Accounting for Income Taxes

Quarterly Hot Topics

September 2015

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Accounting developments

FASB issues ASU to defer effective date of the New Revenue Standard

On August 12, 2015, the Financial Accounting Standards Board (FASB) issued **ASU 2015-14**, which defers the effective date of the Board's revenue standard, **Accounting Standards Update (ASU) 2014-09**, by one year for all entities and permits early adoption on a limited basis. Specifically:

- For public business entities, the standard is effective for annual reporting periods (including interim reporting periods within those periods) beginning after December 15, 2017. Early adoption is permitted as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within those annual periods.
- For nonpublic entities, the standard is effective for annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. Nonpublic entities can also elect to early adopt the standard as of the following:
    - Annual reporting periods beginning after December 15, 2016, including interim periods.
    - Annual reporting periods beginning after December 15, 2016, and interim periods within annual reporting periods beginning one year after the annual reporting period in which the new standard is initially applied.

For more information about the FASB's deliberations related to the deferral of ASU 2014-09, see Deloitte's July 10, 2015 **Heads Up**.

SEC proposes rule on "clawback" policies

The Securities and Exchange Commission (SEC) recently issued a **proposed rule** aimed at ensuring that executives do not receive "excess compensation" if the financial results on which previous awards of compensation were based are subsequently restated because of material noncompliance with financial reporting requirements.

Specifically, the proposal would implement the mandate in Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") that requires the SEC to adopt rules directing the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that has not adopted a written policy providing for the recovery of incentive-based compensation (IBC) under certain circumstances. It would also amend paragraph (b) of Regulation S-K, Item 601 to require that a listed issuer disclose its recovery policy in an exhibit to its annual report.

For more on this proposed rule, see Deloitte's August 5, 2015, **Heads Up**.

FASB makes tentative decisions about income tax disclosures related to unrecognized tax benefits

On August 26, 2015, as part of its review of financial statement disclosures about income taxes, the FASB discussed disclosure requirements related to unrecognized tax benefits and tentatively decided to:

- Add a disclosure requirement within the tabular reconciliation required by Accounting Standards Codification (ASC) 740-10-50-15A(a) to disaggregate settlements between cash and noncash (e.g., settlement by using existing net operating loss (NOL) or tax credit carryforwards).
- Add a disclosure requirement to provide a breakdown of the amount of total unrecognized tax benefits shown in the tabular reconciliation by the respective balance-sheet lines on which such unrecognized tax benefits are recorded.
- Eliminate the requirement in ASC 740-10-50-15(d) for entities to provide details of positions for which it is reasonably possible that the total amount of unrecognized tax benefits will significantly increase or decrease in the next 12 months.

Since the two new proposed disclosure requirements are related to the tabular reconciliation, they will only apply to public entities.

The FASB will continue to deliberate possible changes to requirements related to disclosures about income taxes at future meetings.

FASB issues guidance for measurement period adjustments related to a business combination

On September 25, 2015, the FASB issued **ASU 2015-16**, which requires the following related to adjustments made to provisional amounts recognized for a business combination:

> Acquirers should record the effect of the change to the provisional amounts during the measurement period in the financial reporting period in which the adjustment is identified. That is, during the measurement period, the acquirer will recognize adjustments to the provisional amounts with a corresponding adjustment to goodwill in the reporting period in which the adjustments to the provisional amounts are determined. Consequently, under the guidance an acquirer will adjust provisional amounts as needed in its financial statements until the measurement period is closed, which will include recognizing in current-period earnings the effect of changes in depreciation, amortization, or other income as a result of the change to the provisional amounts calculated as if the accounting had been completed as of the acquisition date. When adjustments to provisional amounts for an acquisition are made, acquirers should disclose the effects on current-period earnings that would have been recognized in a previous period if the adjustments had been recognized as of the acquisition date.

Also, acquirers should disclose the nature of and reason for the change in accounting in the first annual period of adoption and in the interim periods within the first annual period.

The changes apply prospectively to adjustments to provisional amounts that are identified after the effective date of the final standard and that are within the measurement period.

Effective dates are as follows:

- **Public business entities**: for fiscal years, including interim periods within those years, beginning after December 15, 2015.
- **All other entities**: for fiscal years beginning after December 15, 2016, and interim periods within fiscal years beginning after December 15, 2017.

For all entities, early adoption is permitted in any interim and annual financial statements that have not yet been issued or made available for issuance, as applicable.

