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International Tax

United States Virgin Islands Highlights 2017

Investment basics:

Currency – US Dollar (USD)

Foreign exchange control – While there are no general restrictions on remittances of profits, dividends, interest, royalties or fees to nonresidents, sanctions and embargoes apply to listed countries and entities with restrictions on foreign payments, remittances and other types of contracts and trade transactions. Extensive currency transaction reporting and recordkeeping requirements also may apply. However, information reporting applies to US Virgin Islands (USVI) residents only if the responsible party is subject to the "general jurisdiction" of the US Treasury.

Accounting principles/financial statements – As an unincorporated territory of the US, the USVI follows the US Securities and Exchange Commission rules, which require publicly traded companies to file their financial statements according to US GAAP.

Principal business entities – These are the corporation, limited liability company, partnership and limited partnership. USVI business also may be carried on directly by an individual (a "sole proprietorship") or a USVI branch of a foreign business entity (e.g. a foreign corporation).

Corporate taxation:

Residence – A corporation (or partnership) is resident for USVI tax purposes if created or organized in the USVI or under the laws of the USVI. All other corporations, including those organized under the laws of the 50 US states or the District of Columbia and other US territories, are nonresident.

Basis – The US Internal Revenue Code applies in the USVI under a "mirror system," under which "USVI" is substituted for the "United States" wherever necessary. USVI corporations are taxed by the Bureau of Internal Revenue (BIR) on worldwide income. A nonresident corporation is taxable on income effectively connected with the conduct of a trade or business in the USVI ("effectively connected income," or ECI), and on most non-ECI that is derived from USVI sources (see below under "Taxable income"). US corporations with USVI-source income are not subject to gross basis tax or withholding, and US corporations with USVI branches are not subject to the branch profits tax.

Taxable income – Resident corporations are taxed on their worldwide income (including income from a business, compensation for services, fees and commissions, dividends, interest, royalties, rents, gains from dealings in property and income from a partnership), from whatever source derived, less deductions allowed for depreciation, amortization, expenses, losses and certain other items.

A nonresident corporation is subject to this same tax, except that its taxable income is limited to the gross amount of its ECI, less deductions allocated to ECI. ECI includes any gain from the sale of USVI real property, income connected with a participation in a partnership that engages in a USVI-based business or income received as a beneficiary of an estate or trust so engaged. With the exception of US corporations, all foreign corporations are taxed on a gross withholding basis on USVI-source portfolio income (e.g. dividends, interest, rents and royalties that are not effectively connected). A branch of a foreign corporation is taxed in the same way as a domestic corporation (i.e. net basis) on income that is effectively connected to its USVI operations, and also is subject to a "branch profits tax" (unless it is the branch of a US corporation) designed to approximate the tax that would be imposed on dividends paid from a USVI subsidiary of a foreign corporation engaged in the same activities.

The USVI also imposes a gross receipts tax (GRT) on every firm, corporation and other association doing business in the USVI. All banks are exempt from GRT.

Taxation of dividends – A dividends received deduction is available for dividends received by a corporate shareholder from a resident corporation, at a rate of 70% (less-than-20% shareholder), 80% (noncontrolling shareholder owning 20% or more) or 100% (distributions among members of the same affiliated group, provided other requirements are met).

Capital gains – Gains recognized by corporations on capital assets (e.g. assets held for investment) are taxed at the same rates as ordinary income (a maximum of 35%). Gains from the sale of depreciable property used in a business are treated as ordinary income to the extent they result in the recovery of past depreciation. Capital losses may be deducted against capital gains, but not against ordinary income. Relief from gain recognition is available for sales or exchanges of business assets in certain situations.

Losses – Subject to certain exceptions, a corporation's net operating losses may be carried back two years and forward 20 years.

Capital losses may be carried back three years and forward five years to offset capital gains.

