02

Income tax

2 Income Tax

2.1 Tax returns and compliance

When are tax returns due? That is, what is the tax return due date?

15 April of the year following the end of the tax year to which the return relates (but see discussion of extensions). If 15 April falls on a weekend or holiday, the due date is the following business day.

What is the tax year end?

31 December.

What are the compliance requirements for tax returns in the United States?

Individual income tax returns for residents are generally due on or before the 15th day of the fourth month following the close of the taxable year (15 April in the case of a calendar-year taxpayer, which is the required year for nearly all taxpayers). The time for filing can be automatically extended for 6 months by filing Internal Revenue Service (IRS) **Form 4868**, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*. However, the time for payment of tax cannot be extended.

Nonresidents who have compensation subject to withholding must file their income tax returns on or before 15 April. In the case of a nonresident who does not have compensation subject to income tax withholding, the tax return is due on 15 June.

Nonresidents generally must file income tax returns on time to be permitted to claim deductions. In addition, nonresidents who claim the benefits of treaty provisions, or otherwise modify an internal revenue law of the United States, may be required to disclose this position on the tax return. Failure to disclose could lead to substantial penalties, including possible disallowance of the treaty benefit claimed.

Generally, the tax shown on an income tax return is self-assessed and must be paid by the filing deadline for the return, determined without regard to any extension of time for filing the return. The U.S. government makes no separate assessment of tax or notice of tax due.

Residents

Withholding

Individuals pay tax either through withholding or by making payments of estimated tax. Income tax is withheld from wages paid by an employer. Wages include cash and non-cash payments for services performed by an employee unless an exception applies.

Estimated tax payments

A taxpayer must pay a certain amount of tax during the current year to avoid penalties for under-payment, so a taxpayer should make estimated installment tax payments if it is expected that tax withholding will be insufficient to satisfy their tax liability. However, an individual is exempted from estimated tax payment requirements if the tax for the current year, after credit for withholding tax, is less than USD 1,000.

See **Calculation of Estimates/Pre-payments/Withholding** below for further discussion of estimated tax payments.

Nonresidents

Withholding

Nonresidents are subject to withholding of income tax on wages paid by their employer for services performed in the United States.

A nonresident may also be subject to withholding on other U.S.-source income, such as investment income. The withholding rate is 30 percent unless a lower treaty rate applies.

Estimated tax payments

If income tax withholding is not sufficient to cover their income tax liability, nonresidents are subject to the same estimated tax payment requirements as residents.

For nonresident taxpayers, the estimated payment schedule is the same as for residents. See **Calculation of Estimates/Pre-payments/Withholding** below for further discussion of estimated tax payments.

2.2 Tax rates

What are the current personal income tax rates in the United States?

Residents

There are four types of tax status that may apply to a resident:

- Married filing jointly/qualifying widow(er)
- Married filing separately
- Head of household (unmarried and maintaining a home for qualified dependent individuals)
- Single

Each filing status is subject to a different graduated tax rate scale. The tax rates for 2025 are shown in the tables below. A couple will be considered to be married for U.S. federal tax purposes if they were legally married in a jurisdiction that recognizes their union and that marriage is recognized by at least one U.S. state, territory, or possession, regardless of the couple's domicile.

Income Tax Tables for 2025		
Taxable Income Bracket		Tax Rate
From USD	To USD	Percent
Married Filing Jointly		
0	23,850	10
23,851	96,950	12
96,951	206,700	22
206,701	394,600	24
394,601	501,050	32

Income Tax Tables for 2025		
Taxable Income Bracket		Tax Rate
From USD	To USD	Percent
501,051	751,600	35
751,601	No limit	37
Married Filing Separately		
0	11,925	10
11,926	48,475	12
48,476	103,350	22
103,351	197,300	24
197,301	250,525	32
250,256	375,800	35
375,801	No limit	37
Head of Household		
0	17,000	10
17,001	64,850	12
64,851	103,350	22
103,351	197,300	24
197,301	250,500	32
250,501	626,350	35
626,351	No limit	37
Single		
0	11,925	10
11,926	48,475	12
48,476	103,350	22
103,351	197,300	24
197,301	250,525	32
250,526	626,350	35

Income Tax Tables for 2025		
Taxable Income Bracket		Tax Rate
From USD	To USD	Percent
626,351	No limit	37

It is generally more beneficial for married taxpayers to file using the status “married filing jointly” versus “married filing separately.” However, married individuals must file separately if either spouse is a nonresident at any time during the tax year. Certain elections may be available to allow a married couple to use the married filing jointly status when one or both individuals is a nonresident during part of the year.

A taxpayer may also be subject to an alternative minimum tax. The alternative minimum tax is payable to the extent it exceeds an individual’s regular tax liability. The alternative minimum tax is figured using lower rates but allows fewer deductions.

Tax rates on long-term capital gains and qualified dividends for 2025 (all figures in USD)

Filing Status	Single	Married Filing Jointly/ Qualifying Widow(er)	Married Filing Separately	Head of Household
0% if taxable income is less than	48,350	96,700	48,350	64,750
15% if taxable income is less than	533,400	600,050	300,000	566,700

Nonresidents

A nonresident is subject to tax at graduated rates for income that is effectively connected with a U.S. trade or business, such as compensation for services rendered in the United States. A 30-percent flat tax (or lower treaty rate) applies to U.S.-source income that is not effectively connected to a U.S. trade or business, such as U.S.-source dividend income, certain interest, and royalties’ income.

In most cases, nonresidents must file their U.S. income tax return using single or married filing separately status.

2.3 Residence rules

For the purposes of taxation, how is an individual defined as a resident of the United States?

As a general rule, a foreign citizen is treated as a nonresident for U.S. tax purposes unless the individual qualifies as a resident. Under U.S. domestic law, a resident is defined as an individual who either is a lawful permanent resident (the “green card” test) or meets the “substantial presence” test.

A lawful permanent resident is an individual who has been officially granted the right to reside permanently in the United States. These individuals are often referred to as green card holders.

An individual who meets the substantial presence test is an individual who has been present in the United States for at least 31 days in the current calendar year and an aggregate of 183 days during the current and 2 preceding years, counting all the days of physical presence in the current year, one-third of the days in the first preceding year, and one-sixth of the days in the second preceding year. In general, a

partial day of presence in the United States is counted as one day of U.S. presence for purposes of applying the substantial presence test.

An individual may be both a nonresident and a resident at different times during the same tax year. This may occur in the year a foreign citizen arrives in or departs from the United States. For an individual who meets only the green card test, residence begins on the first day of the calendar year in which the individual is physically present in the United States as a lawful permanent resident and will generally cease on the day the lawful permanent resident status officially ends.

Residence under the substantial presence test generally begins the first day during the year on which the individual is physically present in the United States. An individual generally will cease to be a resident following their last day of physical presence in the United States provided certain conditions are met.

Is there a de minimis number of days rule when it comes to residency start and end dates? For example, taxpayers cannot come back to the host country/jurisdiction for more than 10 days after their assignments end and they repatriate.

A period of up to 10 days of presence in the United States will not be counted for the purpose of determining an individual's residency start and end dates; those days of presence will be counted, however, for the purpose of determining whether the 183-day component of the substantial presence test has been met.

What if the assignee enters the country/jurisdiction before their assignment begins?

