



## Accounting for Income Taxes | Quarterly Hot Topics

### U.S. Federal

*Tax News & Views*, published by the Deloitte Tax LLP 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](#).

### Inflation Reduction Act becomes law

On Aug. 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022 ([H.R. 5376](#)), the roughly \$740 billion tax-and-spending package that includes a new book-minimum tax on certain large corporations, an excise tax on stock buybacks, a significant funding boost for IRS enforcement efforts, and a long-term extension of the Superfund excise tax, plus incentives to address climate change mitigation and clean energy and provisions to promote health care affordability.

For an overview of the key tax provisions, see [Tax News & Views](#), Vol. 23, No. 29, Aug. 12, 2022. See also discussion of the following:

- [Book-minimum tax](#)
- [Stock buyback excise tax](#)
- [Clean energy tax provisions](#)
- [Financial reporting considerations](#)
- State tax considerations (Tax Alerts dated [Aug. 25, 2022](#) and [Aug. 16, 2022](#))

### In this edition:

[U.S. federal](#)

[US multistate](#)

[International](#)

[Accounting developments](#)

[Up-C structure services](#)

## 'CHIPS' bill with tax break for domestic semiconductor makers becomes law

On Aug. 9, 2022, President Biden signed into law the CHIPS Act of 2022 (H.R. 4346: [text](#); [section-by-section summary](#)), a bipartisan legislation designed to boost domestic semiconductor manufacturing and encourage US research activities. However, while the measure provides an investment tax credit intended to promote domestic production of semiconductors, it does not include a provision that would retroactively permit expensing for research expenditures under [section 174](#).

For additional details, please refer to the Deloitte [tax@hand article](#) dated Aug. 13, 2022.

## IRS issues proposed regulations under section 1256, reversing Wright

On July 6, 2022, Treasury and the IRS published proposed regulations (the "Proposed Regulations," [87 FR 40168](#)) under [section 1256\(g\)\(2\)\(B\)](#) that define the term "foreign currency contract" under [section 1256\(g\)\(2\)\(A\)](#) to include only foreign currency forward contracts, reversing the Sixth Circuit's holding in *Wright v. Commissioner*, [809 F.3d 877](#) (6th Cir. 2016). [Section 1256](#) provides mark-to-market and character rules for gains and losses on section 1256 contracts. Section 1256 contracts include foreign currency contracts and other enumerated instruments. Generally speaking, with respect to foreign currency contracts, section 1256 operates as a timing provision while [section 988](#) controls the character.

The Proposed Regulations are proposed to apply to contracts entered into on or after the date that is 30 days after the date of publication adopting the Proposed Regulations as final regulations in the Federal Register. However, a taxpayer may rely on the Proposed Regulations for taxable years ending on or after July 6, 2022, provided the taxpayer and its related parties, within the meaning of [sections 267\(b\)](#) (determined without regard to [section 267\(c\)\(3\)](#)) and [707\(b\)\(1\)](#), consistently follow the Proposed Regulations for all contracts entered into during the taxable year ending on or after July 6, 2022, through the proposed applicability date.

## US multistate

### Multistate Tax Commission says states adopting its P.L. 86-272 Statement should also adopt its Factor Presence Nexus Standard

At its recent annual meeting, the Multistate Tax Commission (MTC) approved a resolution recommending that states adopt the MTC's revised "P.L. 86-272 Statement" from 2021 that incorporates activities regularly undertaken by businesses today, including selling goods over the internet, and also adopt its "Model Factor Presence Nexus Standard for Business Activity Taxes" from 2002.

For additional details, please refer to the Aug. 12, 2022 edition of [State Tax Matters](#).

### Alabama: Taxpayer allowed intercompany interest expense deduction under addback statute exception

The Alabama Tax Tribunal's chief judge recently issued an opinion ([Docket No. BIT. 18-236-JP](#), Ala. Tax Trib. (7/28/22)) that overturns an Alabama Department of Revenue audit assessment to hold in the taxpayer's favor that certain interest paid to a related member in Ireland should be excepted from Alabama's intercompany expense addback statute because the payments were subject to tax on the related member's net income in that country.

