Accounting for Income Taxes
Quarterly Hot Topics

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US Federal

Treasury and the IRS recently issued proposed Treasury Regulations and Notices related to the Tax Cuts and Jobs Act (the “Tax Act”)

The recently issued proposed Treasury Regulations and Notices may impact the financial statement income tax accounting calculations pursuant to ASC 740 of companies for the period of enactment or subsequent quarters.

New IRC section 163(j) proposed regulations released

On November 26, 2018, the US Department of Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) released proposed Treasury Regulations (the “Proposed Regulations”) under new Internal Revenue Code (“IRC”) section 163(j), which was enacted by the Tax Act and imposes limits on deductibility of “business interest.” Business interest subject to this limitation is carried forward and treated as business interest paid or accrued in the next succeeding taxable year (when it is again subject to the limitation). The limitation is determined at the entity level, with special rules for consolidated groups, partnerships, and controlled foreign corporations (CFCs), and with a limited exception for certain small businesses. The Proposed Regulations state that the limitation under IRC section 163(j) generally applies after other interest expense limitations and that interest expense capitalized into the basis of assets is not subject to limitation under IRC section 163(j). In general, new section IRC 163(j) applies to taxable years beginning after December 31, 2017.

Foreign Tax Credit proposed Treasury Regulations released

The Treasury and the IRS released proposed Treasury Regulations (“Proposed Regulations”) on November 28, 2018 addressing foreign tax credits for businesses and individuals, following the major changes to the tax treatment of foreign activities made by the Tax Act. The legislation made a number of modifications to the foreign tax credit rules for tax year 2018 and subsequent years to reflect the new international tax rules, including the following:

- The repeal of rules for calculating deemed-paid foreign tax credits on dividends on the basis of foreign subsidiaries’ cumulative pools of earnings and foreign taxes;
- The addition of separate foreign tax credit limitation categories for foreign branch income and amounts includable under the new Global Intangible Low-Taxed Income (GILTI) provisions; and
- Modifications to the calculation of taxable income for foreign tax credit limitation purposes.

The Proposed Regulations provide guidance on complying with the new rules and on other foreign tax credit issues for businesses claiming foreign tax credits.

For additional details, please see the tax@hand article dated November 28, 2018.

Base Erosion Avoidance Tax proposed Treasury Regulations released

On December 13, 2018, the Treasury and the IRS released proposed Treasury Regulations under IRC section 59A. As added to the IRC by the Tax Act, IRC section 59A imposes on each “applicable taxpayer” for any taxable year a tax equal to the “base erosion minimum tax amount” for the taxable year. This new tax, referred to as the Base Erosion Avoidance Tax (“BEAT”) is in addition to any other tax imposed by the IRC and may be imposed on an applicable taxpayer making “base erosion payments” to related foreign persons and deriving “base erosion tax benefits” (e.g., deductions) in respect to such payments. The BEAT is imposed at a 5 percent rate in 2018, a 10 percent rate beginning in 2019, and a 12.5 percent rate beginning in 2026.
IRC sections 245A and 267A proposed Treasury Regulations released

On December 20, 2018, the Treasury and the IRS released proposed Treasury Regulations ("Proposed Regulations") under IRC sections 245A(e) and 267A which were enacted by the Tax Act regarding hybrid dividends and certain amounts paid or accrued in hybrid transactions or with hybrid entities. The Proposed Regulations also contain proposed regulations under IRC sections 1503(d) and 7701 to prevent the same deduction from being claimed under the tax laws of both the United States and a foreign country. The Proposed Regulations affect taxpayers that would otherwise claim a deduction related to such amounts and certain shareholders of foreign corporations that pay or receive hybrid dividends.

US Federal Tax Accounting Methods and Periods

Beginning of construction rules issued for the energy investment tax credit

The IRS published Notice 2018-59 ("Notice"), providing guidance for determining when construction has begun on solar, fuel cell, combined heat and power, microturbine, geothermal and small wind energy property, to allow taxpayers to qualify for the investment tax credit ("ITC"). The Notice applies industry-favorable rules similar to those for the beginning of construction of production tax credit ("PTC") facilities including wind, biomass, and hydropower facilities.

Final Treasury Regulations under IRC Section 263A released

On November 20, 2018, the Treasury and the IRS released final Treasury Regulations under IRC section 263A. This section requires taxpayers to capitalize the direct costs and indirect costs that are properly allocable to: (1) real or tangible personal property produced by the taxpayer, and (2) real and personal property described in IRC section 1221(a)(1) acquired for resale by the taxpayer. These final Treasury Regulations are effective on November 20, 2018.