Rate – A flat tax of 35% applies to the taxable income of a corporation that has taxable income for the year equal to or greater than USD 18,333,333. Graduated rates, starting as low as 15%, apply to the income of a USVI corporation with total taxable income of less than USD 18,333,333. For purposes of determining the appropriate tax rate, members of a controlled group of corporations are treated similarly to a single corporation.

GRT is imposed at a rate of 5%.

Surtax – Both resident and nonresident corporations are subject to a 10% surtax on their total USVI income tax liability.

Alternative minimum tax – Resident and nonresident corporations are liable for a 20% alternative minimum tax (AMT) to the extent that 20% of an adjusted measurement of income, computed without certain preferences, exceeds the regular tax on taxable income.

Foreign tax credit – Foreign income taxes may offset dollar-for-dollar the USVI income tax on taxable income, to the extent the USVI tax is allocated to foreign-source taxable income and additional conditions and limitations are satisfied. Creditable foreign income taxes include taxes borne by foreign subsidiaries on profits repatriated to a USVI corporate shareholder ("deemed-paid taxes").

Participation exemption – No. The deduction for dividends received, which serves a similar function in the case of a participation in a subsidiary (but not a branch or permanent establishment), generally is not available for dividends from nonresident corporations (except in certain cases where the nonresident corporation has ECI).

Holding company regime – No

Incentives – Incentives include numerous credits for qualified investors who invest in the USVI. The USVI Economic Development Program, administered by the Economic Development Commission (EDC), and the University of the Virgin Islands Research and Technology Park Tenant Program ("RTPark") provide tax incentives based on the investment commitment, as well as the potential for creating new employment and expanding the base of the territory's industry. The EDC's incentives are aimed at manufacturers, agriculture, transportation, utilities, recreation and hotel operations, while the RTPark's incentives are aimed at emerging technology and knowledge-based businesses. The EDC's incentives also are available for businesses that provide services to customers located outside the USVI, including investment managers, financial advisors, call centers and international public relations firms. Qualified companies and individuals may be granted a maximum of a 90% income tax credit; a 100% exemption on the USVI GRT; a 100% exemption on real property tax (subject to limitations); a 100% exemption from withholding tax on interest payments; a 60% exemption from withholding tax on dividends (an 80% exemption in limited circumstances); and, for RTPark beneficiaries only, a 60% exemption from withholding tax on royalties (an 80% exemption in limited circumstances). For EDC beneficiaries, these incentives are available for a period of up to 10 years (30 years in some instances), with a renewal period of five years (10 years in some instances). For RTPark beneficiaries, these incentives are available for a period of up to 15 years, with a renewal period of 10 years and subsequent renewal periods of five years.

Incentives also exist for the installation or operation of a reverse osmosis water production plant, the development of affordable housing, the financing of capital improvements and the financing of foreign assets through a USVI subsidiary.

Withholding tax:

Dividends – The gross amount of dividends paid by a USVI corporation to a nonresident corporation generally is subject to a 10% USVI withholding tax. However, there is no withholding on payments to US corporations.

Interest – The gross amount of a nonresident corporation's USVI-source interest income that is not effectively connected to a USVI trade or business generally is subject to USVI tax at a rate of 10%, unless the tax is reduced under USVI law.

Royalties – The gross amount of a nonresident corporation's USVI-source royalty or other intangible property income that is not effectively connected to a USVI trade or business generally is subject to USVI tax at a rate of 10%, unless the tax is reduced under USVI law.

Technical service fees – There generally is a tax on fees for personal services only if the services are performed within the USVI. If performed in the USVI, such fees typically would be ECI.

Branch remittance tax – The USVI imposes a branch profits tax, as discussed above under "Taxable income."

Other – A nonresident corporation generally is subject to a 10% tax on the gross amount of any rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments and other fixed or determinable annual or periodical gains, profits and income that is not effectively connected to a USVI trade or business, unless the tax is reduced under USVI law.