If the taxpayer has multiple short visits to the United States prior to commencing residency, the residency start date is deemed to be the first day of the visit during which the individual's cumulative presence for the year exceeds 10 days. An individual may be present in the United States for 10 days in total (for example, on a short business or house-hunting trip) and not trigger residency under the substantial presence test (discussed above), if the individual has a tax home in a foreign country/jurisdiction and a closer connection to the foreign country/jurisdiction during those days. (An individual may generally establish that the tax home is in a foreign country/jurisdiction by showing that their principal place of business and/or abode is located in such foreign country/jurisdiction.) The purpose of a visit to the United States is not relevant for determining whether a person is a U.S. resident, nor for determining the residency start date. Under the rules of the substantial presence test, residency is a function of presence rather than intent.

2.4 Termination of residence

Are there any tax compliance requirements when leaving the United States?

Generally, all foreign nationals departing from the United States are required to first obtain tax clearance – commonly known as a "sailing permit" or "departure permit" – from the IRS by filing either **Form 1040-C,** *U.S. Departing Alien Income Tax Return*, or **Form 2063**, *U.S. Departing Alien Income Tax Statement*, and, in most cases, to pay any tax due or post a bond. Form 2063 should be filed with the IRS if there is no taxable income for the year of departure and the preceding year or, in the case of a resident, if the IRS is satisfied that the departure will not jeopardize collection of tax.

The departing foreign national should make the application for the sailing permit with the IRS at least 2 weeks, but not more than 30 days, before departing the United States. If the IRS deems all requirements have been met, the foreign national will be issued the sailing permit. Certain categories of individuals, students, trainees, exchange visitors, and certain foreign nationals temporarily in the United States, may be exempt from the sailing permit rules if specific requirements are met.

What if the assignee comes back for a trip after residency has terminated?

If an individual who qualified as a U.S. resident under the substantial presence test returns to the United States for short visits which total more than 10 days later in the same year, U.S. residency may be extended until the last day of actual presence in the United States.

2.5 Communication between immigration and taxation authorities

Do the immigration authorities in the United States provide information to the local taxation authorities regarding when a person enters or leaves the United States?

Formal information sharing among U.S. authorities can occur.

2.6 Filing requirements

Will an assignee have a filing requirement in the host country/jurisdiction after they leave the country/jurisdiction and repatriates?

If U.S.-source income is received after an assignee ceases to be a U.S. resident, the assignee must file a nonresident income tax return to report the income, remit any tax due, or claim any refund.

Additionally, because the tax return is due 15 April of the year following the close of the tax year, the assignee will have to file the tax return for the year of departure in the year following departure.

2.7 Economic employer approach

Do the taxation authorities in the United States adopt the economic employer approach to interpreting the Income from Employment article (article 15) of the Organization for Economic Co-operation and Development (OECD) treaty?

The United States does not explicitly adopt the economic employer approach. Rather, under the 2016 U.S. Model Income Tax Convention (which serves as the basis for the U.S. negotiating position for income tax treaties), the United States may not tax employment income if three conditions are satisfied: (a) the individual is present in the United States for a period or periods not exceeding 183 days in any 12-month period that begins or ends during the relevant tax year; (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the United States; and (c) the remuneration is not borne as a deductible expense by a permanent establishment that the employer has in the United States.

If a foreign person pays the salary of an employee who is employed in the United States, but a U.S. corporation or permanent establishment reimburses the payor with a payment that can be identified as a reimbursement, neither condition (b) nor (c) will be considered to have been fulfilled.

2.8 De minimis number of days

Is there a de minimis number of days before the local taxation authorities will apply the economic employer approach? If yes, what is the de minimis number of days?

No.

However, under U.S. tax law, a nonresident alien performing personal services for a foreign employer in the United States, who is present in the United States for a period of 90 days or less, and whose compensation for those services is no more than USD 3,000, will not be subject to U.S. tax on the income earned.

2.9 Types of taxable compensation

What categories are subject to income tax in general situations?

The following is a list of typical items in an international assignment compensation package that are fully taxable (to a resident or nonresident) unless otherwise indicated. Please note this is not a comprehensive list.

- Basic salary.
- Foreign location premium.
- Reimbursement of host or home country/jurisdiction taxes. Reimbursements of tuition for children.
- Home leave reimbursements. Employer contribution to rent.
- Free or below-market-value use of employer-furnished accommodation. (However, if employer-furnished accommodation is provided on the employer's business premises for the convenience of the employer, and the employee is required to accept it as a condition of employment, the value of such lodging may be excluded. Camp housing is, in most cases, covered by this exception.)
- Personal use of a company car, including home-to-work travel. (Business use of a company car will generally not be taxable if adequate records are maintained and proper accounting is made in the employee's tax return or to their employer.)
- Moving allowances and moving expense reimbursements such as meal expenses, expenses incurred while searching for a new home, cost of selling the old residence or acquiring a new residence, and temporary living expenses.
- Employer stock (in certain cases). The taxable amount of employer stock and other property is the excess of the fair market value of the stock/property over the amount, if any the employee pays for the stock/property. Special rules exist where such property is encumbered by restrictions.
- Stock options in certain cases. The tax treatment of stock options depends on the nature of the option. See **Taxation of Investment Income and Capital Gains** below for more information.

2.10 Intra-group statutory directors

Will a nonresident of the United States who, as part of their employment within a group company, is also appointed as a statutory director (i.e., member of the Board of Directors in a group company situated in the US) trigger personal tax liability in the US, even though no separate director's fee/remuneration is paid for their duties as a board member?

Yes. A nonresident director will trigger U.S. tax liability if they perform services in the United States, rather than as a result of being employed by or serving on the board of a U.S. company.

Will the taxation be triggered irrespective of whether or not the board member is physically present at the board meetings in the US?

No. Income for personal services is taxable to a nonresident to the extent that the income is related to services that were provided in the United States.

Will the answer be different if the cost directly or indirectly is charged to/allocated to the company situated in the United States (i.e., as a general management fee where the duties rendered as a board member is included)?

No.

In the case that a tax liability is triggered, how will the taxable income be determined?

If the director is also employed by the company, generally the U.S.-source portion of their compensation will be determined by applying the ratio of days worked in the United States over all days worked during the year, regardless of whether the services provided in the U.S. were directors' duties or other responsibilities. The answer might be different if there was a separate contract for the director duties, or if the employment contract specifically stated which portion of compensation was related to director duties.

2.11 Tax-exempt income

Are there any areas of income that are exempt from taxation in the United States? If so, please provide a general definition of these areas.

Below we highlight the most common items of compensation that are exempt from income tax. Please note this is not a comprehensive list.

Contributions to profit sharing or pension plans

Generally, contributions to profit sharing or pension plans paid by the employer on behalf of the employee are not currently taxable (that is, they are tax deferred) if the plan is a U.S. qualified plan. Certain tax treaties may provide favorable treatment for similar foreign plans.

Medical expense reimbursements and accident and health insurance premiums

Medical expense reimbursements and employer-paid accident and health insurance premiums for U.S. qualified plans.

Meals and lodging

Lodging and meals that are provided for the employer's convenience, on business premises, and as a condition of employment.

Certain fringe benefits

Certain employee benefits of nominal value.

Temporarily-away-from-home travel expenses

For a discussion of away-from-home travel expenses, see **Special Considerations for Short-Term Assignments.**

2.12 Expatriate concessions

Are there any concessions made for assignees in the United States?

Generally, the United States does not offer any expatriate concessions to foreign citizens working in the United States. However, holders of F, J, and Q visas may be exempt from income tax on compensation under certain circumstances.