For additional details, please refer to the Aug. 5, 2022 edition of [State Tax Matters](#).

### Alaska: High court says statute requiring inclusion of foreign affiliates on return is constitutional

Contrary to a taxpayer's assertions otherwise, the Alaska Supreme Court held that a state statute requiring an Alaska corporate income tax return to include certain foreign corporations affiliated with the taxpaying corporation is constitutional under both the Commerce and Due Process Clauses and not void for vagueness ([Case Nos. S-17883/17903](#), Alaska (8/5/22)).

For additional details, please refer to the Aug. 12, 2022 edition of [State Tax Matters](#).



### Arkansas: New law includes corporate income tax rate reductions and state conformity to section 179

New law lowers Arkansas' top corporate income tax rate from 5.9% to 5.3% and fully adopts [section 179](#) expensing for purposes of computing Arkansas income tax liability for property purchased ([S.B. 1](#), signed by gov. 8/11/22).

For additional details, please refer to the Aug. 19, 2022 edition of [State Tax Matters](#).

## Arkansas: New rulings address intercompany expenses, alternative apportionment, sourcing and NOLs

A series of newly released lengthy and redacted Arkansas Office of Hearings & Appeals rulings involves an Arkansas corporate income taxpayer functioning as an investment company and addresses, among other issues, intercompany interest expenses, alternative apportionment, sourcing of income, and net operating loss deductions. ([Opinion No. 22-457](#); [Opinion No. 22-017](#); [Opinion No. 22-699](#); [Opinion No. 22-700](#); [Opinion No. 22-701](#)).

For additional details, please refer to the Sep 16, 2022 edition of [State Tax Matters](#).

## California: Investor's profit interest, not capital interest, in LLC determines 'doing business' status

Regarding whether an out-of-state limited liability company (LLC) is doing business in California and thus subject to California's \$800 annual tax when its only in-state connection is its pass-through ownership interest through a multitiered ownership structure in a California-based LLC, the correct measure for determining its distributive share of property for meeting California's annual bright-line property threshold was deemed to be its profit interest in the CA LLC rather than its capital interest ([Case No. 19044718](#), Cal. Off. of Tax App. 5/26/22).

For additional details, please refer to the Aug. 5, 2022 edition of [State Tax Matters](#).

## California: FTB updates guidance on state reporting of federal tax adjustments

An updated publication from the California Franchise Tax Board explains that California corporate taxpayers must report all federal tax changes or corrections to gross income, deductions, or tax credits even if the changes or corrections do not result in an increase in tax payable to California for any year and that such taxpayers generally must do so within six months of each final federal determination. ([FTB Pub 1008](#), Cal. FTB, rev. 7/22).

For additional details, please refer to the Sep 9, 2022 edition of [State Tax Matters](#).

## Idaho: New law includes additional corporate and individual income tax rate reductions

New law lowers Idaho's corporate income tax rate from 6% to 5.8%, as well as establishes a flat individual income tax rate of 5.8%. Note that this legislation is a product of Idaho's special legislative session, and that a bill enacted earlier this year as part of Idaho's regular legislative session also included some corporate and individual income tax rate reductions. ([H.B. 1](#), signed by gov. 9/1/22).

For additional details, please refer to the Sep 9, 2022 edition of [State Tax Matters](#).

## Illinois: DOR letter rulings address nexus and bonus depreciation adjustments in a reorganization

The Illinois Department of Revenue recently issued two letter rulings: one in the form of a general information letter ([General Information Letter IT-22-0009-GIL](#), Ill. Dept. of Rev. 6/14/22) addressing Illinois corporate income tax nexus standards, and another in the form of a private letter ruling ([Private Letter Ruling IT-22-0002-PLR](#), Ill. Dept. of Rev. 4/12/22) addressing required Illinois bonus depreciation adjustments because of a [section 368\(a\)\(1\)\(D\)](#) reorganization.

For additional details, please refer to the July 22, 2022 edition of [State Tax Matters](#).