Notice 2018-99 provides guidance for parking expenses for qualified transportation fringe benefits

On December 10, 2018 the IRS released Notice 2018-99, which provides guidance for taxpayers to determine the amount of parking expenses for qualified transportation fringes that is non-deductible under IRC section 274(a)(4) and for tax-exempt organizations to determine the corresponding increase in the amount of unrelated business taxable income (UBTI) under IRC section 512(a)(7) attributable to the non-deductible parking expenses.

Investing in Qualified Opportunity Funds (qualified Opportunity Zone Incentive)

On October 19, 2018, the IRS and Treasury issued the first set of the proposed Treasury Regulations providing guidance and clarification on utilizing a Qualified Opportunity Fund to invest in certain communities within the United States and related territories designated as Qualified Opportunity Zones. The IRS and Treasury also released additional guidance for taxpayers in Revenue Ruling 2018-19. The Qualified Opportunity Zone incentive was introduced by the 2017 Tax Act and is an economic development tool designed to spur investment in distressed communities, and provides taxpayers with an opportunity for deferral of capital gains from a sale or exchange of prior investments, reduction of deferred capital gain from the sale or exchange of prior investments, and exclusion of capital gains from the sale or exchange of investments in Qualified Opportunity Funds.
US Federal Financial Instruments

The commitment fees paid on a revolving loan as deductible in the year incurred upheld by the IRS

In a Field Attorney Advice, the IRS held that the taxpayer was not required to capitalize the commitment fees under IRC section 263 and may deduct the fees under IRC section 162 in the year in which they were incurred. The taxpayer entered into a revolving credit agreement giving the taxpayer the right to secure funding through a revolving line of credit and letters of credit (revolving loan) for a term of five years. The taxpayer was required to pay a commitment fee quarterly in arrears based upon the average daily unused amount of the total commitment during the most recent previous quarter. The taxpayer deducted the fees as they were paid. In upholding that the taxpayer was not required to capitalize the commitment fees under IRC section 263, the taxpayer was allowed to deduct the fees in the year they were incurred.

US Federal Employee Benefits

Notice 2018-97 released

IRC section 83(i), as enacted by the Tax Act, allows certain employees to defer recognition of income attributable to a stock option or RSU received in connection with the performance of services. On December 7, 2018, the IRS issued Notice 2018-97 (“Notice”) to provide initial guidance on certain aspects of section 83(i). In particular, the Notice addresses the application of the requirement that grants be made to not less than 80 percent of all employees who provide services in the US the application of federal income tax withholding to the deferred income, and the ability of an employer to opt out of permitting employees to elect the deferred tax treatment even if the requirements under IRC section 83(i) are otherwise met.

US International

IRC section 956 proposed Treasury Regulations released

On October 31, 2018, the Treasury and the IRS released proposed Treasury Regulations (“Proposed Regulations”) with respect to the prospective application of IRC section 956 to certain domestic corporations. The Proposed Regulations reduce the amount of income inclusion under IRC section 956 to certain domestic corporations which own (or are treated as owning) stock in foreign corporations.

Notice 2019-01: previously taxed earnings and profits accounts guidance released

On December 14, 2018, the IRS released Notice 2019-01 describing proposed regulations it intends to release addressing some issues arising from the enactment of the Tax Act regarding foreign corporations with previously taxed earnings and profits (PTEP).

The guidance describes forthcoming regulations that will provide rules on the maintenance of PTEP in annual accounts and within some groups; rules on the ordering of PTEP upon distribution and reclassification; and rules on the adjustment required when an income inclusion exceeds the earnings and profits of a foreign corporation.
**US Partnerships**

**IRC section 864(c) proposed Treasury Regulations released**

On December 20, 2018, the Treasury and the IRS released [proposed Treasury Regulations](#) (“Proposed Regulations”) addressing IRC section 864(c)(8). The Proposed Regulations apply to transfers of partnership interests occurring on or after November 27, 2017, consistent with the effective date of the statute. New IRC section 864(c)(8)(A) provides that gain or loss of a non-resident alien individual or foreign corporation (a “foreign person”) from the sale or exchange of an interest, owned directly or indirectly, in a partnership engaged in a US trade or business, is treated as effectively connected to a U.S. trade or business (“ECI”) to the extent such gain or loss does not exceed the selling partner’s distributive share of gain or loss that would be treated as ECI if the partnership sold all of its assets at fair market value immediately before the sale or exchange of the partnership interest (the “deemed sale”). The rules also provide that the ECI gain or loss is limited to the outside gain or loss on the disposition of the partnership interest when the hypothetical inside gain or loss would be greater if the partnership actually sold the partnership assets. The preamble states that the regulations are expected to be consistent with the results provided in Revenue Ruling 91-32.

