

## Accounting for Income Taxes | Quarterly Hot Topics

### US federal

Tax News & Views, published by Deloitte Tax LLP's Tax Policy Group in Washington, DC, provides a compact, reader-friendly perspective on the latest tax developments coming out of Congress affecting businesses and high-wealth individuals.

For updates and perspective on the latest tax developments coming out of Congress, please subscribe to [Tax News & Views](#).

### Pillar Two a likely revenue loser for the US, JCT says

Enactment of new international minimum tax rules known collectively as Pillar Two could cost the United States fiscal US\$122 billion in lost revenue over the next decade if the rest of the world moves ahead with the agreement being led through the OECD and the United States stays on the sidelines, the Joint Committee on Taxation (JCT) revealed the week of June 19, 2023 in an [analysis](#) requested by congressional Republican taxwriting leaders. And even if the United States does in 2025 implement the global agreement—which the Biden administration signed in 2021 and nearly 140 other jurisdictions have adopted and pledged to implement—the domestic loss still could amount to US\$56.5 billion, the congressional scorekeepers said.

For additional details, please refer to the Deloitte [tax@hand](#) article dated June 24, 2023.

### In this edition:

US federal

US multistate

International

Accounting developments

Up-C structure

## Direct pay election: Proposed and temporary regulations

The Inflation Reduction Act of 2022 ([P.L. 117-169](#)) (IRA) added a novel “direct pay” provision, section 6417, to the Internal Revenue Code (IRC). [Section 6417](#) provides that “applicable entities” (or “electing taxpayers” for credits provided in [sections 45V, 45Q, or 45X](#)) may elect to treat certain credits (“applicable credits”) as a direct payment made against their federal income tax liabilities, thereby allowing such entities a federal tax refund of the amount of the direct payment in excess of any tax liability (the “direct-payment election”). On June 14, 2023, the Internal Revenue Service (IRS) and Treasury released proposed regulations ([REG-101607-23](#)) under section 6417. In addition, the IRS and Treasury issued temporary regulations ([T.D. 9975](#)) setting forth mandatory information and registration requirements for direct-payment elections.

The proposed regulations would generally apply to taxable years ending on or after the date the final regulations are published in the Federal Register. Taxpayers and other entities may rely on the proposed regulations for elective payments after December 31, 2022, in taxable years ending before the date final regulations are published in the Federal Register, provided the proposed regulations are followed in their entirety and in a consistent manner. The temporary regulations apply to taxable years ending on or after the date they are published in the Federal Register. An IRS [FAQ](#) further explaining the proposed regulations and temporary regulations was also released. The proposed regulations and temporary regulations were published in the Federal Register on June 21, 2023.

For additional details, please refer to the Deloitte [tax@hand](#) article dated June 21, 2023.

## Transferability of credits: Proposed and temporary regulations

The IRA added a novel “transferable credit” provision, section 6418, to the IRC. [Section 6418](#) provides that “eligible taxpayers” may elect to transfer (i.e., sell) certain credits to unrelated taxpayers rather than using

the credits against their federal income tax liabilities.

On June 14, 2023, the IRS and Treasury released proposed regulations ([REG-101610-23](#)) under section 6418. In addition, the IRS and Treasury issued temporary regulations ([T.D. 9975](#)) setting forth mandatory information and registration requirements for transfer elections. The proposed regulations would generally apply to taxable years ending on or after the date the final regulations are published in the Federal Register. Taxpayers and other entities may rely on the proposed regulations for taxable years beginning after December 31, 2022, and before the date final regulations are published in the Federal Register, provided the proposed regulations are followed in their entirety and in a consistent manner. The temporary regulations apply to taxable years ending on or after the date they are published in the Federal Register. An IRS [FAQ](#) further explaining the proposed regulations and temporary regulations was also released. The proposed regulations and temporary regulations were published in the Federal Register on June 21, 2023.

For additional details, please refer to the Deloitte [tax@hand](#) article dated June 21, 2023.

## IRS issues updated list of automatic accounting method changes

On June 15, 2023, the IRS released [Revenue Procedure \(Rev. Proc.\) 2023-24](#) that modifies and supersedes, in part, [Rev. Proc. 2022-14](#), and provides the list of automatic accounting method changes to which the automatic change procedures in [Rev. Proc. 2015-13](#) apply. The list of automatic changes previously was published in [Rev. Proc. 2022-14](#).

For additional details, please refer to the Deloitte [tax@hand](#) article dated June 23, 2023.

## Penalty relief for failure to make estimated tax payments on corporate AMT liability

On June 7, 2023, the IRS released [Notice 2023-42](#), which grants penalty relief for corporations that do not pay estimated

tax related to the new corporate alternative minimum tax (CAMT) for a taxable year that begins after December 31, 2022, and before January 1, 2024.