## Illinois: Amended rule reflects \$100K limitation on C corporation net loss deduction

The Illinois Department of Revenue adopted administrative rule changes reflecting legislation enacted in 2021 that reinstates a \$100,000 limitation on the use of a net loss deduction for C corporation ([Amended 86 Ill. Adm. Code 100.2330](#), Ill. Dept. of Rev. 7/12/22).

For additional details, please refer to the Aug. 5, 2022 edition of [State Tax Matters](#).

## Illinois amends regulation defining taxable in other jurisdictions

Illinois adopted an [amendment](#) to 86 Ill. Adm. Code Section 100.3200 which is related to the applicability of the definition of taxable in another state, country, or political subdivision for Illinois income tax purposes.

For additional details, please refer to [Tax Alert](#) dated Sep 12, 2022.

## Iowa: New law provides franchise tax rate reductions for some financial institutions

New law phases in over five years Iowa franchise tax rate reductions for certain defined financial institutions, resulting in an eventual tax rate of 3.5% ([S.F. 2367](#), signed by gov. 6/17/22).

For additional details, please refer to the June 24, 2022 edition of [State Tax Matters](#).

## Iowa: Governor announces budget surplus and resulting lower corporate income tax rate

Pursuant to state law that contingently adjusts Iowa's corporate income tax rate for a given year so long as net corporate income tax proceeds collected by Iowa exceed \$700 million in the immediately prior fiscal year, Iowa Governor Kim Reynolds announced that for Fiscal Year 2022, net corporate income tax receipts exceeded \$850 million, "triggering a drop of 14.2% in the top corporate tax rate to 8.4% from 9.8%." ([Press Release: Gov. Reynolds announces Iowa budget surplus of \\$1.91B, significant drop in top corporate tax rate](#), Office of the Governor of Iowa 9/27/22; [Iowa Corporate Income Tax Rate Changes for 2023](#), Iowa Dept. of Rev. 9/28/22).

For additional details, please refer to the Sep 30, 2022 edition of [State Tax Matters](#).



## **Louisiana: Software platform creator deemed a manufacturer eligible for single sale factor apportionment**

In a case involving whether a taxpayer in the business of creating different software platforms qualified as a manufacturer eligible to use single sales factor apportionment for Louisiana corporate income and franchise tax purposes for the prior tax years at issue, the taxpayer was deemed to be engaged in the business of manufacturing tangible personal property and thus was eligible. ([Docket No. 12272D](#), La. Bd. of Tax App. 9/8/22).

For additional details, please refer to the Sep 23, 2022 edition of [State Tax Matters](#).

## **Maryland: Unauthorized captive insurance company deemed exempt from corporate income tax**

The Maryland Court of Special Appeals affirmed that a captive insurance company not possessing a valid Maryland certificate of authority nevertheless was entitled to a state corporate income tax exemption under Title 4 of Maryland's Insurance Article because it was subject to Maryland's premium receipts tax and thus exempt from all other state taxes for the tax year at issue ([Case No. 563/21](#), Md. Ct. Spec. App. 8/29/22).

For additional details, please refer to the Sept. 2, 2022 edition of [State Tax Matters](#).

## **Michigan: Holding company lacks nexus for City of Detroit income tax purposes even post-Wayfair**

In a case involving City of Detroit (City) corporate income tax nexus on remand to reconsider the facts in light of Wayfair, the Michigan Tax Tribunal once again concluded that the passive holding company at issue was not subject to the City's income tax—commenting also that even if it had ruled otherwise, applying Wayfair retroactively would not pass constitutional muster ([Docket No. 16-000724-R](#), Mich. Tax Trib. 8/19/22).

For additional details, please refer to the Aug. 26, 2022 edition of [State Tax Matters](#).

## **Michigan: Department of Treasury addresses tax treatment of digital currency transactions**

The Michigan Department of Treasury addresses the state income tax treatment of digital currency transactions, concluding that treatment of these currencies for federal income tax purposes generally dictates their treatment at the state tax level because Michigan does not have any rules or policies with respect to digital currency transactions that differ from the federal policies regarding such transactions. ([Treasury Update Newsletter](#), Mich. Dept. of Treas. 8/22).

For additional details, please refer to the Sep 9, 2022 edition of [State Tax Matters](#).

