

INDEX

A

ability to pay

- EB visas and small businesses, 37, 39
- H-1B visas and, 7

Accounting Standards Executive Committee (AcSEC)

- Audit and Accounting Guidelines of, 343

accounting systems

- Generally, 339–60
- accounting information systems, 339–40
- accounting policies, 346
- audit engagements of CPAs, 347–49
 - generally accepted auditing standards (GAAS), 347–49
 - professional skepticism and, 349
 - types of audit reports, 348
- background of modern U.S. accounting, 342–43
- balance sheets, 340–41, 351
- capital accounts used in tax returns, 355
- cash flow statements, 341–42
- compilation engagements of CPAs, 347
- contributed capital, 351
- of corporations, 349, 351
- disclosure requirements, 346
- of entity types, 349–50
- equity accounts, 350–52
- financial statements, 340–42, 345–46
- generally accepted accounting principles (GAAP), 342, 343–45
- income statements, 341
- initial investment, 359
- of limited liability companies, 350, 351
- of limited liability partnerships, 350, 351
- other comprehensive basis of accounting, 346–47
- of partnerships, 349–50, 351
- retained earnings, 351, 352
- review engagements of CPAs, 347
- of S corporations, 349
- Schedule K, 357
- Schedule K-1, 357–58
- Schedule L, 358
- Schedule M-1, 358–59
- Schedule M-2, 359
- services provided by independent CPA, 347–49
- of sole proprietorships, 350, 351
- tax returns, 352–54
- treasury stock, 351

AC21. *See* American Competitiveness in the 21st Century Act

adjustment of status

- re-examination of I-526 for, 154

Administrative Procedure Act (APA)

- challenge to USCIS decision and, 155

Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA)

- disclosure requirements of, 330, 336

AICPA. *See* American Institute of Certified Public Accountants

American Bar Association

- resolution opposing mandatory reporting by attorneys, 369

American Competitiveness in the 21st Century Act (AC21)

- EB visas and, 39

American Institute of Certified Public Accountants (AICPA)

- Auditing Standards Board's Statement on Auditing Standards (SAS), 343–44
- Code of Professional Conduct, 349
- role of, 342–43

American Stock Exchange (AMEX)

- role of, 380

amount of investment

- Canadian Immigrant Investor Program, 408
- E-2 investment, 73, 236, 240–41, 434–35
- EB-5 capital investment, *See* EB-5 visas
- New Zealand Investor category, 425
- UK investment immigration, 431, 434

anti-terrorism

- investor concerns, 361–77
- restricted transactions with terrorist entities, 365–68

Antiterrorism and Effective Death Penalty Act (AEDPA)

- liability under, 366

antitrust laws

- foreign investors and, 333–34, 337

APA (Administrative Procedure Act)

- challenge to USCIS decision and, 155

Arms Export Control Act

- trade of arms, regulation of, 335

artwork

- estate tax exception when deemed to have situs outside U.S., 303

Atomic Energy Act

- licensing restrictions of, 334

at-risk investments

- E-1 and E-2 cases, 236–37, 239–40
- EB-5 visas and, 57, 76, 433–34

attorneys

- anti-money laundering and anti-terrorist compliance
 - client identification, 370, 371, 373–74
 - due diligence of “knowing your client,” 371
 - general tips, 371, 372
 - heightened diligence in dealings with politically exposed persons, 370
 - mandatory reporting, 369–70
 - OFAC authorization for legal services, 368
 - privileged communications and FATF recommendations, 371
 - suspicious transactions reporting, 370–71
- EB-5 visas and legal ethics, 267–80
- competence issues, 267–69
- finder's fees, 277–78
- legal fees, 276–77
- malpractice claims, 278–79

- multiple investors, representation of, 272–73

- seller and buyer representation by same attorney, 270–72
- unsettled area of law issues, 269–70

attorneys' fees

- EB-5 visas and, 276–77

audits. *See* accounting systems

Australia business skills program

- Generally, 397–405
- age requirement, 401
- cancellation of visa, 404
- class 457 Independent Executive visa, 399–400
- current government policy on, 399–400
- English language requirement, 401
- entrepreneur visas, 405
- health and character requirements, 401
- number of visas granted, 397–98
- post-arrival monitoring, 404
- previous government policy on, 398–99
- regional settlement of business migrants, 400
- staged approach to permanent residence, 399–400
 - first stage of establishing or participating in a business, 401–02
 - first stage of investing in government bonds, 403–04
 - second stage of establishing or participating in a business, 402–03
 - second stage of investing in government bonds, 404
- State or Territory Government sponsorship, 400
- temporary residence for self-funded retirees, 405
- visa requirements, 400–404

Australian Department of Immigration and Multicultural and Indigenous Affairs (DIMIA)

- on problems with business skills visas, 398–99

aviation

- federal laws on licensing, 335

B

balance sheets

- accounting for investor-based immigration, 340–41, 351

BALCA decisions

- on bona fide job opportunities, 41, 42–44

bank deposits

- estate tax exception when deemed to have situs outside U.S., 303

Bank Secrecy Act

- anti-money laundering under, 368–69

bilateral investment treaties

- U.S. pursuit of, 327

Blue Sky laws

- state securities laws, 389–90

Board of Immigration Appeals (BIA)

EB-5 cases appealed from rulings of, 156

bona fide job opportunity test

Generally, 41–48
BALCA rulings on, 41–44
family relationship of alien to employer, 44
final PERM rule on, 45–48
investment or managerial involvement as ground for denial, 42–43
investment or managerial involvement not significant enough for denial, 43–44
proposed PERM rule on, 44–45