For additional details, please refer to the Deloitte [tax@hand](#) article dated June 9, 2023.

## IRS and Treasury issue proposed regulations on section 30D new clean vehicle credit

On March 31, 2023, the IRS and Treasury released [proposed regulations](#) regarding the new clean vehicle credit under [section 30D](#) for the purchase of qualifying new clean vehicles, including new plug-in electric vehicles and new qualified fuel cell vehicles. The proposed regulations provide rules consistent with previously issued notices and revenue procedure (see [Rev. Proc. 2022-42, section 30D Treasury Position Paper, Notice 2023-16, and Notice 2023-1](#)) and make effective certain critical minerals and battery component requirements for the battery contained in a clean vehicle that is placed in service after April 17, 2023, the date of publication of the proposed regulations in the Federal Register.





## IRS releases guidance on environmental justice solar and wind capacity limitation under section 48(e)

On February 13, 2023, the IRS released [Notice 2023-17](#) establishing the program under [section 48\(e\)](#) to allocate environmental justice solar and wind capacity limitation with respect to certain solar and wind facilities placed in service in connection with low-income communities ("section 48(e) program"). The Notice provides initial guidance regarding the general design of the section 48(e) program. The Treasury and the IRS will issue further guidance outlining the specific application procedures, additional criteria, applicable definitions, and other information requirements.

## First allocation round for 48C advanced energy project credit begins on May 31, 2023

On February 13, 2023, the IRS and Treasury issued [Notice 2023-18](#), establishing the program under [section 48C\(e\)](#) to allocate US\$10 billion of tax credits to qualifying advanced energy projects (US\$4 billion of which may be allocated only to projects located in certain energy communities) ("section 48C(e) program"). The notice provides that at least two allocation rounds are anticipated. On May 31, 2023, the first allocation round ("round 1") begins, allocating credits of US\$4 billion (US\$1.6 billion of which is expected for projects located in certain energy communities). To be considered for round 1, taxpayers must submit concept papers to the Department of Energy by July 31, 2023.

For additional details, please refer to the Deloitte [tax@hand](#) article dated April 25, 2023.

## Ninth Circuit requires 'meticulous compliance' to start assessment statute of limitations

In *Seaview Trading LLC v. Commissioner*, 62 F.4th 1131 (9th Cir. 2023), the Ninth Circuit recently ruled that a taxpayer did not file its tax return when it provided the return to IRS employees; thus, the assessment statute of limitation was open. The Ninth Circuit began its analysis by noting that the assessment statute of limitation is strictly construed in favor of the government, and if a taxpayer wants to invoke the assessment statute of limitations, there must be "meticulous compliance by the taxpayer with all named conditions...." The Ninth Circuit concluded that Seaview did not "meticulously" comply with the filing requirements because its return was not filed with the Ogden Service Center.

For additional details, please refer to the May 2023 issue of [IRS Insights](#).

## Failure to comply with international information return reporting obligations keeps statute of limitations open

In *Leigh C. Fairbank and Barbara J. Fairbank v. Commissioner*, T.C. Memo 2023-19 (Feb. 23, 2023), the Tax Court ruled that a failure to file [Forms 3520-A, Annual Information Return of Foreign Trust with a US Owner](#), and [Forms 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts](#), as required by [section 6048](#), extends the time in which the IRS can assess tax deficiencies under [section 6501](#). Here, the taxpayers' failure to file certain international information returns allowed the IRS to assess tax deficiencies going back to 2003.

For additional details, please refer to the May 2023 issue of [IRS Insights](#).

## US multistate

### Arkansas: New law lowers corporate income tax rate and repeals throwback rule

New law lowers the top tax rate for Arkansas corporate income tax purposes while another recently signed bill gradually phases in a complete repeal of Arkansas' current throwback rule for state corporate income tax apportionment purposes to help encourage more investment and job creation in Arkansas.

For additional details, please refer to the April 14, 2023 edition of [State Tax Matters](#).

### California: FTB reminds taxpayers of nonconformity to extended federal statute of limitations period on NOL carrybacks

The Franchise Tax Board (FTB) reminds taxpayers that California does not conform to the extended federal statute of limitations period under IRC [section 6501\(h\)](#) with respect to net operating loss (NOL) carrybacks.

For additional details, please refer to the June 9, 2023 edition of [State Tax Matters](#).

### Colorado: New and amended rules on foreign source income and NOLs are effective May 30

As published in the Colorado Secretary of State's official Colorado Register, the Colorado Department of Revenue's (DOR's) recently adopted new and amended rules addressing the state tax treatment of various forms of foreign source income, IRC [section 78](#) dividends, and the Colorado allocation and carryforward of NOLs allowed to C corporations take effect on May 30, 2023.