2.13 Salary earned from working abroad

Is salary earned from working abroad taxed in the United States? If so, how?

In general, U.S. citizens and residents are taxed on all income from all sources. A U.S. citizen or "green card" holder may reside abroad but will continue to be subject to U.S. tax as if a resident.

However, a U.S. citizen or resident who has a tax home in a foreign country/jurisdiction and who is physically present in a foreign country/jurisdiction or countries/jurisdictions for at least 330 full days during any period of 12 consecutive months may elect to exclude a portion of their foreign earned income from gross income. The amount that may be excluded in 2025 is USD 130,000. (This amount is adjusted annually for inflation.) An additional exclusion or deduction for certain housing costs may also be claimed subject to limitations.

A U.S. citizen who establishes that they have been a bona fide resident of a foreign country/jurisdiction or countries/jurisdictions for an uninterrupted period that includes an entire calendar year may also elect to exclude a portion of their foreign income from gross income, subject to the same limitations noted above. A housing deduction or housing exclusion may also be claimed subject to certain limitations.

2.14 Taxation of investment income and capital gains

Are investment income and capital gains taxed in the United States? If so, how?

A U.S. citizen or resident is subject to U.S. tax on worldwide income. Thus, a resident is subject to tax on investment income (wherever paid) including interest and dividend income, capital gains, and income (less expenses) from partnerships and rental properties.

For a nonresident, U.S.-source investment income that is not effectively connected with a U.S. trade or business is generally taxed at 30 percent (or the lower treaty rate, if applicable). The tax applies to gross income without deductions. Items of investment income subject to tax include, in part, dividends, certain interest (including original issue discount), rents, royalties, and certain capital gains.

Certain investment interest income and certain capital gains are exempt from U.S. taxation.

In general, nonresidents are not taxed on net capital gains, except for any dispositions of a U.S. real property interest and sales of assets used in a U.S. trade or business.

2.15 Dividends, interest, and rental income

Generally, U.S. residents are subject to tax on dividend, interest, and rental income (net of deductions).

Nonresidents are generally subject to tax on U.S.-source income. Dividend income is U.S. source if paid by a U.S. corporation. Interest income is U.S. source if paid by a U.S. corporation or other entity that is a U.S. resident. However, interest on U.S. bank deposits received by a nonresident is specifically exempt from tax.

Nonresidents are taxed on gross rental income from U.S. real property held for investment at the flat 30-percent (or, if applicable, the lower treaty) rate. This rental income is not considered effectively connected with a U.S. trade or business, so no deductions (such as interest, taxes, and depreciation) are allowed. An election can be made to treat rental income as effectively connected with a U.S. trade or business. The election permits rental income to be reduced by expenses allocable to the income (such as interest, taxes, and depreciation). The election also causes the net income from the property to be taxed at graduated rates. An income tax return must be filed to make this election, which in most cases is beneficial. Gain recognized by a nonresident from the sale or disposal of U.S. real property is generally subject to tax at the regular graduated U.S. tax rates, including the applicable capital gains tax rates.

2.16 Gains from stock option exercises

A stock option is the right granted to an employee or to an independent contractor to purchase shares in their corporate employer or a related company. The option agreement usually specifies the purchase price and time period during which the option may be exercised. The taxation of stock options to an individual depends on whether the options are incentive stock options or nonqualified options.

An incentive stock option (ISO) is an option that meets certain statutory requirements. If all requirements are met and an option is considered an ISO, no income is recognized upon grant or exercise of the option; instead, capital gain is recognized when the acquired stock is sold.

A nonqualified stock option (NQSO) is generally any option other than an ISO that is granted to acquire employer common stock. Unless the option has an ascertainable fair market value, an individual is not taxed when granted a nonqualified stock option. Upon the exercise of the NQSO, the individual is treated as receiving taxable compensation measured by the excess of the fair market value of the stock received over its purchase price. The subsequent sale of the stock will result in a capital gain or loss. In determining gain or loss, the basis of the option stock is the purchase price plus the compensation recognized at exercise.

Although this is generally not the case with compensatory options, if an option has a readily ascertainable fair market value at the time of grant, the individual recognizes income at the time of grant, or at the time of vesting if later, instead of at the time of exercise of the option.

U.S. residents are taxed on the entire amount of compensation income, while nonresidents are taxed only on the portion of the income that is from U.S. sources. Generally, this is determined by applying the ratio of all U.S. workdays between the grant and vesting dates to the total number of workdays over the same period to the total stock option income recognized at exercise.

2.17 Foreign exchange gains and losses

Foreign exchange gain is generally taxable and is considered ordinary income subject to tax at graduated tax rates. If the foreign exchange transaction is not related to business or investment and results in a loss, the loss is considered a non-deductible personal loss.

2.18 Principal residence gains and losses

Up to USD 250,000 of gain realized on the sale of a principal residence (USD 500,000 for a married couple that files their tax return jointly) may be excluded from income if certain conditions are met.

To qualify for this exclusion, the individual must have owned and used the property as a principal residence for periods that total at least 2 years in the 5-year period ending on the date of sale. The ownership and use requirements may be satisfied during non-concurrent periods provided both tests are met during the 5-year period ending on the date of the sale. Once claimed, this exclusion cannot be claimed again for 2 years. If this requirement is not met due to certain unforeseen circumstances (such as change in place of employment, health, or divorce), a pro rata exclusion may be allowed.

If a property is used for a purpose other than as a principal residence (e.g., as a rental property or vacation home), and is subsequently used as a principal residence, then upon sale, the gain attributable to the period of time that the property was not used as a principal residence is not eligible for the exclusion. Certain exceptions to this rule may apply.

2.19 Capital losses

Generally, capital losses are deductible only against capital gains. However, residents may deduct up to USD 3,000 (USD 1,500 on a married filing separate return) of net capital loss against other income. Unused capital losses may be carried forward indefinitely to be used in future years.

For nonresidents, capital losses from the sale or exchange of capital assets effectively connected with a U.S. trade or business are taxed under the same rules that apply to U.S. residents.

2.20 Personal use items

Gain realized on the sale of assets held for personal use is generally taxed as capital gain. Loss on such assets is not deductible. A deduction is allowed if a property loss is caused by a federally declared disaster. A deduction for loss in connection with personal losses suffered due to other casualties or theft is suspended for tax years 2018 through 2025.

2.21 Gifts

Recipients of gifts are not subject to tax upon receipt of the gift. The donor of a gift may be subject to gift tax, which is based on the value of the gift. Annual and lifetime gift tax exemptions apply to the donor. See **Gift, Wealth, Estate, and/or Inheritance Tax** below for further discussion.

2.22 Additional capital gains tax (CGT) issues and exceptions

Are there additional CGT issues in the United States? If so, please discuss?

No.

Are there CGT exceptions in the United States? If so, please discuss?

Gain on disposition of real property may be deferred if the property is exchanged for other real property. Such transactions are subject to various restrictions and generally require careful planning to accomplish the deferral of tax.

2.23 Pre-CGT assets

Not applicable.

2.24 Deemed disposal and acquisition

Generally, not applicable. However, a deemed disposition tax could apply for individuals subject to an exit tax upon expatriation. See **Other Taxes** below for more information.

2.25 General deductions from income

What are the general deductions from income allowed in the United States?

Ordinary and necessary business expenses generally are deductible from gross income. In addition, deductions are available for certain expenses of a personal nature. Listed below are some of the deductions available.