## **New Hampshire: Finalized BPT rule proposal reflects law changes, including single sales factor**

The New Hampshire Department of Revenue Administration (Department) filed a "Final Proposal" of rules with New Hampshire's "Legislative Services, Division of Administrative Rules" reflecting state tax law changes from 2021 and 2019, which include revising New Hampshire's business profits tax (BPT) apportionment formula from a three-factor formula that includes payroll, property, and double-weighted sales to a single sales factor apportionment formula for taxable periods ending on or after Dec. 31, 2022 ([Final Proposed Regulations](#), N.H. Dept. of Revenue Admin. 6/27/2022).

For additional details, please refer to the July 1, 2022 edition of [State Tax Matters](#).

## **New Hampshire: New law lowers BPT rate, provides NOL fix, protects resident remote workers**

New law decreases New Hampshire's BPT rate to 7.5% while additional signed legislation addresses calculation of the BPT net operating loss (NOL) carryover deduction, as well as seeks to protect the wages of New Hampshire residents who work from home from personal income taxation by other states ([H.B. 1221](#), [S.B. 435](#), and [H.B. 1097](#), all signed by gov. 6/17/22).

For additional details, please refer to the June 24, 2022 edition of [State Tax Matters](#).

## **New Hampshire: Department of Revenue Administration summarizes significant 2022 legislation**

A 2022 tax legislative summary describes new law that modifies calculation of the net operating loss carryover deduction under New Hampshire's business profits tax (BPT), and establishes a commission to study replacing New Hampshire's current water's edge method by the worldwide combined reporting method for combined reporting and apportionment of income under the BPT. ([Tax Information Release \(TIR\) No. 2022-003](#), N.H. Dept. of Rev. Admin. 9/1/22).

For additional details, please refer to the Sep 9, 2022 edition of [State Tax Matters](#).

## **New Jersey: New voluntary initiative seeks to resolve corporate transfer-pricing issues**

The New Jersey Division of Taxation announced that it is implementing a voluntary initiative to work with corporate taxpayers to expedite the resolution of corporate intercompany pricing issues.

For additional details, please refer to the June 24, 2022 edition of [State Tax Matters](#).

## **New Jersey: Division of Taxation formally adopts and finalizes combined reporting and NOL rules**

The New Jersey Division of Taxation issued new and amended administrative rule changes reflecting New Jersey tax reforms first enacted in 2018 and addressing certain aspects of New Jersey net operating loss (NOL) deductions and composition of combined filing group returns, as well as the state tax implications of certain federal tax reform measures under the Tax Cuts and Jobs Act of 2017. ([Amended N.J.A.C. 18:7-1.3, 1.14, 1.16, 1.17, 2.1, 3.4, 3.6, 3.10, 3.13, 3.15, 3.16, 3.23, 5.2, 5.11, 5.12, 5.13, 5.14, 5.15, 7.6, 8.3, 8.7, 8.8, 8.10A, 8.12, 10.1, 11.6, 11.7, 11.8, 11.12, 11.15, 11.17, 11.18, 12.1, 12.2, 12.3, and 13.8; New N.J.A.C. 18:7-1.24, 1.25, 3.23A, 3.26, 3.27, 3.28, 3.29, 5.21, 5.22, 5.23, 11.17A, and 21](#), N.J. Div. of Tax. eff. 9/19/22).

For additional details, please refer to the Sep 23, 2022 edition of [State Tax Matters](#).

## **New Mexico: Taxation and Revenue Department addresses corporate income and gross receipts tax nexus**

Providing some accompanying examples to illustrate, the New Mexico Taxation and Revenue Department explains that for state corporate income and gross receipts tax purposes, establishing nexus means that your business has sufficient connection or presence in New Mexico for the state to have taxing authority, and that such connection may be a permanent or temporary in-state presence. ([Determining Nexus](#), N.M. Tax. & Rev. Dept. 8/22).

For additional details, please refer to the Sep 9, 2022 edition of [State Tax Matters](#).