For additional details, please refer to the May 19, 2023 edition of [State Tax Matters](#).



## **DOR updates guidance on state impact and treatment of federal law changes**

The Colorado DOR's updated administrative guidance addresses how some provisions under the federal CARES Act interact with Colorado corporate and individual income taxation and reflect a 2022 Colorado Court of Appeals decision, which determined that Colorado Rule 39-22-103(5.3) was incorrect and that retroactive changes in federal law can affect a taxpayer's Colorado taxable income.

For additional details, please refer to the April 21, 2023 edition of [State Tax Matters](#).

## **Connecticut: Bulletin reflects revised claimant period for combined reporting-related ASC 740 deduction**

An administrative bulletin updates guidance in connection with state law providing for a net deferred tax liability (DTL) deduction pursuant to Connecticut mandating unitary combined reporting which reflects legislation enacted in 2017 that revised the installment period to thirty years and the first income year that the net DTL deduction may be claimed to 2021.

For additional details, please refer to the July 7, 2023 edition of [State Tax Matters](#).

## **New law extends corporation business tax surcharge and revises PTE tax**

New law implementing Connecticut's budget for fiscal year 2024 and fiscal year 2025 includes provisions that extend Connecticut's 10% corporation business tax surcharge for three additional years to the 2023, 2024, and 2025 income years and implements changes to Connecticut's pass-through entity (PTE) tax, including making the tax optional beginning in 2024.

For additional details, please refer to the June 16, 2023 edition of [State Tax Matters](#).

## **Florida: New law generally updates state conformity to IRC**

New law updates corporate income tax statutory references in Florida to conform to the IRC provisions as in effect on January 1, 2023.

For additional details, please refer to the June 2, 2023 edition of [State Tax Matters](#).

## **Georgia: New law updates state conformity to IRC and decouples from TCJA changes to IRC section 174**

New law updates Georgia's corporate and individual income tax conformity to the IRC provided for in federal law enacted on or before January 1, 2023; however, IRC [section 174](#) must be applied as it was in effect immediately before enactment of the 2017 federal Tax Cuts and Jobs Act (TCJA).

For additional details, please refer to the May 5, 2023 edition of [State Tax Matters](#) and [Multistate Tax Alert](#) dated June 1, 2023.

## **Hawaii: New law updates state conformity to IRC**

New law updates statutory references to the IRC, providing that references to the IRC in Hawaii income tax laws generally refer to the federal law in effect as amended as of December 31, 2022.

For additional details, please refer to the June 9, 2023 edition of [State Tax Matters](#).

## **Idaho: Administrative ruling addresses unitary groups, business income, and apportionment**

A redacted administrative ruling involving a foreign Idaho taxpayer addresses several state corporate income tax issues and topics such as the classification of income, whether certain affiliates operate as a unitary group, computation of the property factor for apportionment purposes, and application of Idaho's sales factor throwback rule on sales made to a foreign affiliate.

For additional details, please refer to the [Multistate Tax Alert](#) dated April 11, 2023.

## **Idaho State Tax Commission adopts market-based sourcing rules**

Idaho requires taxpayers to use market-based sourcing for sales other than sales of tangible personal property.

For additional details, please refer to the April 28, 2023 edition of [State Tax Matters](#).

## **Illinois: DOR adopts changes to special apportionment rules involving sales-inducement payments**

The Illinois DOR adopted changes to its special allocation and apportionment rules to provide guidance for when certain sales-inducing payments from vendors to retailers should be included from the sales factor for Illinois corporate income tax purposes.

For additional details, please refer to the May 5, 2023 edition of [State Tax Matters](#).

## **Indiana: New law updates state conformity to IRC and addresses NOLs, R&D deduction, and mobile workforce**

New law updates state income tax statutory references to the IRC so that IRC references in Indiana law generally refer to the federal income tax law in effect on January 1, 2023, and also revises some net operating loss provisions, addresses IRC [section 174](#), and adopts a 30-day safe harbor threshold for employers to determine nonresident state income tax withholding requirements.

For additional details, please refer to the May 12, 2023 edition of [State Tax Matters](#) and for section 174, see the [Multistate Tax Alert](#) dated June 1, 2023.

## **Affiliated special purpose entity not includable on return because it lacked nexus**

The Indiana DOR denied a communications services company an Indiana corporate income tax refund, holding that one of its affiliates may not be included in its amended state consolidated tax returns because it failed to show the affiliate

conducted in-state business by virtue of any continuing ownership interest in certain communications licenses it helped finance.