**US Multistate**

**New state legislative/judicial updates**

**California FTB issues regulations on how credits are allocated among members of combined reporting group when defective election occurs**

The California Franchise Tax Board (FTB) has issued new regulations intended to give taxpayers some certainty and flexibility on how credits are allocated among affiliated members of a combined reporting group when a defective election occurs, including allowing taxpayers to have one year to correct certain errors in such defective elections.

For additional details, please refer to the October 5, 2018 issue of [State Tax Matters](#).

**California FTB modifies legal ruling on “doing business” to reflect 2017 Appellate Court ruling, which held that passive LLC interest alone is not “doing business”**

In light of a 2017 California Court of Appeals published decision which held that an out-of-state corporation was not “doing business” in California within the meaning of California Revenue & Tax Code Section 23101 (Section 23101) when the corporation’s only connection to California was its passive ownership of a 0.2 percent membership interest in a California-based manager-managed limited liability company (LLC). The FTB has issued a new legal ruling (Legal Ruling 2018-01) intended to modify Legal Ruling 2014-01 that sets forth the FTB’s analysis on a number of “doing business” scenarios involving members of multiple-member LLCs that are classified as partnerships for income tax purposes. The modification relates to the distinction between “manager-managed” LLCs and “member-managed” LLCs – and provides that “a narrow exception may apply in limited circumstances” to the general rule that if an LLC classified as a partnership for tax purposes is “doing business” in California under Section 23101, the members of the LLC are themselves generally considered to be “doing business” in California.

For additional details, please refer to the October 26, 2018 issue of [State Tax Matters](#).
California FTB issues final rule changes on the apportionment and allocation of partnership income for corporate tax purposes

The FTB has issued amended regulations that establish appropriate guidelines for determining the apportionment and allocation rules for corporate taxpayers with ownership interests in tiered partnership structures, including those that sell a partnership interest, and how income derived in that context should be sourced. The amendments address tiered ownership structures, indicating that the various rules embedded in the regulation also apply to partnerships conducting business within and without California that are owned, or partially owned, by other partnerships that also conduct business within and without California.

Addressing sales between a unitary partnership and other members of the combined reporting group, the amended regulations explicitly state that sales between a unitary partnership and other members of the taxpayer’s combined reporting group should not be reflected in the combined reporting group’s sales factor. Other changes include specifying that a taxpayer’s partnership interest for purposes of computing a taxpayer’s apportionment factors generally is determined by the taxpayer’s interest in the partnership as determined by the portion of total interest in profits of the partnership assigned to the partner for the taxable year. The amended regulations additionally clarify the provisions applicable for determining a non-resident partner’s California source income from a partnership that conducts business both within and outside of California.

For additional details, please refer to the December 14, 2018 issue of State Tax Matters.

California FTB explains application of of Public Law 86-272 to businesses utilizing company-owned delivery trucks

The FTB has issued a technical advice memorandum on the application of Public Law (“P.L.”) 86-272 with respect to a business’s delivery of tangible personal property via private vehicles rather than common carrier, concluding that delivery via a company’s own vehicles is considered protected activity under P.L. 86-272. However, such protection only extends to the delivery of goods; if the company goes beyond delivery, this activity would exceed the protections afforded under P.L. 86-272.

For additional details, please refer to the December 21, 2018 issue of State Tax Matters.

Colorado DOR issues emergency rules in light of new law that implements market-based sourcing and conformity to MTC provisions

The Colorado Department of Revenue (“DOR”) has issued emergency administrative regulations reflecting recently enacted corporate income tax legislation, which is applicable for tax years beginning after 2018. The regulations implement market-based sourcing for sales of services and intangible property for purposes of calculating a corporation’s sales apportionment factors and provides definitions for “apportionable income” and “receipts” that are generally based on the most recent version of the Multistate Tax Commission’s (“MTC”) related model acts and regulations.

According to the DOR, the purpose of these emergency regulations is to provide guidance to corporations on Colorado’s revised corporate apportionment methods for income tax years commencing on or after January 1, 2019.

For additional details, please refer to the December 21, 2018 issue of State Tax Matters.
Illinois DOR issues amended and new rules on prior year NOL suspensions and special NOL computation rules

The Illinois Department of Revenue has issued a number of new and amended administrative rules that, among other items, address some issues arising from the suspension of net operating loss (“NOL”) carryforward deductions between 2010 and 2014 under state law; special rules for computing Illinois net losses of the residual interest holders of certain real estate mortgage investment companies (REMICs); and computing the net losses of corporations receiving dividends from certain controlled foreign corporations.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

Iowa DOR regulatory changes reflect new Law that revises conformity to IRC section 179 expensing of certain depreciable business assets

The Iowa Department of Revenue has issued administrative rule changes reflecting new law [S.F. 2417; see previously issued Multistate Tax Alert for more details on this new law] that, among other state tax law changes, includes:

- Adjustments to Iowa’s decoupling of IRC section 179 for state corporate and individual income tax purposes, including a partial decoupling of IRC section 179 received from multiple pass-through entities, effective for tax years beginning on or after January 1, 2018 and through December 31, 2019; and
- Full conformity with IRC section 179 for state corporate income tax purposes for tax years beginning on or after January 1, 2020.