## **New York: Affiliate's income must be included on combined return, but bad debt deductions are proper**

For Article 9-A purposes, a taxpayer was not allowed to remove from its combined returns for the years at issue a subsidiary's prorated [section 311\(b\)](#) gain that had been deferred under federal consolidated return rules in an earlier year in which the subsidiary was not part of the taxpayer's combined filing group; however, the taxpayer could claim certain income tax bad debt expense deductions for the years at issue ([Determination DTA No. 828931](#), N.Y. Div. of Tax App., ALJ Division, 7/7/22).

For additional details, please refer to the July 22, 2022 edition of [State Tax Matters](#).

## **New York: New York releases 'final update' to draft corporate apportionment regulations—impact to investment managers**

On July 1, 2022, the New York State Department of Taxation and Finance released a "final update" to its draft Article 9-A Business Corporation Franchise Tax Regulations ("Draft Regulations") addressing apportionment as part of its comprehensive effort to update the regulations to reflect New York's tax reform generally effective for tax years beginning in 2015.

For additional details, please refer to [Tax Alert](#) dated Aug. 2, 2022, and the July 8, 2022 edition of [State Tax Matters](#).

## **New York: Draft proposed Article 33 rules address combined filing for insurance corporations**

The New York State Department of Taxation and Finance released draft proposed changes to New York Article 33 insurance tax regulations reflecting the repeal of provisions concerning expired tax credits and specific guidance on state combined filing for insurance corporations (Draft Proposed (new) [New York State Article 33: 33.1, 33.2, 33.3, 33.4, 33.5, 33.6, 33.7, 33.8, and 33.9](#), N.Y. Dept. of Tax. & Fin. 8/22).

For additional details, please refer to the Aug. 12, 2022 edition of [State Tax Matters](#).

## **New York: New law enacts New York City economic nexus thresholds and permits city PTET for TY2022**

New law amends the New York City Business Corporation Tax to include bright-line economic nexus standards and the newly created New York City pass-through entity tax (PTET), providing that such tax is in effect beginning with tax year 2022 for those electing to opt in and meeting certain Sept. 15, 2022 deadlines ([SB 9454](#), signed by gov. 8/31/22).

For additional details, please refer to the Sept. 2, 2022 edition of [State Tax Matters](#).

## **New York: Updated draft proposed Article 9-A Rules revise "investment capital" definition and contain new example**

The New York State Department of Taxation and Finance released updates to previously posted draft proposed amendments to New York Article 9-A State Business Corporation Franchise Tax Regulations, Parts 1, 2 and 3, which revise the definition of "investment capital" and incorporate a new example within the draft proposal's examples of income and capital ([Draft Proposed Amended New York State Article 9-A Business Corporation Franchise Tax Regulations, Part 1, Part 2, and Part 3](#), N.Y. Dept. of Tax. & Fin. 8/22).

For additional details, please refer to the Aug. 12, 2022 edition of [State Tax Matters](#).

## **New York: City Department of Finance highlights 2022 law changes on economic nexus and PTE tax**

The New York City Department of Finance issued a memorandum explaining new law that aligns certain provisions of the City Administrative Code with New York State Tax Law including adding an economic nexus standard for the City Business Corporation Tax and amends the newly created City pass-through entity (PTE) tax. ([Finance Memorandum 22-3](#), N.Y.C. Dept. of Fin. 9/16/22).

For additional details, please refer to the Sep 23, 2022 edition of [State Tax Matters](#) and [Tax Alert](#) dated Sep 13, 2022.

## **North Carolina: New law addresses foreign entity net worth calculation, NOLs, and intercompany loans**

Effective for taxable years beginning on or after Jan. 1, 2023, and applicable to the calculation of North Carolina franchise tax reported on the 2022 and later North Carolina corporate income tax returns, new law provides that the net worth of a foreign entity filing a federal income tax return is based on the value of assets deemed to be in the United States ([H.B. 83](#), signed by gov. 6/29/22).

For additional details, please refer to the July 8, 2022 edition of [State Tax Matters](#).

## North Carolina: New law revises taxation of some captive insurance companies

New law revises North Carolina's taxation of certain captive insurance companies, addressing among other issues, protected cell captive insurance companies and special purpose captive insurance companies with a cell or series structure ([S.B. 347](#), signed by gov. 6/14/22).