Other taxes on corporations:

Capital duty – No

Payroll tax – Employers must withhold federal tax from employee wages and remit the tax to the US and the USVI governments, as applicable. Payroll taxes include income, social security and Medicare taxes. Income taxes withheld from an employee's wages by the employer must be remitted to the USVI government, while social security and Medicare taxes withheld from an employee's wages must be remitted to the US government. Employers also must pay US and USVI unemployment tax and, as noted below, social security taxes. The US unemployment insurance rate is 6.2% on the first USD 7,000 of each employee's wages. The USVI unemployment insurance rate is 1.5% of salary up to USD 22,500 in employees' salaries for existing employers. The USVI unemployment insurance rate is 2% of salary up to USD 23,000 in employees' salaries for new employers. (A new employer is any employer that has registered with the USVI Department of Labor within the previous 12 quarters.) USVI employers receive a credit, up to a maximum of 5.1%, against the US tax for amounts paid to the USVI unemployment insurance fund, since the USVI is classified as a "credit reduction state."

Real property tax – Real property taxes are assessed using a multirate tax structure with four property classes: (1) unimproved noncommercial real property is taxed at the annual rate of 0.004946; (2) residential real property is taxed at the annual rate of 0.003770; (3) commercial real property is taxed at the annual rate of 0.007110; and (4) timeshare real property is taxed at the annual rate of 0.014070. The property tax may be reduced by certain exemptions.

Social security – The US Internal Revenue Service (IRS) administers and is authorized to directly collect social security taxes. These comprise old age/survivor/disability taxes (OASDI) and Medicare/hospitalization insurance, both borne equally by the employer and the employee. The employer is responsible for remitting the tax to the US government. The combined OASDI rate is 12.4% (i.e. 6.2% each) and the combined Medicare rate is 2.9%. OASDI is levied on the first USD 127,200 of wages for 2017. Medicare is levied on total wages. The portion of social security taxes borne by the employer is tax deductible. Persons who are self-employed are subject to a separate tax that is comparable to the social security tax paid by employers.

Stamp duty – A stamp duty is imposed on an instrument evidencing the conveyance of real property or upon the bill evidencing the sale of personal property. The tax rate is 2% on property valued up to USD 350,000, 2.5% on property valued from USD 350,001 to USD 1 million, 3% on property valued from USD 1,000,001 to USD 5 million and 3.5% on property valued over USD 5 million. Certified copies of documents obtained from the US District Court are taxed at the rate of USD 25 per document.

Transfer tax – No

Other – All personal property imported into the USVI for use or consumption by the importer is subject to a 6% tax on the cost. Hotel guests pay a hotel room tax of 12%. Every person that registers a vehicle requiring licensing in the USVI for the first time must pay a highway user's tax based on the unladen weight of the vehicle, at a rate of USD 0.16 per pound, with a maximum of USD 25. A fuel tax is imposed at a rate of USD 0.07 per gallon on the sale of gasoline and diesel fuel. A franchise tax is imposed on all corporations (resident and nonresident) qualified to do business in the USVI at a rate of USD 1.50 for each thousand dollars of capital stock used in conducting the business, up to a maximum of USD 150.

Anti-avoidance rules:

Transfer pricing – The transfer pricing regime mirrors that of the US. The US or USVI tax authorities may adjust income in related party transactions that are not at arm's length. Detailed regulations prescribe the scope, specific methodologies and principles. Documentation is required. Advance pricing agreements, both bilateral and unilateral, may be negotiated.

Thin capitalization – The "earnings stripping" rules restrict the ability of USVI (and certain foreign) companies to claim an interest deduction on debts owed to, or guaranteed by, certain non-USVI related parties (and other persons exempt from USVI tax). The rules generally apply where the debt-to-equity ratio of the payer exceeds 1.5 to 1 and the payer's "net interest expense" exceeds 50% of its "adjusted taxable income" for the year. Disallowed interest that is not currently deductible may be carried forward and deducted in future years if certain conditions are satisfied.