Bureau of Economic Analysis (BEA)

data collection on foreign investment in U.S., 328–29

business entities

C corporations, 284–86
limited liability companies, 287–88, 350, 351, 353
limited liability partnerships, 284, 350, 351, 353
limited partnerships, 283–84
overview of, 281–88
partnerships, 282–83
S corporations, 286–87
sole proprietorship, 281–82

business records

as evidence for E-2 visas, 240
as evidence for EB-5 visas, 82

C**C corporations**

accounting systems for, 349, 351
overview, 284–86
tax returns, 353

California

California Consortium for Agricultural Export, designation as regional center, 107, 118–19
empowerment zones, encouraging EB-5 investment in, 103
enterprise zones, encouraging EB-5 investment in, 103
Local Agency Military Base Recovery Area, encouraging EB-5 investment in, 103
Redevelopment Agency of the City of Vernon, designation as regional center, 108, 136–37

Canada

commuters from and taxes, 294
Immigrant Investor Program (CIIP), 407–11
current program, 407–08
entrepreneurs, 410–11
history of, 407
net worth requirement, 407
pooling of investment funds, 407
procedures for investors, 409–11
Provincial Nominee Programs, 410
qualifications of immigrant investors, 408–09
Québec province and, 407, 408, 409

capital

contributed capital, accounting for, 351
EB-5 requirements, *See* EB-5 visas

lawful source of, *See* lawful source of investment capital

tax returns, capital accounts used in, 355–57

capital gains

deferral of, 321

Capitol Area Regional Center JOB Fund, LLC

designation as regional center, 108, 133–35

certified public accountants

services provided by independent CPAs, 347–49

CFIUS, *See* Committee on Foreign Investment in the United States**changed circumstances**

EB-1A visas and, 37
EB-5 visas and, 144–49
NIW visas and, 36–37

character requirements

Australia business skills program, 401
executive or supervisory character of E-2 investor's employees, 17–18
New Zealand Investor category, 419–20

Chevron USA v. Natural Resources Defense Council (U.S. 1984)

administrative deference under, 155, 158

children, *See* dependents and children**China**

EB-5 visa petitioners from, 87

classified information

laws protecting, 334

Clayton Act

foreign investors and, 333

Closer Economic Partnership Arrangement

between Hong Kong and Central People's Government, 418

cluster economic development theory

Immigrant Investor Pilot Program and, 91–95

CMB Export LLC

designation as regional center, 106, 116–17

co-investors

EB-5 visas for, 53–54, 71
legal representation of, 272–73
visas for, 71

commercial enterprises

EB-5 visa requirement for new commercial enterprise to be created, 52–54, 432–33
UK investor category and, 432

Committee on Accounting Procedure (CAP)

issuance of Accounting Research Bulletins (ARBs), 342–43

Committee on Foreign Investment in the United States (CFIUS)

establishment and role of, 332–33, 338

Communications Act of 1934

radio and television regulation, 334–35

conditional residence

New Zealand, 421, 422–23
lifting or removal of conditions, 426–27
U.S., *See* EB-5 visas

control issues, *See* E-2 investor visas**corporations**

C corporations, *See* C corporations
S corporations, *See* S corporations

stock in, tax liability for, 304

criminal activities

See also money laundering
proceeds of crime, 365
specified unlawful activities, 364

Cronin memorandum

NIW status and, 36–37

currency transactions

EB-5 visas and currency transfer laws, 86–87
reporting, 331, 337, 368–69

customer identification

Gatekeeper Initiatives and, 370, 371, 373–74

D**debt obligations**

estate tax on, 304–405
exception when deemed to have situs outside U.S., 303

declarations

in EB-5 petitions, 86

departure

E-2 investor's intention to depart from U.S., 20–21, 245–46
tax planning for, 320–22

dependents and children

of E-2 investors, 21–22
of EB-5 investor, 65
of Hong Kong investment-related residents, 415, 417
qualified domestic trust and estate property passing to noncitizen spouse, 292, 299, 305–13
spousal gifts and gift tax, 321

derogatory information

denial of EB-5 visas based on, 151–52

DIMIA, *See* Australian Department of Immigration and Multicultural and Indigenous Affairs**diplomats**

taxes and, 293

disclosure requirements

accounting policies and, 346
Agricultural Foreign Investment Disclosure Act of 1978, 330, 336
financial statements, 342
foreign investment and, 327–30, 336–37
International Investment and Trade in Services Survey Act of 1976, 328–30, 336
Securities Exchange Act of 1934, 328, 337

DOJ Act, *See* 21st Century Department of Justice Appropriations Act**DOS guidance, *See* Foreign Affairs Manual (FAM)****drug entities**

See also Kingpin Act
money laundering and, 361
transactions with, 365–68

dual residence

income tax implications of, 319

due diligence

attorneys to screen clients, 371

E

E-1 trader visas

- under INA, 234
- tax planning for, 297

E-2 investor visas

- ability to develop and direct the business, required for, 16–21
- amount of investment, 73, 236, 240–41, 434–35
- “at risk” principle and, 236–37, 239–40, 433–34
- bona fide commercial or entrepreneurial undertaking, required for, 14, 431
- co-investors, 71
- comparison to UK investment immigration, 429
- comparison with EB-5 visas, 69–80
- control of business, required for, 76, 77, 241–42
- dependents’ status, 21–22
- DOS on job shop arrangements, 245
- eligibility requirements for, 10–21
- employees of principal aliens, 17–20, 243–45
 - essential skills of, 18–20, 244–45
 - executive or supervisory character of, 17–18
 - general requirements for, 17
- encouraging liberal issuance of, 3–4
- historical background, 233–35
- incidental activities and, 21
- intention to depart from U.S., required for, 20–21, 245–46
- investment requirements for, 11–16, 72, 236, 246
- labor certification and, 48
- legal precedent and, 233–47
- list of treaty countries for, 24–27
- marginality issues of, 241
- nationality requirements for, 10–11, 70, 242–43, 430
- “negative control,” concept of, 242
- period of validity and period of admission, 22–23
- post-1979 guidance, 238–46
- pre-1979 guidance, 237
- regulations, promulgation of, 246
- regulatory authority for, 9–10
- small businesses and, 3, 9–27
- source of funds, 236, 240, 436
- statutory authority for, 9
- substantiality of investment, *See this heading*: amount of investment
- tax planning for, 297
- treaties applicable for, 10–11
- U.S. economy and, 3–4
- where to apply, 23

