Deloitte.

Tax

U.S. Inbound Corner

October 2015

In this issue:

OECD Releases Final BEPS Reports

On Monday, October 5, 2015 the Organization for Economic Cooperation and Development (OECD) released the 2015 Final Reports on the G20/OECD Base Erosion and Profit Shifting (BEPS) project.[1] These reports cover the seven topics that were the subjects of the "2014 Deliverables" approved last fall, and finalize subsequent discussion drafts on the remaining eight "actions."[2] The 2015 Final Reports recommend changes to domestic laws, the OECD Model Tax Convention (the "OECD Model"), and the OECD Transfer Pricing Guidelines (TPG). In addition, they propose to accelerate the incorporation of recommended treaty changes into existing bilateral treaties through a multilateral convention to be entered into by interested countries.

The 2015 Final Reports are to be presented to the G20 Leaders in Lima on Thursday, October 8.

[1] The final reports are on the OECD website at http://www.oecd.org/tax/beps-2015-final-reports.htm.
[2] The BEPS Package also includes an Explanatory Statement that provides a useful, and very brief, introduction to the 1000-plus pages of the final reports.

Overview of the BEPS package

Putting aside Actions 8, 9, and 10 (recommending changes to the TPG), many of the recommendations in the 2015 Final Reports are consistent with the 2014 Deliverables, subsequent discussion drafts, and public statements by the BEPS negotiators. The recommendations include additional examples and resolve some open issues, leaving others for subsequent development.

The table below contains an overview of several key non-transfer pricing reports and highlights some of the significant changes from prior deliverables and discussion drafts.

Implementation

In general: The practical realities of achieving consensus among the countries that participated in the BEPS project are reflected in the fact that almost every recommendation generally reflects only one of three possible levels of endorsement; they are indicated by, in descending order, the terms “minimum standards,” “common approaches,” and “best practices.” (One of the 2015 Final Reports (Action 7, regarding changes to the OECD Model definition of permanent establishment (“PE”)) lacks even one of these levels of consensus.) “Minimum standards” reflect commitments to consistent implementation of standards laid out in final reports, and agreements to be subject to monitoring by the OECD during and after implementation. “Common approaches” reflect agreement as to “general tax policy direction,” with the aspiration that they will become “minimum standards” over time. “Best practices” are offered where the negotiators failed to reach a consensus that countries must adopt legislation on the particular topic in question.

European Union: The European Council may intend to implement these minimum standards and best practices across all of the EU’s 28 member states in conjunction with the implementation plan outlined in the 2015 Final Reports.

United States: The US Congress has not been directly involved in the BEPS project, and to this point has shown little interest in implementing it. However, the 2015 Final Reports, and subsequent actions by other nations, may motivate Congressional action of some sort on international tax issues in the future.[3] Earlier this year, the chairmen of the House and Senate taxwriting committees[4] sent two letters to Treasury Secretary Jack Lew, asking to be kept informed on the details of the BEPS project and voicing concerns about country-by-country

[3] The most recent effort by key taxwriters, including Ways and Means Committee Chairman Paul Ryan, R-Wis., and Senate Finance Committee member Charles Schumer, D-NY, to pair a rewrite of the US international tax rules with legislation to provide additional funding for highway construction and repair, appears to have stalled, at least temporarily. But in a statement released October 5, Ryan said that the 2015 BEPS Final Reports “will only increase the pressure for American businesses to move overseas [and the solution] is to bring our tax code into the 21st century, allowing companies to bring back their earnings without penalty and making our tax rates more competitive with the rest of the world. There is never going to be a perfect time to fix the tax code, but stalling for so long got us into this problem. We can’t afford to wait any longer.”