For more information about ASU 2015-16, see Deloitte's September 30, 2015 **Heads Up**.

Tax law developments

Under US Generally Accepted Accounting Principles (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 deferred tax liability (DTL) or deferred tax asset (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, derecognition, 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: 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 deferreds 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

For a summary of the current major international income tax developments for the current quarter please refer to the **Accounting for Income Taxes – Global Tax Developments** publication. Please note the Global Tax Developments publication will be issued shortly after the release of this publication. This 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. The publication also contains select sample financial statement disclosures that may be considered relevant to accounting for income taxes.

US Tax Court's Altera decision raises broader questions

The US Tax Court on July 27 held, in a unanimous 15-0 decision in Altera Corp. v. Commissioner, that a rule promulgated under the 2002 proposed modification to the 1995 cost sharing regulations requiring participants in a qualified cost sharing arrangement (QCSA) to share stock-based compensation costs related to the intangible development area of the QCSA (i.e., Treas. Reg. § 1.482-7(d)(2)(2003), the "all costs rule") did not satisfy the reasoned decision-making standard, and is thus invalid. Companies should consider whether the Altera decision could impact their income tax accounts. Please refer to the **Deloitte Global Transfer Pricing Alert** for further details.

Periods and methods

Temporary regulations revise determination of wages for Section 199 deductions for short taxable years

On August 26, 2015, the Internal Revenue Service (IRS) released temporary regulations under Section 199 (**TD 9731**) that specifically address the allocation of W-2 wages to a short tax year or a tax year in which the taxpayer acquires, or disposes of, a major portion of a trade or business.

Under Section 199(b)(1), the amount of the deduction allowable under Section 199(a) for any tax year shall not exceed 50 percent of the taxpayer's W-2 wages. Prior to the release of the temporary regulations, the amount of W-2 wages allocable to a short tax year included only those wages subject to federal income tax withholding that are reported on Form W-2 for the calendar year ending with or within that short tax year, which may have precluded taxpayers from claiming a Section 199 deduction for certain short tax years.

The temporary regulations provide the following:

1. In the case of an acquisition or disposition of a trade or business that causes more than one taxpayer to be an employer of the employees of the acquired or disposed of trade or business during the calendar year, the wages of the taxpayer for the calendar year of the acquisition or disposition are allocated between each taxpayer based on the period during which the employees of the acquired or disposed of trade or business were employed by the taxpayer. This rule may be applied to determine wages for Section 199 purposes, notwithstanding which permissible method is used for reporting W-2 wages on Form W-2.

2. If a taxpayer has a short taxable year that does not contain a calendar year ending during such short taxable year, wages paid to employees for employment by such taxpayer during the short taxable year are treated as W-2 wages for such short taxable year for purposes of Treas. Reg. § 1.199-2(a)(1) (if the wages would otherwise meet the requirements to be W-2 wages under Treas. Reg. § 1.199-2 but for the requirement that a calendar year must end during the short taxable year).

The temporary regulations are applicable for taxable years beginning on or after August 27, 2015 and are applicable to taxable years for which the limitations for assessment of tax has not expired beginning before August 27, 2015. If the temporary regulations are not adopted permanently, their applicability will expire on August 24, 2018.

Rev. Proc. 2015-13 (as modified by Rev. Proc. 2015-33) and Rev. Proc. 2015-14 – New three-month window open for certain taxpayers under exam to file a change in accounting method

Under Rev. Proc. 2015-13, taxpayers that file accounting method changes while under exam generally do not receive audit protection. Rev. Proc. 2015-13 provides several exceptions to this general rule, including the "three-month window" which replaces the previous 90-day window under Rev. Proc. 97-27 and Rev. Proc. 2011-14.

The three-month window is generally the period beginning on the 15th day of the 7th month of the tax year and ending on the 15th day of the 10th month of the tax year. The three-month window is available without regard to whether the taxpayer requested an extension of time to file its return for the year of change. For calendar-year taxpayers, the three-month window opened on July 15, 2015 and closes on October 15, 2015.

Taxpayers that are currently under exam and that have been under exam for at least 12 consecutive months (24 consecutive months in the case of controlled foreign corporations (CFCs) and 10/50 corporations) as of the first day of the three-month window will receive audit protection for any accounting method changes filed during this period if the item being changed is not an issue under consideration. The three-month window is an opportunity for taxpayers to file automatic or non-automatic accounting method changes, with audit protection, to address impermissible methods of accounting. In addition, if the associated Section 481(a) adjustment is an increase to taxable income, taxpayers will generally spread the adjustment over 4 tax years beginning with the year of change. Alternatively, if the IRS imposes a change in method of accounting as part of an examination, taxpayers are generally required to take the Section 481(a) adjustment into account in the year of change (generally the earliest year under exam).