E-3 visas

- realistic view of, 237

EB visas and small businesses

- Generally, 29–40
- ability to pay and, 37, 39
- changed circumstances and, 36–37
- employer sponsorship, issues of credibility for, 37–38
- employer-employee relationship required for, 32–33

- exempt from labor certification, 29–40
- extraordinary ability petitions, 33–34
- first preference, 29–31
- issues facing, 32–33
- NIW applications, *See* National Interest Waiver
- outstanding researcher petitions, 38
- permanent resident regulations, 38–40
- second preference, 31–32
- self-sponsorship issues, 33–36

EB-1A visas

- Skerrett letter on, 37

EB-1B visas

- outstanding researchers, 38

EB-1C visas

- co-investors, 71
- comparison with EB-5 visas, 69–80, 430
- credibility issues and, 37–38
- investment requirements for, 72, 436
- sponsorship of, 31
- types of investors covered by, 69, 70, 429

EB-5 visas

- See also* Immigrant Investor Pilot Program
- Generally, 51–80, 246
- AAO decisions limiting use of, 62–63
- adverse determinations of petitions, 151–52
- at-risk investments, 57, 76, 433–34
- attorney competence to handle, 267–80
- attorneys’ fees and, 276–77
- background and experience requirements for, 69–70
- benefit to U.S. economy from investment, 55, 58–59
- business records as evidence for, 82
- “capital” requirements, 54, 57–58, 73–74, 263
 - See also this heading*: source of investment capital
 - proving requisite amount invested, 141–42
 - shortfall, seeking reasonable time to complete investment, 145–47
 - sustaining of investment, 142
- changed circumstances and, 144–49
- characteristics of investment, 70–76
- child of EB-5 investor, 65
- co-investors, 53–54, 71
 - legal representation of, 272–73
- comparison to alternative immigrant investor strategies (L-1, E-2, and EB-1C), 69–80, 430
- comparison to New Zealand Investor category, 425–27
- comparison to UK investment immigration, 429, 430, 431
- conditional residence period of, 60–61, 69, 79–80, 264, 430
 - binding legal authorities, 140–41
 - removal of conditions, 139–52
 - See also* Form I-829
- creation of jobs for at least 10 U.S. citizens, 55–56, 58, 77, 261, 262–63, 436–37
 - deficient number, seeking reasonable time to cure, 147–48
 - measurement of job creation, recommendations for, 98–101
 - proof of, 142–43
- declarations, use in petitions for, 86

- derogatory information resulting in denial of, 151–52
- duration of benefits, 79–80
- “engaging” in new commercial enterprise, 54, 70
- equity investment, 74–75, 435
- ethical considerations for attorneys dealing with, 267–80
- existing businesses and, 53, 72
 - See also this heading*: troubled businesses, investment in
- failed businesses and, 148–49
 - attorney liability for, 276
- finder’s fees and, 277–78
- Form I-829, *See* Form I-829
- fraudulent investments and, 62, 264
- individual petitioner to be investor, 71
- initial evidence for, 56–60, 81–82
- “investing” or “actively in process of investing,” 54–55, 74–75, 145
- legislative history of, 259–64
- litigation concerning stalled cases, 153–59
 - See also* litigation
- location of jobs created, 56, 58, 59, 72–73
 - recommendations for, 101–04
- managerial capacity of investor, 58, 69–70, 263–64
- nationality of investor, 70
 - higher scrutiny countries, 87–88
- new commercial enterprise to be created, 52–54, 57, 71–72
- number of visas available, 52, 92, 261
- pilot program for, *See* Immigrant Investor Pilot Program
- pooling arrangements and, 53–54, 71, 91
- procedures, 60–61
- purpose of, 262
- qualified immigrants, 52
- regional centers, designation of, *See* Immigrant Investor Pilot Program
- removal of investor upon denial of I-829 petition, 152
- saving jobs, *See this heading*: troubled businesses, investment in
- source of investment capital
 - actual sources, 82–84
 - currency transfer laws and, 86–87
 - documentation, 57, 81–82, 141–42
 - gifts as, 83
 - inheritance as, 83–84
 - lawful source, 57–58, 75–76, 142
 - loan as, 54, 83, 101
 - tracing, 81–88
 - transactions as, 84–85
 - wealth accumulation as, 85–86
- statutory requirements of, 51, 52–56
- tax returns as evidence for, 82
- termination of status, 61–62, 64, 139
- timing issues
 - investment time, 71, 142, 433–34
 - when jobs must be created, 56, 262–63
- troubled businesses, investment in, 56, 77–78, 148, 262
- 2002 amendments on, 63–65, 91, 105, 149–50
- types of jobs to be created, 55–56, 58
- unlawful residents and, 88
- USCIS 2004 meeting on, 65

Economic Growth and Tax Relief**Reconciliation Act**

estate tax under, 292

80/20 companies

estate tax exception when deemed to have situs outside U.S., 303–04

employment-based visas, *See* EB visas**English language requirements**Australia business skills program, 401
New Zealand Investor category, 420, 426**enterprise zones**

