Deloitte.

Inside Deloitte

Federal Tax Reform—
Multistate Tax Considerations and Conformity

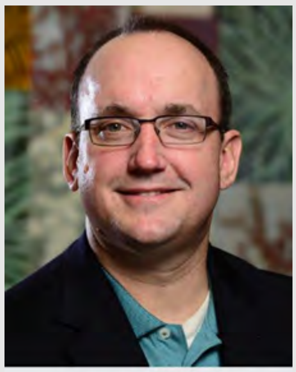
by Valerie C. Dickerson, Scott Schiefelbein, and Thomas Cornett

state tax notes®

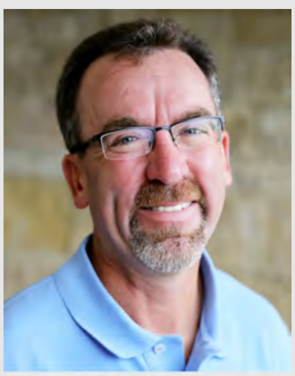
Federal Tax Reform — Multistate Tax Considerations and Conformity

by Valerie C. Dickerson, Scott Schiefelbein, and Thomas Cornett

Valerie C. Dickerson



Scott Schiefelbein



Thomas Cornett

Valerie C. Dickerson is a partner and practice leader with Deloitte Tax LLP. Scott Schiefelbein is a managing director and Thomas Cornett is a senior manager with the firm.

In this edition of Inside Deloitte, the authors consider some potential state tax issues raised by key elements of the recently enacted federal tax reform legislation.

The U.S. Congress passed federal tax reform legislation on December 20, which President Trump signed into law on December 22 (P.L. 115-97).[1] The massive federal tax reform package includes items lowering tax rates on corporations, passthrough entities, individuals, and estates; generally moving the United States toward a territorial-style system for taxing foreign-source income of domestic multinational corporations; and scaling back or eliminating many current deductions, credits, and incentives for businesses and individuals. Many of these will be critically important to state governments and create a host of state tax issues. The chart below summarizes some of the state income tax issues raised by P.L. 115-97, highlighting the federal income tax elements that are likely to generate significant interest for businesses and providing an overview of the associated multistate tax considerations. A state-by-state chart providing an IRC conformity overview as of December 2017 follows.

[1] Pub. L. No. 115-97.

Provision	Related 'To-Do' Items	Observation
Federal Corporate Rate Reduction	Analyze state deferred tax asset inventory Evaluate the effect of proposed federal accounting method changes and other decisions to accelerate deductions or defer income, and update plans to enhance use of state deferred tax assets Consider accelerating payment of known state tax liabilities: - voluntary disclosure agreement (VDA) or amnesty - resolve state tax disputes - state reporting of federal revenue agent reports (RARs)	State tax deferred assets may grow in relative importance because of declining federal tax rates and may be overlooked in federal tax planning. Resolving state tax disputes during a period of higher federal tax rates may yield other nontax benefits (for example, eliminating Accounting Standards Codification 740 reserves for state tax liabilities resolved through VDA, state audit resolution, etc.).
Immediate Federal Expensing	Evaluate state conformity to section 168(k) Coordinate taxpayer planning regarding immediate expensing and repatriation of foreign earnings and profits Identify state and local credit and incentive (C&I) opportunities	Need to monitor state legislative response to amended IRC section 168(k) Negotiated incentives can have a long lead time.
Elimination of Federal Deductions and Credits	Evaluate state conformity to repeal of or limits on federal incentives Evaluate state-specific opportunities for similar incentives	States may preserve state-only application of repealed or limited federal incentives by conforming to an old version of the law. For example, the Oregon R&D credit does not conform to federal R&D credit expiration.
Repatriation Rates: 15.5% for Cash and 8% for Noncash Assets	Model effects of increased subpart F income recognition for state taxes and develop a plan for managing state exposure Calculate inventory of pre-deemed repatriation and post-repatriation foreign E&P Develop plan for actual repatriation	State tax treatment of subpart F income varies. State tax conformity to section 965 varies. States that are unable to tax deemed repatriation may seek to impose tax on actual repatriation. State and local C&I opportunities may be significant upon reinvestment.
Federal Tax on Global Intangible Low-Taxed Income (GILTI) and Related Deduction Under New Section 250	Evaluate state conformity to new sections 250 and 951A Evaluate state income tax treatment of GILTI and section 250 deduction Evaluate current state taxation of GILTI Consider structuring and other tax planning options	State taxation of GILTI may lead to more complex state apportionment calculations and unitary business determinations. Coordinate GILTI with state tax provisions for deductibility or non-deductibility of payments to related parties for intangibles
Federal Base Erosion Anti-Abuse Tax (BEAT) on Taxable Income in Excess of Deductible Payments to Related Foreign Parties	Potential for state legislative action to conform to new section 59A unclear Consider state addback provisions Consider state implications of structuring and other tax planning options	Need to monitor state legislative response to new federal minimum tax Need to consider effect of unitary business determinations and state related party definitions on new tax calculations
100% Dividends Received Deduction on Repatriated Foreign E&P (the New Participation Exemption System)	Under current law, general conformity to new section 245A may occur. For states, that may include potential applicability of differing state treatment of distributions from unitary and non-unitary foreign affiliates.	State budgetary pressures may lead states to refuse to conform to section 245A and 100% dividends received deduction.

