

When are non-U.S. corporations subject to federal income tax in the United States?

Non-U.S. corporations are generally subject to U.S. income tax only on their U.S. source income. They are subject to two different tax rates, one for effectively connected income, and one for income not effectively with a U.S. trade or business.

1. Income Effectively Connected with the Conduct of a Trade or Business in the United States includes corporations engaged in a U.S. trade or business whether or not the corporation had U.S. source income from that trade or business, and whether or not income from such trade or business is exempt from United States tax under a tax treaty.
 - o Also includes income, gains, or losses treated *as if* they were effectively connected with the conduct of a U.S. trade or business
2. Income from U.S. Sources Not Effectively Connected with the Conduct of a Trade or Business in the United States includes income from any U.S. source, if its tax liability has not been fully satisfied by the withholding of tax at the source. This income is taxed at a flat 30% rate, unless a tax treaty specifies a lower rate.

Other reasons a foreign corporation may need to file a federal income tax return in the U.S.

- making a claim for the refund of an overpayment of tax for the tax year.
- claiming the benefit of any deductions or credits.
- making a claim that an income treaty overruled or modified any provision of the Internal Revenue Code.
 - This may include filing a “protective” return if a foreign corporation has a trade or business in the U.S. however does not meet the permanent establishment criteria in an income tax treaty with the U.S..

Tax Treaties - The United States has income tax treaties with a number of foreign countries, including Canada. For non-US corporations, these treaties can often reduce or eliminate U.S. tax on various types of income. Non U.S. corporations need to know how treaties apply to them. To claim treaty benefits a treaty disclosure must be timely filed.

- Days in the U.S. – The U.S.-Canada Income Tax Treaty contains a provision in the permanent establishment (P.E.) article which outlines criteria for when a company is deemed to provide services through a P.E. in the U.S..

When are foreign corporation income tax filings due?

Form 1120F – foreign corporations must file and pay any tax due using Form 1120F, U.S. Income Tax Return of a Foreign Corporation. A foreign corporation that maintains an office or place of business in the United States must generally file Form 1120-F by the *15th day of the 3rd month* after the end of its tax year. A foreign corporation that does not maintain an office or place of business in the United States must generally file Form 1120-F by the *15th day of the 6th month* after the end of its tax year.



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Additional state income tax filings and payments may apply and need to be evaluated in addition to federal requirements.

This material is intended for informational purposes only. You should consult a tax advisor regarding your specific situation.

Please contact us for more information or to discuss further info@atbapllc.com.