- Individual retirement account (IRA) contributions up to the lesser of compensation included in income or USD 7,000 in 2025 (USD 14,000 for a married couple filing a joint return). The amount is increased by USD 1,000 for any taxpayer aged 50 or older. For an active participant in an employer-sponsored qualified retirement plan, the maximum deduction is phased out where adjusted gross income exceeds certain limits.
- Certain away-from-home business expenses such as travel, meals, and lodging may be deductible, if with respect to a temporary assignment of 1 year or less.
- Qualified student loan interest.
- Medical expenses in excess of 7.5 percent of adjusted gross income.
- State and local income and property taxes, up to USD 10,000.
- Charitable contributions.
- Interest on home mortgage (limited to interest on acquisition debt of no more than USD 750,000, or USD 1 million if the acquisition debt was incurred before 15 December 2017).
- Losses incurred by a federally declared disaster (may be subject to limitations).
- Nonresidents are allowed to deduct certain expenses that relate to income effectively connected to a U.S. trade or business. Qualifying charitable contributions, state and local income tax, and certain casualty losses are also allowed as itemized deductions to nonresidents.

In lieu of itemized deductions such as those listed above, an individual who has been a resident for the entire taxable year may claim the standard deduction. The amount of the standard deduction is determined according to the filing status of the taxpayer.

Filing status	2025 USD
Married filing jointly and surviving spouse	30,000

Married filing separately	15,000
Head of household	22,500
Single	15,000

2.26 Tax reimbursement methods

What are the tax reimbursement methods generally used by employers in the United States?

The current-year gross-up method is most commonly used.

2.27 Calculation of estimates/pre-payments/withholding

How are estimates/pre-payments/withholdings of tax handled in the United States? For example, Pay-As-You-Earn (PAYE), Pay-As-You-Go (PAYG), etc.

2.28 PAYE withholding

Employers are required to withhold taxes from each payment of wages and other compensation. Taxes withheld include federal income tax, social security tax, and Medicare tax. Most states and some localities also require withholding of income tax, and some states impose additional withholding taxes.

2.29 PAYG installments

If withholding is not expected to cover the individual's annual tax liability, estimated tax payments may be required of the individual. Failure to pay sufficient tax through withholding and estimated tax payments may result in assessment of penalties

When are estimates/pre-payments/withholdings of tax due in the United States? For example, monthly, annually, both, etc.

Estimated tax payments, if required, should be made quarterly. For a calendar-year taxpayer, payments of federal estimated taxes are due quarterly on 15 April, 15 June, and 15 September of the current year, and on 15 January of the following year. States and localities generally follow the same payment schedule, but some of the due dates may vary.

2.30 Relief for foreign taxes

Is there any relief for foreign taxes in the United States? For example, a foreign tax credit (FTC) system, double taxation treaties, etc.?

U.S. citizens and residents may claim a credit against U.S. tax for foreign taxes paid or accrued on foreign-source income. The amount of the credit is the lesser of the amount of foreign tax paid or accrued, or the amount of the U.S. tax on the net foreign-source taxable income.

Excess foreign tax credits can be carried back 1 year, and forward 10 years. (Note that not all U.S. states allow a foreign tax credit.)

Residents of countries/jurisdictions with which the United States has income tax treaties may be eligible for certain benefits. Generally, most treaties provide a lower rate of withholding tax on certain types of income, including dividends, interest, and royalties. Many tax treaties provide that a nonresident will not be taxed on compensation for services rendered in the United States if the individual is present in the

United States for a short period of time (generally not more than 183 days during a calendar year, or relevant 12-month period, depending on the treaty) and is rendering services for a foreign employer that is not engaged in business in the United States. For more information, see section above titled **Economic Employer Approach**. (Note that not all U.S. states recognize income tax treaties.)

In some treaties, specified income or income below a certain level is also exempt from tax in the United States. A foreign citizen who is resident in two countries/jurisdictions at the same time may also be able to invoke the tie-breaker provisions of a treaty to determine the appropriate primary taxing jurisdiction.

2.31 General tax credits

What are the general tax credits that may be claimed in the United States? Please list below.

The most common tax credits available to a resident individual taxpayer include credits for:

- Adoption expenses – a non-refundable credit for qualified adoption expenses for each eligible child. In 2025, the maximum credit amount is USD 17,280 and is subject to phase-out based on income level.
- Child credit – a partially refundable credit of USD 2,000 is allowed for each U.S. resident qualifying child under the age of 17. The amount of the credit is gradually phased out for higher-income taxpayers. In order to claim the credit for a qualifying child, the qualifying child must have a U.S. social security number (SSN).
- Other dependent credit – non-refundable credit of USD 500 for each U.S. resident qualifying dependent. The amount of the credit is gradually phased out for higher-income taxpayers. To claim the credit, a qualifying dependent must have either an SSN or individual taxpayer identification number (ITIN). A dependent who would otherwise be a qualifying child eligible for the child tax credit but for the SSN requirement is eligible for the dependent credit, provided the dependent has an ITIN.
- Child or dependent care expenses – non-refundable credit for a percentage of dependent care expenses that enable a taxpayer to work. The amount of the percentage is based on a taxpayer's income level. The maximum qualifying expenses are USD 4,000 for one dependent and USD 8,000 for two or more dependents.
- Post-secondary education expenses – credit for qualified college or vocational school expenses for eligible students. There are two different tax credits available, and both are subject to phase-out based on income level. Only one of the two credits can be claimed in a given tax year.
    - American opportunity tax credit (modified Hope credit) – maximum credit of USD 2,500 per eligible student for each of the first 4 years of post-secondary education. The credit is partially refundable.
    - Lifetime learning credit – maximum credit of USD 2,000 per return for qualified expenses and is available for education expenses incurred at any time to acquire or improve job skills. The credit is non-refundable.

2.32 Sample tax calculation[1]

This calculation assumes a married taxpayer resident in the United States with two children, whose 3-year assignment begins 1 January 2023 and ends 31 December 2025. The taxpayer's base salary is USD 100,000, and the calculation covers 3 years. Other assumptions:

- The taxpayer and spouse are deemed residents throughout the assignment.
- The taxpayer and spouse have SSNs that are valid for employment.
- The taxpayer's two children are under age 17 and have SSNs.
- All earned income is attributable to local sources.
- Bonuses are paid at the end of each tax year and accrue evenly throughout the year. Interest income is not remitted to the United States.

- The company car is used for business (55 percent) and private (45 percent) purposes and originally cost USD 50,000. The deemed taxable annual lease value is USD 13,250. Only the portion of that amount attributable to personal use is included in income.
- The foreign interest income may be subject to foreign withholding tax. If so, such tax could result in a U.S. foreign tax credit that would lower that U.S. tax liability.
- Tax treaties and totalization agreements are ignored for the purpose of this calculation. Many U.S. states impose income tax. This calculation is for federal tax only.