For additional details, please refer to the November 30, 2018 issue of State Tax Matters.

Kentucky DOR explains deductibility of state taxes for corporate income tax purposes

The Kentucky Department of Revenue (Department) has issued guidance surrounding which state taxes are deductible from "gross income" for corporations subject to Kentucky’s corporation income tax, including a “non-exclusive list” of examples of state taxes that are deductible in Kentucky. In doing so, the Department notes that Kentucky law generally allows a deduction for all state taxes that are not based on gross or net income – “therefore, state taxes that are imposed on or calculated in reference to business attributes other than gross or net income are deductible.”

For additional details, please refer to the November 16, 2018 issue of State Tax Matters.

New Jersey

On October 4, 2018, Governor Murphy signed Assembly Bill 4495, which adds provisions to the New Jersey Corporate Business Tax (CBT) and makes certain technical corrections related to the recently-enacted A4202:

- Adoption of a provision conforming the CBT to the federal deduction under IRC section 250.
- Changes the effective date for purposes of mandatory combined reporting from privilege periods beginning on or after January 1, 2019, to privilege periods ending on and after July 31, 2019.
- Modifies the computation of the three-year average element of the allocation formula applied to the net dividend income included in entire net income for periods beginning after December 31, 2016, and before January 1, 2019.
• Reinstates the limit on dividend received exclusion when there is a net operating loss carryover.
• Amends the net operating loss and interest addback provisions.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters and the Multistate Tax Alert dated October 26, 2018.

New Jersey Court rejects Division-proposed alternative five-factor apportionment formula on taxpayer’s CBT return

The New Jersey Tax Court (Court) recently held that the New Jersey Division of Taxation’s (Division) imposition of a proposed five-factor alternative apportionment formula on a taxpayer’s CBT tax return without compliance with the requirements of New Jersey’s Administrative Procedures Act was improper under state law and, accordingly, the part of the revised CBT assessment allocating the taxpayer’s income on this basis must be set aside. In doing so, the Court explained that the Division’s construction and application of the five-factor apportionment formula in this case constituted “de facto rule-making requiring compliance with the Administrative Procedure Act.”

Under the facts, the Division’s offered formula attempted to apportion income by utilizing New Jersey’s “Section 6” three-factor statutory formula, and then dividing the property fraction into two separate fractions: one for assets used by the taxpayer in its business operations and one for assets leased to its customers for use by them. The Court additionally held that under the circumstances of this case where the Division permitted a deduction for related party interest paid in 2010 but denied that deduction, in part, for tax years preceding 2010, “it is unreasonable to deny the related party interest deduction for tax years preceding 2010.”

For additional details, please refer to the December 14, 2018 issue of State Tax Matters.

Ohio Department of Taxation explains NOL deductions available for state-administered Municipal Net Profit Tax purposes

Pursuant to legislation enacted in 2017 that allows some electing businesses to opt-in for state administration of Ohio’s municipal net profit tax, the Ohio Department of Taxation has issued an information release “intended to offer clarification of the law in Ohio Revised Code (R.C.) Chapter 718” as it relates to computing the two categories of NOL deductions available to such taxpayers for taxable years beginning in 2018 and thereafter.

The first category of NOL deduction is the “pre-2017 NOL deduction,” which includes any NOL incurred in a taxable year beginning prior to January 1, 2017, to the extent such a deduction was permitted by a municipal corporation; this pre-2017 NOL deduction is apportioned to the municipal corporation and the carryforward period is determined by the applicable municipal corporation’s resolution or ordinance.

The second category of NOL deduction is the “post-2016 NOL deduction” (referred to on the state-issued tax return as “NOLs for 2017 and after”); all municipal corporations are required to allow an NOL deduction with a five-year carryforward period for NOLs incurred in taxable years beginning on or after January 1, 2017. The post-2016 NOL deduction is calculated and deducted on a pre-apportionment basis, meaning that the post-2016 NOL is not apportioned to the municipal corporation prior to being deducted from adjusted federal taxable income.