Once the three-month window closes, taxpayers under examination may review the other exceptions in Rev. Proc. 2015-13 to determine if an accounting method change receives back-year audit protection.

For more information about accounting for a change in income tax accounting method, see Deloitte's A Roadmap to Accounting for Income Taxes (Section Edition) **Section 3.49**.

US Federal

Proposed Section 367(a)/(d) regulations eliminate tax-free transfers of foreign goodwill and going concern value

On September 14, 2015, the US IRS and Treasury issued **proposed regulations** under Section 367(a) and (d) of the Internal Revenue Code that would eliminate the ability of taxpayers to transfer foreign goodwill or going concern value outbound on a tax-free basis. Once finalized, the proposed regulations would apply with retroactive effect to transfers occurring on or after September 14, 2015[1].

The proposed regulations would amend the exception for property transferred for use in the active conduct of a trade or business outside the US under Section 367(a) and Treas. Reg. §1.367(a)-2 with respect to transfers of foreign goodwill and going concern value, so that such transfers either would be:

- Subject to immediate tax under Section 367(a) and the regulations thereunder; or

[1] The proposed regulations would also apply to transfers occurring before September 14, 2015 resulting from Section 7701 entity classification elections filed on or after that date. The preamble to the proposed regulations states that no inference is intended by the proposed regulations regarding the application of current law.

- At the election of the taxpayer, subject to tax over its useful life under Section 367(d)[2].

In addition, the proposed regulations would no longer limit the useful life under Section 367(d) to 20 years.

The proposed regulations generally would consolidate the active trade or business regulations into one regulation section without substantive change. However, the regulations do propose to tax the transfer of certain property acquired in the ordinary course of business of the US transferor that will be carried on by the foreign transferee and denominated in the foreign currency of the foreign transferee's country that currently is tax-free under Treas. Reg. §1.367(a)-5T(d)(2).

The proposed regulations would eliminate the current regulations' approach to valuing foreign goodwill and going concern value. In its place, proposed Treas. Reg. §1.367(a)-1(b)(3) explicitly states that in any case where a US transferor's transfer of property to a foreign corporation constitutes a "controlled transaction" under the Section 482 regulations, the value of the property transferred is determined in accordance with Section 482 and the regulations thereunder. (Temporary regulations were issued on September 14, 2015 under Section 482 on the arm's length standard and best method rule, and the coordination of these provisions with other provisions, such as Section 367.)

US transferors of property to a partnership with related foreign partners

On August 6, 2015 the Treasury Department ("Treasury") and the IRS published **Notice 2015-54** ("the Notice"), modifying the rules applicable to the contribution of built-in gain property to a partnership. Under the Notice, a US transferor is required to recognize any built-in gain on the transfer of property to the partnership, irrespective of Section 721(a), unless the partnership adopts the Gain Deferral Method with respect to such contributed property, which, among other things, requires the partnership to use the remedial allocation method of Section 704(c) to account for the built-in gain of such contributed property. In general, the Notice applies if the following three conditions are met:

(i) a US person (or persons) contributes property with a built-in gain of greater than $1 million to a partnership;

(ii) a related foreign person is a direct or indirect partner in such partnership; and

(iii) The US transferor and related foreign person own more than 50 percent of the interest in partnership capital, profits, deductions, or losses.

The provisions of the Notice are effective for transactions occurring on or after August 6, 2015. For additional details on how Notice 2015-54 limits the ability to transfer property to a partnership tax free, see Deloitte's **US Tax Alert.**

Temporary Subpart F regulations change the rules under Section 956 and the active rents and royalties exception; Proposed Section 956 regulations also released

On September 1, 2015, temporary Subpart F regulations with immediate effect were released that—

- Changed the "active rents and royalties exception" regulations on Subpart F income.
- Changed the Section 956 "anti-abuse" rule in Treas. Reg. § 1.956-1T(b)(4).
- Added Section 956 regulations that apply to a debt obligation held by a CFC where the obligor is a foreign partnership and the partnership has a US partner.

