



Accounting for Income Taxes

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US Federal

New Treasury Regulations address treatment of GILTI and FDII

The Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") recently released Treasury regulations addressing various aspects of the tax treatment of global intangible low-taxed income ("GILTI") and foreign-derived intangible income ("FDII").

On July 9, 2020, the Treasury and the IRS released [final Treasury Regulations](#) under section 250 of the Internal Revenue Code ("IRC") with respect to FDII, which include substantial modifications to the [proposed regulations](#) under the same section previously published on March 6, 2019.

For a summary of the final Treasury Regulations, see the Deloitte [tax@hand](#) article dated July 13, 2020.

[Final Treasury Regulations](#) issued on July 20, 2020 allow taxpayers to exclude certain high-taxed income of a controlled foreign corporation from their GILTI computation on an elective basis. A separate set of [proposed Treasury Regulations](#) were released on the same day which addresses the interaction of the Subpart F high-tax exception with the GILTI high-tax exclusion.

Final IRC section 163(j) Treasury Regulations issued

On July 28, 2020, the Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") issued [final](#) and [proposed](#) Treasury Regulations issued on July 28, 2020 to provide additional guidance as to the limitation on the deduction for business interest expense pursuant to Internal Revenue Code section 163(j). The new final and proposed Treasury Regulations reflect changes to the limitation enacted in the Tax Cuts and Jobs Act (the "Tax Act") and the temporary changes to the Tax Act provisions enacted in March 2020 by the Coronavirus Aid, Recovery, and Economic Security ("CARES") Act. The versions of the [final](#) and [proposed](#) Treasury Regulations were published in the Federal Register on September 14, 2020.

Additionally, on July 28, 2020, the IRS issued [Notice 2020-59](#) contains a proposed revenue procedure that provides a safe harbor allowing taxpayers engaged in a trade or business that manages or operates qualified residential living facilities to treat that trade or business as a real property trade or business solely for purposes of qualifying as an electing real property trade or business under IRC section 163(j)(7)(B).

For additional details, please see the [Deloitte tax@hand](#) article dated July 31, 2020.

Final and proposed Treasury Regulations on dividends received deductions released

On August 21, 2020, the Treasury and the IRS released [final Treasury Regulations](#) under IRC sections 245A and 954 that limit the deduction for certain dividends received by US persons from foreign corporations under IRC section 245A and the exception to subpart F income under IRC section 954(c)(6) for certain dividends received by controlled foreign corporations. These regulations finalize a package of temporary and proposed Treasury Regulations issued on June 18, 2019 that limit the IRC section 245A deduction and the IRC section 954(c)(6) exception with respect to distributions supported by earnings and profits that were not subject to tax under IRC section 965 (transition tax), IRC section 951 (subpart F), or IRC section 951A (Global Intangible Low-Taxed Income "GILTI").

In addition, the Treasury and the IRS released [proposed Treasury Regulations](#) to coordinate the extraordinary disposition rule under IRC section 245A with the disqualified basis rule under IRC section 951A in order to prevent excess taxation due to the application of both limitations.

For a summary of the final and proposed Treasury Regulations, see the Deloitte [tax@hand](#) article dated August 25, 2020

Final BEAT Treasury Regulations released

On September 1, 2020, the Treasury and the IRS released [final Treasury Regulations](#) under IRC section 59A. The final Treasury Regulations provide guidance regarding the Base Erosion and Anti-Abuse Tax ("BEAT") imposed on certain large corporate taxpayers with respect to certain payments made to foreign related parties.

Please refer to an [alert](#) issued by Deloitte Tax LLP which provides a summary of these final Treasury Regulations.

Final Bonus Depreciation Treasury Regulations released

On September 21, 2020, the Treasury and the IRS issued [final Treasury Regulations](#) under IRC sections 168(k) and 1502, which provide guidance regarding the 100 percent bonus depreciation provisions of the Tax Act. These final Treasury Regulations are effective sixty days after publication in the Federal Register for property placed in service in tax years beginning after December 31, 2020, but taxpayers can rely on these final Treasury Regulations in their entirety for qualified property acquired and placed in service after September 27, 2017.

Final IRC section 863 Treasury Regulations released

On September 29, 2020, the Treasury and the IRS released [final Treasury Regulations](#) under IRC section 863. These final Treasury Regulations modify the rules for determining the source of income from sales of inventory produced within the United States and sold outside of the United States and vice versa. These final Treasury Regulations also contain new rules for determining the source of income from sales of personal property (including inventory) by non-residents that are attributable to an office or other fixed place of business that the non-resident maintains in the United States. Finally, these Final Treasury Regulations modify certain rules for determining whether foreign source income is effectively connected with the conduct of a trade or business within the United States.