EB-5 investment in, 102–03

entrepreneurs*See also* E-2 investor visas
Australian entrepreneur visas, 405
Canadian entrepreneur visas, 410–11
E-2 investor visas and bona fide entrepreneurial undertaking, 14, 431
UK investment immigration, 431–32
U.S. economy and immigrant entrepreneurs, 3–4**equity accounts**accounting for, 350–51
reporting changes in, 351–52**equity investment**EB-5 visas and, 74–75, 435
in UK, 435**estate tax**bequests after nonresident alien obtains U.S. domicile, 315
exceptions for property deemed to have situs outside U.S., 303–04
foreign decedents
credits for, 299–300
deductions for, 298–99
determination of gross estate of, 298
foreign trusts and, 313–18
generation-skipping transfer tax, 300
planning issues, 291–92, 295–96, 320
QDOT and U.S. decedent transferring property to noncitizen spouse, 292, 299, 305–13
real estate and, 302–03
situs of property and, 302–05
tangible personal property and, 303
tax treaties and, 296, 300–301, 323
U.S. possession residents and, 296**ethical considerations**auditing, 349
EB-5 visas and attorneys, 267–80
See also attorneys
securities market, 389**European Union Directive**

on gatekeeping roles for legal professionals, 362, 369

Executive Order 12662 (1988)

establishment of Committee on Foreign Investment in the United States (CFIUS), 332–33

existing businesses*See also* troubled businesses
EB-5 investment in, 53, 72
UK investment in, 432**Exon-Florio provision**

on foreign direct investment, 332, 338

expatriationexcise tax on expatriating trusts, 317–18
income tax consequences of, 321–22**Export Administration Act of 1979**

military technology and goods, restrictions on export of, 335

extraordinary abilityO-1 visas for, 8
self-sponsorship and, 29, 33–34**F****F visas**

taxes and, 293–94

False Statement Statutecriminal liability under, 366
penalties, 368FAM, *See* Foreign Affairs Manual**family relationship of alien to employer**BALCA ground to deny labor certification, 44
DOL view of, 45FASB, *See* Financial Accounting Standards BoardFATF, *See* Financial Action Task ForceFCN treaties, *See* Foreign Commerce and Navigation Treaties**Federal Aviation Act**

licensing restrictions of, 335

Financial Crimes Enforcement Network (FinCEN)Form 105 to report transport of currency or monetary instruments over \$10,000, 331, 369
Gatekeeper initiatives and, 370**federal laws and regulations***See also specific acts*
antitrust laws, 333–34, 337
Arms Export Control Act, 335
atomic energy, 334
aviation, 335
classified information laws, 334
disclosure laws, 327–30
See also disclosure requirements
Export Administration Act of 1979, 335
felony penalties, 368
foreign investors and, 325–38
national security and, 331–33, 338
radio and television, 334–35
reporting laws, 331
See also reporting
technology protection, 335**felonies**

penalties for, 368

Financial Accounting Standards Board (FASB)*Qualitative Characteristics of Accounting Information*, 345
role of, 340, 343**Financial Action Task Force (FATF)**privileged communications,
recommendations on, 371
role to combat money laundering, 361

suspicious activity reporting and, 369, 370–71

financial statementsaccounting and, 340–42
characteristics of, 345–46
small businesses and, 346–47**finder's fees**

EB-5 visas and, 277–78

first preference

employment-based categories and, 29–31

Foreign Affairs Manual (FAM)consular guidance on visas, 9–10
guidance on E treaty investor/trader visas, 234–35, 237, 238–39, 246
on intent to return abroad, 245
notes on nonpreference investor category, 235, 241, 251, 253**Foreign Commerce and Navigation (FCN) Treaties**between U.S. and other countries, 234
between U.S. and UK, 233**foreign direct investment**Exon-Florio provision on, 332, 338
U.S. policy and, 325–27**foreign entities**

taxes on interests in, 304

foreign financial accounts

filing Form TD F 90-22.1 for interests in, 319, 331

foreign government related individuals

taxes and, 293

Foreign Narcotics Kingpin Designation Act, *See* Kingpin Act**foreign trusts and tax implications**Generally, 313–18
excise tax on expatriating trusts, 317–18
income tax planning, 318
loans to U.S. grantor or beneficiary or family member, 317
Notice 96-65 and compliance with domestic trust criteria to avoid excise tax, 318
powers of appointment, 315
situs determination for, 317–18**Form 1-A (SEC)**

Regulation A securities offerings by non-SEC reporting issuers, 385

Form 8300

reporting receipt of over \$10,000 for one business or financial transaction, 369

Form BE-13

disclosure of international investment in U.S., 329

Form BE-14

disclosure of joint venture in U.S. with foreign person, 329–30

Form DS-156EE visa process and, 431, 436
EB-5 visa process and, 75**Form FSA-153**

disclosure of foreign interest in agricultural land, 330, 336

Form I-140ability to pay and, 39
similarity of positions when seeking portability, 39, 40