[4] Paul Ryan and Senator Orrin Hatch, R-Utah.

reporting (agreed to by the BEPS negotiators in Action 13), including whether the Treasury has the authority to implement it without legislation. In addition, the BEPS negotiators' endorsement of the "substance" approach to preferential tax regimes (agreed to in Action 5) may have increased Congress's appetite for enacting an "innovation box" that would be intended to preserve US R&D jobs.[5]

Highlights of final reports

The following table provides a brief outline of some of the 2015 Final Reports, including an overview of significant changes from prior deliverables and discussion drafts as well as notes concerning agreement implementation of each final report:

Action	Overview	Significant Developments	Implementation
Financing			
Neutralize effects of hybrid mismatch arrangements (Action 2)	• Domestic law and treaty provisions that deny a deduction or require an income inclusion with respect to arrangements involving hybrid instruments or entities	• Favorable treatment for income inclusions under CFC regimes • Treatment of stock loans and repos • Further detail and explanatory examples	• Common Approach

[5] House Ways and Means Committee members Charles Boustany, R-La., and Richard Neal, D-Mass., released a discussion draft proposal for a so-called "innovation box" in July that, among other things, could theoretically reduce the corporate income tax rate to as low as roughly 10 percent on certain income associated with intellectual property such as patents, inventions, know-how, software and films. The Boustany-Neal proposal was expected to be part of broader legislation being developed by Chairman Ryan that would overhaul US international tax rules and generate certain one-time revenue from the reform provisions to pay for a long-term extension of the Highway Trust Fund.

Action	Overview	Significant Developments	Implementation
Limit base erosion via interest deductions (Action 4)	• Limits on deductions for related and unrelated party interest deductions	• Net interest deductions limited to a fixed ratio of EBITDA • Fixed ratio between 10-30% • Exception from fixed ratio test for individual members of more highly leveraged consolidated groups	• Common Approach • Additional work in 2016 on groups that are highly leveraged or in banking or insurance • Additional work in 2016 and 2017 on transfer pricing aspects of financial transactions
Supply chain			
Strengthen CFC rules (Action 3)	• Outlines "building blocks" for design of a CFC regime	• Largely unchanged	• Best Practices
Prevent treaty abuse (Action 6)	• Recommends changes to OECD Model to prevent treaty shopping	• Largely unchanged	• Minimum Standard • Insert into the Multilateral Instrument • The LOB will be updated to reflect the US Model Treaty revisions due to be finalized this fall. • Non-collective investment vehicles to be addressed in early 2015

Action	Overview	Significant Developments	Implementation
Prevent artificial avoidance of PE status (Action 7)	• Recommends following changes to PE definition in OECD Model: o Expand types of sales agent activity that can give rise to a PE o Replace bright-line exceptions with subjective preparatory and auxiliary activity test o No longer test for PE status on a separate company basis.	• Adds the words "habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise" to the description of a "dependent agent PE"	• Insert into the Multilateral Instrument • Follow-up work on attribution of profits; additional guidance planned before end of 2016
Intellectual Property			
Counter harmful tax practices (Action 5)	• Define substantial activity requirement for preferential IP regimes • Compulsory spontaneous exchange of rulings and APAs	• Agreed approach to tracking and tracing front-end R&D activities to back-end IP exploitation • Limit qualifying IP assets to include 3 categories: patents (broadly defined), copyrighted software, and other similar IP assets that meet specific conditions on company size and amount of benefited income • Rules to prevent IP assets (not already in a regime) from being shifted from one related party to another	• Minimum Standard • Disclosure of existing post-2009 rulings by end of 2015 • Disclosure of future rulings within 3 months, beginning April 2016 • Monitoring of preferential regimes

Action	Overview	Significant Developments	Implementation
Tax challenges of digital economy (Action 1)	• Digital economy cannot be ring-fenced; BEPS risks addressed in other Actions are exacerbated by the digital economy	• Generally concludes that other parts of the BEPS Package addressing mobile income effectively address BEPS concerns in the digital economy • Does not adopt proposals discussed in 2014 Deliverable regarding Significant Economic Presence Test, Withholding Taxes, and Equalizing Levies	• Post-project monitoring process to be developed in 2016
Dispute Resolution and Multilateral Instrument			
Make dispute resolution mechanisms more effective (Action 14)	• Recommendations for the effective and timely resolution of disputes through MAP	• General agreement on taxpayer access, timely resolution, and peer review of MAP process • Agreement by 20 countries (representing 90%of all MAP cases at end of 2013) to adopt mandatory binding arbitration in their bilateral tax treaties[6]	• Minimum Standard

[6] Countries reported as agreeing to mandatory binding MAP arbitration include the following: Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States.