For additional details, please refer to the April 28, 2023 edition of [State Tax Matters](#).

### **Maryland: New law narrows definition of 'Captive REIT' subject to dividends paid deduction addback**

New law narrows the definition of a Captive REIT subject to Maryland's income tax addition modification in the amount of the federal dividends paid deduction for Captive REITs by excluding, under certain circumstances, corporations, trusts, or associations owned or controlled by certain qualified foreign entities and certain trusts owned or controlled by a listed Australian property trust.

For additional details, please refer to the May 12, 2023 edition of [State Tax Matters](#).

### **Michigan: Newsletter summarizes recent cases involving federal depreciation and basis adjustments**

A newsletter published by the Tax Policy Division of the Michigan Department of Treasury summarizes two Michigan Court of Claims cases addressing whether a taxpayer may increase its basis in assets purchased under the Michigan Single Business Tax and sold under the Michigan Business Tax/Corporate Income Tax by the amount of depreciation it was required to add back to its tax base.

For additional details, please refer to the June 9, 2023 edition of [State Tax Matters](#).

### **Minnesota: Minnesota enacts several changes to its income and franchise tax laws**

Minnesota House File 1938 was enacted into law affecting changes to Minnesota corporate franchise, PTE tax, individual income, sales and use, and property tax laws.

For additional details, please refer to the [Multistate Tax Alert](#) dated May 30, 2023.

### **Montana: New law eliminates list of approximately 40 tax haven countries and jurisdictions**

New law immediately eliminates the list of approximately 40 countries/taxing jurisdictions considered tax havens for purposes of inclusion in the tax base of corporations electing water's edge filing status for Montana corporate income tax purposes.

For additional details, please refer to the May 26, 2023 edition of [State Tax Matters](#).

### **Nebraska: New law lowers corporate income tax rates and retroactively permits PTE tax election**

Newly enacted legislation contains several tax-related measures including phasing in lower Nebraska corporate income tax rates and retroactively establishing an elective PTE tax.

For additional details, please refer to the June 2, 2023 edition of [State Tax Matters](#).

### **New York: Receipts from certain buy/sell arrangements cannot be included in receipts factor**

An administrative law judge rejected an oil and gas company's attempt to gross up its receipts factor in a case involving whether gross amounts attributable to the sale side of certain buy/sell arrangements entered into to acquire inventory or to reduce transportation costs may be included in the receipts factor of the company's Article 9-A business allocation percentage for the prior years at issue.

For additional details, please refer to the May 19, 2023 edition of [State Tax Matters](#).

### **New York enacts 2023–2024 Budget Act**

New York's 2023–2024 Budget Act was signed into law extending certain expiring Article 9-A tax rates, setting a fixed rate for the Metropolitan transportation business tax surcharge, increasing the top Metropolitan Commuter Transportation

Mobility Tax rate, making technical changes involving the New York State and New York City PTE taxes, and other changes.

For additional details, please refer to the [Multistate Tax Alert](#) dated May 17, 2023.

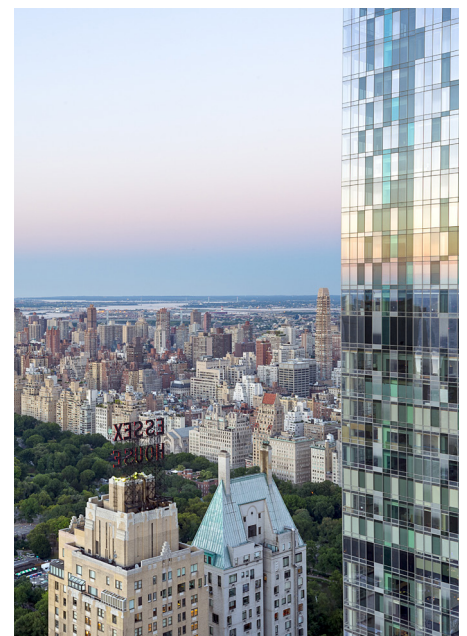
### **Administrative law judge holds that federal ITFA preempts taxation of receipts from certain telecom services**