Form I-485

portability issues, 39–40

Form I-526

EB-5 visa process and, 56, 60, 64, 70, 143–44

historical background of, 250, 255–57

litigation over denials, 153–54

Form I-829

adjudication of, 60–61

adverse determinations, 151–52

mandamus actions to force, 153, 155–56

petitions on hold, 150

approval by USCIS, 152

contents of and documentation required, 140–43

derogatory information, denial based on, 151–52

effect of failure to file by immigrant

investor, 60, 64, 139–40

filing of, 139–40

receipt notice, 150

regional center-based petitions and, 143–44

removal of investor upon denial of, 152

request for evidence, 60–61, 151

status of conditional residents while

pending, 61, 150

naturalization application after 5 years of conditional status, 150–51

Form TD F 90-22.1

filing for interests in foreign financial accounts, 319, 331

franchises

as E treaty issues of control, 242

fraud

EB-5 visas and fraudulent investments, 62, 264

Rule 10b-5 and securities fraud under 1934 Securities Act, 387–88

sections 11 and 12 of 1933 Securities Act, 388

funding sources, *See* source of funds

G**gatekeeping regimes**

European and FATF initiatives, 369–71

general partnerships, *See* partnerships

generally accepted accounting principles (GAAP)

Generally, 342, 343–45

generally accepted auditing standards (GAAS)

assurances of, 347–49

generation-skipping transfer tax

nonresidents and noncitizens, applicability to, 300

gift tax

foreign trusts and, 313–18

gifts after nonresident alien obtains U.S. domicile, 315

intangible personal property and, 304–05

planning issues, 291–92, 295–96, 301–02, 320

spousal gifts and, 321

tax treaties and, 302, 323

gifts

as source of funds for E-2 visas, 236

as source of funds for EB-5 visas, 83

Golden Rainbow Freedom Fund

designation as regional center, 106, 111–13

Government Accountability Office (GAO)

report on immigrant investor program, 149–50

H**H-1B visas**

specialty occupations and, 7–8

tax planning and, 297

Hart-Scott-Rodino Antitrust Improvement Act of 1976

foreign investors and, 333–34, 337

Hawaii Department of Business, Economic Development and Tourism

designation as regional center, 106, 109–10

health conditions

alien in U.S. and tax payments, 294

Australia business skills program, 401

New Zealand Investor category, 420

Hong Kong investment-related resident visas

Generally, 413–18

Capital Investment Entrant Scheme, 413, 415–17

application procedure, 416–17

approval in principle, 417

eligibility criteria, 415–16

change of status application, 415

dependent visas, 415, 417

direct filing with Hong Kong Immigration Department (HKID), 414–15

entry for investment via employment visa, 413–14

I

IEEPA, *See* International Emergency Economic Powers Act

IFM, *See* Inspector's Field Manual

illicit funds, *See* unlawful funds

IMMACT90, *See* Immigration Act of 1990

Immigrant Investor Pilot Program

Generally, 59–60, 89–137

administration of, 95–104

cluster economic development and, 91–95

integrity of program, recommendations for, 101

measurement of job creation,

recommendations for, 98–101

poor performance of, 90–91

promotion of program, recommendations

for, 101–04

purpose of, 263

regional center designation, 59, 66–67, 73,

78–79, 91, 92, 436–37

See also specific regional centers defined, 105

I-526 petitions and, 143–44

I-829 petitions and, 143–44

profiles of regional centers, 106–37

recommendations for, 96–98

statutory requirements of, 52, 89, 91, 97

UK immigrant investor program compared to, 437

Immigration Act of 1990 (IMMACT90)

Generally, 259–64

EB-5 visas and, 89, 235, 246, 261–64, 267

historical roots in 1982 Senate bill, 259–60

passage of, 261–64

proposed 1989 bill as background to, 260–

61

Immigration and Nationality Act (INA)

EB-5 visas under, 52

treaty investor visas under, 234

Immigration Reform and Control Act of 1986 (IRCA)

E-2 visas and, 22

INA, *See* Immigration and Nationality Act

income tax

Generally, 290–91

acceleration of income or gain, 318

capital gains, deferral of, 321

compensation, deferral of, 321

corporate returns, 353

dual residence and, 319

expatriation and, 321–22

filing for interests in foreign financial accounts, 319

foreign situs trusts and, 318

income splitting, 318–19

partnership returns, 353–54

planning

post-residence, 319

pre-immigration, 318–19

returns, use of, 82, 352–57

sale of principal residence, timing of, 318

sole proprietorship returns, 353, 354

tax treaties and, 295

inheritance

See also estate tax

as source of funds for EB-5 visas, 83–84

insider trading

violations of prohibition against, 387, 389

Insider Trading and Securities Fraud Act of 1988

treble damages under, 389

Inspector's Field Manual (IFM)

on employment of E-2 dependents, 22

insurance proceeds

estate tax exception when deemed to have situs outside U.S., 304

intent to return abroad, *See* E-2 investor visas

international comparison of immigrant investment programs

Australia, 397–405

Hong Kong, 413–18

New Zealand, 419–27

UK, 429–38

International Emergency Economic Powers Act (IEEPA)

anti-terrorism enforcement and, 365–66

penalties, 368

scienter elements, 367–68

International Investment and Trade in Services Survey Act of 1976

disclosure requirements, 328–30, 336

International Traffic in Arms Regulations (ITAR)

licensing to transfer technical data, 335

intracompany transfers*See also* L-1 visas

L-1 visas, 5–6

in-transit passage

tax exception for, 294

Investor and Regional Center Unit (IRCU)

creation of, 65, 95–96

ineffectiveness of, 97–98

Iowa Department of Economic Development

designation as regional center, 107–08, 129–32

Iran

EB-5 visa petitioners from, 87–88

IRCA, *See* Immigration Reform and Control Act of 1986**IRCU, *See* Investor and Regional Center Unit****J****J visas**