Action	Overview	Significant Developments	Implementation
Develop multilateral instrument (Action 15)	• Ad hoc group, open to all interested countries, began in May 2015 to develop multilateral instrument to implement the BEPS treaty-related measures and amend bilateral tax treaties	• See discussion of OECD Model changes above	• Negotiations underway with over 90 countries • Speculation that the United States may join • To be open for signature by end of 2016

— Gretchen Sierra (Washington, DC)
Principal
Deloitte Tax LLP
gretchensierra@deloitte.com

Harrison Cohen (Washington, DC)
Director
Deloitte Tax LLP
harrisoncohen@deloitte.com

State Corporate Income Tax Update: What's happened during the 2015 legislative sessions?

On November 4, 2014, voters in 36 states chose governors, which resulted in 11 new chief executives and six changes in party affiliation. These changes helped place state tax policy front and center during the 2015 state legislative season. A theme in many of the governors' State of the State addresses was a call for tax relief and a reduced tax burden as a means for growing the states' economies. With most state legislative sessions having come to a close for 2015, this an excerpt of an article, which highlights, jurisdiction by jurisdiction, a few of the corporate income tax legislative changes that have been enacted thus far during the 2015 legislative season, which may be of interest to US inbound companies. The full article can be found online.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/state-corporate-income-tax-update-legislative-sessions.html?id=us:em:na:usic:eng:tax:101915

Connecticut

During June the Connecticut General Assembly enacted legislation that resulted in sweeping tax reform to the state's corporate tax regime. HB 7061 and SB 1502, which were signed concurrently by Gov. Dan Malloy (D) on June 30, 2015, contain many significant changes for Connecticut corporate taxpayers, including:

- Extending the 20 percent surtax on both the 7.5 per-cent tax rate on the income base and the 0.31 percent tax rate on the capital base for income years beginning before January 1, 2018 (the surtax is reduced to 10 percent for income years beginning on or after January 1, 2018, and before January 1, 2019);
- Imposing mandatory unitary taxation applicable to income years commencing on or after January 1, 2016;
- Limiting the deduction of net operating losses to 50 percent of Connecticut income effective for income years commencing on or after January 1, 2015;
- Limiting the application of tax credits to 50.01 percent of the amount of tax due (this change is effective for income years commencing on or after January 1, 2015);
- Extending the film production tax credit limitations through June 30, 2017;
- Requiring the commissioner of revenue to review the effect of alternative methods of apportionment and provide recommendations in a report delivered to the Finance, Revenue, and Bonding Committee of the General Assembly on or before February 1, 2016;
- Extending the First Five Plus program through June 30, 2016, allowing the Department of Economic and Community Development to provide flexible financial assistance in exchange for job creation and other investments in Connecticut;
- Raising the cap on the Neighborhood Assistance Act tax credit from $5 million to $10 million per fiscal year (this change is effective July 1, 2017); and
- Raising the cap on the Urban and Industrial Site Reinvestment tax credit from $800 million to $950 million (this change is effective July 1, 2015).

Further, HB 7061 and SB 1502 amended Connecticut's insurance premiums tax, hospital gross receipts tax, cigarette tax, estate and gift tax, personal income tax, sales and use tax, and admission tax regimes.

Illinois

In February, Illinois Gov. Bruce Rauner (R) signed into law SB 3366, which was adopted in response to a 2014 state appeals court decision involving a dispute over how insurance companies incorporated or organized outside Illinois but doing business in Illinois should treat their Illinois income tax for purposes of the Illinois retaliatory tax. SB 3366, effective retroactively to January 9, 2015, clarified that foreign insurance companies must use the cash basis method to calculate their income tax when determining "penalties, fees, charges, or taxes" for purposes of the retaliatory tax.