US Multistate

California FTB Discusses COVID-19 pandemic-related telecommuting nexus relief and Public Law 86-272

Responding to the COVID-19 pandemic, the California Franchise Tax Board ("FTB") released guidance in the form of some answers to frequently asked questions (FAQs) addressing "possible California franchise tax implications to corporations that previously had no connections with California but now have an employee indefinitely teleworking from California" pursuant to California Governor Newsom's public health "stay at home" executive order (Executive Order N-33-20) signed on March 19, 2020, which are applicable until this order is no longer in effect. According to the FTB guidance, California will not treat an out-of-state corporation whose only connection to California is the presence of an employee who is currently teleworking in California due to Executive Order N-33-20 as "actively engaged in a transaction for the purposes of financial or pecuniary gain or profit" under state franchise tax law for purposes of determining whether it is "doing business" in California.

The FTB additionally states that California will not include the compensation attributable to an employee who is currently teleworking due to Executive Order N-33-20 in the minimum payroll threshold set forth in Cal. Rev. & Tax. Code section 23101(b)(2)(4). For purposes of the protections afforded under Public Law 86-272, the FTB provides that California will not treat an out-of-state corporation as exceeding the protections of Public Law 86-272 if it has an employee who is currently teleworking in California due to Executive Order N-33-20 and instead will treat such activities as engaging in "de minimis activities."

For additional details, please refer to the September 18, 2020 edition of [State Tax Matters](#).

California FTB says tax returns must be prepared using current market-sourcing rules

The California FTB states that tax returns prepared for taxable years beginning during the 2019 calendar year are not required to be prepared utilizing the rules reflected in proposed revisions to California Code of Regulations, title 18, section 25136-2 and that such returns should be prepared utilizing the rules reflected in the current version.

For additional details, please refer to the October 2, 2020 edition of [State Tax Matters](#).

California new law provides Water's Edge election fix for certain unitary foreign affiliates

Newly enacted tax law provides that if a unitary corporation not incorporated in the United States (i.e., a unitary foreign affiliate) that is not itself subject to tax under California's Corporation Tax Laws in the year for which a unitary combined reporting group made a valid California water's-edge election but then subsequently becomes subject to tax in California solely due to California's economic nexus standard under California Rev. & Tax Code section 23101(b) in a taxable year beginning on or after January 1, 2021, then that corporation is deemed to have made the California water's edge election with the other members of the unitary combined reporting group.

For additional details, please refer to the October 2, 2020 editions of [State Tax Matters](#).

Colorado new tax law addresses some federal "CARES" Act provisions including NOLs and IRC section 163(j)

On July 11, 2020, Governor Polis signed into law, which effective immediately decouples Colorado tax law from several provisions enacted under the federal CARES Act, including changes involving IRC sections 172 and 163(j) for state corporate income tax purposes. The Colorado Department of Revenue ("DOR") released a publication addressing how the retroactive federal tax provisions under the federal CARES Act interact with Colorado corporate and individual income taxation.

For additional details, please refer to the July 17, 2020 edition of [State Tax Matters](#) and the July 10, 2020 edition of [State Tax Matters](#).

Colorado issues permanent rules which clarify meaning of IRC for Colorado income tax purposes

The Colorado DOR has adopted permanent rules clarifying that the term IRC incorporates changes to federal statutes only on a prospective basis for Colorado income tax purposes. Under these rules, the term IRC does not, for any taxable year, incorporate federal statutory changes that are enacted after the last day of that taxable year and as a result, "federal statutory changes enacted after the end of a taxable year do not impact a taxpayer's Colorado tax liability for that taxable year." The rules explain that changes to federal statutes are incorporated into the term IRC only to the extent they are in effect in the taxable year in which they were enacted and future taxable years. Please note that the DOR issued similar emergency versions of these rules earlier this year.

For additional details, please refer to the September 18, 2020 edition of [State Tax Matters](#).

Connecticut DOR services comments on state tax implications of the CARES Act

The Connecticut DOR recently issued two publications addressing the Connecticut corporate income tax implications of some federal tax provisions under the federal CARES Act.

For additional details, please refer to the July 17, 2020 edition of [State Tax Matters](#).

District of Columbia issues permanent bill postponing combined reporting group deduction and addresses Qualified High Technology Companies and Opportunity Zones

On August 31, 2020, Mayor Bowser signed a bill into law which includes delaying the deduction afforded to combined reporting groups where the combined reporting regime resulted in an increase to the group's net deferred tax liability revising the Qualified High Technology Companies provisions and aligning with certain federal Opportunity Zone tax benefits.

For additional details, please refer to the September 4, 2020 edition of [State Tax Matters](#).