Each of these provisions applies to taxable years of CFCs ending on or after September 1, 2015 — i.e., to the current, as well as future, taxable years of CFCs now in existence. Proposed Section 956 regulations also released on September 1, 2015 cover other topics. Insofar as the Proposed Regulations would revise the determination, under current Treas. Reg. § 1.956-2(a)(3), of a CFC partner's share of US property owned indirectly through a partnership, they can be relied upon by taxpayers immediately.

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[2] The proposed regulations make conforming changes to the Section 6038B regulations, accordingly.

As for matters covered by the proposed Section 956 regulations and not the Temporary Regulations, when and if they become final they are not proposed to take effect until tax years of CFCs ending on or after the date final regulations are published in the Federal Register. Once they are final and in effect, in some cases they would apply only to property acquired, or pledges or guarantees entered into, after they are finalized, but in other cases would apply to property acquired or pledges or guarantees entered into, on or after September 1, 2015.

For an overview of key aspects of the temporary Subpart F regulations and the proposed Section 956 regulations, see Deloitte's **US Tax Alert.**

US Multistate

Multistate

Alabama: Governor Bentley recently signed into law a bill implementing a factor-based presence nexus standard. Effective for tax years beginning after December 31, 2014, a nonresident individual or a business entity organized outside Alabama and doing business in the state will be deemed to have "substantial nexus" with the state, and will thus be subject to applicable taxes, if the property, payroll, or sales of the individual or business in the state exceed any of the following "bright-line" thresholds during the tax period:

- $50,000 in property;
- $50,000 of payroll;
- $500,000 of sales; or
- 4.25 percent of total property, payroll, sales.

The new law also provides Alabama will not gain jurisdiction to impose tax if the taxpayer is protected under Public Law 86-272, regardless of whether the taxpayer's property, payroll, or sales exceed the bright-line thresholds.

The income tax law changes were enacted on August 11, 2015. Accordingly, any impact of these law changes should be treated as a third quarter event for financial statement purposes for calendar year taxpayers. For additional details on the law changes for Alabama, see Deloitte's **Alabama Multistate Tax Alert**.

Arizona: The Arizona Department of Revenue ("Department") has recently issued an application form and instructions pursuant to recently enacted legislation, Senate Bill 1471, which requires the Department to establish a "Tax Recovery Program" from September 1, 2015 through October 31, 2015, for the purpose of reducing or waiving civil taxpayer penalties and interest for unpaid liabilities on most taxes administered by the Department for any period ending before January 1, 2014, for annual filers, and before February 1, 2015, for all other filers. Participants must attach any audit assessments, billing notices, schedules of tax, tax returns and reports, including amended returns, for each taxable period as part of their Tax Recovery Program application. The application form instructions note that if the Department grants an applicant tax recovery, the applicant waives any right to refund or credit for the total amount of the tax liability for each period included in the application. Additionally, if the Department grants an applicant tax recovery, this terminates any appeal of an audit determination or refund denial. If an applicant has proceedings before the Arizona State Board of Tax Appeals ("BOTA") or any court, BOTA or the court will dismiss each action or proceeding before that body on receiving a notice from the Department that tax recovery has been granted for the tax period. The application form instructions also note that the Department may audit an applicant for tax recovery periods, and that the statute of limitations will apply to any period subject to audit. While an applicant may contest any deficiency that is determined by such audit, the applicant will not receive any credit or refund for any tax decrease for any period covered by the tax recovery. For additional details on the benefits provided under the Program, the limitations to participation and the process by which taxpayers may avail themselves of the Program, see Deloitte's **August 28, 2015 issue of State Tax Matters.**

Indiana: On June 29, 2015, Governor Pence signed into law Indiana House Bill 1001 ("H.B. 1001"). Pursuant to recently enacted legislation, the Indiana Department of Revenue (DOR) established a tax amnesty program for taxpayers having an unpaid tax liability for "listed taxes" (i.e., most taxes administered by the DOR including the state adjusted gross income tax, financial institutions tax, and gross retail and use tax) that were due and payable for a tax period ending before January 1, 2013. The DOR has announced that this program will run from September 15, 2015 through November 16, 2015. The program provides for a potential waiver of all related penalties, interest, and collection fees. A taxpayer is not eligible for this amnesty program if it participated in certain previous Indiana amnesty programs. For additional details on the benefits provided under the Program, the limitations to participation and the process by which taxpayers may avail themselves of the Program, see Deloitte's **July 3, 2015 issue of State Tax Matters**.