Calculation of Taxable Income

Year ended (all figures USD)	2023	2024	2025
Days in the United States	365	365	366
Salary	100,000	100,000	100,000
Bonus	20,000	20,000	20,000
Cost-of-living allowance	10,000	10,000	10,000
Net housing allowance	12,000	12,000	12,000
Company car	6,000	6,000	6,000
Moving expense reimbursement	20,000	0	20,000
Home leave	0	5,000	0
Education allowance	3,000	3,000	3,000
Total earned income	***171,000***	***156,000***	***171,000***
Interest income	6,000	6,000	6,000
Total income	***177,000***	***162,000***	***177,000***
Standard deduction	(27,700)	(29,200)	(30,000)
Total taxable income	***149,300***	***132,800***	***147,000***

Calculation of Tax Liability

Year ended (all figures USD)	2023	2024	2025
Taxable income as above	149,300	132,800	147,000
US. federal income tax	*23,461*	*19,322*	*22,168*
Less:			
Child tax credits	(4,000)	(4,000)	(4,000)
Total federal income tax	*19,461*	*15,322*	*18,168*
Social security tax (FICA)	*12,412*	*11,934*	*13,082*
Total US. federal taxes	***31,873***	***27,256***	***31,250***

[1] Sample calculation generated by KPMG LLP, the U.S. member firm of KPMG International, based on the Internal Revenue Code as enacted on 1 January 2025.

03

Special considerations for short term assignments

3 Special considerations for short-term assignments

For the purposes of this publication, a short-term assignment is defined as an assignment that lasts for one year or less.

3.1 Residency rules

Are there special residency considerations for short-term assignments

No. As discussed above, determination of residency status is a function of presence rather than intent.

3.2 Payroll considerations

Are there special payroll considerations for short-term assignments?

No. U.S.-source wages are subject to withholding regardless of the nationality of either employer or employee or the intent of the assignment.

3.3 Taxable income

What income will be taxed during short-term assignments?

Unless modified by domestic law or exempt by an applicable treaty, compensation paid for services performed in the United States is U.S.-source income and subject to U.S. tax.

For an individual whose assignment is not expected to, and in fact does not, exceed 1 year in duration, and whose tax home (regular or principal place of business) remains in their home country/jurisdiction, certain travel, meals, and lodging expenses (away-from-home expenses) may be excludable from income.

Business expenses and reimbursements do not have to be reported on an assignee's U.S. income tax return if an assignee fully accounts to the employer for the expenses. If any reimbursement exceeds an assignee's substantiated expenses, the employer must report the excess amount as compensation and the amount is includible in the assignee's income.

3.4 Additional considerations

Are there any additional matters that should be considered before initiating a short- term assignment in the United States?

Before initiating a short-term assignment in the United States, it is important to remember that proper immigration procedures must be followed, such as obtaining the appropriate visa and work permits. Also, the intended length of the assignment should be adequately documented for purposes of the exclusion of certain travel, meals, and lodging expenses (mentioned above).

For further information on short-term assignments, extended business travelers, and cross- border commuters, see the KPMG International publication: **Thinking Beyond Borders: Management of Extended Business Travelers**

04

Other taxes and levies

4 Other taxes and levies

4.1 Social security tax

Are there social security/social insurance taxes in the United States? If so, what are the rates for employers and employees?

4.2 Employer and Employee

Social security tax (established by the Federal Insurance Contributions Act, thus also known as “FICA”) is imposed on both the employer and employee. FICA is assessed on wages paid for services performed as an employee within the United States regardless of the citizenship or residence of either the employee or employer. The employee portion of the tax may not be deducted in computing U.S. income tax.

FICA consists of two parts, the old-age, survivors, and disability insurance tax (OASDI), and Medicare Tax (hospital insurance part). The OASDI rate is 6.2 percent on all wages up to USD 176,100 for 2025. (The cap is adjusted annually for inflation.) The Medicare Tax rate is 1.45 percent (for the employer and the employee), imposed on all wages without a cap. An additional Medicare Tax of 0.9 percent is imposed on wages over USD 200,000 (USD 250,000 for cumulative wages of both spouses if filing jointly, or USD 125,000 for a married person filing separately). This tax is not assessed to the employer, but only to the employee.

On 2025 Wages	Paid by		Total
	Employer percent	Employee percent	Percent
Up to USD 176,100	7.65	7.65	15.3
USD 176,101 to USD 200,000 (USD 250,000 MFJ spouses combined; USD 125,000 MFS)	1.45	1.45	2.9
Over USD 200,000 (USD 250,000 MFJ spouses combined; USD 125,000 MFS)	1.45	2.35	3.8

Foreign national employees may be exempt from FICA pursuant to a totalization agreement between the United States and the employee’s home country/jurisdiction. Totalization agreements eliminate dual coverage and contributions and provide for continued benefits eligibility (“totalized” benefits) for foreign nationals working in the United States for limited time periods. In addition, some nonresident visa holders (specifically, F, J, M, and Q visas) may qualify for exemption from FICA. (See the list of countries/jurisdiction with which the United States has **Social Security Totalization Agreements** later in this publication.)

Social security tax is imposed on self-employed individuals under the Self-Employment Contribution Act (SECA). SECA is imposed on self-employed U.S. residents with net earnings from self-employment of USD 400 or more. For 2025, self-employment income up to USD 176,100 (reduced by an employee compensation subject to FICA), is taxed at 15.3 percent, and self-employment income in excess of that amount is taxed at 2.9 percent. Half of the self-employment tax is deductible in computing the regular income tax. The additional 0.9-percent Medicare Tax described above also applies to self-employment

income but is not deductible for regular income tax purposes. (In determining the rate thresholds for self-employment income, the thresholds are reduced by any wages subject to FICA.)

Self-employed nonresidents are not subject to SECA, except as may be provided under a totalization agreement.

4.3 Gift, wealth, estate, and/or inheritance tax

The United States has a unified gift and estate tax system that applies to gifts made during life and bequests made at death. For 2025, the highest estate and gift tax rate is 40 percent.

One system of estate and gift taxation applies to U.S. citizens and to foreign citizens domiciled in the United States. A separate system applies to foreign citizens who are not domiciled in the United States. A number of treaties have been negotiated with respect to estate and gift taxes.

4.4 U.S. Citizens and US-Domiciled Foreign Citizens

A U.S. citizen or US-domiciled foreign citizen is subject to gift tax on the fair market value of all gifts made during their lifetime unless an exclusion exists. Most notably, an individual is permitted to exclude gifts of up to USD 19,000 (2025 amount, indexed for inflation) annually to each recipient. Gifts to the individual's spouse also qualify for special treatment. All outright gifts made to a spouse who is a U.S. citizen are exempt from gift tax. In contrast, annual gifts of up to USD 190,000 (in 2025, amount indexed for inflation) to a spouse who is not a U.S. citizen are exempt from gift tax. Upon the death of a U.S. citizen or US-domiciled foreign individual, their taxable estate is subject to estate tax. The taxable estate includes the fair market value of all a decedent's assets, wherever located, less certain deductions. The most important estate tax deduction is the marital deduction, which generally permits all outright transfers of property to the decedent's spouse to be excluded from taxation, but only if the spouse is a U.S. citizen. Generally, no marital deduction is allowable for property passing outright to a spouse who is not a U.S. citizen. There is also a unified credit available that has the effect of exempting from the gift and estate tax up to USD 13.99 million (2025 amount) of property transferred cumulatively during life or at death.

4.5 Non-domiciled foreign citizens

Most gifts made by non-domiciled foreign citizens (NDFC) are exempt from U.S. gift taxes. However, these individuals are subject to U.S. gift tax on gifts of real property and tangible personal property located within the United States. Gifts by a NDFC to their spouse are treated the same as gifts by U.S. citizens. Thus, gifts qualify for the unlimited marital deduction if the recipient spouse is a U.S. citizen and for the annual exclusion (USD 190,000 for 2025) if the spouse is not a U.S. citizen. The USD 19,000 annual gift exclusion per donee is allowed. The gift tax rates for NDFCs are generally the same as for gifts made by U.S. citizens and US- domiciled foreign citizens, except that the unified credit amount mentioned above is not available for NDFCs.