District of Columbia Office of Tax and Revenue extends COVID-19 pandemic-related telecommuting relief and addresses Public Law 86-272

The OTR continues to state that it will not seek to impose franchise tax nexus solely on the basis of employees or property used to allow employees to work from home that are temporarily located in the District of Columbia.

For additional details, please refer to the September 11, 2020 edition of [State Tax Matters](#).

Florida new law updates state conformity to the IRC

Effective immediately and applicable retroactively to tax years beginning on or after January 1, 2020, new law generally updates corporate income tax statutory references in Florida to conform to the Internal Revenue Code provisions as in effect on January 1, 2020 (previously through January 1, 2019).

For additional details, please refer to the September 25, 2020 edition of [State Tax Matters](#).

Florida DOR announces corporate tax rate and comments on state conformity to IRC

The Florida DOR issued a tax information publication announcing that the Florida corporate income/franchise tax rate will remain 4.458%. Another clarification provides detail with respect to state conformity with various CARES Act provisions.

For additional details, please refer to the October 2, 2020 edition of [State Tax Matters](#).

Georgia DOR explains state tax implications of the CARES Act

The Georgia DOR has revised certain administrative guidance to reflect new law that generally updates Georgia's corporate and individual income tax conformity to the IRC but that also specifically decouples from some provisions under the CARES Act involving IRC sections 172 and 461(l).

For additional details, please refer to the July 17, 2020 edition of [State Tax Matters](#) and the July 10, 2020 edition of [State Tax Matters](#).

Georgia DOR addresses state implications of the CARES Act QIP provisions

The Georgia DOR updated its guidance on the state income tax implications of certain federal tax provisions under the CARES Act, specifically how the CARES Act amends the treatment of certain "qualified improvement property" ("QIP") effectively to treat it as 15-year "MACRS" property, eligible for 100% bonus depreciation allowed by IRC section 163(k), and what these revisions mean for Georgia income tax purposes. The DOR states that for taxable years beginning on or after January 1, 2019, Georgia has adopted the federal law change involving QIP as it relates to the 15-year life but has not adopted bonus depreciation and, accordingly, explains what should be done procedurally for Georgia income tax purposes if a taxpayer elects the option to file an automatic accounting method change.

For additional details, please refer to the September 18, 2020 edition of [State Tax Matters](#).

Hawaii new law updates state conformity to IRC and decouples from certain CARES Act provisions

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 of March 27, 2020; however, IRC sections 172 and 461 shall be operative in the form that existed as of December 31, 2019.

For additional details, please refer to the August 21, 2020 edition of [State Tax Matters](#).

Iowa new law addresses some federal CARES Act provisions, NOLs, IRC Section 163(j) and GILTI

A recently signed omnibus bill contains numerous tax-related measures including revisions that modify net operating loss ("NOL") carryover provisions, decouple from recent federal tax law changes that limit the deduction of business interest expenses for income tax purposes under IRC section 163(j), and decouple from GILTI.

For additional details, please refer to the July 3, 2020 edition of [State Tax Matters](#), the July 17, 2020 edition of [State Tax Matters](#) and the July 24, 2020 edition of [State Tax Matters](#).

Kentucky DOR comments on state tax implications of some federal CARES Act provisions

The Kentucky DOR has issued answers to some frequently asked questions addressing the Kentucky income tax implications of select federal tax provisions under the federal CARES Act.

For additional details, please refer to the July 24, 2020 edition of [State Tax Matters](#).

Kentucky DOR addresses COVID-19 pandemic-related telecommuting on nexus

The Kentucky DOR issued answers to some frequently asked questions addressing certain Kentucky income tax implications of temporary employee telecommuting noting that it will continue reviewing Kentucky state income tax nexus determinations on a case-by-case basis.

For additional details, please refer to the August 28, 2020 edition of [State Tax Matters](#).

Louisiana new law enhances angel investor credit for businesses located in Opportunity Zones

New law provides an enhanced Louisiana "Angel Investor Credit" of 35% for investments in eligible businesses located in federal qualified opportunity zones as established under Subchapter Z of the IRC under the Tax Act, as well as increases the annual program's credit award cap to a total of \$7.2 million.

For additional details, please refer to the July 24, 2020 edition of [State Tax Matters](#).

Maine Revenue Services supplements comments on state treatment of the CARES Act

Following up on its previously issued guidance regarding Maine's response to some tax provisions under the CARES Act, Maine Revenue Services has issued supplementary guidance explaining that taxpayers who have already filed a 2018 or 2019 Maine income tax return may be required to file amended income tax return(s).

For additional details, please refer to the July 17, 2020 edition of [State Tax Matters](#).