Provision	Related 'To-Do' Items	Observation
Limitations on Federal Income Tax Deduction for Interest	Evaluate state conformity to amendments to section 163(j) imposing limits on deductions for interest expense Evaluate state effects of taxpayers shifting away from debt (for example, franchise taxes)	If limitation on the interest expense deduction leads to less intercompany borrowing, this could affect whether some entities qualify as financial institutions for state tax purposes. State filing group differences may create additional issues.
Net Operating Loss Modifications	NOL deductions limited to 80% of taxpayer's (pre-NOL) taxable income Most carrybacks eliminated Indefinite carryforward allowed House proposal to adjust carryforwards for time value of money not adopted	These changes could cause states that allow carrybacks to reconsider allowing them, or to consider limitations on NOL use.
Passthrough Income: 20% Deduction for Qualified Business Income (QBI)	Evaluate state conformity to new QBI deduction and new section 199A (including states already imposing entity-level income taxes on passthroughs) Consider state effects of restructuring that could follow federal corporate rate reduction below passthrough income rates Evaluate federal QBI definition in new section 199A, as well as taxpayer apportionment and allocation determinations for state business or nonbusiness income purposes	Need to monitor state legislative response to new federal deduction States imposing gross receipts taxes on passthroughs will not experience direct adverse budget effects from the new federal QBI deduction.
State and Local C&I Leading to Taxable Contributions to Capital	Identify taxpayer assets subject to state and local C&I Calculate potential federal income tax exposure that could result if inventoried assets are transferred via capital contribution Evaluate state conformity to amended section 118	Amended section 118 would apply to contributions made and transactions entered into after enactment of P.L. 115-97, and could apply to assets that received state and local C&I before enactment but contribute to capital after enactment. States would presumably not be in favor of conforming to this provision, as it undermines incentives.

Conformity to the IRC and Associated Amendments

The chart below provides a basic IRC conformity overview. Of the more than 40 states plus the District of Columbia that impose corporate income taxes, many automatically conform to IRC amendments on a rolling basis. The remaining conform only to the IRC in effect as of a specific date, and some of those lag in conformity for multiple years. Even where a conformity date is noted, whether the state merely leverages the federal taxable income as a numerical starting point versus incorporating the actual federal provisions into its own laws can affect the analysis. Further, it is important to understand whether the state has only selectively conformed to some provisions or selectively decoupled from the specific amended federal provisions at issue. Finally, state-specific nuances — such as how to interpret federal provisions in a separate or combined filing state tax regime — inevitably remain to be analyzed, especially in states that do not follow the consolidated return regulations.