For additional details, please refer to the November 2, 2018 issue of State Tax Matters.
Puerto Rico new law includes corporate tax rate reductions, transfer pricing study exception for intercompany interest expense disallowance provisions and NOL changes
On December 10, 2018, new legislation was enacted in Puerto Rico which makes a number of changes to Puerto Rico corporate tax law, including:

- A reduction in its corporate tax rate so that the highest income tax rate for corporations is decreased from 39 percent to 37.5 percent;
- An exception to its 51 percent intercompany expense disallowance provisions for taxpayers that submit a valid US transfer pricing study pursuant to IRC section 482 and duly reviewed by the IRS (please note Organisation for Economic Co-operation and Development (“OECD”) reports will be accepted if none of the related entities have operations in the United States); and
- An increase in its allowable NOL deduction from 80 percent to 90 percent of the current year Puerto Rico taxable income.

For additional details, please refer to the December 14, 2018 issue of State Tax Matters.

Texas Comptroller ruling - taxpayer found to not qualify for reduced Texas franchise tax rate
On June 18, 2018, the Texas Comptroller of Public Accounts (Comptroller) released a ruling addressing whether an electronics designer and marketer (taxpayer) was eligible for the reduced tax rate reserved for taxable entities primarily engaged in retail or wholesale trade (reduced rate) for purposes of the Texas franchise tax (commonly referred to as the Texas margin tax) under Texas Tax Code (TTC) section 171.002(b). The ruling also addressed potential grounds for an alternative apportionment method under TTC section 171.103 based on sales shipped by a taxpayer to a third party authorized seller’s (Company A) distribution center in Texas.

For additional details, please see the Multistate Tax Alert dated November 5, 2018.

Utah Supreme Court affirms Trial Court ruling that State Tax Commission wrongfully disallowed intercompany royalty expenses
The Utah Supreme Court (Court) has affirmed a Utah trial court decision, which held that the Utah State Tax Commission (Commission) erroneously denied deductions for intercompany royalty payments made by a candy store retailer to its insurance company affiliate for use of intellectual property. In doing so, the Court agreed that the Commission must exercise its discretion pursuant to the federal regulations accompanying IRC section 482 to the facts at hand. In applying these federal regulatory principles to the submitted facts, which included an independent transfer pricing study, unrebutted testimony on the nature of the intellectual property transfer and underlying business purpose for it, and a review of the arm’s length transaction price at issue, the Court concluded that the trial court had appropriately employed the arm’s length transaction standard to determine that the Commission improperly allocated the taxpayer’s income.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

Wisconsin new law permits pass-through entities to elect to be taxed at the entity level
On December 14, 2018, a new Wisconsin law was enacted which includes provisions that allow some pass-through entities to elect to be taxed at the entity level. Such electing pass-through entities generally would be subject to an entity level tax at the rate of 7.9% on net income reportable to Wisconsin, with the
underlying individual partners and/or shareholders permitted an adjustment to their federal adjusted gross income for state income tax purposes for any item of income, loss, or deduction passed through from any S corporations and partnerships electing to pay this new Wisconsin tax at the entity level. Such provisions generally apply to taxable years beginning on or after January 1, 2019; however, for tax-option corporations, the provisions generally apply to taxable years beginning on or after January 1, 2018.

For additional details, please refer to the December 21, 2018 issue of State Tax Matters.

**Proposed IRC section 965 and GILTI Regulations may result in federal/state income tax differences**

As a number of states do not fully conform to the federal consolidated return regulations, including both separate company filing states and certain unitary states, provisions of the federal IRC section 965 and GILTI proposed regulations may result in federal/state income tax differences for the 2018 tax year.

For additional details, please see the Multistate Tax Alert dated October 26, 2018.

**New legislative updates**

**Arkansas**

The revenue legal counsel within the Arkansas Department of Finance and Administration has issued an opinion explaining that as a “selective” conformity state, Arkansas’ standalone tax code must affirmatively adopt any applicable new federal provisions and that Arkansas currently has not conformed to the new IRC section 965 pertaining to deemed repatriation income as enacted under the Tax Act. Accordingly, absent any state conformity legislation, the opinion generally states that Arkansas will continue to only tax income as the dividends are actually paid and will not allow the new federal deduction.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

**Georgia**

The Georgia Department of Revenue has issued administrative rule changes reflecting legislation enacted earlier this year. Among various other changes, this new law in Georgia includes the following modifications:

- Generally updates state corporate and individual income tax conformity to the IRC of 1986, as enacted on or before February 9, 2018, applicable for tax years beginning on or after January 1, 2017, and specifically decouples from certain provisions of the Tax Act (e.g., the 30% limitation on business interest under IRC section 163(j));
- Regarding NOLs, the revisions add that “any limitations included in the IRC on the amount of net operating loss that can be used in a taxable year shall be applied; provided, however, that such limitations, including, but not limited to, the 80 percent limitation, shall be applied to Georgia taxable net income.”
- Other rule changes reflect new Georgia law pertaining to the exclusion for certain foreign-sourced income (such as IRC section 965), as well as computation of NOL carryovers in a state consolidated return context.
- The revisions also provide that only C corporations are eligible for the exclusion for foreign income under Georgia state tax law, and only the net amount, after the IRC section 965(c) deduction or any other IRC deduction, is eligible for this exclusion. Furthermore, an addition to Georgia taxable income is provided for expenses directly attributable to the excluded amounts.