Maryland Comptroller addresses state tax treatment of the CARES Act

The Maryland Comptroller released guidance on the state tax treatment of some provisions under the federal CARES Act and how, under current state law, Maryland automatically decouples from certain provisions for tax year 2020, but not prior.

For additional details, please refer to the July 31, 2020 edition of [State Tax Matters](#).

Maryland unauthorized captive insurance company deemed exempt from corporate income tax

The Maryland Tax Court held 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.

For additional details, please refer to the August 7, 2020 edition of [State Tax Matters](#).

Massachusetts DOR readdresses COVID-19 pandemic-related telecommuting on nexus

The Massachusetts DOR has issued a new technical information release that supersedes its initial guidance from April 2020, describes Massachusetts tax relief in certain situations in which employees work remotely due solely to the COVID-19 pandemic and includes an expiration date to help businesses prepare for the cessation of these temporary rules.

For additional details, please refer to the July 31, 2020 edition of [State Tax Matters](#).

Massachusetts technical information release addresses implications of the CARES Act

The Massachusetts DOR has issued a technical information release describing the Massachusetts corporate and business tax and individual income tax implications of some federal tax provisions under the CARES Act, including changes involving IRC sections 172, 163(j), and 168(e).

For additional details, please refer to the July 17, 2020 edition of [State Tax Matters](#)

Michigan issues notice on the corporate income tax treatment of IRC Section 163(j)

The Michigan Department of Treasury issued "Notice: Corporate Income Tax Treatment of the IRC 163(j) Business Interest Limitation" addressing the computation of the business interest expense limitation found under IRC Section 163(j) for Michigan corporate income tax purposes.

For additional details, please refer to the [Multistate Tax Alert](#) dated July 27, 2020.

Minnesota state high court rules that sale of majority interest in operating subsidiaries yields business income

In a case involving an out-of-state taxpayer's capital gain from its sale of a majority interest in the US operations of a subsidiary business which was conducted by twelve wholly-owned disregarded limited liability company subsidiaries, the Minnesota Supreme Court affirmed that the gain was from the operation of a unitary business and thus must be apportioned to Minnesota.

For additional details, please refer to the August 21, 2020 edition of [State Tax Matters](#)

New Hampshire DOR outlines taxability of COVID-19 financial relief for Business Profits Tax and Business Enterprise Tax purposes

The New Hampshire DOR issued guidance addressing the state Business Profits Tax and Business Enterprise Tax impacts of some COVID-19 pandemic-related financial relief as enacted under the CARES Act.

For additional details, please refer to the August 28, 2020 edition of [State Tax Matters](#).

New Jersey Division of Taxation adopts rules reflecting market-based sourcing law

The New Jersey Division of Taxation has adopted rule changes within the context of state corporation business tax reforms that include imposition of market-based sourcing provisions for sales of services for privilege periods ending on and after July 31, 2019.

For additional details, please refer to the September 11, 2020 edition of [State Tax Matters](#).

New Jersey Appellate Court upholds CBT assessments against out-of-state corporate limited partner

In an unpublished opinion, the New Jersey Superior Court, Appellate Division (the "Court"), upheld state corporation business tax ("CBT") assessments issued against an out-of-state corporation (i.e., the taxpayer) on its share of pass-through income received as a 99% limited partner from two foreign limited partnerships. The taxpayer unsuccessfully had argued that it lacked CBT nexus with New Jersey as a holding company that merely received passive income from the two limited partnerships over which it had no control. The Court agreed with the New Jersey Tax Court that, under the supported record and facts, the partnerships at issue were actively managed, operated, and controlled in all aspects by the same family of individuals that ultimately owned the taxpayer and the general partners, and who were all actively involved in their sole real estate business (i.e., developing, building and selling homes) in New Jersey through the two limited partnerships. Accordingly, pursuant to the applicable state statutory scheme, the Court affirmed that the taxpayer derived receipts from New Jersey sources and had sufficient nexus with New Jersey during the relevant tax years to subject it to the CBT on the income it derived from the two partnerships.

For additional details, please refer to the September 18, 2020 edition of [State Tax Matters](#).

New Mexico new law includes decoupling from NOL provisions under the CARES Act

New law revises New Mexico's corporate income tax definitions of NOL effectively to maintain conformity with the NOL-related definitions and provisions found under the Tax Act and thus decouple from the NOL-related provisions under the federal CARES Act.

For additional details, please refer to the July 3, 2020 edition of [State Tax Matters](#).

New Jersey governor signs bill that incorporates a 2.5% corporate surtax through 2023

Newly enacted law imposes New Jersey's CBT surtax at a rate of 2.5% until December 31, 2023; however, if the federal corporate income tax rate is increased to at least 35% of taxable income, the new law suspends the surtax following the conclusion of a CBT taxpayer's privilege period corresponding with the increase to the federal tax rate.