For additional details, please refer to the June 24, 2022 edition of [State Tax Matters](#).

## Oregon: Airline must include unitary affiliate's departures for special industry apportionment

In an unpublished order of the Regular Division of the Oregon Tax Court involving the special income tax apportionment formula for airlines under state law as in effect for the prior years at issue, the Oregon Tax Court held that an airline must include the flight data of its unitary affiliate in the departure ratio used to determine its Oregon transportation sales for Oregon corporate excise tax purposes ([TC Case Nos. 5406](#) and [5407](#), Or. Tax Ct. 7/21/22).

For additional details, please refer to the Aug. 12, 2022 edition of [State Tax Matters](#).

## Oregon: Company's in-state activities through independent contractors destroy P.L. 86-272 protection

In an unpublished order of the Regular Division of the Oregon Tax Court involving whether a company's in-state activities conducted via independent contractors were protected under P.L. 86-272 for Oregon corporate excise tax purposes, the Oregon Tax Court concluded that the activities destroyed its immunity from Oregon corporate excise taxation ([TC Case No. 5372](#), Or. Tax Ct. 8/23/22).

For additional details, please refer to the Aug. 26, 2022 edition of [State Tax Matters](#).

## Pennsylvania: New law lowers corporate tax rates, adopts market sourcing and economic nexus standard

An enacted omnibus tax bill under Pennsylvania's Fiscal Year 2022–23 Budget implementation includes the following state corporate net income tax law changes: an annual phase-down of the tax rate for tax years beginning on or after Jan. 1, 2023, until it reaches 4.99% in tax year 2031; market-based sourcing on receipts from certain intangible property; and codification of an economic nexus standard ([H.B. 1342](#), signed by gov. 7/8/22).

For additional details, please refer to the July 15, 2022 edition of [State Tax Matters](#).

## Pennsylvania: Philadelphia DOR announces business tax rate reductions under recently enacted budget

The City of Philadelphia, Pennsylvania (City) recently enacted its Fiscal Year 2023 Budget, and the legislation provides several tax rate reductions including on the net income portion of the City's business income and receipts tax (BIRT) (*i.e.*, lowering the tax rate from 6.2% to 5.99%).

For additional details, please refer to the July 1, 2022 edition of [State Tax Matters](#).

## Pennsylvania: Philadelphia DOR explains treatment of section 1031 like-kind exchanges under BIRT and NPT

The City of Philadelphia, Pennsylvania Department of Revenue updated its guidance on the tax treatment of [section 1031](#) like-kind exchanges for purposes of calculating the City's business income and receipts tax (BIRT) and net profits tax (NPT), concluding that state conformity to the federal provisions depends on the tax base and underlying calculation method. ([Philadelphia's Tax Treatment of Section 1031 Exchanges for Business Income and Receipts Tax \(BIRT\) and Net Profits Tax \(NPT\)](#), City of Philadelphia, Pa. Dept. of Rev. updated 9/15/22).

For additional details, please refer to the Sep 23, 2022 edition of [State Tax Matters](#).





## Tennessee: Tax manual reflects treatment of TCJA changes involving GILTI and Opportunity Zones

The Tennessee Department of Revenue recently updated its franchise and excise tax manual to incorporate some new state tax law changes and answers to taxpayer questions in an effort to help provide improved clarity or expanded guidance, some of which address the state tax implications of certain changes to the 2017 federal tax overhaul legislation known as the Tax Cuts and Jobs Act ([Franchise and Excise Tax Manual](#), Tenn. Dept. of Rev. updated 8/22; [Tax Manual Updates](#), Tenn. Dept. of Rev. 8/22).

For additional details, please refer to the Sept. 2, 2022 edition of [State Tax Matters](#).



## Texas: Appellate court holds only net proceeds from selling commodity futures includable in sales factor

Citing a previous ruling that involved a taxpayer with a similar issue currently pending before the Texas Supreme Court, a Texas appellate court recently affirmed only the net proceeds from a taxpayer's sales of commodity futures were includable in the apportionment factor denominator for Texas franchise tax purposes ([Case No. 03-21-00111-CV](#), Tex. Ct. App. 8/24/22).