For additional details, please refer to the December 14, 2018 issue of State Tax Matters.
Iowa
The Iowa Department of Revenue (Department) has issued administrative guidance explaining recently enacted “state tax reforms”, specifically how Iowa will treat certain provisions of the Tax Act such as the federal deemed repatriation of deferred foreign income, domestic production activities deduction, and like-kind exchanges of personal property. Regarding the IRC section 965 deemed repatriation provisions, the Department explains that Iowa has not conformed to these federal law changes for tax year 2017, meaning any accumulated deferred foreign income included in a taxpayer’s 2017 federal income tax return should not be included on the Iowa income tax return. On this topic, the Department also notes that certain taxpayers may be eligible for special elections under IRC section 965 that would cause some of this income to be included in later years and that due to changes in IRC conformity from year to year, “Iowa may treat the amounts included in federal income in future years under IRC section 965 differently for Iowa purposes.”

For additional details, please refer to the November 2, 2018 issue of State Tax Matters.

Louisiana
The Louisiana Department of Revenue (Department) has issued guidance for Louisiana taxpayers on how to report the IRC section 965 repatriation income as enacted under the Tax Act for Louisiana state income tax purposes, and how to claim the federal income tax deduction on the income taxed at the federal tax level. For corporate filers, the Department explains that IRC section 965 income reported on the federal “IRC 965 Transition Tax Statement” is eligible for a deduction equal to 72 percent of dividends that would otherwise be included in gross income in accordance with Louisiana Revenue Statute 47:287.738(F)(1) for tax year 2017. Additionally, a federal income tax (FIT) deduction is allowed on IRC section 965 income apportioned and taxed by Louisiana. As provided by La. Rev. Stat. 47:287.83, the Department explains that a federal income tax deduction is not allowed on income upon which no Louisiana income tax is incurred or paid. Therefore, the federal income tax paid on the 72 percent of dividends that are exempt from Louisiana income tax under La. Rev. Stat. 47:287.738(F)(1) are not eligible for the FIT deduction.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

Maine
The Maine Department of Revenue Services has issued has issued guidance on the state treatment of deemed repatriated income pursuant to recently enacted legislation that generally conforms state corporate and personal income tax references to the IRC to the federal IRC as in effect as of March 23, 2018. The guidance includes some state coupling and decoupling provisions in response to the Tax Act. The Department generally explains that under Maine tax law, accumulated post-1986 deferred foreign income (as determined by the foreign corporation on either November 2, 2017, or December 31, 2017, whichever is greater) is subject to Maine income tax.

However, the related federal deduction for the participation exemption pursuant to IRC section 965(c) is not allowed for taxable corporations, but is allowed for individual and fiduciary income tax purposes. The Department also explains that for taxable corporations, Maine law allows a deduction equal to 80% of the apportionable deferred foreign income, net of the foreign earnings and profits (E&P) deficit deduction (IRC section 965(b)) that is included in federal gross income.

For additional details, please refer to the October 5, 2018 issue of State Tax Matters and the October 19, 2018 issue of State Tax Matters.
Maryland
The Maryland Comptroller (Comptroller) has issued guidance on Maryland’s reporting and taxation of IRC section 965 repatriation income under the Tax Act for tax year 2017. In doing so, the Comptroller concludes that such repatriated income reported at the federal level must be reported at the Maryland level for tax year 2017, as Maryland taxable income includes amendments to the IRC when the Comptroller determines that the impact of the amendment on Maryland income tax revenue is less than $5 million, as the Comptroller has determined to be the case here.