For additional details, please refer to the October 2, 2020 edition of [State Tax Matters](#).

New Jersey Division of Taxation issues guidance on new elective pass-through entity-level tax

The New Jersey Division of Taxation has issued guidance in the form of some answers to frequently asked questions addressing the implementation of legislation enacted earlier this year that establishes an elective pass-through business alternative income tax (PTE tax) for some passthrough entities with a corresponding income tax credit for members, applicable for taxable years beginning on or after January 1, 2020. Under this new law, pass-through entities may include partnerships, federal S corporations that have made the New Jersey S corporation election, and certain limited liability companies. Among other topics, the new guidance explains the PTE tax election process, how to calculate the tax, and how corporate members of certain pass-through entities may be impacted.

For additional details, please refer to the October 2, 2020 edition of [State Tax Matters](#).

New York rules taxpayer must include royalty payments received from foreign affiliates in tax base

The New York Tax Appeals Tribunal affirmed that while certain payments received by a taxpayer from its foreign affiliates constituted royalties, such intercompany royalty payments could not be excluded under a former statutory royalty exclusion in effect for the prior tax years at issue in computing its Article 9-A corporation franchise tax combined return entire net income.

For additional details, please refer to the August 21, 2020 edition of [State Tax Matters](#).

New York City rules that capital gain from sale of limited partnership interest includable in tax base

Rejecting the taxpayer's argument for exclusion based on federal conformity principles, a New York City Tax Appeals Tribunal administrative law judge held that capital gain realized by a nondomiciliary corporate taxpayer from the sale of its limited partner interest in a limited partnership conducting business in New York City was properly included in its General Corporation Tax entire net income.

For additional details, please refer to the August 21, 2020 edition of [State Tax Matters](#).

New York City memorandum addresses decoupling of CARES Act provisions and potential penalty abatement

The New York City Department of Finance recently issued administrative guidance in the form of a new finance memorandum (Finance Memo 20-6) reflecting enactment of New York State's FY 2020-2021 Budget Act, as well as subsequent legislation that included amendments to some New York City business tax provisions addressing the tax treatment of certain federal tax provisions enacted under the CARES Act. More specifically, Finance Memo 20-6 describes the City's decoupling under the New York City Unincorporated Business Tax ("UBT"), General Corporation Tax ("GCT"), Banking Corporation Tax ("BTX") and Business Corporation Tax ("BCT") from certain business tax provisions of the CARES Act and provides instructions to such taxpayers for completing their tax year 2018 and 2019 business tax returns.

Finance Memo 20-6 additionally explains that the City's decoupling from CARES Act changes to IRC section 163(j)(10), IRC section 172, and IRC section 461(l) may result in increases to the New York City tax liability of some business taxpayers, and that the Department of Finance has determined that the enactment of the CARES Act as well as the City's decoupling legislation "so late in tax year 2020" constitutes "reasonable cause" for taxpayers to have underpaid the portion of their New York City tax liabilities attributable to the New York City's decoupling from these specific CARES Act changes. Accordingly, Finance Memo 20-6 explains that if a taxpayer receives a bill from the Department of Finance that includes a penalty for failing to pay the correct amount of tax when due, and the underpayment is attributable to the New York City's decoupling from CARES Act changes to IRC section 163(j)(10), IRC section 172, or IRC section 461(l), the taxpayer may request an abatement of the penalty.

For additional details, please refer to the October 2, 2020 edition of [State Tax Matters](#).

North Carolina new law updates state conformity to IRC and decouples from some CARES Act provisions

New North Carolina law generally updates corporate income tax conformity with the IRC, specifically decoupling from some recent changes under the CARES Act involving IRC sections 163(j) and 172. A notice issued by the North Carolina DOR addresses these new state laws and how some taxpayers that have already filed a 2019 North Carolina income tax return may need to file an amended one.

For additional details, please refer to the July 24, 2020 edition of [State Tax Matters](#) and July 3, 2020 edition of [State Tax Matters](#).

North Carolina DOR launches four-month “Voluntary Corporate Transfer Pricing Resolution Initiative”

The North Carolina DOR recently launched a “Voluntary Corporate Transfer Pricing Resolution Initiative” that will run through December 1, 2020, in a stated effort to “work with corporate taxpayers to expedite the resolution of corporate intercompany pricing issues” that may cause a taxpayer to inaccurately report net income attributable to North Carolina.

For additional details, please refer to the August 7, 2020 edition of [State Tax Matters](#).