taxes and, 293

Japan

E visas and Japanese immigrants, 238–39, 240, 242–43

job creation, *See* EB-5 visas**joint ventures**

control issues for E-2 visas, 242

Form BE-14 to be filed when joint venture in U.S. with foreign person, 329

judicial review

of EB-5 cases and administrative deference, 155–57

jurisdictional defenses

EB-5 cases and, 158

K**Kingpin Act**

liability for Significant Foreign Narcotics Trafficker, 366

penalties, 368

scienter elements, 367–68

L**L-1 visas**

co-investors, 71

comparison with EB-5 visas, 69–80

control of business, required for, 76, 77

intracompany transfers, 5–6

investment requirements for, 72

tax planning for, 297–98

L-1A visas

new offices and managers, 6, 38

L-1B visas

specialized knowledge category for, 6

labor certification*See also* bona fide job opportunity test

BALCA rulings on investor, owner, or relative, 42–44

bona fide job opportunity test, 41, 42–44
family relationship of alien to employer, 44

investment or managerial involvement as ground for denial, 42–43

investment or managerial involvement not significant enough for denial, 43–44

DOL denial to investor, 47

employment-based sponsorship exempt from, 29–40

first preference, 29–31

second preference, 31–32

exceptions to, 235, 249–50

PERM rule on, 41–48

tax consequences of, 294

labor disputes

E-2 visas and, 21

LAMBRA, *See* Local Agency Military Base Recovery Area**lawful source of investment capital**

E-2 visas and, 236, 436

EB-5 visas and, 57–58, 75–76, 435–36

New Zealand requirement, 426

UK immigrant investors, 435

laws and regulations, *See* federal laws and regulations; *specific acts***legal precedent**

in investor visa cases, 233–47

limited liability companies

accounting systems for, 350, 351

overview, 287–88

tax returns, 287, 353

limited liability partnerships

accounting systems for, 350, 351

overview, 284

tax returns, 353

limited partnerships

accounting systems for, 350, 351

EB-5 visas and, 76, 264

overview, 283–84

litigation

of securities law, 387–89

of stalled EB-5 cases, 153–59

best strategies for, 159

government defenses, 156–59

judicial review, 155–56

mandamus actions, 153, 155–56

venue, 155, 159

loans

foreign trusts making to U.S. grantor or beneficiary or family member, 317

as source of funds for EB-5 visas, 54, 83, 101

Local Agency Military Base Recovery Area (LAMBRA)

encouraging EB-5 investment in, 103

location of investment, *See* EB-5 visas;

targeted employment areas

long-term need employees

of E-1 or E-2 principal aliens, 20

LPR status

tax consequences of, 293, 319

M**malpractice**

EB-5 visas and, 278–79

managers

E-2 visas and, 77, 243–45

EB-5 visas and managerial capacity of investor, 58, 69–70, 263–64

H-1B visas for, 7–8

L visas for, 5, 77

new offices and, 6, 38

labor certification denial due to managerial involvement, 42–43

multinational managers, sponsorship of, 31, 242

mandamus actions

EB-5 cases, to force government to adjudicate, 153, 155–56

marginality issues

E-2 investors and, 241

medical conditions, *See* health conditions**Mexico, commuters from**

taxes and, 294

Modular Container Systems, Inc.

BALCA decision on bona fide job opportunity, 41, 42, 44, 45, 46, 47, 48

money laundering

Generally, 361–77

pro forma report form for, 376–77

source of funds and, 240

tips on how to spot, 375

most-favored nation status

policy of, 326

multinational executives and managers

E-2 visas and, 242

L-1 and EB-1C categories and, 430

sponsorship of, 31

multiple petitioners, *See* co-investors**N****NASDAQ Stock Market**

role of, 379, 380

National Interest Waiver (NIW)

changed circumstances since filing petition for, 36–37

self-sponsorship for, 32, 34–36

National Securities Market Improvement Act (NSMIA)

enactment of, 389–90

national security

laws on investment and, 331–33, 338

national treatment of foreign investment

policy of, 326

nationality

of E-2 investor, 10–11, 70, 242–43, 430

of EB-5 investor, 70, 87–88

naturalization

conditional residents under EB-5 visas seeking, 150–51, 154

“negative control”

concept of, 242

new offices

L-1 visas and, 6, 38

New York Stock Exchange (NYSE)
role of, 380

New Zealand Investor category
Generally, 419–27
application procedure, 419–22
changes to business proposal, 422
character requirements, 419
character waivers, 420
conditional residence visas, 421
English language requirements, 420, 426
expression of interest, 419
health requirements, 420
investment funds, 420
invitation to make formal application, 420–21
selling of business, 422
transfer of funds to New Zealand, 421
withdrawal of funds for approved business, 422

Citizenship Amendment Act of 2005 and, 419

comparison of New Zealand category with EB-5 category, 425–27

creation of jobs not required, 426

criteria for approval, 419

lawful source of investment capital, 426

lifting of conditions at end of investment period, 422–23
proof of funds retained in acceptable investment, 422
proof of spending significant time in New Zealand, 423

“old” investor category and points system, 423–25

passive/active role at investor’s choice, 426

NIW, *See* National Interest Waiver

nonpreference investor category
Generally, 249–54, 431
“at risk” principle and, 236–37
investor defined under, 235
relevance to current practice, 250–54
source of funds, 236
substantiality requirement for investment, 236, 250

nonresident aliens
estate tax and, 291–92
tax home exception for, 294

Notice 96-65
compliance with domestic trust criteria to avoid excise tax, 318

NSMIA, *See* National Securities Market Improvement Act

number of employees
bona fide job opportunity and, 45, 46
creation of job for 10 or more employees for EB-5 visas, *See* EB-5 visas