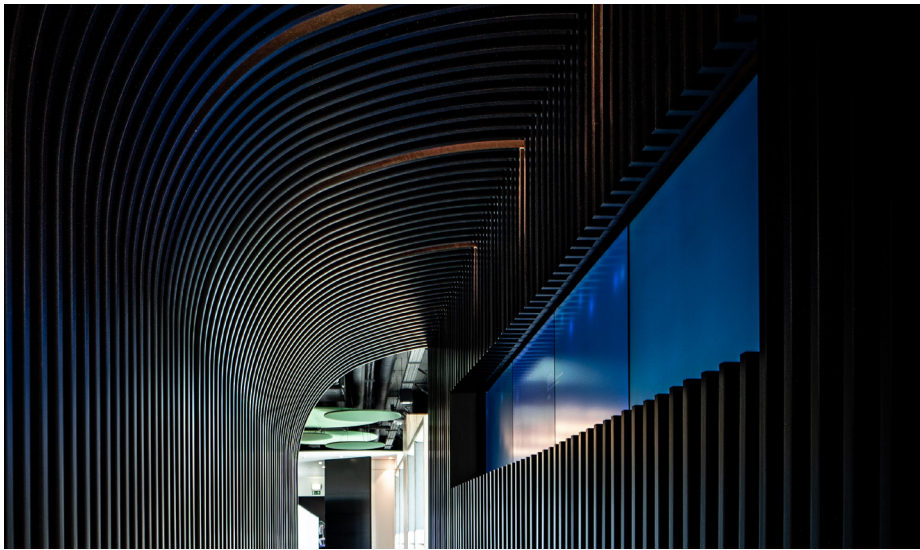
In a case involving a telecom and its New York corporate franchise tax liability under Tax Law § 184 for the prior audit years at issue, an administrative law judge with the New York Division of Tax Appeals held that the taxpayer's receipts from certain services constituted receipts from internet access services within the meaning and intent of the federal Internet Tax Freedom Act and, as such, were preempted from taxation.

For additional details, please refer to the May 12, 2023 edition of [State Tax Matters](#).

### **New Jersey: New law makes several significant changes to corporation business tax regime**

New law makes several significant changes to New Jersey's corporation business tax, including revising aspects concerning unitary businesses and apportionment, providing bright-line economic nexus thresholds; modifying the treatment





of global intangible low-taxed income and foreign-derived intangible income; and modifying the treatment of certain deductions and carryovers allowed.

For additional details, please refer to the July 7, 2023 edition of [State Tax Matters](#).

### **North Carolina: DOR explains corporate tax treatment of CFC in light of federal TCJA changes**

The North Carolina DOR issued a ruling explaining the state corporate income and franchise tax treatment of a controlled foreign corporation (CFC) with in-state activity due to a single-member limited liability company in a situation where the parent had changed the legal and physical flow of its inventory and how imported product is sold domestically in response to certain law changes contained within the federal TCJA.

For additional details, please refer to the June 9, 2023 edition of [State Tax Matters](#).

### **DOR denies taxpayer's request to file water's edge unitary combined return**

The North Carolina DOR denied the request of a publicly traded parent company to file a North Carolina water's edge unitary combined return with its affiliates rather than continue filing on a separate entity basis, concluding that the company failed to show that its net income is not properly attributable to North Carolina under its current state filing method.

For additional details, please refer to the April 14, 2023 edition of [State Tax Matters](#).

### **New law updates state conformity to IRC**

New law updates state corporate and individual income tax conformity with the IRC as in effect as of January 1, 2023.

For additional details, please refer to the April 7, 2023 edition of [State Tax Matters](#).

### **Oklahoma: New law revises election to immediately and fully expense qualified property**

New law provides that when an Oklahoma taxpayer elects to immediately and fully expense a qualified business expense on eligible qualified property or qualified improvement property under state law, any depreciation claimed for state tax purposes cannot duplicate the same amount allowed on the taxpayer's federal income tax return, and thus requires an adjustment for Oklahoma return purposes to federal taxable income.

For additional details, please refer to the June 2, 2023 edition of [State Tax Matters](#).

### **Oregon: New law updates state conformity to IRC for specific provisions**

While Oregon conforms to the federal IRA on a rolling basis, Oregon tax law contains several references to the IRC as amended and in effect on a specific date, and newly

enacted legislation updates several of these references to the IRC as in effect on December 31, 2022, applicable to tax years beginning on or after January 1, 2023.

For additional details, please refer to the June 16, 2023 edition of [State Tax Matters](#).

### **Tax court addresses inclusion of commodities hedging receipts in company's sales factor**

In an unpublished order of the Magistrate Division of the Oregon Tax Court, the presiding magistrate denied the taxpayer's motion for summary judgment and granted summary judgment to the Oregon Department of Revenue in a matter involving whether to include the taxpayer's commodities hedging receipts in its sales factor for Oregon corporate excise (income) tax purposes.

For additional details, please refer to the May 26, 2023 edition of [State Tax Matters](#).

### **Pennsylvania: DOR addresses corporate income tax treatment and apportionment of electricity**

The Pennsylvania DOR issued a state corporate net income tax bulletin addressing how it intends to assess the taxability and correct apportionment of electricity, concluding that receipts from transactions involving the sale of electricity must be treated as receipts from the sale of tangible personal property for sales factor sourcing purposes.