Kansas: Governor Brownback recently signed into law House Bill 2109 ("H.B. 2109"). Effective July 1, 2015, the new law implements a tax amnesty program that will:

- Run from September 1, 2015 through October 15, 2015;
- Apply to certain delineated taxes administered by the Kansas Department of Revenue (including the state corporate income tax, as well as state and local sales and use taxes); and
- Provide for a potential waiver of all penalties and interest with respect to unpaid taxes or taxes due and owing.

The amnesty program will apply only to certain tax liabilities due and unpaid for tax periods ending on or before December 31, 2013. Also, for the eligible taxes and tax periods, the amnesty will apply to the under-reporting of such tax liabilities, the nonpayment of such taxes and the non-reporting of such tax liabilities. The new law also explains that amnesty participants will relinquish all administrative and judicial rights of appeal with respect to such tax liabilities, and that no tax payment received pursuant to this program is eligible for a refund or credit. The new law additionally provides that i) no payment of penalties or interest made prior to September 1, 2015 is eligible for the amnesty, and ii) the amnesty shall *not* apply to any matter involving individual or corporate income tax liability resulting from an audit or adjustment by the federal Internal Revenue Service and reported to the Kansas Department of Revenue pursuant to K.S.A. 79-3230(f). For additional details on the benefits provided under the Program, the limitations to participation and the process by which taxpayers may avail themselves of the Program, see Deloitte's **June 26, 2015 issue of State Tax Matters.**

Maryland: The Maryland Comptroller ("Comptroller") has issued a series of "frequently asked questions" and answers (FAQs) pursuant to recently enacted legislation Senate Bill 763, which requires the Comptroller to establish a tax amnesty program for certain delinquent taxpayers that will:

- Run from September 1, 2015 through October 30, 2015;
- Apply to Maryland state and local individual income tax, corporate income tax, withholding taxes, sales and use taxes, as well as admissions and amusement taxes, for tax returns generally due on or before December 31, 2014; and
- Permit the potential waiver of 100% of the underlying civil penalties (except previously assessed fraud penalties) and 50% of the underlying interest.

The FAQs note that eligible applicants may file for such amnesty for taxes that they are currently appealing or protesting by paying the tax and one-half interest during the amnesty period and continuing the appeal. In such cases, if the applicant ultimately prevails on the appeal or protest, the tax and interest paid will be refunded and the applicant may be entitled to interest on the overpayment.

Note that this upcoming amnesty program will not apply to:

- Any taxpayer that was granted amnesty under a Maryland tax amnesty program held between calendar year 1999 and calendar year 2014; or
- Any taxpayer eligible for the settlement period which ran from July 1, 2004 through November 1, 2004, for tax periods prior to tax year 2003, pursuant to Chapter 557 of the Acts of 2004 – During which back taxes assessed for certain intangible holding company transactions were forgiven.

For additional details on the benefits provided under the Program, the limitations to participation and the process by which taxpayers may avail themselves of the Program, see Deloitte's **August 28, 2015 issue of State Tax Matters.**

Massachusetts: On July 17, 2015, Governor Baker signed into law House Bill 3650 ("H.B. 3650"). Retroactively effective to July 1, 2015, the new law 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, during which generally all penalties that could be assessed by the Department must be waived without the need for any showing by the taxpayer of reasonable cause or the absence of willful neglect for the taxpayer's failure to:

- Timely file any proper return for any tax type and for any tax period;
- Timely pay any tax liability; or
- Pay the proper amount of any required estimated payment toward a tax liability.

The tax amnesty program cannot apply to a tax liability of any tax type for a period commencing on or after January 1, 2014. Additionally, the scope of the tax amnesty program, including the particular tax types and periods covered, including any limited look-back period for unfiled returns not to exceed three years, shall be determined by the Department. The new law notes that while the Department may choose to offer tax amnesty to taxpayers who have failed to file required returns due for any tax period beginning before January 1, 2014, participants must file the required return and pay the tax shown as due on the return during the amnesty period together *with* accrued interest, as the Department is *not* authorized to waive any related interest. The new law also requires the Department to establish administrative procedures and methods to "prevent any taxpayer who utilizes the tax amnesty program from utilizing any future tax amnesty programs for the next consecutive ten years, beginning in calendar year 2015." For additional details on the benefits provided under the Program, the limitations to participation and the process by which taxpayers may avail themselves of the Program, see Deloitte's **July 24, 2015 issue of State Tax Matters.**