For additional details, please refer to the Aug. 26, 2022 edition of [State Tax Matters](#).

## Texas: Texas Comptroller adopts new regulations concerning R&D activities

On July 29, 2022, the Texas Register was published adopting certain proposed regulations that implement several important updates to the Texas franchise research and development (R&D) activities credit and sales/use tax R&D exemption.

For additional details, please refer [Tax Alert](#) dated Aug. 22, 2022, and the Aug. 5, 2022 edition of [State Tax Matters](#).

## Vermont: Document highlights law changes impacting apportionment, 80/20 companies, partnership audits

The Vermont Department of Taxes released a summary document highlighting recently enacted corporate income tax law changes, including adopting single sales factor apportionment, repealing Vermont's carve-out for 80/20 companies, and moving from "Joyce" to "Finnigan," as well as summarizing Vermont's new reporting requirements for partnerships under federal audit ([2022 Legislative Highlights](#), Vt. Dept. of Taxes, 6/22).

For additional details, please refer to the June 24, 2022 edition of [State Tax Matters](#) and the July 1, 2022 edition of [State Tax Matters](#).

## Virginia: Noncodified provisions related to intangible expense addback statutes remain in effect

Applicable retroactively for taxable years beginning on and after Jan. 1, 2004, Virginia's recently enacted "Budget Bills" include non-codified provisions that limit the "subject to tax" statutory exception to Virginia's intercompany intangible expense addback statute—regarding income that is subject to a tax based on or measured by net income or capital imposed by Virginia, another state, or a foreign government—to the portion of intercompany expense payments to the related member that owns the intangible property that corresponds to the portion of the related member's income where it has sufficient nexus to be subject to taxes based on or measured by net income or capital in other states (i.e., on a post-apportionment basis).

For additional details, please refer to the July 1, 2022 edition of [State Tax Matters](#).

## Washington: Cryptocurrency developments

The Washington Department of Revenue issued an [interim guidance statement](#) regarding the taxability of non-fungible tokens (NFTs).

For additional details, please refer to [Tax Alert](#) dated Aug. 26, 2022.

## West Virginia: Adopted rule changes reflect single sales factor apportionment and market-based sourcing

The West Virginia State Tax Department adopted amendments to state corporation net income tax rules reflecting legislation enacted in 2021 that incorporates a single sales factor formula, eliminates the sales factor "throw-out" rule, and implements market-based sourcing for certain receipts applicable for tax years beginning on or after Jan. 1, 2022. The amended rules took effect on July 1, 2022 ([Amended Regs. sections 110-24-1, 110-24-2, 110-24-3 et al.](#), W. Va. State Tax Dept. eff. 7/1/22; [Notice of Agency Approval of Proposed Amended Regs. sections 110-24-1, 110-24-2, 110-24-3 et al. and filing with Legislative Rule-Making Review Committee](#), W. Va. Dept. of Rev. 7/27/21).

For additional details, please refer to the July 15, 2022 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

### OECD

#### Five EU member states issue joint release committing to implement Pillar Two in 2023

On Sept. 9, 2022, representatives from France, Germany, Italy, the Netherlands, and Spain issued a [joint statement](#) reaffirming their commitment to swiftly implement the global minimum tax rules in Pillar Two of the two-pillar solution developed by the [OECD/G20 Inclusive Framework on BEPS](#).

For additional details, please refer to Deloitte [tax@hand](#) article dated Sept. 9, 2022.

### Brazil

#### Software license royalties paid to foreign indirect shareholder not deductible

On May 11, 2022, Brazil's Superior Chamber of Tax Appeals (CSRF) ruled that royalties paid by a Brazilian entity to its foreign indirect parent company for a license to distribute and commercialize software are nondeductible for corporate income tax purposes.

For additional details, please refer to Deloitte [tax@hand](#) article dated July 18, 2022.

### France

#### 2022 amended finance law and 'purchasing power law' enacted

During summer 2022, the French parliament adopted a "purchasing power package," consisting of the 2022 amended finance law and a "purchasing power law," both of which were published in the official journal on Aug. 17, 2022.