For additional details, please refer to the May 5, 2023 edition of [State Tax Matters](#).

### **South Carolina: New law updates state conformity to IRC**

New law updates South Carolina corporate and personal income tax statutory references to the IRC, referring to the federal law in effect as amended through December 31, 2022, and includes the effective date of provisions contained in it.

For additional details, please refer to the May 26, 2023 edition of [State Tax Matters](#).



## Tennessee: DOR notices explain new law adopting single sales factor and TCJA bonus depreciation

The Tennessee DOR issued several new notices explaining the implementation of recently signed legislation that enacts several significant tax law changes, including phasing in single sales factor apportionment and conforming with the federal bonus depreciation provisions under the 2017 federal TCJA for Tennessee franchise and excise tax purposes.

For additional details, please refer to the May 19, 2023 edition of [State Tax Matters](#).

## Tennessee enacts several changes to business tax and franchise and excise tax laws

Tennessee enacted House Bill 323 (Tennessee Works Tax Act) that includes changes to the business tax, franchise and excise tax, and sales and use tax laws.

For additional details, please refer to the [Multistate Tax Alert](#) dated May 12, 2023.

## Texas: Texas Supreme Court reinstates petition for review in sales factor case involving hedging transactions

The Texas Supreme Court has withdrawn its earlier order denying the taxpayer's petition for review while granting a taxpayer's motion for rehearing related to a previously filed petition for review concerning a Texas Court of Appeals decision from 2021, which held that only the net proceeds from a taxpayer's sales of commodity futures were includable in its apportionment factor denominator for Texas franchise tax purposes.

For additional details, please refer to the April 28, 2023 edition of [State Tax Matters](#).

## Gains from sale of certain leasehold interests deemed includable in franchise tax base

The Texas Third Court of Appeals, Austin affirmed that because a taxpayer's gains from the sale of certain leasehold interests must be reported on [Form 1065, US Return of Partnership Income](#) for federal tax



purposes, such gains are included in total revenue for Texas franchise tax purposes notwithstanding contentions that federal form instructions may have suggested otherwise.

For additional details, please refer to the April 28, 2023 edition of [State Tax Matters](#).

## Virginia: Ruling addresses whether subsidiary may file as part of combined return with affiliates

The Virginia Department of Taxation held that a subsidiary conducting in-state activities was correctly included on a state combined corporate income tax return with its affiliates for the tax year at issue, even though it had filed a Virginia Insurance Premiums License Tax Surplus Lines Broker's Annual Reconciliation Tax Report.

For additional details, please refer to the July 7, 2023 edition of [State Tax Matters](#).

## Ruling addresses whether taxpayer needs permission to change consolidated filing status

Responding to a taxpayer seeking permission to file a separate Virginia corporate income tax return for the taxable year ended December 31, 2021 and going forward, when it had previously filed with its subsidiaries on a consolidated basis in Virginia, the Virginia Department of Taxation held that

because all the taxpayer's subsidiaries became disregarded entities on January 1, 2021, it was no longer a member of an affiliated group for the 2021 taxable year and thus, did not need permission to change its filing status.

For additional details, please refer to the June 16, 2023 edition of [State Tax Matters](#).

## Taxpayer may choose manufacturer's special apportionment method on amended return

The Virginia Court of Appeals affirmed a circuit court's grant of summary judgment for a corporate taxpayer that it may elect to use the income apportionment method allowed for manufacturing companies under Va. Code § 58.1-422 for the first time on an amended state corporate income tax return based on a plain reading of the statute.

For additional details, please refer to the May 26, 2023 edition of [State Tax Matters](#).

## New law moves from fixed date to rolling conformity with IRC

New law updates state corporate and individual income tax statutory references to federal income tax law as it exists as soon as any federal tax law changes are enacted on or after January 1, 2023; however, Virginia will not conform to certain federal changes that impact its general fund revenues by certain delineated threshold amounts.

For additional details, please refer to the April 21, 2023 edition of [State Tax Matters](#).

### **West Virginia: Deferred tax deduction enacted for publicly traded companies due to apportionment changes**

New law permits some publicly traded companies impacted by West Virginia's apportionment law changes to claim a deferred tax deduction in computing their West Virginia taxable income related to a decrease in net deferred tax assets or increase in net deferred tax liabilities calculated in accordance with GAAP.

For additional details, please refer to the April 7, 2023 edition of [State Tax Matters](#).

### **Wisconsin: Enacted budget bill includes increase in refundable portion of R&D credit**

Wisconsin's recently enacted budget legislation includes provisions that increase the refundable portion of Wisconsin's research and development credit, increasing the amount from 15% to 25%.