North Carolina DOR summarizes market-based sourcing provisions

The North Carolina DOR reminds that North Carolina law requires state corporate income taxpayers to calculate their sales factor for apportionment purposes under a market-based sourcing approach for certain receipts effective January 1, 2020.

For additional details, please refer to the July 24, 2020 edition of [State Tax Matters](#).

Oregon DOR Addresses Effect of COVID-19 Pandemic-Related Telecommuting on Nexus

Responding to the COVID-19 pandemic, the Oregon DOR explains that for state corporate excise (income) tax purposes the presence of teleworking employees in Oregon between March 8, 2020 and November 1, 2020 generally will not be treated as a relevant factor when making a nexus determination if such employee(s) are regularly based outside Oregon.

For additional details, please refer to the July 31, 2020 edition of [State Tax Matters](#).

Oregon CAT Amendment Bill signed and various permanent rules are finalized

Recently signed legislation enacts several technical amendments to Oregon's new Corporate Activity Tax (“CAT”) including an election for unitary group taxpayers to exclude certain foreign members that have no commercial activity sourced to Oregon. Additionally, the Oregon DOR has adopted additional administrative rules governing Oregon's new CAT, including a new seven-page rule that addresses how to determine the sourcing of commercial activity for financial institutions.

For additional details, please refer to the July 3, 2020 edition of [State Tax Matters](#), the [Multistate Tax Alert](#) dated July 8, 2020 and the July 31, 2020 edition of [State Tax Matters](#).

Pennsylvania DOR updates bulletin that adopts \$500 thousand annual gross receipts economic nexus standard

The Pennsylvania DOR issued an updated bulletin which continues to state that “at least prospectively, no physical presence standard exists for purposes of limiting the ability of a state to impose a net income tax on an out of state taxpayer so long as the constitutional requirements under the Due Process and Commerce Clauses of the United States Constitution are satisfied.” As such, the DOR continues to state that for Pennsylvania corporate net income tax (“CNIT”) purposes out-of-state corporations are considered to be doing business in Pennsylvania and/or carrying on activities in Pennsylvania to the extent they are “taking advantage of the economic marketplace” of Pennsylvania regardless of whether they are physically present in Pennsylvania and that, starting on or after January 1, 2020, it “will deem there to be a rebuttable presumption that corporations without physical presence in the state, but having \$500,000 or more of direct or indirect gross receipts from any combination of the following, sourced to Pennsylvania per year pursuant to the sales factor rules contained in 72 P.S. § 7401,” have a CNIT filing requirement:

- Gross receipts from the sale, rental, lease, or licensing of tangible personal property;
- Gross receipts from the sale of services; and/or
- Gross receipts from the sale or licensing of intangibles, including franchise agreements.

The updated bulletin now also provides that receipts from all pass-through entities held by a corporate entity will be combined in determining whether the corporate entity has exceeded the \$500,000 rebuttable presumption of nexus for CNIT purposes. The updated bulletin also states that for purposes of a passthrough entity determining whether Pennsylvania's "Form PA-65 Corp" is required, "each such entity will need to make its own determination based on its gross receipts sourced to Pennsylvania" – explaining that pass-through entities with corporate partners that did not file the "Form PA-65 Corp" may be required to do so for tax year 2020 and later periods depending upon the activities and receipts of the pass-through entity.

For additional details, please refer to the September 25, 2020 edition of [State Tax Matters](#).

City of Philadelphia explains impact of the IRC section 172 CARES Act provisions on the BIRT

Commenting on changes involving IRC section 172 under the CARES Act, the City of Philadelphia DOR explains that Philadelphia does not conform to the federal treatment of NOLs for the Business Income and Receipts Tax ("BIRT") on net income.

For additional details, please refer to the July 3, 2020 edition of [State Tax Matters](#).

New law in the City of Philadelphia postpones scheduled BIRT rate decreases

New law within the City of Philadelphia postpones the previously scheduled City BIRT rate decreases by maintaining the 6.2% net income rate through to the tax year 2022.

For additional details, please refer to the July 3, 2020 edition of [State Tax Matters](#).

South Carolina DOR extends COVID-19 pandemic-related telecommuting relief

The South Carolina DOR now states that it will not use changes solely in an employee's temporary work location due to remote work requirements arising from, or during, the COVID-19 relief period as a basis for establishing nexus or altering apportionment of income through December 31, 2020.

For additional details, please refer to the September 4, 2020 edition of [State Tax Matters](#).

South Carolina new law updates state conformity to IRC

Effective immediately, new law generally updates corporate and personal income tax statutory references to the IRC, referring to the federal law in effect as amended through December 31, 2019 (previously December 31, 2018) and "includes the effective date provisions contained in it." The new law additionally provides that if IRC sections adopted by South Carolina which expired or portions thereof expired on December 31, 2019, are extended, but otherwise not amended, by US Congressional enactment during 2020, "these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes."