Controlled foreign companies – Certain types of income of "controlled foreign corporations" (CFCs) are included currently in the taxable income of a "USVI shareholder" (USVI person that owns at least 10% of the foreign corporation's voting stock). A CFC is a foreign corporation where more than 50% (by vote or value) of the stock is owned (directly, indirectly or by attribution) by a USVI shareholder.

Disclosure requirements – Each US person (including USVI persons) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country is required to file a Report of Foreign Bank and Financial Accounts (FBAR) for each year in which the financial interest or authority exists. Each US person also is required to indicate its ownership or signature authority over a foreign financial account on its income tax return. The FBAR is required only if the foreign account has a balance of more than USD 10,000 at any time during the calendar year.

Transfer pricing documentation also is required. The USVI will follow the US regulations on country-by-country reporting.

Other – Following US rules, the USVI has numerous structure-specific regimes, including anti-inversion and passive foreign investment company provisions.

Compliance for corporations:

Tax year – Corporations may adopt as their tax year a fiscal year consisting of 12 months and ending on the last day of any month (except in the case of a 52/53-week year). Special rules apply in determining the permitted or required taxable year of certain entities (e.g. partnerships and CFCs).

Consolidated returns – A group of domestic affiliated corporations may file a consolidated tax return if certain requirements are met, including that the parent company must directly own 80% or more of the stock of at least one subsidiary in the group and each subsidiary in the group must be at least 80% directly owned by the parent and/or other group subsidiaries. US corporations are not considered "domestic" and may not join with a USVI corporation in filing a consolidated return (and vice versa under US consolidated return rules).

Filing requirements – A USVI corporation's tax return must be filed with the BIR by the 15th day of the fourth month following the end of its tax year. Although there is no specific form for the income tax surcharge, the BIR issues an annual press release indicating which lines must be used to calculate the surcharge. A USVI corporation with US source income must separately file a US tax return. GRT returns are filed monthly or annually, depending on the amount of a corporation's gross receipts. Extensions of time to file income tax returns are available.

Penalties – The USVI, under mirror application of the US tax rules, has a comprehensive set of penalty and interest provisions for failure to pay and failure to file, with the relevant amounts generally determined based on the specific form or tax code section at issue.

Rulings – Taxpayers may request a private letter ruling to be issued relative to a specific taxpayer and a specific transaction or series of events. Prefiling agreements also are available.

Personal taxation:

Basis – A *bona fide* resident of the USVI pays federal tax on its worldwide income, with credits for foreign income taxes (subject to certain limitations), to the BIR, not to the IRS. Nonresident aliens are taxed on ECI and USVI-source non-ECI income.

Residence – An individual who is a *bona fide* resident of the USVI is a person who meets a physical presence test, a tax home test and a closer-connection test. Residence in the USVI requires a presence of at least 183 days in the USVI during the applicable taxable year, with the individual having no other tax home in, or "closer connection" to, another jurisdiction for that year. Special rules apply for US residents who become USVI residents.

Filing status – The filing categories for individuals are single, married filing jointly, married filing separately, head of household or qualifying widow(er). If spouses filing joint returns do not have the same residence status, filing is made according to the residence of the spouse with the larger income.

Taxable income – Individuals generally must include all gross income from whatever source derived in their taxable income (including their compensation for services, including all forms of remuneration and allowances and the value of other perquisites that are not specifically exempted; fees and commissions; dividends; interest; royalties; rents; gains from dealings in property; and income from a partnership). Nonresident aliens exclude non-ECI in computing taxable income and are subject to USVI tax on the amounts of such income, generally collected on receipt via withholding if the income is from US sources and not from the sale or exchange of property.

Capital gains – The excess of net long-term capital gains (generally gains from investments held for more than 12 months) over net short-term capital losses (net capital gains) generally is taxed at a maximum rate of 20% (or more in certain cases). The net capital gains rate also is applicable to dividends from corporations generally and from certain nonresident corporations.

Deductions and allowances – Individual taxpayers are entitled to a standard deduction from gross income in calculating taxable income, or they may "itemize" deductions. Numerous credits also are available.