For additional details, please refer to the July 7, 2023 edition of [State Tax Matters](#).

### **DOR summarizes ruling on intercompany royalties, business purpose, and economic substance**

The Wisconsin DOR has summarized the Wisconsin Tax Appeals Commission's recent state corporate franchise tax ruling involving a parent company and its created wholly-owned intellectual property subsidiary that licensed transferred IP back to the parent in exchange for royalties, which deemed that the transactions lacked economic substance and a nontax business purpose.

For additional details, please refer to the May 5, 2023 edition of [State Tax Matters](#).

## **International**

This compilation is intended to be an overview of major international tax developments during the quarter that may have ASC 740 implications. For more summaries of other current international income tax news and developments for the current quarter, please refer to the additional publications listed at the end of this section.

### **Multiple jurisdictions**

#### **Belgium – Netherlands: New Belgium-Netherlands tax treaty signed**

New Belgium-Netherlands tax treaty signed On June 21, 2023, Belgium and the Netherlands signed a new bilateral tax treaty to replace the 2001 treaty currently in effect between the two countries. The new bilateral tax treaty includes provisions relating to the scope of application of the treaty; the tie breaker rule for dual resident companies; permanent establishments (PEs); withholding taxes; professors, artists, and athletes; company officers; the compensation rule for stock options; relief from double taxation; and the avoidance of treaty abuse. Notably, this treaty does not include any rules for the taxation of cross-border workers that work from home and negotiations on this issue are understood to be ongoing.

For additional details, please refer to the Deloitte [tax@hand](#) article dated July 5, 2023.

#### **France: EU public CbC reporting directive transposed into domestic law**

France has completed the necessary procedures to transpose into its domestic law the provisions of the EU public country-by-country (CbC) reporting directive ([Directive \(EU\) 2021/2101](#)) published on November 24, 2021. The directive entered into force on December 21, 2021, with EU member states required to transpose the directive into national legislation no later than June 22, 2023. France has complied with this obligation through the publication

of an ordinance (No. 2023-483) on June 21, 2023 and two decrees (Nos. 2023-493 and ECOT2316682A) on June 22, 2023.

Under the directive, multinational groups with consolidated global turnover exceeding EUR 750 million and certain standalone undertakings, are required to make publicly available an annual report containing prescribed income tax information. In France, the new public reporting requirement applies to financial years (FYs) beginning on or after June 22, 2024.

For additional details, please refer to the Deloitte [tax@hand](#) article dated July 6, 2023.

#### **Germany: Dividends paid to US 'S corporation' subject to 0% withholding tax under treaty**

On March 10, 2023, the lower tax court of Cologne published a long-awaited decision dated November 16, 2022, and ruled that a US "S corporation," which is a transparent entity for US federal income tax purposes, was entitled to a 0% withholding tax (WHT) rate pursuant to article 10(3)(a)(bb) of the Germany-US Double Tax Treaty. The lower tax court also ruled that, pursuant to section 50d(1) sentence 11 of the German income tax code, the shareholders of the S corporation were required to file for the dividend WHT refund and not





the S corporation itself, and that such provision is merely procedural and does not govern whether a particular treaty provision applies in determining the dividend WHT rate.

For additional details, please refer to the Deloitte [tax@hand](#) article dated March 15, 2023.

### **India: Finance Act enacted with amendments**

On March 31, 2023, India's Finance Act, 2023 was enacted after being passed by the Lok Sabha (the lower house of parliament), approved by the Rajya Sabha (the upper house), and receiving presidential assent. The Finance Act, 2023 was initially presented to parliament by the finance minister on February 1, 2023, and a large number of revisions were made to the bill during its passage through parliament. The enacted provisions generally apply as of April 1, 2023.

For additional details, please refer to the Deloitte [tax@hand](#) article dated April 15, 2023.

### **Japan: 2023 Tax Reform Bill passed**

On March 28, 2023, the Japanese Diet passed Japan's 2023 Tax Reform Bill. The new legislation includes laws to implement the income inclusion rule (IIR) to align with OECD BEPS 2.0 Pillar Two initiative. The new legislation will generally apply to fiscal years beginning on or after April 1, 2023, but the IIR will apply to fiscal years beginning on or after April 1, 2024.

For additional details, please refer to the Deloitte [tax@hand](#) article dated January 10, 2023.

### **United Kingdom: HMRC publishes guidance on R&D tax relief changes**

Further to a consultation in December 2022, on April 18, 2023, the UK tax authorities (HM Revenue & Customs [HMRC]), finalized and published [updated guidance](#) on recent changes to the R&D tax relief. The guidance is intended to clarify technical aspects of how these changes will work in practice and when they will take effect.