Missouri: The Missouri Department of Revenue ("Department") has recently issued guidance pursuant to recently enacted legislation, House Bill 384, which authorizes a tax amnesty program to run from September 1, 2015 through November 30, 2015, and permits amnesty from the assessment or payment of all penalties, additions to tax and interest on delinquencies of unpaid taxes administered by the Department with respect to tax liabilities generally due on or before December 31, 2014. This amnesty program will generally apply to unpaid taxes regardless of whether previously assessed, except for penalties, additions to tax, and interest paid before September 1, 2015. If qualified amnesty participants fail to comply "in good faith" with Missouri tax laws at any time during the eight years following the date of their amnesty agreement, then all penalties, additions to tax, and interest that were waived under their amnesty agreement "shall become due and owing immediately." If a taxpayer is granted amnesty under this program, then such taxpayer will be ineligible to participate in any future Missouri amnesty for the same type of tax. For additional details on the benefits provided under the Program, the limitations to participation and the process by which taxpayers may avail themselves of the Program, see Deloitte's **August 28, 2015 issue of State Tax Matters.**

New Hampshire: Governor Hassan recently signed into law Senate Bill 9 ("S.B. 9"). Effective January 1, 2016, the new law reduces New Hampshire's business profits tax (BPT) from 8.5% to 8.2%, and business enterprise tax (BET) from 0.75% to 0.72%, for taxable periods ending on or after December 31, 2016. The new law includes further BPT and BET rate reductions that would apply for taxable periods ending on or after December 31, 2018, if specified revenue levels for the biennium ending June 30, 2017 are met. See our ***Did You Know*?** section for additional technical discussion on a contingent change in tax rates and the impact on the financial statements.

New Hampshire also issued House Bill 2 ("H.B. 2"), which provides for an amnesty program with respect to taxes administered and collected by the New Hampshire Department of Revenue Administration (Department), with respect to unpaid taxes reported and paid in full during the period from December 1, 2015 through and including February 15, 2016, regardless of whether previously assessed. The amnesty program will only apply to taxes due but unpaid on or before February 15, 2016. In exchange for participation, qualifying taxpayers may receive a potential waiver of all related penalties and interest in excess of 50% of the applicable interest rate for the tax period. The new law also provides for the establishment of a voluntary disclosure program for taxes administered by the Department, as well as authorizes the Department to potentially contract with the Multistate Tax Commission to participate in audits.

For additional details on these law changes for New Hampshire, see Deloitte's **September 25, 2015 issue of State Tax Matters.**

New Jersey: The New Jersey Division of Taxation has released Tax Bulletin 79 ("Bulletin") providing general guidelines for determining whether the activities of a corporation create nexus with New Jersey for state corporation business tax (CBT) purposes. In determining whether a corporation is doing business in New Jersey, consideration is given to such factors as:

- The nature and extent of the activities of the corporation in New Jersey;
- The location of its offices and other places of business;
- The continuity, frequency, and regularity of the activities of the corporation in New Jersey;
- The employment in New Jersey of agents, officers, and employees; and
- The location of the actual seat of management or control of the corporation.

The bulletin additionally explains that a foreign corporation that conducts business activity in New Jersey that exceeds the protection of Public Law 86-272 is subject to the CBT as measured by the net income of the corporation. Also, even though a corporation's activities may be protected by Public Law 86-272, if it is registered or otherwise has nexus in New Jersey, it is subject to the CBT minimum tax and must file a CBT return. The bulletin then lists a number of in-state activities by a corporation that create nexus for CBT purposes and which are outside the protection of Public Law 86-272. Companies are encouraged to consult with their accounting advisors to evaluate how the finalized bulletin might affect them. For additional details on the Comptroller's new policy, see Deloitte's **August 7, 2015 issue of State Tax Matters.**

North Carolina: On September 18, 2015, Governor Pat McCrory signed House Bill 97 ("H.B. 97"), which includes the following modifications to North Carolina law:

- Amends mechanism for potential future corporate income tax rate reduction from 4 percent to 3 percent.
- Phases in single sales factor apportionment over three years beginning in 2016, replacing the existing double-weighted sales factor apportionment for both income and franchise tax.
- Requires certain corporate taxpayers to file a market-based sales factor sourcing informational report with the North Carolina corporate income tax return for the 2015 taxable year.
- Adds an intercompany interest expense addback provision with corresponding exceptions.
- Replaces the capital stock, surplus, and undivided profits element of the franchise tax capital base with an apportioned net worth tax measure.
- Expands the sales and use tax base to include repair, maintenance, and installation services.