For a summary of some of the laws' key provisions, please refer to Deloitte [tax@hand](#) article dated Aug. 22, 2022.

#### Foreign tax credits may offset tax due on dividend lump sum addback

On July 5, 2022, France's Supreme Administrative Court (Conseil d'Etat) canceled the French tax authorities' (FTA) guidelines that stated that the addback of a 5% lump sum on dividends that are tax exempt under the participation exemption regime could not be treated as a tax paid on part of the dividends, thus denying the use of foreign tax credits to offset the tax due on the lump sum (Conseil d'Etat, n°463021).

For additional details, please refer to Deloitte [tax@hand](#) article dated July 6, 2022.

### Germany

#### MOF grants another extension of the filing deadline for certain ORIP-related filings

On June 29, 2022, the German Ministry of Finance (MOF) published a decree that extends (for a second time) the deadline for certain filings that are required in connection with the extraterritorial taxation of royalty payments derived by nonresidents (referred to as offshore receipts in respect of intangible property or "ORIP") from June 30, 2022, through June 30, 2023. In addition to the extension of the filing deadline, the MOF published its report to the finance committee of the German parliament on the evaluation of nonresident taxation of royalty income and capital gains relating to rights that are registered in a German public book or register.



For additional details, please refer to Deloitte [tax@hand](#) article dated June 29, 2022.

## India

### CBDT issues guidance on exclusions from definition of virtual digital assets

India's Central Board of Direct Taxes (CBDT) has issued guidance (through Notifications No. 74 and No. 75 of 2022, dated June 30, 2022 ["notifications"]) providing certain exclusions from the definition of virtual digital assets (VDAs) under section 2(47A) of the Income-tax Act, 1961 (ITA). Assets excluded from the definition of VDAs are not subject to the new regime for the taxation of VDAs that applies as from April 1, 2022. The notifications entered into force on the date of their publication in the official gazette (June 30, 2022).

For additional details, please refer to Deloitte [tax@hand](#) article dated July 4, 2022.

## Accounting developments

### FASB issues proposed ASU: Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method

In August 2022, the FASB issued a proposed Accounting Standards Update (ASU) that would allow for reporting entities to account for investments made primarily for the purpose of receiving income tax credits and other tax benefits consistently. The proposed ASU originally was presented to the Emerging Issues Task Force (EITF) and referred to as EITF 21-A.

EITF Issue 21-A addresses expanding the allowance of the proportional amortization method to be used for other investment tax credits outside of low-income housing tax credit (LIHTC) investments that meet the criteria in ASC 323-740-25-1. The EITF Issue also clarifies criterion (aa) and criterion (aaa) in ASC 323-740-25-1 that an investment tax credit must meet in order to apply the proportional amortization method instead of the equity method.

Comments on the proposal are due Oct. 6, 2022.

For additional details, please refer to the June 2022 edition of [EITF Snapshot](#) and the [proposed ASU](#).

## Up-C Structure Services

For Up-C structures, the Up-C Services group offers virtual webcasts from Deloitte specialists covering recent U.S. 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) (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 CPE credits, please visit [Dbriefs Webcasts](#).

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

Join us at the [Deloitte Tax Accounting Conference – Learn. Grow. Advance.](#) live at Caesars Palace, Las Vegas, NV from December 5-9, 2022 and take part in tax accounting sessions delivered by well-known Deloitte leaders. The conference offers three distinct and insightful tax accounting courses, over a one-week period. Each course will cover ASC 740 topics impacting today's complex tax environment.

## 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 Home Page](#)
- [Deloitte Tax Accounting & Provisions Dbriefs Webcasts Series](#)
- [Deloitte Heads Up Newsletter Archive](#)
- [Global Tax Developments Quarterly—Accounting for Income Taxes](#)
- [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 [e-mail](#).

## 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](http://Deloitte.com) | [Legal](#) | [Privacy](#)

1633 Broadway  
New York, NY 10019-6754  
United States

Copyright © 2022 Deloitte Development LLC. All rights reserved.

 [Deloitte RSS feeds](#)