

Washington Updates Requirements for Investment Management Companies to Qualify for Reduced B&O Tax Rate

Overview

On May 21, 2019, Governor Jay Inslee signed Engrossed Senate Bill 6016¹ ("Bill") which will take effect July 1, 2019. The Bill significantly alters the requirements necessary to qualify for Washington's Business and Occupation Tax ("B&O Tax") preferential rate provided to international investment management companies. The Washington B&O tax is imposed on gross receipts of business activities conducted in Washington and the tax rates may vary based on the type of business.

Through June 30, 2019, certain international investment management companies are subject to a B&O Tax rate of 0.275% on gross income.² Prior to the Bill, a taxpayer qualifies for this rate if it is engaged primarily in the business of providing investment management services and at least ten percent of the gross income of such person is derived from providing investment management services to one of the following: (i) Persons or collective investment funds residing outside the United States; or (ii) persons or collective investment funds with at least ten percent of their investments located outside the United States.³ Investment management services include investment research and consulting, portfolio management, fund administration, investment transactions, or related investment services.⁴ If, however, a taxpayer's activities are not primarily investment management services (i.e. 50% or more), it cannot qualify for the preferential rate and was historically subject to the service and other B&O Tax at the rate of 1.5%.⁵

Key Changes

The newly signed Bill makes some key modifications to the criteria of qualifying international management services for the 0.275% rate. Now, investment management services must be provided to collective investment funds, which are commercially domiciled, as defined in RCW 82.56.010, outside the United States⁶ compared to persons or funds merely residing outside the United States, which previously qualified. It is important to note that under the new bill, investment management services provided to collective investment funds with at least ten percent of their investments located outside the United States still qualify for the lower rate to the extent the rest of the requirements are met, as provided below;

Additionally, "Investment management services" are now more narrowly defined as "managing the collective assets of a collective investment fund by engaging in all of the following activities: (i) Portfolio management; (ii) fund administration; (iii) fund distribution; and (iv) transfer agent services."⁷

Further, an entity must:

- Have more than twenty-five percent (25%) of employees located in Washington; and
- Be a member of an affiliate group that collectively has:
 - Ten (10) or more offices located in at least eight (8) foreign countries;
 - At least five hundred (500) full-time employees worldwide;
 - Worldwide gross revenue of more than four hundred (400) million dollars during the current or immediately preceding calendar year; and
 - Average assets under management of more than two hundred (200) billion dollars during the current or immediately preceding calendar year.⁸

¹ 2019 Legislation, 66th Legislature, 2019 Regular Session (Engrossed Senate Bill 6016; May 21, 2019)("ESB 6016"). [here](#).

² Rev. Code Wash. ("RCW") 82.04.290.

³ RCW. 82.04.293(1).

⁴ RCW 82.04.293(2).

⁵ Excise Tax Advisory 3183.2014, International Investment Management Services, February 28, 2014.

⁶ ESB 6016, Sec. 3(1)(b)(i).

⁷ ESB 6016, Sec. 3(3)(d).

⁸ ESB 6016, Sec. 3(1)(c) and (d).

Furthermore, the Bill expands the sales and use tax exemption for the purchase of standard financial information by a qualifying international investment management company to include the sale of this information to an affiliate.⁹ It also extends the exemption sunset date from July 1, 2021 to July 1, 2031.¹⁰

Consequences

If an investment management manager does not meet the updated requirements, then the manager will be subject to the service and other B&O Tax rate of 1.5%, compared to the preferential rate, 0.275%, through December 31, 2019. Further, due to the enactment of the 20% B&O surcharge on service industry businesses,¹¹ beginning January 1, 2020, the rate will effectively increase to 1.8%.

If a qualifying international investment manager fails to maintain more than 25% of its employees in Washington, it will not only lose the preferential rate, but must also immediately pay an amount equal to the entire economic benefit of the lower rate plus interest (but not penalties) for the shorter of the following periods:

- the current calendar year plus the previous nine calendar years; or
- Until July 1, 2019.¹²

Considerations

Taxpayers that have historically qualified as an international investment management company should be aware of the changes above, which will likely significantly narrow the taxpayers that may qualify for the preferential rate. Taxpayers should evaluate these provisions and re-evaluate the applicable Washington B&O Tax rate.

Contacts

If you have questions regarding Engrossed Senate Bill 6016 or other Washington state tax matters, please contact any of the following Deloitte professionals:

Robert M. Wood
Senior Manager
Deloitte Tax LLP, Seattle
+1 206 716 7076
robwood@deloitte.com

Myles M. Brenner
Manager
Deloitte Tax LLP, Seattle
+1 206 716 6751
mybrenner@deloitte.com

For further information, visit our website at www.deloitte.com/us/multistatetax

Follow [@DeloitteTax](https://twitter.com/DeloitteTax)

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

About Deloitte

As used in this document, 'Deloitte' means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/about to learn more about our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2019 Deloitte Development LLC. All rights reserved

⁹ ESB 6016, Sec. 6(1).

¹⁰ ESB 6016, Sec. 6(5).

¹¹ 2019 Legislation, 66th Legislature, 2019 Regular Session (Engrossed Second Substitute House Bill 2158; May 21, 2019). [here](#)

2 ¹² ESB 6016, Sec. 3(5).