Accordingly, the Comptroller takes the position that such repatriation income is included in the calculation of Maryland taxable income for tax year 2017, and must be incorporated, as appropriate, on Maryland Forms 502, 510, 500, or 504. However, the Comptroller notes that Maryland law generally provides a subtraction modification for corporations that receive dividends when i) the receiving corporation owns, directly or indirectly, 50 percent or more of the paying corporation’s outstanding shares of capital stock; and ii) the paying corporation is organized under the laws of a foreign government.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

Massachusetts
The Massachusetts Department of Revenue (Department) has issued administrative guidance (TIR) on how some provisions under the Tax Act may impact Massachusetts corporate taxpayers, specifically Massachusetts’ treatment of the federal repatriation transition tax under IRC section 965. The TIR attempts to provide guidance on the Massachusetts tax treatment of the deemed repatriated income for business corporations and financial institutions, including related apportionment calculations, as well as how to report such income for state purposes – noting that “for many affected taxpayers, the deemed repatriated income was recognized in the 2017 taxable year.”

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

In addition, new law signed on October 23, 2018 addresses the state tax treatment of certain provisions of the Tax Act. The law clarifies the corporate excise and financial institution tax treatment of IRC section 951 Subpart F income and IRC section 951A GILTI taxable income inclusions. It further addresses the related underlying apportionment calculations. The law also provides corporate excise tax addition adjustments for certain federal deductions, including the IRC section 245A participation exemption deduction for foreign-source dividends, IRC section 250 deduction from foreign-derived intangible income (FDII) and GILTI; and IRC section 965(c) repatriation income deduction.

For additional details, please refer to the November 2, 2018 issue of State Tax Matters.

Missouri
The Missouri Department of Revenue (Department) has issued guidance on Missouri’s reporting and taxation of IRC section 965 repatriation income under the Tax Act for the 2017 tax year, which generally concludes as follows:

- The “Net Section 965 Inclusion Amount” (defined as the federal repatriation amount less the IRC section 965(b) reduction and the IRC section 965(c) deduction) must be included in a corporate taxpayer’s federal taxable income or an individual taxpayer’s federal adjusted gross income; for many Missouri corporate taxpayers, this amount could be offset in whole or in part as nonbusiness income, non-Missouri dividends, or as part of the Missouri dividends deduction; and
• Taxpayers must include any federally-required “Transition Tax Statement” when filing their original or amended Missouri return for tax year 2017.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

Montana
The Montana Department of Revenue (Department) has issued guidance addressing the state corporate income tax treatment of certain provisions of the Tax Act, specifically the state treatment of deemed repatriation income under IRC section 965 on a Montana corporate income tax return.

For additional details, please refer to the November 23, 2018 issue of State Tax Matters.

New York City
The New York City (City) Department of Finance recently issued two memos regarding certain provisions of the Tax Act, specifically i) how business corporation taxpayers must treat IRC section 965 income for City income tax purposes, and ii) instructions for reporting IRC section 965 income and deduction amounts on 2017 New York City Business Corporation Tax returns, General Corporation Tax returns, Unincorporated Business Tax returns, and Banking Corporation Tax returns.

For additional details, please refer to the October 5, 2018 issue of State Tax Matters.

New Jersey
Regarding the Tax Act’s amendments to IRC section 965 involving the deemed repatriation of foreign dividends, the New Jersey Division of Taxation (Division) has finalized procedures including answers to frequently asked questions about how taxpayers must report such income for New Jersey corporation business tax (CBT) purposes for tax year 2017.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters and the Multistate Tax Alert dated October 26, 2018.

Oklahoma
The Oklahoma Tax Commission (Commission) has issued guidance on the state corporate income tax treatment of certain provisions of the Tax Act, specifically the state treatment of deemed repatriation income under IRC section 965 and GILTI. The guidance explains that Oklahoma law includes foreign earnings deemed repatriated under IRC section 965 and GILTI included in federal income under IRC section 951A within the state tax base.

For additional details, please refer to the November 23, 2018 issue of State Tax Matters.

Oregon
The Oregon Department of Revenue has issued a bulletin providing non-binding guidance as to when the mandatory repatriation under IRC section 965 may receive sales factor representation under Oregon
Revenue Statute sections 314.665 and 314.666, specifically whether sales factor representation may be given to accumulated post-1986 deferred foreign income of foreign corporations included in federal taxable income for 2017 and 2018 under IRC section 965, and remaining in taxable income after the dividend received subtraction under Or. Rev. Stat. section 317.267(2).

For additional details, please refer to the November 16, 2018 issue of State Tax Matters.

South Carolina
Signed on October 3, 2018 and effective immediately, H.B. 5341 generally updates corporate and personal income tax statutory references to the IRC, referring to the federal law in effect as amended through February 9, 2018 (previously December 31, 2016) 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, 2017 are extended, but otherwise not amended, by US Congressional enactment during 2018, “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.”

However, the new law also decouples from various provisions of the Tax Act, including IRC section 163(j) relating to limitation on business interest expense, IRC sections 250 and 267A relating to the taxation of foreign income, and IRC section 199A relating to qualified business income. The law additionally decouples from IRC sections 381(c)(20) and 382(d)(3) relating to carryover of limited business interest.