The guidance covers changes to the treatment of expenditure on data licenses and cloud computing services, changes to the treatment of expenditure on advancements in mathematics, the new obligation for certain claimants to submit a claim notification to HMRC, and new requirements for additional information supporting R&D claims.

Legislation for most of these changes is included in the [Spring Finance Bill 2023](#), and the new guidance will be added to HMRC's [Corporate Intangibles Research and Development Manual](#) once the bill receives royal assent.

For additional details, please refer to the Deloitte [tax@hand](#) article dated April 23, 2023.

## **Accounting developments**

### **Financial Reporting Alert 23-3, Accounting for Tax Credits Under the CHIPS Act and the IRA—Interim Reporting Considerations**

The Creating Helpful Incentives to Produce Semiconductors and Science Act of 2022 (the "CHIPS Act") and the IRA, both signed into law in August 2022, have a number of tax-related provisions, including a plethora of clean energy tax incentives in the form of tax credits, some of which include a direct-pay option, transferability provisions, or both. There are multiple accounting approaches to accounting for refundable and transferable credits. Accordingly, it is critical for entities to determine which approach to use, make the appropriate accounting policy determinations, and factor such determinations into their first-quarter close process, if material.

For additional details, please refer to the [Financial Reporting Alert 23-3](#) dated April 3, 2023.

### **Proposed Accounting Standards Update—Income Taxes (Topic 740): Improvements to Income Tax Disclosures**

On March 15, 2023, the [FASB issued a proposed accounting standards update \(proposed ASU\)](#) that would modify or eliminate certain existing income tax disclosure requirements in addition to establishing new requirements. The proposal is intended to improve the usefulness of income tax information for financial statement users while addressing investors' requests for greater transparency in, and enhancements to, disclosures related to the rate reconciliation and income taxes paid. The comment letter period ended May 30, 2023, with 58 comment letters submitted to the FASB. A final ASU is expected in the fourth quarter of 2023.

## Up-C structure services

For Up-C structures, the Up-C Services group offers virtual webcasts from Deloitte specialists covering recent US federal income tax and ASC 740 developments relevant to these businesses organized as Up-Cs. Please visit us at [Up-C Structure Services](#) or contact Jill Wilde at [jiwilde@deloitte.com](mailto:jiwilde@deloitte.com) (+1 904 665 1433) to be added to our virtual webcast distribution list.

## Other

For upcoming webcasts that give you valuable insights on important developments affecting your business and feature practical knowledge from Deloitte specialists and offer CPE credits, please visit our [Dbriefs webcasts](#).

For other information regarding newly issued accounting standards, exposure drafts, and other key developments, refer to our [Quarterly Accounting Roundup](#).

## Deloitte Tax Accounting Conference of UP-Cs & Partnership | Sep 21-22, 2023 | Nashville, TN

Join us at the [Deloitte Tax Accounting Conference of UP-Cs & Partnership Structures on September 21-22, 2023 at W Nashville | Nashville, TN](#) to take part in an exclusive training course delivered by well-known Deloitte speakers, join discussions on key topics, and explore insights to expand your knowledge of complex partnership structures, joint ventures, UP-Cs and tax receivable agreements (TRAs).

## Learn more

### Additional resources you may find helpful

- [Accounting for Income Taxes—Quarterly Hot Topics Archive](#)
- [Tax News & Views Webcast](#)
- [Deloitte Tax Accounting & Provision Services Homepage](#)
- [Deloitte Tax Accounting & ProvisionsDbriefs Webcast Series](#)
- [Deloitte Heads Up Newsletter Archive](#)
- [Global Tax Developments Quarterly—Accounting for Income Taxes](#)
- [tax@hand](mailto:tax@hand)

As always, we are interested in your comments on our publications. Please take a moment to tell us what you think by sending us an [email](#).

## Talk to us

If you have any questions or comments about the ASC 740 implications described above or other content of Accounting for Income Taxes—Quarterly Hot Topics, contact the Deloitte Washington National Tax Accounting for Income Taxes Group at: [USNationalWNTActIncomeTaxesGrp@deloitte.com](mailto:USNationalWNTActIncomeTaxesGrp@deloitte.com)

This publication contains general information only, and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte, its affiliates, and related entities shall not be responsible for any loss sustained by any person who relies on this publication.

### About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States, and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more about our global network of member firms.

[Deloitte.com](#) | [Legal](#) | [Privacy](#)

1633 Broadway  
New York, NY 10019-6754  
United States

Copyright © 2023 Deloitte Development LLC. All rights reserved.

[Deloitte RSS feeds](#)