Similarly, the taxable estate of a NDFC is limited to certain tangible and intangible property situated in the United States.

The estate tax rates that apply to the estates of NDFCs are the same rates applicable to the estates of U.S. citizens and US-domiciled foreign citizens. A special unified credit is provided for NDFCs that will exempt the first USD 60,000 of the U.S. taxable estate from U.S. estate tax.

4.6 Real estate tax

Are there real estate taxes in the United States?

Yes. An individual holding real property in the United States may be subject to real estate taxes applicable in that locality. Tax rates vary from state to state, and from locality to locality. No real estate tax is imposed at the federal level.

4.7 Sales/VAT tax

Are there sales and/or value-added taxes in the United States?

Yes, most states and many local jurisdictions impose sales taxes. The definition of a taxable sale or service, as well as the tax rate, varies from jurisdiction to jurisdiction. No sales tax is imposed at the federal level. There is no value-added tax in the United States.

4.8 Unemployment tax

Are there unemployment taxes in the United States?

Yes. Unemployment taxes are assessed on the employer by the federal government under the Federal Unemployment Tax Act (FUTA), as well as under most state unemployment insurance systems, which together fund compensation payments to people who have lost their jobs. FUTA tax is not deducted from the employees' wage.

4.9 Other taxes

Are there additional taxes in the United States that may be relevant to the general assignee? For example, customs tax, excise tax, stamp tax, etc.

4.10 Net Investment Income Tax

A Net Investment Income Tax (NIIT) is due on unearned income, including rent, net of related expenses. The NIIT is calculated as 3.8 percent of the higher of net investment income, or the amount by which modified adjusted gross income exceeds a threshold amount of USD 200,000 (USD 250,000 for a married couple filing jointly, or USD 125,000 for a married couple filing separately). The NIIT is paid as an addition to federal income tax.

4.11 State and municipal taxes

Each state and municipality in the United States has its own set of rules with respect to taxing the income of a state resident or nonresident. However, many states have adopted rules similar to those of the federal government regarding the residence status of a foreign national and the taxing of income earned within the taxing jurisdiction.

Personal property taxes may be assessed by states and localities on inventory or other personal property (such as automobiles) held in the United States.

Some states also impose death taxes with respect to certain property included in a decedent’s gross estate.

4.12 Exit tax

Certain U.S. citizens and long-term residents who relinquish their citizenship or give up their right to lawful permanent residence in the United States (expatriation) may be subject to an exit tax. The tax is figured as if the person had disposed of all their property at fair market value on the day before the date of expatriation and is imposed on the resulting deemed gains in excess of USD 890,000 (2025 amount, indexed for inflation). Special rules apply to certain classes of property.

A long-term resident is any individual, other than a citizen of the United States, who is a lawful permanent resident (that is, a green card holder) of the United States in at least eight years during the 15-year period ending on the date of the individual's loss of lawful permanent residence status. The exit tax applies if a former citizen or long-term resident meets certain financial thresholds.

If an individual who was subject to the exit tax subsequently makes a gift or bequest to a U.S. citizen or resident, the recipient is subject to a special transfer tax on the amount received. The tax is assessed at the highest gift or estate tax rate then in effect (currently 40 percent). The transfer tax is reduced by any foreign gift or estate tax paid and is not due if the amount is reported by the donor on a timely-filed U.S. gift or estate tax return.

4.13 Foreign trusts

Residents of the United States who are beneficiaries or grantors of foreign trusts may have reporting requirements with respect to those trusts. Failure to provide the required information can lead to substantial penalties.

4.14 Foreign gifts

U.S. residents are required to report the receipt of large gifts from foreign sources if the aggregate amount of gifts exceeds certain thresholds.

4.15 Foreign financial accounts

U.S. persons are required to report information regarding their interest in foreign financial accounts if the balance in all such accounts exceeds USD 10,000, on any day during the year. No tax is assessed on the account balances, but significant penalties can be assessed for non-disclosure. The report is made on FinCEN Form 114, Report of Foreign Bank and Financial Accounts, commonly referred to as the FBAR, which is due on 15 April of the following year, with an automatic 6-month extension available (the same due dates as the individual income tax return). This form is not included with the federal individual income tax return; rather it must be filed electronically with the U.S. Treasury Department.

4.16 Foreign financial assets

U.S. taxpayers are required to report ownership of specified foreign financial assets to the extent the total value of those assets exceeds certain threshold amounts. The threshold amounts are based on the taxpayer's tax return filing status and whether they reside in the United States or abroad. This report is made on **Form 8938**, *Statement of Specified Foreign Financial Assets*, which must be attached to the U.S. income tax return. Failure to include Form 8938, if required, could lead to substantial penalties.

4.17 Passive Foreign Investment Companies

U.S. taxpayers who invest in a passive foreign investment company (PFIC), such as a foreign mutual fund, must report their ownership interest annually with their tax return on **Form 8621**, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*. Investment in a PFIC may result in additional taxes and interest charges may be due, which are calculated on Form 8621, on which certain elections can also be made with respect to PFIC interests.

Is there a requirement to declare/report offshore assets (e.g., foreign financial accounts, securities) to the country/jurisdiction's fiscal or banking authorities?

Yes. An individual must file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (the "FBAR") if they have a financial interest in or signature authority over foreign bank, securities, or other financial accounts, both business and personal, that exceed USD 10,000 in aggregate value at any time

during the calendar year. The report is filed separately from the income tax return, can only be filed electronically – by way of the Financial Crimes Enforcement Network's BSA E-Filing System -- and generally must be completed by 15 April of the year following the tax year. An automatic extension is allowed until 15 October of the year following the tax year, provided certain filing requirements are met. Significant penalties may be assessed for failure to file.

In addition, a special report must be attached to your tax return if the value of your foreign financial assets exceeds certain thresholds that vary depending on marital status and whether you live in the United States or abroad. Foreign financial assets include (but are not limited to) bank accounts, investments, and pensions. This report, **Form 8938**, *Statement of Specified Foreign Financial Assets***,** is required in addition to the FBAR, mentioned above.

4.18 Double taxation treaties

The following countries/jurisdiction have a double taxation treaty with the United States.

*Former republic of the USSR and member of the Commonwealth of Independent States, covered by the US-USSR income tax treaty signed 20 June 1973.

**Treaties with Belarus and Russia are partially suspended.

Armenia*	China	Iceland	Latvia	Philippines	Switzerland
Australia	Cyprus	India	Lithuania	Poland	Tajikistan*
Austria	Czech Republic	Indonesia	Luxembourg	Portugal	Thailand
Azerbaijan*	Denmark	Ireland	Malta	Romania	Trinidad
Bangladesh	Egypt	Israel	Mexico	Russia**	Tunisia
Barbados	Estonia	Italy	Moldova*	Slovak Republic	Turkey
Belarus*,**	Finland	Jamaica	Morocco	Slovenia	Turkmenistan
Belgium	France	Japan	Netherlands	South Africa	Ukraine
Bulgaria	Georgia*	Kazakhstan	New Zealand	Spain	Uzbekistan*
Canada	Germany	Korea	Norway	Sri Lanka	Venezuela
Chile	Greece	Kyrgyzstan*	Pakistan	Sweden	

4.19 Social Security Totalization Agreements

The following countries/jurisdiction have a social security totalization agreement with the United States. As of March 2025, the United States has a social security totalization agreement pending approval with Romania.