NYSE, *See* New York Stock Exchange

O

O-1 visas
extraordinary ability and, 8
tax planning for, 298

Office of Foreign Assets Control (OFAC)
anti-terrorism role of, 361, 365–67

Order to Show Cause
removal of EB-5 investor and, 152

Organization for Economic Cooperation and Development (OECD)
Code of Liberalisation of Capital Movements, 327
Declaration on International Investment Multinational Enterprises, 326–27
determination of tax domicile under Model Convention of, 296
Multilateral Agreement on Investment (MAI), 327

outstanding professors and researchers
EB-1B petitions, 38
sponsorship of, 30–31

over-the-counter bulletin board market (OTCBB)
SEC reporting requirements and, 381

ownership interest
of alien applying for labor certification, *See* bona fide job opportunity test
self-petitioning of owner, *See* self-petitioning

P

Pakistan
EB-5 visa petitioners from, 87

partnerships
general partnerships, 282–83
accounting systems for, 349–50, 351
tax returns, 353–54
limited liability partnerships, 284
accounting systems for, 350, 351
tax returns, 353
limited partnerships, *See* limited partnerships
taxation of interests in, 304
capital accounts, allocations, and basis, 354–55, 357

penalties, *See specific acts and crimes*

PERM regulation
on alien influence and control over job opportunity
final rule, 45–48
proposed rule, 41, 44–45

Philadelphia Industrial Development Corporation
designation as regional center, 107, 120–22

pilot program, *See* Immigrant Investor Pilot Program

Pink Sheets
SEC reporting requirements and, 381

pooling arrangements
EB-5 visa and, 53–54, 71, 91

portfolio debt obligations
estate tax exception when deemed to have situs outside U.S., 303

powers of appointment
foreign trusts and, 315

principal residence, sale of
avoiding tax consequences from, 320–21
timing of and income tax, 318

private placement market
securities registration and, 381–82

privileged communications
attorney privilege and FATF recommendations, 371

professional athletes present for charitable sports events
taxes and, 294

protection of investor rights
policy of, 326

purchase of existing business, *See* existing businesses

Q

qualified domestic trusts (QDOTs)
estate property passing to noncitizen spouse and, 292, 299, 305–13

Québec Immigrant Investor Program (QIIP)
Generally, 407, 408, 409

R

radio and television
federal regulation of ownership and licensing, 334–35

Redevelopment Agency of the City of Vernon
designation as regional center, 108, 136–37

regional center designation, *See* Immigrant Investor Pilot Program

Regulation A
securities offerings by non-SEC reporting issuers, 385

Regulation D
exemptions to securities registration, 384–85

Regulation S
exemption from securities registration, 386

removal
of EB-5 investor, 152

reporting
attorney reporting pursuant to OFAC authorization, 368
changes in equity accounts, 351–52
of currency transactions, *See* currency transactions
of foreign financial accounts, *See* foreign financial accounts
receipt of over \$10,000 for one business or financial transaction, 369
securities, *See* securities law
suspicious transactions reporting, 369, 370–71
pro forma report form, 376–77

request for evidence (RFE)
EB-5 petitions and tax returns, 82
Form I-829 and, 60–61, 151

resident aliens
estate tax and, 292

restricted securities
Rule 144A and, 386

retained earnings, *See* accounting systems

RFE, *See* request for evidence

RIMS II (forecasting methodology)
recommended use for Immigrant Investor Pilot Program to measure indirect job creation, 99

ripeness

EB-5 cases and, 158

Rule 10b-5

securities fraud and manipulation, 387–88
remedies for violations, 389

Rule 144A

safe harbor exemption from securities
registration, 385–86

rural areas

EB-5 program to create jobs in, 56, 59, 103–
04, 141, 263

S**S corporations**

accounting systems for, 349
overview, 286–87
tax returns for, 353

Sarbanes-Oxley Act of 2002 (SOX)

SEC authority under, 389

Schedule K

accounting for, 357

Schedule K-1

accounting for, 357–58

Schedule L

accounting for, 358

Schedule M-1

accounting for, 358–59

Schedule M-2

accounting for, 359

scienter elements

AEDPA and criminal liability, 367
civil liability, 367
IEEPA and Kingpin Act, 367–68
illicit funds and, 363–64

Securities Act of 1933

definition of “security” in, 382
disclosure requirements for initial offerings,
382

exemptions to registration, 384–86
registration of securities, 383–84

Regulation A securities offerings by non-
SEC reporting issuers, 385

Regulation D exemptions, 384–85

Regulation S exemption from registration,
386

restricted securities and Rule 144A, 386

Rule 144A safe harbor exemption from
registration, 385–86

section 11 and misrepresentation or
omission of material fact, 388

section 12 and antifraud provision, 388

Securities and Exchange Commission (SEC)