Rauner signed HB 3086 to amend the Illinois Income Tax Act as it relates to defining a captive real estate investment trust. The new law provides that for tax years ending on or after August 16, 2007, the voting power or value of the beneficial interest or shares of a REIT that is held in a segregated asset account of a life insurance company for the benefit of persons or entities who are immune or exempt from federal income taxes is not taken into account for purposes of determining if a REIT is a captive REIT.

Nevada

In June, Nevada Gov. Brian Sandoval (R) signed SB 483, which enacted a new commerce tax effective July 1, 2015, that is applicable to business entities with Nevada-sitused gross revenue exceeding $4 million in a tax year. If a business entity's Nevada gross revenue exceeds $4 million, the excess is subject to tax at various rates that depend on the industry in which the business entity is primarily engaged. The new commerce tax is imposed on Nevada gross revenue, which is determined starting with the total gross revenue of the business entity, less permitted deductions, and situsing the resulting amount based on applicable sourcing rules. Gross revenue is defined as "the total amount realized by a business entity from engaging in business in this State, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income."

Gross revenue does not include "amounts realized from the sale, exchange, disposition or other grant of the right to use trademarks, trade names, patents, copy-rights and similar intellectual property"; the "value of goods or services provided to a customer on a complimentary basis"; cash discounts taken by a customer; amounts realized from transactions specified in IRC sections 118, 331, 332, 336, 337, 338, 351, 355, 368, 721, 731, 1031, or 1033; amounts indirectly realized from a reduction of an expense or deduction; the value of deductible donations (under IRC section 170(c)) to certain nonprofit organizations; and amounts not considered revenue under generally accepted accounting principles.

SB 483 provided various deductions from gross revenue, including:

- Dividends and interest received on federal or Nevada (or political subdivisions thereof) bonds or securities;
- Revenue amounts used to calculate certain industry-specific taxes in the gaming and mining industries;
- An amount equal to the excise tax paid on liquor for businesses required to pay liquor taxes under Nev. Rev. Stat. Ch. 369;
- Certain amounts related to business entities required to pay insurance fees and taxes under Nev. Rev. Stat. Ch. 680B;
- The amount of the premiums used to calculate tax imposed under Nev. Rev. Stat. section 694C.450 ("Captive Insurers") and section 685A.180 ("Nonad-mitted Insurance");
- Some payments received by healthcare providers and healthcare institutions;
- Some payments received by employee leasing companies;
- Passthrough revenue received by a business, including revenue received by a business entity that is part of an affiliated group from another member of the affiliated group;
- The tax basis of securities and loans sold, as determined for federal income taxation;
- Interest other than interest on credit sales;
- Dividends and distributions from corporations and distributive receipts and income from passthrough entities;
- Receipts for the sale, exchange, or other disposition of an asset described in IRC sections 1221 or 1231;
- Receipts from some hedging transactions and loan repayments;

- Some proceeds from insurance policies, litigation dam-ages, bad debts expensed, customer returns and re-funds, and cash discounts;
- Some amounts realized from the sales of an account receivable; and
- Some income from a passive entity.

The resulting adjusted gross revenue of the business entity from real property and tangible personal property is then sitused to Nevada using what is largely market-based sourcing. Adjusted gross revenue from services is sitused to Nevada “in the proportion that the purchaser’s benefit in this State... bears to the purchaser’s benefit everywhere with respect to... [the] purchased [services].”

If the business entity’s resulting Nevada gross revenue exceeds $4 million, the excess is taxed at different rates depending on the industry in which the business entity is primarily engaged. A business entity is considered primarily engaged in the business category in which the highest percentage of its Nevada gross revenue is generated. There are 26 business categories and rates that correspond to various North American Industry Classification System codes.

SB 483 also amended the Nevada tax on financial institutions and the business tax, both of which are based on payroll. Those amendments included the allowance of a credit against payroll-based taxes equal to 50 percent of the commerce tax paid by the employer in the preceding tax year. The credit may be used for any of the four calendar quarters immediately following the end of the tax year for which the commerce tax was paid.