Australia	Germany	Norway
Austria	Greece	Poland
Belgium	Hungary	Portugal
Brazil	Iceland	Slovak Republic
Canada	Ireland	Slovenia
Chile	Italy	Spain
Czech Republic	Japan	Sweden
Denmark	Korea (South)	Switzerland
Finland	Luxembourg	United Kingdom
France	Netherlands	Uruguay

05
Immigration

5 Immigration

Following is an overview of the concept of the United States' immigration system for skilled labor.

(E.g., which steps are required, authorities involved, in-country/jurisdiction and foreign consular processes, review/draft flow chart illustrating the process)

This summary provides basic information regarding business visits to, and work authorization for, the United States (US). The information is of a general nature and should not be relied upon as legal advice.

Most foreign nationals who intend to engage in active, productive employment in the U.S. will require employment authorization. Depending on the type of work to be performed in the U.S. and the nationality of the foreign worker, there are different types of visas that will apply. Each visa category varies in terms of application requirements, method of application, and processing time. For most work authorization types, foreign nationals must coordinate with their employer and, if applicable, U.S. legal counsel to prepare the necessary application.

The U.S. distinguishes further between visa-exempt nationals and nationals who require a visa. Visa-exempt individuals can enter the U.S. for business visitor purposes without the need to apply for an entry visa. Such individuals may, however, be required to secure approval through the U.S.'s Electronic System for Travel Authorization (ESTA) prior to travel. In addition, persons entering the U.S. pursuant to an approved ESTA may only remain in the U.S. for up to 90 days per trip.

A business visitor – visa-exempt or not – may not start working in the U.S. until valid work authorization is secured. Such work authorization may sometimes be secured by applying to change status from within the U.S. to an immigration category which permits employment.

In most situations, a U.S. work visa will need to be secured prior to entry to the U.S.

5.1 International Business Travel/Short-Term Assignments

Describe (a) which nationalities may enter the United States as non-visa national, (b) which activities they may perform and (c) the maximum length of stay.

Canadian citizens are generally exempt from most U.S. visa requirements. Instead, Canadians may generally seek admission to the U.S. in a work-authorized category based on an approval notice issued by U.S. Citizenship and Immigration Services, without requiring a visa to be issued by the U.S. Department of State. For certain types of U.S. employment authorization, Canadian citizens may present the petition or application directly to a U.S. Customs and Border Protection Officer for adjudication at the Port of Entry.

The Visa Waiver Program (VWP) enables most citizens of participating countries/jurisdictions to travel to the U.S. for tourism or business activities for stays of 90 days or less without obtaining a visa. As noted above, travelers seeking entry to the U.S. under the VWP must have a valid **ESTA** approval prior to travel and meet all requirements. Visit the **ESTA webpage** on the U.S. Customs and Border Protection website for more information. The VWP is practical, however, the ultimate decision to admit the foreign national remains with the U.S. Customs and Border Protection Officer at all times.

Citizens or nationals of the following countries/jurisdictions may be eligible to travel to the U.S. pursuant to the VWP:

Andorra	France	Lithuania	San Marino
Australia	Germany	Luxembourg	Singapore
Austria	Greece	Malta	Slovakia
Belgium	Hungary	Monaco	Slovenia
Brunei	Iceland	Netherlands	South Korea
Chile	Ireland	New Zealand	Spain
Croatia	Israel	Norway	Sweden
Czech Republic	Italy	Poland	Switzerland
Denmark	Japan	Portugal	Taiwan*
Estonia	Latvia	Qatar	United Kingdom**
Finland	Liechtenstein	Romania	

** British citizens must have the unrestricted right of permanent abode in England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man in order to be eligible to travel under the VWP.

Persons seeking admission to the U.S. pursuant to the VWP must have an e-passport valid for at least 6 months from the date of planned departure from the U.S.**

Under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, the following categories of travelers are no longer eligible to travel to the U.S. under the VWP:

- Nationals of VWP countries who have traveled to or been present in Democratic People's Republic of Korea, Iran, Iraq, Libya, Somalia, Sudan, Syria, or Yemen on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country).
- Nationals of VWP countries who are also nationals of Democratic People's Republic of Korea, Iran, Iraq, Sudan, or Syria.

The B-1 category permits certain business activities of a commercial or professional nature to be carried out in the US, including, but not limited to:

- Engaging in commercial transactions that do not involve gainful employment in the U.S. (e.g., a merchant who takes orders for goods manufactured abroad)
- Negotiating a contract
- Consulting with business associates Settling an estate
- Litigating

- Participating in scientific, educational, professional or business conventions, conferences or seminars; and/or
- Undertaking independent research.

The Business Visitor category does not permit any remuneration from a U.S. source. In addition, the Business Visitor classification generally prohibits gainful/productive employment in the U.S.

Exception: B-1 After-Sales Service. A person coming to the U.S. to install, service or repair commercial/industrial equipment or machinery purchased from a company outside the US, or to train U.S. workers to perform such services, may seek entry as a B-1 business visitor to perform After-Sales Services. The international contract of sale must specifically provide for the performance of after-sales services. To be eligible, the foreign national must satisfy the authorities that they possess specialized knowledge that is essential to the seller's contractual obligation, and the foreign national receives no compensation from a U.S. source.

A person is generally admitted to the U.S. in B-1 Business Visitor status for a period long enough to conduct their business, up to a maximum of 6 months. It is, however, possible to request an extension of B-1 status for up to another 6 months. As noted above, however, persons seeking admission in WB (Business Visitor status pursuant to the Visa Waiver Program) may only enter the U.S. for a maximum of 90 days.

Describe (a) the regulatory framework for business travelers being visa nationals (especially the applicable visa type), (b) which activities they may perform under this visa type and the (c) maximum length of stay.

Visa nationals may be required to obtain a B-1 visa to be able to enter the U.S. for business visitor activities. The B-1 is typically issued for multiple entries. The duration of B-1 visa validity will depend on the reciprocity schedule in effect at the time of application. Maximum validity is 10 years.

The application for a B-1 visa must be filed at a U.S. embassy/consulate in the respective foreign country/jurisdiction of residence.

Generally, the maximum period of admission in B-1 status is 6 months. For a list of the permitted activities, please see above.

Outline the process for obtaining the visa type(s) named above and describe (a) the required documents (including any legalization or translation requirements), (b) process steps, (c) processing time and (d) location of application.

Canadian citizens may apply to enter the U.S. in B-1 status directly at a U.S. Port of Entry or Preflight Clearance facility.

Other foreign nationals not eligible for the VWP described above may apply for a B-1 visa at a U.S. Embassy or Consulate. Details of the B-1 visa application process may be found at https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html The timeline, location of application, and specific required documents will depend on the U.S. consular post where the foreign national will apply. Any documents submitted in support of a B-1 application must be in English.

Are there any visa waiver programs or specific visa categories for technical support staff on short-term assignments?

Yes, some short-term assignments may include technical support activities. See the B-1 After Sales Service exception above. In addition, technical support may enter the U.S. in B-1 status to participate in short-term training that does not constitute productive work.

5.2 Long-Term Assignments

What are the main work permit categories for long-term assignments to U.S.? In this context, please outline whether a local employment contract is required for the specific permit type.

H-1B, Specialty Occupation Professional:

The H-1B category allows U.S. employers to hire certain foreign employees in specialty occupations.