Jurisdictional Conformity to the IRC as of December 2017

Alabama	Selectively conforms to the current version of the IRC as amended and in effect
Alaska	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Arizona	Conforms to the IRC as amended and in effect as of January 1, 2017, subject to disconnecting from specific provisions
Arkansas	Selectively conforms to specific provisions of the IRC, and the conformity date for each IRC section varies according to the specific Arkansas conformity statute
California	Selectively incorporates specific provisions of the IRC, as amended and in effect as of January 1, 2015
Colorado	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Connecticut	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Delaware	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
District of Columbia	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Florida	Conforms to the IRC as amended and in effect as of January 1, 2017, subject to disconnecting from specific provisions
Georgia	Conforms to the IRC provided for in federal law enacted on or before January 1, 2017, subject to disconnecting from specific provisions
Hawaii	Conforms to the IRC as amended and in effect as of December 31, 2016, subject to disconnecting from specific provisions
Idaho	Conforms to the IRC as amended and in effect as of January 1, 2017, subject to disconnecting from specific provisions
Illinois	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Indiana	Conforms to the IRC as amended and in effect as of January 1, 2016, subject to disconnecting from specific provisions
Iowa	Conforms to the IRC as amended and in effect as of January 1, 2015, subject to disconnecting from specific provisions
Kansas	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Kentucky	Conforms to the IRC as amended and in effect as of December 31, 2015, subject to disconnecting from specific provisions
Louisiana	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Maine	Conforms to the IRC as amended and in effect as of December 31, 2016, subject to disconnecting from specific provisions
Maryland	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions

Jurisdictional Conformity to the IRC as of December 2017 *(Continued)*

Massachusetts	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Michigan	Conforms to the IRC as amended and in effect as of January 1, 2012, or, at the option of the taxpayer, in effect for the current tax year, subject to disconnecting from specific provisions
Minnesota	Conforms to the IRC as amended and in effect as of December 16, 2016, subject to disconnecting from specific provisions
Mississippi	Conforms selectively to the current version of the IRC as amended and in effect
Missouri	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Montana	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Nebraska	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
New Hampshire	Conforms to the IRC as amended and in effect as of December 31, 2015, for tax years beginning on or after January 1, 2017, subject to disconnecting from specific provisions
New Jersey	Generally defaults to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions, as the starting point for taxable income is federal taxable income before NOLs and special deductions as reported on Line 28 of federal return
New Mexico	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
New York	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
New York City	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
North Carolina	Conforms to the IRC as amended and in effect as of January 1, 2017, subject to disconnecting from specific provisions
North Dakota	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Oklahoma	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Oregon	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Pennsylvania	Generally defaults to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions, as the starting point for taxable income is federal taxable income before NOLs and special deductions as reported on Line 28 of the federal return
Rhode Island	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
South Carolina	Conforms to the IRC as amended and in effect as of December 31, 2016, subject to disconnecting from specific provisions

Jurisdictional Conformity to the IRC as of December 2017 *(Continued)*

Tennessee	Generally defaults to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions, as the starting point for taxable income is federal taxable income
Texas	Taxable margin is determined using the federal provisions in effect as of January 1, 2007
Utah	Conforms to the current version of the IRC as amended and in effect, subject to disconnecting from specific provisions
Vermont	Conforms to the IRC as amended and in effect for the 2016 tax year, subject to disconnecting from specific provisions
Virginia	Conforms to the IRC as amended and in effect as of December 31, 2016, subject to disconnecting from specific provisions
West Virginia	Conforms to the IRC as amended and in effect as of December 31, 2016, subject to disconnecting from specific provisions
Wisconsin	Conforms to the IRC as amended and in effect as of December 31, 2016, subject to disconnecting from specific provisions

Conclusion

While the foregoing is not intended to be a complete list of state tax issues raised by each provision in P.L. 115-97, the summary is meant to provide an overview of the range of state and local tax issues presented by the act. Each taxpayer is encouraged to consider these state and local issues and how the states may respond to the act in 2018, including the ASC 740 implications, when evaluating the effects of the act on current and prospective tax planning. ■