For additional details, please refer to the October 2, 2020 edition of [State Tax Matters](#).

Tennessee DOR addresses state corporate tax treatment of the CARES Act provisions

The Tennessee DOR has issued some guidance on the state corporate excise tax treatment of some provisions under the CARES Act, namely changes involving IRC sections 163(j), 172 and 168.

For additional details, please refer to the August 7, 2020 edition of [State Tax Matters](#), the August 21, 2020 edition of [State Tax Matters](#) and the September 11, 2020 edition of [State Tax Matters](#).

Texas Comptroller addresses marketplace provider and marketplace seller nexus and taxation

Addressing the taxation of marketplace providers and marketplace sellers, the Texas Comptroller of Public Accounts explains that a taxable entity generally must report and remit Texas franchise tax if it has physical presence or economic nexus in Texas and that such entities with a Texas use tax permit are presumed to have nexus with Texas for state franchise tax purposes.

For additional details, please refer to the August 21, 2020 edition of [State Tax Matters](#).

Utah responds to the CARES Act, new law includes changes to NOL provisions

Responding to certain NOL provisions under the CARES Act, new law in Utah removes the 80 percent limitation on a Utah net loss carry forward for the 2018 through 2020 income tax years for state corporate franchise and income tax purposes.

For additional details, please refer to the September 4, 2020 edition of [State Tax Matters](#).

Virginia administrative ruling provides that single-sales factor election must be made on an original return

Addressing state law that permits qualifying manufacturing companies to elect a modified method of apportioning their Virginia taxable income for state corporate income tax purposes by utilizing a single sales factor, a recent Virginia Department of Taxation ruling rejected a taxpayer's attempt to make the election retroactively on an amended return.

For additional details, please refer to the July 31, 2020 edition of [State Tax Matters](#).

International

For a summary of additional international tax developments and other current major international income tax developments for the current quarter please refer to the [Global Tax Developments-Accounting for Income Taxes](#) publication. The Global Tax Developments publication will be issued shortly after the release of this publication. The Global Tax Developments publication also includes a summary of combined tax rates applicable in several key jurisdictions and the dates of enactment of rate changes, if applicable, under US GAAP.

Australia guidance issued on thin capitalization arm's length debt test

On August 12, 2020, the Australian Taxation Office ("ATO") published two sets of guidance in respect of the arm's length debt test ("ALDT"), and taxpayers should use these guidelines to self-assess their risk profile against a specified matrix included therein.

These documents are final versions of the draft ruling released in April 2019 (TR 2019/D2) and the draft PCG released in August 2019 (PCG 2019/D3).

For additional details, please refer to the article at [tax@hand/Australia](#).

Cyprus EU anti-tax avoidance directive provisions adopted

Following the partial adoption of the EU Anti-Tax Avoidance Directive of July 12, 2016 (ATAD I) in 2019, on June 19, 2020, the Cyprus Parliament voted into law the remaining provisions of the ATAD I as well as the provisions of the EU Anti-Tax Avoidance Directive of May 29, 2017 (ATAD II). The law was published in the official gazette on July 3, 2020.

The anti-tax avoidance measures that have been transposed into law are the following:

- Exit taxation rules (ATAD I)
- Hybrid mismatch (including reverse hybrid mismatch) rules (ATAD II)

These measures are expected to impact companies and groups of companies with international activities.

For additional details, please refer to the article at [tax@hand/Cyprus](#).

France third amended finance bill becomes law

Both chambers of France's parliament adopted a third 2020 amended finance bill on July 23, 2020. The bill had been introduced by the French government on June 10, 2020 in response to the COVID-19 pandemic in order to strengthen support measures for the most affected economic sectors. It was published (in French only) in the [Official Journal](#) on July 31, 2020 and became law. The main tax measures affecting French companies include the following:

- Early refund of carryback receivables;
- Real estate contribution ("CFE") relief for some companies carrying out an activity in industries significantly affected by the pandemic (e.g., the hotel and airlines industries);
- Deferral of Directive 2011/16/EU ("DAC 6") reporting deadlines;
- Introduction of tax credit to support companies carrying out investments in audiovisual and cinema programs ;
- Exemption from employer social contributions, and payroll taxes debt relief and payment plans for companies affected by COVID-19

For additional details, please refer to the article at [tax@hand/France](#).

Germany upper and lower houses of parliament approve economic stimulus bill

On June 29, 2020, the upper and lower houses of the German parliament approved the economic stimulus bill that was introduced into the legislative process by the government on June 12, 2020. The law has already been signed and published in the federal gazette and entered into force with (retroactive) effect as of July 1, 2020.