U.S. immigration regulations define “specialty occupation” as an occupation requiring a minimum of a 4-year U.S. Bachelor's degree or equivalent for entry into the occupation.

There is a limit or quota of 65,000 new H-1B visas that can be issued each year. The U.S. sets aside 6,800 of these H-1B visas for citizens of Chile and Singapore.

A separate quota of 20,000 H-1B visas is reserved for beneficiaries who have attained a U.S. Master's degree or higher. Petitions filed on behalf of beneficiaries who hold a U.S. Master's degree or higher will be counted against the regular H-1B quota once U.S. CIS receives sufficient petitions to reach the advanced degree cap.

E-3, Australian Specialty Occupation Professional:

E-3 visas are available for Australian citizens who will fill a U.S. position and meet the criteria for an H- 1B visa, as stated above. The number of E-3 visas issued is limited to 10, 500 per fiscal year.

TN Professional Under U.S.-Mexico-Canada Agreement:

The USMCA (formerly NAFTA) establishes the rules of trade and investment between the U.S., Mexico, and Canada. The TN category allows citizens of Canada and Mexico to engage in prearranged business activities in the U.S. as professionals. In most cases, an individual applying for TN status will have a U.S. employment offer, although in some cases the applicant may seek entry to the U.S. to provide professional services to a U.S.-based client on behalf of a foreign employer. The TN criteria are as follows:

- The applicant is a citizen of Mexico or Canada
- The applicant is 1 of the 63 types of professionals listed in NAFTA Appendix 1603.D.II
- The alien meets the specific criteria for that profession
- The prospective position in the U.S. requires someone in that professional capacity; and
- The alien will work for a U.S. employer, or for a U.S.-based client pursuant to a pre-existing contract or service agreement.

L-1A or L-1B, Intracompany Transferee:

L-1 status is used to transfer employees from a company abroad to a related entity in the U.S. L-1A classification applies to aliens seeking admission to the U.S to assume an executive/managerial role, while L-1B classification is reserved for foreign nationals entering the U.S. to perform work requiring the application of “specialized knowledge.” In order to qualify for L-1 status, an individual must have been employed with a qualifying organization outside of the U.S. for at least 1 continuous year in the last 3 years in a position which was either managerial/executive in nature or in a specialized knowledge capacity. A qualifying organization is a U.S. or foreign firm that is or will be doing business on a regular, systematic, and continuous basis providing goods and/or services. Branches, affiliates, and subsidiaries are all considered qualifying organizations in the L-1 context.

E-1/E-2, Treaty Trader/Treaty Investor:

E-1 or E-2 non-immigrant visa status may be granted based on either substantial trade or investment undertaken by a foreign national or company with the same nationality as a country which has entered

into a treaty of commerce and navigation with the US. An applicant for E-1 or E-2 status must be required in the U.S. to serve in either 1) an executive or supervisory role, or 2) an “essential employee” position, exercising specialized skills critical to the successful operation of the U.S. entity.

An E-1 or E-2 applicant may work in the U.S. intermittently or continuously for the temporary period authorized and may remain on foreign payroll.

O-1, Alien with Extraordinary Ability or Achievement:

The O-1 non-immigrant visa is for the individual who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who has a demonstrated record of extraordinary achievement in the motion picture or television industry and has been recognized nationally or internationally for those achievements. A U.S. employer or U.S. agency may sponsor an individual for O-1 status.

The general processing time highly depends on the permit type, the authorities involved in the process and the place of filing the application. In general, the process can take anywhere from 2 weeks to 1 year, from the day of filing/submission.

Depending on the permit type, the maximum validity period varies from 3 to 5 years with the possibility of renewing the visa.

Is there a minimum salary requirement to obtain a long-term work and residence permit for assignments? Can allowances be taken into account for the salary?

There is a minimum salary requirement for certain U.S. work visas and certain employment-based U.S. Permanent Residence applications.

Is there a fast-track process which could expedite the visa/ work permit?

Certain visa applications are eligible for “premium processing” by U.S. Citizenship and Immigration Services for a fee of USD 2, 500.

At what stage is the employee permitted to start working when applying for a long-term work and residence permit (assignees/ local hire)?

The employee is permitted to start working once s/he obtains either a valid U.S. work visa, an approved change of status to a work-authorized visa category, a valid Employment Authorization Document, or U.S. Permanent Residence Status.

Can a short-term permit/ business visa be transferred to a long-term permit in U.S.?

Technically, it is possible to transfer a short-term visa/status to a long-term visa in country/jurisdiction. This needs to be reviewed on a case-by-case basis as it is highly dependent on the circumstances. If a transfer would not be possible, the applicant would need to leave U.S. and apply from outside of the country/jurisdiction.

Is it possible to renew work and residence permits?

It is generally possible to extend/renew work visa status and Permanent Residence cards.

Is there a quota or system or a labor market test in place?

U.S. does have a quota and labor market test requirement in place for certain visa and employment-based Permanent Residence application categories.

5.3 General Immigration Related Questions

Would it be possible to bring family members to U.S.?

Dependents are eligible to obtain dependent status and accompany the main applicant. According to U.S. immigration law, spouses (marriage certificate required) and/ or unmarried children under 21 years of age (birth certificates required) are considered as dependents.

Is it possible to obtain a permanent residence permit?

Yes, Permanent Residence may be applied for at any time, however, certain visa categories do not permit "immigrant intent." Legal counsel should be sought before pursuing Permanent Residence to determine the appropriate strategy.

What if circumstances change after the Work and Residence application process?

Any material changes in the term of the employment or personal situation, including job title, job role or salary may require that a new application or request for amendment to a previously approved work visa application be made. Counsel should be notified in advance of any changes so that appropriate action may be taken before the changes take effect.

How long can a permit holder leave U.S. without their permit becoming invalid?

Any extended absences from U.S. may affect Permanent Residence status and citizenship applications. In particular, absences of more than 12 months, and in some cases up to 6 months, might lead to deemed abandonment of Permanent Resident status. Certain applications may be filed – ideally prior to U.S. departure – to preserve U.S. Permanent Resident status.

Must immigration permissions be cancelled by the end of the assignment/employment?

In case of a termination of the employment before the end of the validity of the permit, the immigration authorities should generally be informed. A formal withdrawal request should be filed with USCIS if employment tied to a Labor Condition Application is terminated prior to expiration.

Are there any penalties for individuals and/or companies in place for non-compliance with immigration law?

Penalties for individuals could include a permanent bar to entering the U.S. and removal from the country/jurisdiction. Companies found out of compliance could face monetary fines, prohibition on employing foreigners for a period of time, criminal charges, civil charges, and imprisonment.

5.4 Other Important Items

List any other important items to note, or common obstacles faced, in U.S. when it comes to the immigration processes.

Below you will find a list of other important items to note and the most common obstacles:

- **Salary for certain visa holders must match the Prevailing Wage as determined by the U.S. Department of Labor**
- **Degree verification** – foreign degrees must undergo U.S. equivalency determination
- **Apostilles/Legalization/ Verification process**
- **Translations** – certain documents would require an English translation
- **Previous stays in U.S.** – if an individual has previously lived and worked in U.S., evidence of lawful status will generally be required
- **Prior criminal records** – these can often result in denial of an application for a U.S. immigration benefit, or require a waiver
- **Inconsistencies in documentation** – for example if there is a discrepancy in the name of the applicant as shown on their passport, degree or marriage certificates, the authorities may require further supporting documentation.

Back to top

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