SB 483 also amended the Nevada business tax based on payroll by increasing the existing tax rate on general businesses from 1.17 percent of total wages in excess of $85,000 paid by the employer each calendar quarter to 1.475 percent of total wages in excess of $50,000 paid by the employer each calendar quarter. Finally, SB 483 required a reduction in the rate of tax on financial institutions and the business tax to the extent that the total revenue collected by Nevada for these taxes and the commerce tax exceeds certain thresh-olds.

New York

On April 13, New York Gov. Andrew Cuomo (D) signed into law S 2009B/A 3009B and S 2006B/A 3006B, as part of the 2015-2016 state budget. That legislation made technical corrections and other revisions to the New York state tax reform provisions enacted in 2014. Those law changes are effective as if originally enacted with the 2014 tax reforms, which generally pertained to tax years beginning on or after January 1, 2015.

The more significant technical corrections and other revisions to the New York state tax reform provisions enacted in 2014 include:

- Redefining the definition of investment capital as investment in stock that meets five criteria;
- Removing the provision stating that for purposes of determining the requisite holding period of a security to qualify as investment capital, the commissioner of the New York Department of Taxation and Finance would take into account offsetting positions the tax-payer takes in such security or similar securities;

- Conforming the related statute addressing the investment capital holding period requirement to provide that if a taxpayer acquires stock that is a capital asset under IRC section 1221 during the tax year and owns that stock on the last day of the tax year, it will be presumed, solely for purposes of determining whether that stock should be classified as investment capital after it is acquired, that the taxpayer held that stock for more than one year;
- Removing the subtraction of hedging losses and expenses from the computation of nontaxable investment income;
- Adding a limitation on investment income so that if the taxpayer's investment income determined without regard to attributed interest deductions comprises more than 8 percent of the taxpayer's entire net in-come, investment income determined without regard to such interest deductions cannot exceed 8 percent of the taxpayer's entire net income (determined on a combined group basis when applicable);
- Deleting a provision that permitted the exclusion from entire net income of a New York City refund or credit relating to the New York state stock transfer tax;
- Clarifying that for purposes of computing the residential and small business loan subtraction modification for certain community banks and small thrifts, the $8 billion asset qualifying test for a combined group applies if the taxpayer is in a combined report and the assets of the combined group do not exceed $8 billion; and clarifying generally that the modifications for some community banks and small thrifts do not reduce the numerator and denominator of the apportionment fraction;
- Clarifying that only unitary group members that meet the ownership test under Article 9-A (more than 50 percent voting power ownership) are considered in applying the aggregate bright-line economic nexus tests (in other words, only the New York receipts of$10,000 or more of unitary group members will be aggregated to determine whether the $1 million or more bright-line nexus threshold is met);
- Clarifying that a non-US corporation qualifying for New York's self-trading exemption will not be deemed to be subject to the bright-line economic nexus rules if its activities are limited to self-trading;
- Clarifying that for purposes of qualifying as a New York manufacturer (for a 0 percent tax rate on the business income base), a combined group filing a combined report must meet the "principally engaged" test on a combined basis;
- Limiting the type of New York property required to qualify as a New York manufacturer (for income tax, capital tax, and fixed dollar minimum tax purposes) to New York ITC property that is "principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing" whereas the requirement enacted in 2014 had been satisfied with any New York ITC property (such as R&D property);
- Establishing a capital base rate of 0.132 percent for tax years beginning in 2015 for qualified New York manufacturers and qualified emerging technology companies (QETCs); adding new fixed-dollar minimum tables for S corporations that are qualified New York manufacturers or QETCs; and adding that regarding qualified New York manufacturers, the fixed-dollar minimum tables apply in the case of a combined report only if the combined group satisfies the requirements to be a qualified New York manufacturer;