H.B. 97 included a provision for the automatic repeal of the tax law changes (but for certain provisions unrelated to income tax) unless two other bills, House Bill 117 ("H.B. 117") and House Bill 943 ("H.B. 943"), were ratified prior to January 1, 2016. H.B. 117 was ratified on September 24, 2015, and H.B. 943 was ratified on September 30, 2015. As H.B. 97 was signed by the governor on September 18, 2015, and both H.B. 117 and H.B. 943 have been ratified as of September 30, the enactment of H.B. 97 is a 3rd quarter event for financial statement purposes for calendar year taxpayers. For additional details on the law changes for North Carolina, see Deloitte's **September 25, 2015 issue of State Tax Matters.**

On August 6, 2015, the Secretary of Revenue announced that North Carolina met the net General Fund tax revenue target for fiscal year ending June 30, 2015, and thus a 4 percent corporate income tax rate now applies for taxable years beginning on or after January 1, 2016. Because this one percent rate reduction, from 5 percent to 4 percent, was announced on August 6, 2015, it is treated as a 3rd quarter event for financial statement purposes for calendar year taxpayers. For additional details on the law changes for North Carolina, see Deloitte's August 7, 2015 issue of **State Tax Matters.**

Did you know?

Measurement when contingent phased-in changes in tax rates are enacted

A phased-in change in tax rates occurs when an enacted law specifies that the tax rate applied to taxable income will change in future periods. In certain jurisdictions, the change in tax rates may be contingent on an event outside an entity's control.

In accordance with ASC 740, the tax rate used to measure DTLs and DTAs are the enacted tax rate expected to apply to taxable income in the years that the liability is expected to be settled or the asset recovered. ASC 740 does not provide guidance on determining what rate to use when there is more than one possible rate and this determination is contingent on events that are outside an entity's control. Therefore, entities in jurisdictions in which a phased-in change in tax rates is enacted will need to establish a policy (see alternative approaches below) for determining the rate to be used in measuring DTAs and DTLs. This policy should be consistently applied and contain proper documentation of the scheduling of DTAs and DTLs, the basis for judgments applied, and the conclusions reached.

Example

In March 20X1, the State X passed legislation to provide business tax relief over future years in the form of phased-in reductions in the corporation net income tax (CNIT) rate. The rate reduction schedule is as follows:

Schedule — CNIT	
Tax years beginning on or after January 1, 20X2	8.50%
Tax years beginning on or after January 1, 20X5	7.75%
Tax years beginning on or after January 1, 20X6	7.00%
Tax years beginning on or after January 1, 20X7	6.50%

With the exception of the rate reduction in 20X2, the rate reductions can be suspended or reversed if the state's rainy day funds fall below 10 percent of the state's general revenue budget as of the preceding June 30 (the "10 percent test"). For example, if the 10 percent test is not passed on June 30, 20X4, the 7.75 percent rate reduction is suspended until the test is passed in a subsequent year. The suspension (and any subsequent suspension) continues until the 10 percent test is passed, and then the rate reduction will occur on the following January 1. The 10 percent test continues on an annual basis after January 1, 20X7, and if the test is not passed, the rate will revert to 7.75 percent until the test is again passed.

The following are two alternative approaches, based on this example that an entity might use to determine the applicable tax rate in any given year:

Alternative 1

An entity might view the phased-in rate reduction as being similar to a graduated tax rate or, alternatively, as an exemption from a graduated tax rate. (For examples illustrating graduated tax rates, see ASC 740-10-55-136 through 55-138.) Under ASC 740, when a tax jurisdiction has a two-rate schedule, an entity should determine whether the graduated rates have a material effect and, if so, should forecast its future income to determine which rate to apply to its taxable temporary differences. In the above example, the entity would need to assess whether the 10 percent test will be passed to determine its future rate by period.

An entity should have sufficient documentation regarding its assessment of whether the 10 percent test will be met in future periods (e.g., consideration of the state's budget forecasts, spending levels, anticipated needs for rainy day funds), since this is the basis under law for applying the lower of two applicable tax rates in any given year.

Alternative 2

An entity might establish a policy to use the highest enacted rate potentially applicable for a future period as the applicable rate until the contingency is resolved (i.e., the 10 percent test is passed). The lower rate would only be applied to DTAs and DTLs for which the associated liability is expected to be settled or asset recovered in that one period, because an assumption that subsequent 10 percent tests will be passed for those future periods would be inappropriate.