enforcement efforts of, 389

role of, 342, 382–83

Securities Exchange Act of 1934

disclosure requirements, 328, 337, 382–83,
386–87

insider trading, 387, 389

overview, 342, 386–87

Rule 10b-5, 387–88, 389

securities law

See also specific acts

Generally, 379–90

bulletin board market (OTCBB), 381

definition of security, 382

litigation, 387–89

Pink Sheets, 381

private placement market, 381–82

remedies for violations, 389

SEC role, 382–83

state laws, 389–90

stock markets, 379–82

self-petitioning

alien ownership and control, effect of, 41–48

BALCA rulings, 42–44

final PERM rule on, 45–46

proposed PERM rule on, 44–45

extraordinary ability petitions, 33–34

H-1B visas and, 7

NIW and, 7, 34–36

short-term need employees

of E-1 or E-2 principal aliens, 19–20

Skerrett letters

on EB-1A status, 37

on NIW status, 36–37

small businesses

E-2 investors and, 3, 9–27

See also E-2 investor visas

EB visas and, 29–40

See also EB visas and small businesses

financial statements of, 346–47

H-1B visas and, 8

sole proprietorships

accounting systems for, 350, 351

overview, 281–82

tax returns, 353, 354

source of funds

See also lawful source of investment capital,
unlawful funds

E-2 requirements, 236, 240

EB-5 visas, *See* EB-5 visas

of investors, 81–88

South Dakota International Business**Institute**

designation as regional center, 107, 123–28

Spencer Enterprises, Inc. v. United States**(9th Cir. 2003)**

EB-5 case, 156–57

spouses, *See* dependents and children**state and local agencies**

encouraging EB-5 investments, 103–04

state securities law

federal authority and, 389–90

stolen money

criminal and civil provisions on, 362–65

strikes

E-2 visas and, 21

students

taxation of, 293–94

substantial economic effect

purpose of rules on, 356–57

substantiality requirement for investment

See also amount of investment

E-2 visas and, 240–41, 434–35

nonpreference investor category, 236, 250

Sumitomo v. Avagliano (U.S. 1982)

place of incorporation debate and, 243

surviving spouse. *See* estate tax

suspicious transactions reporting

FATF recommendations on, 369, 370–71

pro forma report form, 376–77

T**targeted employment areas**

See also rural areas; unemployment

EB-5 program to create jobs in, 56, 58, 59,
141, 262, 263, 434

Tax Reform Act of 1984 (TRA)

tax residency issues, 289

taxation

Generally, 289–323

C corporations, 285, 353

Canadian commuters, 294

capital gains, deferral of, 321

departure planning and, 320–22

determination of tax residency status, 292–
96

estate and gift taxes and, 295–96

income tax treaties and, 295

E visas and, 297

estate tax, *See* estate tax

excise tax on expatriating trusts, 317–18

foreign government related individuals and,
293

foreign trusts and, 313–18

general partnerships, 283

gift tax, *See* gift tax

H-1B visas and, 297

income tax, *See* income tax

intangible personal property and, 304–05

intent to engage in conduct to evade IRC,
364

in-transit passage, exception for, 294

J visas and, 293

L-1 visas and, 297–98

limited liability companies, 287, 353

limited liability partnerships, 284, 353

limited partnerships, 284

LPR status and, 293

medical condition, effect of, 294

Mexican commuters, 294

O-1 visas and, 298

planning, 289–323

planning, pre-immigration, 313–18

principal residence, sale of, 318, 320–21

professional athletes present for charitable
sports events, 294

qualified domestic trusts and estate property

passing to noncitizen spouse and, 292,
299, 305–13

returns

capital accounts used in, 355–57

as evidence for EB-5 visa petitions, 82
use of, 352–54

S corporations, 286, 353

situs of property, 302–05

sole proprietorships, 281

students, 293–94

substantial presence test, 293

dual residence and, 319

exceptions, 294

teachers and trainees, 293
 31-day exception, 294
 treaties, *See* treaties

teachers and trainees
 taxation of, 293

Technical and Miscellaneous Revenue Act of 1988
 estate tax and transfers to noncitizen spouses, 299

technology protection
 federal laws and regulations, 335

television and radio
 federal regulation of ownership and licensing, 334–35

31-day presence in U.S.
 tax exception for, 294

TRA, *See* Tax Reform Act of 1984

trade and investment framework agreements (TIFAs)
 U.S. pursuit of, 327

traders, *See* E-1 trader visas

Treasury Model Conventions
 determination of tax domicile under, 296

treaties
 required for E visa status, 10
See also E-2 investor visas
 tax treaties
 estate tax, 296, 300–301, 323
 gift tax, 302, 323
 income tax and determination of tax residency status, 295

treaty countries
 for E-2 investor visas, 24–27
See also E-2 investor visas

treaty investors, *See* E-2 investor visas

treaty traders, *See* E-1 trader visas

TRIMs Agreement
Agreement on Trade-Related Investment Measures, 327

troubled businesses
 investment in and EB-5 visas, 56, 77–78, 148, 262

trusts
See also qualified domestic trusts (QDOTs)
 deemed transfers to trusts and tax implications, 316–17
 foreign trusts and tax implications, 313–18
 situs determination for, 317–18

21st Century Department of Justice Appropriations Act
 EB-5 visas, amendments to, 63–65, 91, 105, 149–50, 157–58

U

UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
 money laundering and, 361

unemployment
 designation of high unemployment areas for EB-5 program, 56, 58, 59, 72–73, 141, 263

United Kingdom investment immigration
 Generally, 429–38
 amount of investment, 434
 benefits and processing, 429–30
 commercial enterprise investment, 432
 employment impacts, 436–37
 entrepreneurship, 431–32
 equity capital investment, 435
 lawful source of investment capital, 435
 point systems of, 431
 qualifying for benefits, 430–37
 timing and risk of investment, 433–34

unlawful activities
 crimes covered, 364

unlawful funds
 scienter elements and, 363–64

as source of investment capital and EB-5 visas, 57–58, 75–76, 142

unlawful residents
 EB-5 visas and, 88

Uruguay Round
Agreement on Trade-Related Investment Measures (TRIMs Agreement), 327

U.S. economy
 benefit to U.S. economy for EB-5 program, 55, 58–59
 foreign investment and, 325–27
 immigrant entrepreneurs and, 3–4

U.S. possession residents
 estate tax and, 296

USA PATRIOT Act
 anti-terrorism role of, 361, 370

V

venue
 of EB-5 cases, 155, 159

Vermont Agency of Commerce and Community Development
 designation as regional center, 106, 114–15

W

Walsh-Pollard case (BIA 1988), 245
 E-2 visa case, 245

World Trade Organization (WTO)
Agreement on Trade-Related Investment Measures (TRIMs Agreement), 327

Y

Yates memo
 on portability of I-485 applications, 39–40