In addition, on October 16, 2018, the South Carolina Department of Revenue has issued summary guidance in light of recently enacted legislation that generally updates state corporate and personal income tax statutory references to the IRC, referring to the federal law in effect as amended through February 9, 2018.

For additional details, please refer to the October 12, 2018 issue of State Tax Matters.

Amnesty/Voluntary Disclosure

New Jersey Amnesty Program has begun, runs through January 15, 2019
Pursuant to recently enacted legislation that requires the New Jersey Division of Taxation (Division) to establish a tax amnesty program, the Division has announced that the program began on November 15, 2018 and will run through January 15, 2019. The program provides an opportunity for eligible taxpayers to file and pay their past due taxes with reduced interest and no penalties. Eligible periods generally cover state tax liabilities for tax returns due on or after February 1, 2009 through September 1, 2017. Note that an additional 5% non-abatable penalty may be imposed on any eligible debts not resolved during this program’s amnesty period. Additional program guidelines, forms, and answers to frequently asked questions are now available on the Division’s website.

For additional details, please refer to the November 16, 2018 issue of State Tax Matters.

Accounting Developments

FASB amends guidance on cloud computing arrangements
The FASB issued Accounting Standards Update (“ASU”) 2018-15 Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract which amends ASC 350-40 to address a customer’s accounting for implementation costs incurred in a cloud computing arrangement (“CCA”) that is a service contract. ASU 2018-15 aligns the accounting for costs
incurred to implement a CCA that is a service arrangement with the guidance on capitalizing costs associated with developing or obtaining internal-use software. Specifically, the ASU amends ASC 350, *Intangibles-Goodwill and Other*, to include in its scope implementation costs of a CCA that is a service contract and clarifies that a customer should apply ASC 350-40 to determine which implementation costs should be capitalized.

Prior to adoption of the ASU, most costs incurred related to a CCA that is a service contract are generally expensed as incurred. After adoption of the ASU, an entity would still expense costs incurred in the preliminary-project and post-implementation-operation stages, but it would capitalize certain costs incurred during the application-development stage, and it might be able to capitalize certain costs during the post-implementation-operation stage that result in enhanced functionality to the hosted solution. Capitalization of costs related to a CCA that is a service contract may result in recognition of deferred tax assets/liabilities that previously did not exist.

The effective dates of the ASU’s amendments are, for public business entities, fiscal years beginning after December 15, 2019, and interim periods within those fiscal years beginning after December 15, 2019. For all other entities, the amendments are effective for fiscal years beginning after December 15, 2020, and interim periods within fiscal years beginning after December 15, 2021. Early adoption is available, and entities are permitted to apply either a retrospective or prospective transition approach.


**FASB discusses feedback on proposed disclosure requirements related to income taxes**

On July 26, 2016, the FASB issued a proposed ASU that would modify or eliminate certain disclosure requirements related to income taxes as well as establish new requirements. Comments on the proposed ASU were due by September 30, 2016, and feedback was received and discussed at the FASB’s meeting on January 25, 2017. The proposed ASU had not been publicly readdressed, however, since the enactment of the Tax Cuts and Jobs Act (the “Act”) on December 22, 2017.

At its meeting on November 14, 2018, the FASB discussed comments received on the proposed ASU and reached several tentative decisions related to many of the proposed ASU’s disclosure requirements. The Board also discussed whether additional disclosures should be considered as a result of the Act. The Board’s tentative decisions are summarized in Deloitte’s Journal Entry dated November 20, 2018. The Board also requested that the FASB staff incorporate the Board’s tentative decisions into a new draft of a proposed Accounting Standards Update. However, the Board also noted that certain disclosures could be separated and included in a final Accounting Standards Update. Additional information is expected to be issued by the FASB in Q1 2019.

**Learn More**

**A Roadmap to Accounting for Income Taxes**

On December 6, 2018, Deloitte published the 2018 edition of *A Roadmap to Accounting for Income Taxes*. This Roadmap provides Deloitte’s insights into and interpretations of the income tax accounting guidance in ASC 740 and IFRS Standards. Throughout the 2018 edition of the Roadmap, new guidance has been added, including a new appendix, “Frequently Asked Questions About Tax Reform,” and minor edits have been made to existing guidance to improve its clarity.

A Roadmap to Accounting for Income Taxes is available for immediate download on IAS Plus.
We hope that you find our Roadmap useful and informative.

**Additional resources you may find helpful**

- [Accounting for Income Taxes—Quarterly Hot Topics Archive](#)
- [Tax Reform Insights](#)
- [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](#)

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)

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