- Clarifying that the deduction related to pre-2015 net operating losses (the prior net operating loss conversion (PNOLC) subtraction) can be claimed only until the calculated pool of pre-2015 NOLs is exhausted and that, except when the taxpayer elects to use its entire pool of pre-2015 NOLs in 2015 and 2016 (as elected on its first return for the 2015 tax year), the taxpayer may carry forward the PNOLC subtraction pool for no longer than 20 tax years or until the 2035 tax year, whichever comes first;
- Amending certain apportionment provisions;
- Eliminating the requirement that the designated agent of a combined group, a taxpayer that acts on behalf of the members of the group relating to the combined report, must be the parent corporation; and
- Clarifying that the commonly owned group election (permitting qualifying nonunitary groups to file a combined return) is made on a timely filed return of the combined group, determined with regard to extensions.

New York City

On April 13, Cuomo signed S 4610A/A 6721A, which provided for broad-based tax reform of the New York City corporate tax regime for tax years beginning on or after January 1, 2015. That legislation was intended to mirror the recent New York state tax reform provisions.

The more significant changes to the city's corporate tax structure, which are effective for tax years beginning on or after January 1, 2015, include:

- Merging the bank tax and corporate franchise tax for large corporations (C corporations);
- Imposing a 9 percent income tax rate on financial corporations;
- Adopting a limited economic nexus concept for corporations that issue credit cards;
- Adopting general customer-based (market) sourcing of receipts and specific sourcing rules for digital products and financial service receipts;
- Maintaining the schedule to phase in single-sales-factor apportionment by 2018 but offering a one-time election for taxpayers/combined groups with $50 mil-lion or less of New York City receipts to retain the 2017 apportionment factor weighting (93 percent receipts, 3.5 percent payroll, 3.5 percent property);
- Limiting what constitutes investment capital and in-vestment income and modifying existing expense attribution rules so that only interest expense attributable to nontaxable investment or exempt income is subject to disallowance;
- Changing the starting point for computing New York City taxable income for alien (non-US) corporations with New York City nexus to federal effectively connected income determined without regard to tax treaties;
- Changing the NOL provisions from a pre-apportioned to a post-apportioned computation;
- Providing a three-year carryback for NOLs incurred in post-reform tax years, provided that no NOL can be carried back to a tax year beginning before January 1, 2015;
- Adopting full water's-edge unitary combined reporting with a greater than 50 percent ownership test and an election to permit combined filing for certain commonly owned groups with a seven-year lock-in period;

- Reducing the rate from 8.85 percent to 6.5 percent for qualifying non-manufacturers with less than $1 mil-lion of allocated business income;
- Reducing the rate from 8.85 percent to 4.425 percent for qualifying manufacturers with less than $10 mil-lion of allocated business income;
- Retaining the alternative tax base on capital and in-creasing the tax cap from $1 million to $10 million;
- Eliminating the additional tax on subsidiary capital and eliminating most exclusions for income from subsidiaries while retaining an exemption for dividends and CFC income (defined by reference to IRC section 951(a)) from unitary subsidiaries;
- Eliminating the alternative tax base equal to 8.85 per-cent on 15 percent of the excess of (a) net income plus the amount of salaries or other compensation paid to any person, including an officer, who at any time during the tax year owned more than 5 percent of the taxpayer's issued capital stock over (b) a $40,000 ex-emption;
- Increasing the cap on the alternative fixed-dollar mini-mum tax to $200,000 for taxpayers with New York City gross receipts more than $1 billion;
- Permitting New York City or taxpayers to adjust the apportionment of income or capital on which the taxpayer's return or any additional assessment was based when an assessment is made or a refund is claimed during the extended statute of limitations applicable in the event of a New York state change to income (or in some other situations), generally to the extent based on the New York state change to income; and
- Making the following credits available under the newly created subchapter 3-A under Title 11, Chapter 6, section 1 of the NYC Administrative Code: New York City relocation and employment assistance program (REAP) credit, the Lower Manhattan REAP credit, the industrial business zone tax credit, and the New York City biotechnology credit.

North Carolina

North Carolina Gov. