Accounting for Income Taxes

Quarterly Hot Topics

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Accounting developments

FASB's new standard brings most leases onto the balance sheet

After working for almost a decade, the Financial Accounting Standards Board (FASB) has issued its new standard on accounting for leases, **Accounting Standards Update (ASU) 2016-02**. The International Accounting Standards Board (IASB) issued its own version, **International Financial Reporting Standards (IFRS) 16**, in January, and although the project was a convergence effort and the boards conducted joint deliberations, there are several notable differences between the two standards.

The FASB's new standard introduces a lessee model that brings most leases onto the balance sheet. The standard also aligns certain of the underlying principles of the new lessor model, which is similar to the existing lessor accounting guidance, with those in Accounting Standards Codification (ASC) 606, the FASB's new revenue recognition standard (e.g., evaluating how collectability should be considered and determining when profit can be recognized). Furthermore, the ASU addresses other concerns related to the current almost-40-year-old leases model. For example, it eliminates the required use of bright-line tests in current US Generally Accepted Accounting Principles (US GAAP) for determining lease classification. It also requires lessors to provide additional transparency into the exposure to the changes in value of their residual assets and how they manage that exposure.

It should be noted, however, that a lease's classification for accounting purposes does not affect its classification for tax purposes. An entity will therefore continue to be required to determine the tax classification of a lease under the applicable tax laws. While the classification may be the same for book and tax, differences in tax and accounting principles will often result in book/tax differences. Thus, once an entity implements the new standard, it will need to establish a process to account for these differences.

The ASU's requirement for entities to reevaluate their leases under the new guidance presents an opportunity for them also to reassess the tax treatment of such leases as well as part of their data collection and processes. Since the Internal Revenue Service (IRS) considers a taxpayer's tax treatment of leases to be a method of accounting, any changes to existing methods will require IRS consent.

Entities should also consider the potential state tax issues that may arise as a result of the new guidance, including how the classification of the right-of-use (ROU) asset may affect the apportionment formula in the determination of state taxable income and how the significant increase in recorded lease assets could affect the determination of franchise tax payable. Because the applicable state tax rate is a product of apportionment factor and the enacted rate, a change in the apportionment factor can lead to the need to remeasure deferred taxes.

Since the potential tax implications are many and varied, it is essential for a company's tax department to be involved in the evaluation of the lease standard as well as in discussions related to policy adoption and system modifications.

The new standard, which is effective for annual periods beginning after December 15, 2018 (i.e., calendar periods beginning on January 1, 2019), for public business entities and one year later for all other entities, represents a wholesale change to lease accounting, and as a result, entities may face significant implementation challenges during the transition period and beyond, such as those related to:

- Applying judgment and making estimates.
- Managing the complexities of data collection, storage, and maintenance.
- Enhancing information technology systems to ensure their ability to perform the calculations necessary for compliance with reporting requirements.
- Refining internal controls and other business processes related to leases.
- Determining whether debt covenants may be affected and, if so, working with lenders to avoid violations.
- Addressing any income tax implications.

For more information on the FASB's standard, see Deloitte's March 1, 2016, **Heads Up**. For more information on the IASB's standard, see Deloitte's January 13, 2016, **IFRS in Focus**.

FASB amends guidance on classification and measurement of financial instruments

On January 5, 2016, the FASB issued ASU **2016-01**, which amends the guidance in US GAAP on the classification and measurement of financial instruments. Although the ASU retains many current requirements, it significantly revises an entity's accounting related to (1) the classification and measurement of investments in equity securities and (2) the presentation of certain fair value changes for financial liabilities measured at fair value. The ASU also amends certain disclosure requirements associated with the fair value of financial instruments.

Additionally, the new guidance eliminates the diversity in practice related to the evaluation of the need for a valuation allowance for deferred tax assets (DTAs) related to debt securities that are classified as available for sale (AFS). Under current US GAAP, entities may perform this evaluation either separately from their other DTAs or in combination with them. The new guidance clarifies that an entity should "evaluate the need for a valuation allowance on a [DTA] related to [AFS] securities in combination with the entity's other [DTAs]."

The IASB also recently clarified its guidance related to the evaluation of the need for a valuation allowance for DTAs. In January, the IASB made amendments to IAS 12, which clarify that unrealized losses related to debt securities give rise to a deductible tax difference regardless of whether the holder expects to recover the carrying amount by holding the debt instrument until maturity or by selling the debt instrument. The IASB amendments go on to state that when estimating taxable profit of future periods, an entity can assume that an asset will be recovered for more than its carrying value if that recovery is probable and the asset is not impaired. All relevant facts and circumstances should be assessed when making this assessment.

For more information on the FASB's standard, see Deloitte's January 12, 2016, **Heads Up**. For more information on the IASB's standard, see Deloitte's January 20, 2016, **IFRS in Focus**.

FASB simplifies the accounting for share-based payments

On March 30, 2016, the FASB issued ASU 2016-09, which simplifies several aspects of the accounting for employee share-based payment transactions for both public and nonpublic entities, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. The new guidance, which is part of the Board's simplification initiative, also contains two practical expedients under which nonpublic entities can use the simplified method to estimate the expected term of an award and make a one-time election to switch from fair value measurement to intrinsic value measurement for liability-classified awards.

Under current guidance, when a share-based payment award is granted to an employee, the fair value of the award is generally recognized over the vesting period, and a corresponding DTA is recognized to the extent that the award is tax-deductible. The tax deduction often results in a deduction that is greater (excess tax benefit) or less (tax deficiency) than the compensation cost recognized in the financial statements. All excess tax benefits are recognized in additional paid-in capital (APIC), and tax deficiencies are recognized either in the income tax provision or in APIC to the extent that there is a sufficient "APIC pool" related to previously recognized excess tax benefits.

Under the ASU, an entity recognizes all excess tax benefits and tax deficiencies as income tax expense or benefit in the income statement. This change eliminates the notion of the APIC pool and reduces the complexity and cost of accounting for excess tax benefits and tax deficiencies. In addition, excess tax benefits and tax deficiencies are considered discrete items in the reporting period they occur and are not included in the estimate of an entity's annual effective tax rate.

The ASU's guidance on recording excess tax benefits and tax deficiencies in the income statement also has a corresponding effect on the computation of diluted earnings per share (EPS) when an entity applies the treasury stock method. An entity that applies such method under current guidance estimates the excess tax benefits and tax deficiencies to be recognized in APIC in determining the assumed proceeds available to repurchase shares. However, under the ASU, excess tax benefits and tax deficiencies are excluded from the calculation of assumed proceeds since such amounts are recognized in the income statement. In addition, the new guidance affects the accounting for tax benefits of dividends on share-based payment awards, which will now be reflected as income tax expense or benefit in the income statement rather than as an increase to APIC.

Further, the ASU eliminates the requirement to defer recognition of an excess tax benefit until the benefit is realized through a reduction to taxes payable.

In addition to addressing the recognition of excess tax benefits and tax deficiencies, the ASU provides guidance on the related cash flow presentation. Under existing guidance, excess tax benefits are viewed as a financing transaction and are presented as financing activities in the statement of cash flows. However, there is no cash receipt but only a reduction in taxes payable. Therefore, a reclassification is made in the statement of cash flows to reflect a hypothetical inflow in the financing section and a hypothetical outflow from the operating section.

Under the ASU, excess tax benefits no longer represent financing activities since they are recognized in the income statement; therefore, excess tax benefits are not separate cash flows and should be classified in the same manner as other cash flows related to income taxes. Accordingly, the ASU eliminates the requirement to reclassify excess tax benefits from operating activities to financing activities.

An entity should recognize all excess tax benefits previously unrecognized (because the related tax deduction had not been realized through a reduction in taxes payable), along with any valuation allowance, on a modified retrospective basis as a cumulative-effect adjustment to retained earnings as of the date of adoption. This eliminates the need to track unrealized excess tax benefits for both new and existing awards. In addition, the entity should prospectively apply the recognition of all excess tax benefits and tax deficiencies in the income statement, as well as related changes to the computation of diluted EPS.

Further, an entity may elect to apply the change in presentation in the statement of cash flows either prospectively or retrospectively to all periods presented.

For more information on the FASB's standard, see Deloitte's March 31, 2016, **Heads Up.**

Disclosure framework – FASB's makes tentative decisions about income tax disclosures

At its March 23, 2016, meeting, the FASB continued its discussions of income tax disclosure requirements as part of its project to review financial statement disclosures. The Board made tentative decisions related to indefinitely reinvested earnings, private-company requirements, and various other matters regarding income tax disclosures, as summarized below.

Indefinitely reinvested earnings

The Board tentatively decided to require all entities to explain, and specify the amount of, any change to their indefinite reinvestment assertion during the year. (Under an earlier tentative decision, the Board would have required entities to disclose only that they had made a change to no longer assert that foreign earnings are indefinitely reinvested.)

Private-company income tax disclosures

The Board redeliberated and reversed its earlier tentative decisions to require private entities to disclose the following:

- A rate reconciliation (as required for public companies).
- The amounts and expiration dates of (1) gross operating loss and tax credit carryforwards recorded on a tax return (on an as-filed basis) and (2) the tax effect of such operating loss and tax credit carryforwards (i.e., the DTAs on an as-filed basis).
- The total amount of unrecognized tax benefits determined on an as-filed basis that offset DTAs related to operating loss and tax credit carryforwards.
- An explanation of the nature and amount of any valuation allowance recorded or released during the reporting period.

Other income tax disclosures and transition guidance

The Board redeliberated various income tax disclosure requirements and retained its decision to require all entities to disclose:

- An enacted tax law change if it is probable that such change would have an effect on the reporting entity in a future period.
- A disaggregation between domestic and foreign amounts for (1) income (or loss) before income taxes, (2) income tax expense (or benefit), and (3) income taxes paid. An entity would be required to further disaggregate foreign income taxes paid for any country that is individually significant to the total amount of income taxes paid.

In addition, the Board reversed its earlier decision to require the following income tax disclosures:

- The balance sheet lines on which deferred taxes are presented (i.e., a mapping of the total deferred taxes to the balance sheet lines on which they are reported).
- The domestic tax expense recognized in the period related to foreign earnings.

Further, the Board tentatively decided to require prospective transition for all income tax disclosure guidance.

The Board did not redeliberate previously reached tentative decisions related to unrecognized tax benefits and various other income tax disclosures; accordingly, such decisions remain in effect.

For more information on these decisions, see Deloitte's March 29, 2016, **Journal Entry**.

Tax law developments

Under US GAAP, the effects of new legislation are recognized upon enactment (ASC 740-10-25-47). More specifically, the effect of a change in tax laws or rates on a DTL or DTA is recognized as a discrete item in the interim period that includes the enactment date. The tax effects of a change in tax laws or rates on taxes currently payable or refundable for the current year are reflected in the computation of the annual effective tax rate (AETR) after the effective dates prescribed in the statutes, beginning no earlier than the first interim period that includes the enactment date of the new legislation. However, any effects of a tax law or rate change on taxes payable or refundable for a prior year, such as when the change has retroactive effects, is recognized upon enactment as a discrete item of tax expense or benefit for the current year.

Uncertain tax positions: The evaluation of new information may lead to subsequent changes in judgment as it relates to a particular position. Pursuant to ASC 740-10-25-15, a change in judgment that results in subsequent recognition, de-recognition, or a change in measurement of a position taken in a prior annual period, must be recognized as a discrete item in the period in which the new information becomes available. ASC 740 states that the measurement of a tax position should "be based on management's best judgment given the facts, circumstances, and information available at the reporting date." Additional analysis of *existing* information would not typically constitute new information for purposes of adjusting prior estimates.

Classified balance sheet: Before adopting ASU 2015-17, an entity that presents a classified balance sheet must classify the deferred balances as either current or noncurrent on the basis of the financial accounting classification of the related liability or asset for which a temporary difference exists. A deferred tax balance that is not related to an asset or liability for financial reporting purposes, such as the deferred tax consequences related to an operating loss or a tax credit carryforward, is classified in accordance with the expected reversal date of the related temporary difference or tax attribute. The effect of a change in tax law on the current or noncurrent classification of a deferred tax amount that is not related to an asset or liability for financial reporting purposes should be recognized in the financial statements of the interim or annual period that includes the enactment date.

Tax expense: For both calendar and non-calendar-year-end reporting entities, the effect of the tax law change on prior-year taxes and on deferred tax assets or liabilities existing as of the enactment date would be presented as a component of income tax expense or benefit from continuing operations. The effects of changes in tax law on items not included in income from continuing operations (e.g., discontinued operations and other comprehensive income) arising in the current year and before the enactment date should be included in the current interim period as part of income from continuing operations. The effect of the change on total tax expense or benefit (current and deferred) related to post-enactment income would be allocated between continuing operations and other financial statement components in accordance with the intraperiod tax allocation guidance in ASC 740-20.

The topics below highlight what we believe are significant tax law developments that should be considered during the preparation of the financial statements. However, note that this is not a complete list of all recent tax law changes.

International

Several international income tax developments occurred during the first quarter of 2016, including:

- IRS files notice of appeal in Altera case[1]
- Belgium — Excess profit rulings constitute illegal state aid

For a summary of these and other current major international income tax developments for the current quarter please refer to the **Accounting for Income Taxes – Global Tax Developments** 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.

US Federal

Final regulations under Sections 367, 1248 and 6038B

On March 22, 2016, the Department of the Treasury and the IRS released final regulations (**T.D. 9760**) under Sections 367, 1248, and 6038B. The final regulations finalize:

- The elimination of one of two exceptions to the coordination rule between asset transfers and indirect stock transfer for certain outbound asset reorganizations;
- Modifications to the exception to the coordination rule for Section 351 exchanges so that it is consistent with the remaining exception;
- Modifications to the procedures for obtaining relief from failures to satisfy certain reporting requirements; and
- Certain changes with respect to transfers of stock or securities by a domestic corporation to a foreign corporation in a Section 361 exchange.

The final regulations primarily affect domestic corporations that transfer property to foreign corporations in certain outbound non-recognition exchanges. The final regulations adopt the temporary regulations published on March 19, 2013 (T.D. 9615) without substantive revision, and are effective for transactions occurring on or after March 22, 2016.

Treasury and IRS publish temporary regulations modifying the rules applicable to the allocation of creditable foreign tax expenditures by partnerships

On February 4, 2016, the Treasury Department ("Treasury") and the IRS published temporary regulations (**T.D. 9748**, "the Temporary Regulations") modifying the rules applicable to the allocation by a partnership of creditable foreign tax expenditures (CFTEs) that are paid or accrued by the partnership or the partnership's wholly owned disregarded entity. These regulations are effective immediately. On the same day, the Treasury and the IRS published proposed regulations (REG-100861-15) containing the same text as the Temporary Regulations and requested comment.

The Temporary Regulations modify the existing safe harbor rule under Treas. Reg. § 1.704-1(b)(4)(viii) regarding when a partnership's allocation of CFTEs should be respected for US federal income tax purposes.

In general, the Temporary Regulations make, among others, the following modifications:

- Provide that a transferee partner's Section 743(b) adjustment should not be taken into account in allocating CFTEs;

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[1] *Altera Corp. v. Commissioner, 145 T.C. No. 3 (2015)*

- Address the treatment of guaranteed payments, gross income allocations, and other preferential allocations;
- Include provisions requiring the tracing of gross basis withholding taxes to the income on which such tax was imposed.

The provisions of the Temporary Regulations generally are effective for partnership taxable years that begin on or after January 1, 2016, and end after February 4, 2016.

Partnerships are more likely to be affected by the temporary regulations if, in addition to paying or accruing foreign taxes, they have partners with Section 743 adjustments, make guaranteed payments or special allocations of gross income, or make disregarded payments between branches that affect the economic returns to the partners differently. For certain partnerships whose agreements were entered into prior to February 14, 2012, that fall within the scope of these rules, the application of the Temporary Regulations is more complex. In these situations, companies are encouraged to consult with their advisors to evaluate how the finalized Temporary Regulations might affect them. For an overview of key aspects of the Temporary Regulations, see Deloitte's **US Tax Alert**.

Revenue Procedure 2016-13: IRS updates penalty guidance for return disclosures

On January 25, 2016, the IRS published **Revenue Procedure 2016-13**, updating Rev. Proc. 2015-16 to provide guidance on disclosure for purposes of Sections 6662(d)(2)(B)(ii) and 6694(a)(2)(B). Rev. Proc. 2016-13 updates Section 4.02 of the Revenue Procedure to specify that a taxpayer filing a Schedule M-3 may be required to file the appropriate additional information schedule, Schedule B for Form 1120 filers and Schedule C for Form 1065 filers. No other substantive changes were made to the technical guidance in Rev. Proc. 2015-16.

Section 4.02 of Rev. Proc. 2016-13 details specific requirements for disclosing items on a tax return. For example, in order for casualty and theft losses to be adequately disclosed, Form 4684, Casualties and Thefts, must be completed and must list each item. Guidance is provided for other items to be considered adequately disclosed, including items such as interest expense, bad debt charge-offs, and book-tax differences.

Other requirements that must be satisfied to meet the requirements of Rev. Proc. 2016-13 include: the item or position on the return must be properly substantiated, the taxpayer must keep adequate books and records related to the item or position, the amounts reported on the return must be verifiable, and the taxpayer must be able to show good faith.

Rev. Proc. 2016-13 applies to any income tax returns filed on 2015 tax forms for a taxable year beginning in 2015, and to any income tax return filed on 2015 tax forms for short taxable years beginning in 2016. However, Rev. Proc. 2016-13 applies only for purposes of Sections 6662(d)(2)(B)(ii) and 6694(a)(2)(B), and is not applicable to other penalty provisions. Positions completely and accurately reported on Schedule UTP, Uncertain Tax Position Statement, are treated as though the taxpayer filed Form 8275 or Form 8275-R for those positions.

District court strikes down Puerto Rico's corporate AMT

On Monday March 28, 2016, the US District Court for the District of Puerto Rico issued its opinion and order in its case Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza-Gómez, No. 3:15-CV-03018 JAF (P.R. Dist. Mar. 28, 2016). The opinion struck down certain provisions of the alternate minimum tax regime (AMT) of the Puerto Rico Internal Revenue Code of 2011, as amended (PR Code).

The AMT regime, as amended by Puerto Rico Act 72 of 2015 (Act 72-2015), included a tax ranging between 2.5% and 6% on the value of purchases of personal property from affiliates. It also contained a 20% tax on amounts paid or incurred for services received or allocated from related parties not subject to income tax in Puerto Rico.

The Court held that the AMT on the value of purchases of personal property from affiliates, on its face, clearly discriminated against interstate commerce. The Court also determined that the AMT only applied to “cross-border transactions with their out-of-state home office or related company” and, therefore; violated the Federal Relations Act and the Equal Protections Clause of the US Constitution. Consequently, the Court held that the provisions of the AMT discussed above were unconstitutional.

As a result of the Court's ruling, an injunction was established, with immediate effect, prohibiting the Puerto Rico Treasury Department from levying, collecting or enforcing the AMT regime of Section 1022.03(b)(2) and (d) of the PR Code. Further to these developments, the Governor of Puerto Rico and the Secretary of the Puerto Rico Treasury Department have stated publicly that the Commonwealth of Puerto Rico will appeal the Court's decision to the US Court of Appeals for the First Circuit.

US Multistate

California: The California Franchise Tax Board (FTB) recently issued guidance on the sourcing of non-marketing services under California Code of Regulations Section 25136-2. More specifically, a new chief counsel ruling addresses the proper sourcing of the “benefit received” when a service provider provides a benefit that is received by both its customer and its customer’s customer. The corporate taxpayer at issue in this chief counsel ruling provides integrated financial information to its customers, which include portfolio managers and investment bankers, among other types of professionals in the global investment community. In this ruling, the FTB held that:

- Sales of non-marketing services are to be assigned to California to the extent that the taxpayer’s direct customer (not its customer’s customer) is receiving the benefit of the services in California – explaining that “the value of a non-marketing service lies not in the advertising or promoting of a product, service or other item, but rather the value lies in the service being used in the business operations of the taxpayer’s customer;” and
- Central processing unit (CPU) data collected in the regular course of business can be used as a reasonable proxy for financial data in measuring the extent of the benefit received in California.

For additional details, including a link to the Franchise Tax Board’s ruling, see Deloitte’s **February 26, 2016 issue of State Tax Matters**.

Colorado: The Colorado Department of Revenue (Department) has issued an announcement warning taxpayers that they should not rely on Revenue Regulation 39-22-303(12)(c) until further notice. According to the Department, while this rule was intended to address FSCs in particular, some taxpayers have interpreted Regulation 39-22-303(12)(c) to apply to domestic holding companies with no foreign operations and have argued that they can exclude any domestic C corporation from their combined returns if it has no property or payroll – even if it does not do business in a foreign country. The Department states that it “disagrees with this interpretation” and this issue is currently being addressed in the Colorado courts. As such, the Department explains that it will wait for a final ruling from the courts on the application of Section 39-22-303(12)(c), C.R.S., and Regulation 39-22-303(12)(c) before considering any further action on the rule – “pending that determination, taxpayers should not rely on this regulation except as it applies to an FSC.” For additional details, including access to the Department’s announcement, see Deloitte’s **January 28, 2016 issue of State Tax Matters**.

Delaware: On January 27, 2016, Governor Jack Markell signed into law the Delaware Competes Act of 2016 (Act), which phases in single sales factor apportionment for purposes of Delaware’s corporation income tax (CIT), with certain exceptions. Historically, Delaware has maintained an equally weighted three-factor apportionment percentage consisting of property, payroll, and sales for CIT purposes. The Act amends the CIT apportionment statute to gradually phase in single sales factor apportionment commencing in 2017 as follows:

- For tax years beginning in 2017, corporations generally must use a double-weighted sales factor

- For tax years beginning in 2018, the sales factor is generally weighted three times
- For tax years beginning in 2019, the sales factor is generally weighted six times
- For tax years beginning in 2020 and thereafter, corporations must generally use a single sales factor

Effective for taxable periods beginning after December 31, 2015, the Act applies to taxpayers who are not defined as a “telecommunications corporation,” or “world headquarters corporation. However, commencing in tax year 2017, the Act provides that taxpayers meeting the definition of a ”telecommunications corporation” or “worldwide headquarters corporation” are not subject to this single sales factor phase-in schedule and, instead, may annually elect to use either single sales factor apportionment or equally weighted three-factor apportionment consisting of property, payroll, and sales factors divided by three to compute their CIT liability. For additional details on the Delaware tax law changes, see Deloitte’s **Delaware Multistate Tax Alert**.

Georgia: Applicable to all taxable years beginning on or after January 1, 2015, new law generally updates corporate and personal income tax statutory references to the Internal Revenue Code (IRC) as it existed on or before January 1, 2016. For additional details on the Georgia tax law changes, see Deloitte’s **March 4, 2016 issue of State Tax Matters**.

Idaho: Applicable retroactively to tax years beginning on and after January 1, 2016, new law generally updates select corporate and personal income tax statutory references in Idaho to conform to federal IRC provisions as in effect on January 1, 2016. For additional details on the Idaho tax law changes, see Deloitte’s **February 19, 2016 issue of State Tax Matters**.

Illinois: The Illinois Department of Revenue (Department) has issued an amended rule prescribing the sales factor treatment of gains and losses from hedging transactions – i.e., transactions specifically identified by the taxpayer for federal income tax purposes as entered into by the taxpayer for purposes of hedging against the effect on profits or costs of business transactions that result from fluctuations in interest rates, prices or currency exchange rates. The rule requires taxpayers to treat these gains and losses as adjustments to the dollar amounts of the hedged transactions, rather than as separate transactions, in computing the sales factor. For additional details, including access to the Department’s announcement, see Deloitte’s **January 28, 2016 issue of State Tax Matters**.

Iowa: Applicable retroactively for tax years beginning on or after January 1, 2015, new law generally updates statutory references to the IRC as amended through January 1, 2016, for state corporate and individual income tax purposes. The new law continues to decouple with the bonus depreciation provisions allowed for federal tax purposes, including federal bonus depreciation permitted for the 2015 tax year. For additional details on the Iowa tax law changes, see Deloitte’s **March 25, 2016 issue of State Tax Matters**.

Louisiana: In March 2016, Governor John Bel Edwards signed into law a number of tax bills which include the following sweeping changes to Louisiana franchise and income tax law:

- Expanding state franchise tax imposition to certain limited liability companies (LLCs) and other entities treated as subchapter C corporations for federal income tax purposes.
- Expanding state franchise tax imposition to corporations that own property in Louisiana indirectly through a partnership, joint venture, or any other business organization.
- Creating a new holding company deduction from the state franchise tax base for a portion of a corporation’s investments in and advances to its subsidiaries.
- Limiting utilization of net operating losses (NOLs) to 72% of Louisiana net income for state corporation income tax purposes.

- Requiring NOLs to be utilized on a last-in, first out (LIFO) basis from the most recent taxable loss year for state corporation income tax purposes.
- Requiring an "addback" adjustment for related party interest expense, intangible expense, and management fees for state corporation income tax purposes.
- Potentially establishing a flat 6.5% corporate income tax rate.
- Restoring the state corporation income tax dividends received deduction for dividends from certain banking institutions.

In addition to the above legislation that was signed into law the Louisiana House and Senate issued a joint resolution proposing to amend the Constitution of Louisiana to permit elimination of the federal income tax deduction for state corporation income tax purposes. For additional details on the Louisiana's new legislation, see Deloitte's **Louisiana Multistate Tax Alert**.

Maine: Applicable to tax years beginning on or after January 1, 2015, and "to any prior tax years as specifically provided by the United States IRC of 1986 and amendments to that Code as of December 31, 2015," new law generally conforms state corporate and personal income tax references to the "Internal Revenue Code" to the "federal Internal Revenue Code" as in effect as of December 31, 2015. For additional details on the Maine tax law changes, see Deloitte's **March 18, 2016 issue of State Tax Matters**.

Massachusetts: Pursuant to legislation enacted in the final quarter of 2015, which authorizes the Massachusetts Department of Revenue ("Department") to establish a tax amnesty program for a 60-day period within fiscal year 2016 that expires no later than June 30, 2016, the Department has announced that such program will commence on April 1, 2016, and run through May 31, 2016. The Department explains that this amnesty program generally will be open to all individuals and businesses "to catch up on back taxes and save on penalties," and that it allows qualifying taxpayers to:

- File delinquent returns or amend prior tax filings;
- Pay only the tax and interest owed (i.e., tax penalties and any interest due on those penalties will be waived); and
- Benefit from a three-year limited lookback period.

The Department additionally explains that this amnesty program is generally available to any individual or business who has not currently registered with the Department, who has not filed a tax return, or who has not reported the full amount of tax owed on a previously filed return for any tax return due on or before December 31, 2015 – noting that this program does not cover existing tax liabilities, and that any taxpayer who participated in its previous 2014 or 2015 Massachusetts tax amnesty programs is not eligible for the same tax types or tax periods. For additional details on the benefits provided under the Program, the limitations to participation and the process by which taxpayers may avail themselves to the Program, see Deloitte's **March 11, 2016 issue of State Tax Matters.**

New Jersey: On January 11, 2016, Governor Chris Christie signed into law Senate Bill No. 3232 [1R] of 2015. Effective immediately, a business that has been approved to receive a Business Employment Incentive Program (BEIP) grant from the New Jersey Economic Development Authority (NJEDA) may apply to voluntarily convert the grant to a refundable tax credit for use against its state corporation business or insurance gross premiums tax liability, or apply to sell or assign such credit. Businesses that had been approved for the BEIP grant should have received annual cash grants based on the number of new jobs they created in New Jersey. However, due to state budget constraints, many companies have not yet received their cash grant payments. This enacted legislation essentially revises New Jersey's method of payment for the BEIP grants by potentially permitting receipt in the form of tax credits that may be used, sold, or assigned. Businesses seeking to convert a BEIP grant to a refundable tax credit have 180 days from the effective date of Senate Bill 3232 to direct the NJEDA to convert the grant. For additional details on the New Jersey tax law changes, see Deloitte's **New Jersey Multistate Tax Alert**.

Additionally, the New Jersey Division of Taxation has released an updated technical advisory memorandum (TAM) pertaining to New Jersey's corporation business tax intercompany expense "addback" statute, including discussion of a 2014 New Jersey Tax Court case on the application of the addback statute's "unreasonable exception." In doing so, the TAM explains that pursuant to the principles set forth in the 2014 ruling, a taxpayer's documentation, which meets certain standards, may provide the grounds for successfully claiming that the disallowance of a related-member interest expense deduction would be unreasonable. For additional details, including access to the Department's TAM, see Deloitte's **March 4, 2016 issue of State Tax Matters**.

New York: The New York Department of Taxation and Finance (Department) has issued updated frequently asked questions (FAQs) intended to further clarify corporate tax reform legislative amendments, many of which took effect for taxable years beginning on or after January 1, 2015. For additional details, including access to the Department's FAQs, see **Deloitte's February 19, 2016 issue of State Tax Matters**.

Additionally, the Department has released draft amendments to the New York State Business Corporation Franchise Tax Regulations, which update the administrative rules relating to discretionary adjustments to the apportionment fraction, apportionment by a government contractor and short period apportionment fraction. Draft Regulation Section 4-6.1 provides that the party seeking to vary the apportionment fraction bears the burden of proof to demonstrate that the standard statutory apportionment fraction determined pursuant to Section 210-A of the Tax Law and the applicable regulations does not result in a proper reflection of the taxpayer's business income or business capital within New York and that the proposed adjustment is appropriate.

Note that these draft regulatory amendments have been posted for public comment prior to the State Administrative Procedure process to formally propose and adopt these regulations. Accordingly, these draft regulatory amendments "are not final and should not be relied upon." The Department is asking for public comments on these draft regulatory amendments to be provided by June 2, 2016. For additional details on the proposed regulations for New York State, see Deloitte's **March 11, 2016 issue of State Tax Matters**.

North Carolina: Among legislation enacted in 2015 is a requirement that corporate taxpayers with apportionable income greater than $10 million must file an informational report with the Department of Revenue showing the calculation of the taxable year 2014 sales factor using market-based sourcing. The 2014 sales factor is required to be computed based on the market-based provisions outlined in House Bill 97 (e.g., sales of services are to be sourced based on the "delivered to" location), as well as the model market-sourcing regulations drafted by the Multistate Tax Commission.

Along with other required information, the informational report is due April 15, 2016, for all taxpayers regardless of whether they are calendar year or fiscal year taxpayers and must include:

- The corporation's apportionment percentage used on the corporation's 2014 North Carolina corporate tax return,
- The corporation's 2014 apportionment percentage as calculated under the market-based sourcing rules provided in House Bill 97,
- The corporation's primary industry code under the North American Industry Classification System, and
- Any other information prescribed by the Secretary of the Department.

A taxpayer may not request an extension of time to file the informational report, and a penalty of $5,000 shall be assessed for failure to file the report in a timely manner.

The North Carolina Department of Revenue has issued related guidance for computing the sales factor based on market-based sourcing. One issued document contains a summary of market-based sourcing principles and includes tables that provide “an easy reference tool” for taxpayers. The other issued guidance provides a detailed notice that includes numerous examples intended to assist taxpayers in understanding the provisions of market-based sourcing. For additional details and guidance on the program’s implementation, see Deloitte’s **North Carolina Multistate Tax Alert**.

Oregon: New law generally updates Oregon’s corporate and personal income tax statutory references to the IRC as it existed on December 31, 2015, applicable “to transactions or activities occurring on or after January 1, 2016, in tax years beginning on or after January 1, 2016.” For additional details on the Oregon tax law changes, see Deloitte’s **March 25, 2016 issue of State Tax Matters**.

Pennsylvania: The Pennsylvania Department of Revenue (Department) has issued administrative guidance on the application of Pennsylvania’s corporate net income tax intercompany expense “add-back” provisions, which became effective for tax years beginning after December 31, 2014. Note that Pennsylvania’s intercompany expense add-back provisions generally apply to “intangible expenses and costs” and “interest expenses and costs” paid or incurred, directly or indirectly, to an “affiliated entity” unless an exception applies. This recent guidance defines these various terms and provides examples of the Department’s intended application of the statutory add-back provisions as well as the exceptions, including a business purpose exception; a foreign treaty exception; a conduit exception; and a credit for taxes paid by the affiliate in other jurisdictions. The guidance also includes examples and commentary under which the Department may seek to apply the statutory add-back provisions to intercompany transactions involving the purchases of goods and management fees, as well as interest paid to banks if related to an intangible transaction with or among affiliated entities. For additional details, including access to the Department’s guidance, see Deloitte’s **February 26, 2016 issue of State Tax Matters**.

Virginia: New law generally updates state corporate and personal income tax statutory references to federal income tax law as it existed to December 31, 2015, with exceptions for certain fixed-date conformity items such as bonus depreciation. A subsequently issued administrative bulletin explains the fixed-date conformity adjustments that may be necessary on Virginia taxpayers’ taxable year 2015 income tax returns. For additional details on the Virginia tax law changes, see Deloitte’s **February 12, 2016 issue of State Tax Matters**.

West Virginia: Retroactive “to the extent allowable under federal income tax law,” new law adopts all amendments made to federal law after December 31, 2014, but prior to January 1, 2016, for state corporation net income tax purposes “to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective.” For additional details on the West Virginia tax law changes, see Deloitte’s **March 4, 2016 issue of State Tax Matters**.

Learn more

Deloitte's Financial Reporting for Taxes Training seminar: Corporate tax and accounting professionals continue to face significant challenges in financial reporting for income taxes. Deloitte's training seminar can help you stay informed with comprehensive and specialized courses set for May 23-27 in Orlando, Florida and December 5-9 in Las Vegas, Nevada. Course descriptions, pricing, registration, and additional information can be found **here**. Early registration discounts are available.

A Roadmap to Accounting for Income Taxes is part of Deloitte’s Roadmap series. This Roadmap includes all of Deloitte’s interpretive guidance on the accounting for income taxes, combining the income tax accounting requirements and implementation guidance from ASC 740 with Deloitte’s interpretations and examples in a comprehensive, reader-friendly format. The Roadmap also contains appendixes that provide:

- Specific disclosure examples.
- Samples of recent SEC comments on income tax matters.
- A broad-based discussion of the income tax accounting guidance under International Financial Reporting Standards.

Additional resources that you may find helpful:

- **Deloitte Financial Accounting & Reporting - Income Taxes Home Page**
- **Deloitte Dbriefs Webcasts Archive**
- **Deloitte Heads Up Newsletter Archive**

We hope that you find our Roadmap useful and informative. As always, we're 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**

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