For more information about measurement when phased-in changes in tax rates are enacted, see Deloitte's A Roadmap to Accounting for Income Taxes (Section Edition) **Section 4.11**.

Additional resources and developments

Financial reporting implications related to Greece, Puerto Rico, and other regions experiencing economic struggles

Economic conditions globally continue to be volatile. A vote by Greece's parliament in July to accept new austerity measures, recent actions by Eurozone leaders, and the recent re-election of Greece's prime minister has allayed some fears and reduced the risk that Greece will exit from the Eurozone (i.e., discontinue using the euro as the country's currency). Outside the Eurozone, Puerto Rico, a commonwealth of the United States, is also suffering from a combination of a large debt burden, weak economic growth, and population declines. Puerto Rico's government is currently working with its advisers to develop a proposal to pare the commonwealth's debt. Separately, late summer concerns about slowing economic growth in China also had a significant impact on global financial markets. Each of these events have contributed to increased volatility in global financial markets and demonstrate the need to continually monitor as assess the impact that global financial events may have on a company's financial reporting.

Entities should consider how liquidity and impairment concerns that could result from the current economic environment might affect their income tax accounting. ASC 740 requires the recognition of a valuation allowance against a DTA to the extent that it is more likely than not that some or all of the DTA will not be realized. A reduction in forecasted performance should lead to a reassessment of the extent to which DTAs are not expected to be realized. To the extent that declining valuations or impairments generate NOL, an entity needs to consider the character (i.e., capital or operating) of the components of the associated NOL and evaluate whether there is sufficient appropriate income to fully realize the related DTA.

Entities may also need to reconsider any assertions about whether undistributed earnings of subsidiaries are indefinitely reinvested. ASC 740 requires an entity that asserts that undistributed earnings are indefinitely reinvested to document its plans for reinvestment of those unremitted earnings on a subsidiary-by-subsidiary basis. If an entity or its subsidiaries have liquidity issues, or other issues resulting from the economic environment, those issues may affect or change the entity's plans and associated assertion that the unremitted earnings of one or more subsidiaries are indefinitely reinvested.

For more on implications related to regions experiencing economic troubles, see Deloitte's September 28, 2015, ***Financial Reporting Alert.***

Learn more

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:

- Comprehensive disclosure examples.
- Samples of recent SEC comments on income tax matters.
- A comprehensive discussion of the income tax accounting guidance under IFRSs.

We hope that you find this new 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**.

Financial Reporting for Taxes Training: Deloitte's Financial Reporting for Taxes Training seminar: Professionals continue to face significant challenges in financial accounting and reporting for income taxes. Deloitte's training seminar can help you stay informed with half-day, one-day, and two-day courses set for December 7-11 in Las Vegas, Nevada. Course descriptions, pricing, registration, and additional information can be found **here**. Early registration discounts are available and combination course discounts are available after early registration discounts expire.

Example Disclosure: Accounting for Income Taxes: This example disclosure summarizes accounting and disclosure requirements outlined in SEC Regulation S-K, SEC Regulation S-X, and FASB ASC Topic 740, Income Taxes. The information in this example disclosure reflects pronouncements that are effective as of December 31, 2014. A copy of this publication can be found **here**.

Example SEC Comments: Income Taxes: We have compiled a sample of comments issued to public registrants by the SEC on income tax matters under ASC 740. A copy of this publication can be found **here**.

International Core of Excellence (ICE) 2015 Country Essentials: Deloitte Tax LLP's International Core of Excellence (ICE), our foreign tax desk program, is a local resource designed to help US companies doing business in multiple jurisdictions. ICE is a US-based team of highly experienced tax professionals from key jurisdictions around the world. ICE team members, who are specialists in the tax systems of their home jurisdictions, can identify and address how foreign tax considerations impact a US multinational's US business drivers and tax planning. The **ICE Country Essentials** provide information on the tax rules in ICE countries, covering direct and indirect taxes and rates, tax basis and residency rules, plus forms of business organization, accounting standards and foreign exchange controls. The ICE Country Essentials are drawn from the larger Deloitte Highlights series reviewing the tax landscape of nearly 150 jurisdictions. The Essentials serve as companion pieces to the **Deloitte Taxation and Investment Guides**, which help potential investors understand the investment climate, operating conditions and tax system of most major trading jurisdictions in greater detail.

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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