The main tax measures affecting German companies include the following:

- An increase of the amount of the one-year loss carryback (EUR 5 million for corporations);
- The introduction of an accelerated depreciation method for moveable assets;
- An increase to the maximum amount of annual qualifying expenses for the R&D tax credit (EUR 4 million translating into a maximum annual cash benefit of EUR 1 million);
- A temporary reduction of VAT rates to 16% and 5% (from 19% and 7%).

In addition, and by separate bill, a temporary extension of the retroactive effect for certain restructurings from eight to 12 months has been implemented in light of the COVID-19 pandemic.

For additional details, please refer to the article at [tax@hand/Germany](#).

Ireland EU General Court rules in state aid cases on Irish transfer pricing rulings

On July 15, 2020, the EU General Court (part of the Court of Justice of the European Union (CJEU)), delivered its judgment in two joined state aid cases on tax rulings. The General Court annulled a state aid decision made by the European Commission in relation to Irish tax rulings issued.

On August 30, 2016, the European Commission decided that Ireland had granted selective tax advantages for the purposes of article 107(1) of the Treaty on the Functioning of the European Union (TFEU) to two Irish taxpayers. Both cases involved a tax ruling on the method to determine taxable profits in Ireland issued by the Irish tax authorities that was deemed to be unlawful under EU state aid rules.

Both Ireland and the taxpayers concerned appealed the decision to the General Court, which has now overturned the European Commission's decision.

For additional details, please refer to the article at [tax@hand/Ireland](#).

Italy Supreme Court rules on beneficial owner concept under IRD

On July 10, 2020, the Italian Supreme Court issued a decision addressing, among other matters, the interpretation of the concept of beneficial ownership for the purpose of the withholding tax exemption on interest payments under the EU interest and royalties directive ("IRD"), as implemented in Italy. The Court concluded that, in the case at hand, the Luxembourg sub-holding company that performed various treasury and other financial functions for the group qualified as the beneficial owner of interest paid by the Italian taxpayer to the Luxembourg company, and that the taxpayer was not required to withhold tax from the interest payments made.

For additional details regarding Italian tax developments, please refer to the articles at [tax@hand/Italy](#).

UK Finance Act received Royal Assent

The Finance Act and the Stamp Duty Land Tax (Temporary Relief) Act received Royal Assent on July 22, 2020. The Finance Act maintained the UK corporation tax rate at 19% from April 1, 2020 (previously planned to reduce to 17% at this date). For US GAAP purposes, the 19% rate was enacted on July 22, 2020. Substantive enactment of the 19% rate for UK GAAP and IFRS purposes occurred on March 17, 2020.

For additional details, please refer to the [Deloitte UK Tax Publication](#) issued on July 24, 2020.

Accounting Developments

The following Financial Reporting Alerts on considerations related to COVID-19 and an economic downturn have been updated or released during the third quarter. Please refer to the Deloitte's publications listed below for more information:

[Financial Reporting Alert 20-2: Financial Reporting Considerations Related to COVID-19 and an Economic Downturn](#), updated on September 18, 2020 includes discussion of key US GAAP financial statement considerations related to recent COVID-19 developments.

Financial Reporting Alert 20-3, [COVID-19 and Financial Reporting Trends - Accounting for the Pandemic in the Current Quarter](#), published on June 5, 2020 includes guidance on which accounting hot topics should companies keep in mind related to COVID-19 as they prepare quarterly financial statements.

[Financial Reporting Alert 20-4: COVID-19 and Non-GAAP Measures](#), published on July 1, 2020 considers key considerations for registrants related to reflecting the specific impact of COVID-19 in their non-GAAP measures.

FASB simplifies issuer's accounting for convertible instruments and contracts on an entity's own equity

On August 5, 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-06, which simplifies the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity's own equity. ASU 2020-06 removes from U.S. GAAP the separation models for (1) convertible debt with a cash conversion feature and (2) convertible instruments with a beneficial conversion feature. As a result, after adopting the ASU's guidance, entities will not separately present in equity an embedded conversion feature in such debt. Instead, they will account for a convertible debt instrument wholly as debt, and for convertible preferred stock wholly as preferred stock (i.e., as a single unit of account), unless (1) a convertible instrument contains features that require bifurcation as a derivative under ASC 815 or (2) a convertible debt instrument was issued at a substantial premium.

For further information on ASU 2020-06, see the [Heads Up](#) issued August 5, 2020.

Accounting and financial reporting implications of the CARES Act

This publication was updated on September 18, 2020, to add disclosure considerations related to various provisions of the CARES Act. Please see the [Heads Up](#) publication for more information

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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:

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