Rates – Progressive rates up to 39.6%, limited to a maximum of 20% for certain capital gains, as discussed above. The applicable tax rate will depend on the amount of taxable income and the return filing status of the taxpayer. (Alternative minimum tax may be imposed at 26% for the first USD 187,800 of income and at 28% on the excess over USD 187,800.) GRT is imposed at a rate of 5% for sole proprietorships and single-member limited liability companies.

Other taxes on individuals:

Capital duty – No

Stamp duty – See under "Other taxes on corporations."

Capital acquisitions tax – No

Real property tax – Real property taxes are assessed using a multirate tax structure with four real property classes: (1) unimproved noncommercial real property is taxed at the annual rate of 0.004946; (2) residential real property is taxed at the annual rate of 0.003770; (3) commercial real property is taxed at the annual rate of 0.007110; and (4) timeshare real property is taxed at the annual rate of 0.014070. The real property tax may be reduced by certain exemptions.

Inheritance/estate tax – All inheritances are exempt from taxation and inheritance taxes are not collected in the USVI.

Net wealth/net worth tax – No

Social security – See under "Other taxes on corporations."

Other – Individuals, estates and certain trusts must pay a 3.8% tax on net investment income over a threshold amount (for individuals, USD 250,000 if married filing jointly, USD 125,000 if married filing separately and USD 200,000 in other cases; for estates and certain trusts, USD 12,300). Individuals also must pay a 0.9% tax on wages, compensation or self-employment income that exceeds a threshold amount (USD 250,000 if married filing jointly, USD 125,000 if married filing separately and USD 200,000 if single).

Compliance for individuals:

Tax year – The tax year is the calendar year, unless a fiscal year is elected. Any fiscal year must end on the last day of a calendar month.

Filing and payment – Tax is deducted at source from employment income. Individual self-assessment tax returns are due by the 15th day of the fourth month following the end of the tax year (or the 15th day of the sixth month for certain nonresident aliens). An extension of six months is granted if the taxpayer makes an election on or before the due date for the return and pays the estimated final tax due. Persons who are US residents (e.g. US military and federal contractors) file with the IRS and persons who are USVI *bona fide* residents file with the BIR. Non-USVI residents with USVI source income file with, and pay taxes on such USVI source income to, the BIR.

A USVI individual is required to report its "specified foreign financial assets" to the IRS with its tax return if the total value of such assets in which the person has an interest is more than the appropriate reporting threshold. Specified foreign financial assets include a financial account maintained by a financial institution, stock issued by a foreign corporation (other than a US corporation), a capital or profits interest in a foreign partnership, an interest in a foreign trust or foreign estate, an interest in a foreign financial derivative and a note, bond or other form of indebtedness issued by a foreign person. The reporting threshold applies to total assets of more than USD 50,000 on the last day of the tax year, or more than USD 75,000 at any time during the tax year for single taxpayers (more than USD 100,000 on the last day of the tax year or more than USD 150,000 at any time during the tax year for married taxpayers). A different reporting threshold applies to persons living abroad. (See also under "Disclosure requirements" for additional reporting requirements that may apply for specified foreign financial assets.)

Penalties – The USVI, under mirror application of US tax rules, has a comprehensive set of penalty and interest provisions for failure to pay and failure to file, with the relevant amounts generally determined based on the specific form or tax code section at issue.

Value added tax:

Taxable transactions – No

Rates – No

Registration – No

Filing and payment – No

Source of tax law: Revised Organic Act of U.S. Virgin Islands, 1 August 1950 (48 U.S.C 1421); US Internal Revenue Code; US Treasury Regulations; federal court decisions; US Internal Revenue Code administrative guidance; and US Virgin Islands Code

Tax treaties: The US Virgin Islands is outside the scope of all US tax treaties, except the US–Korea treaty.

Tax authorities: US Virgin Islands Bureau of Internal Revenue; US Internal Revenue Service is authorized to directly collect social security and Medicare taxes

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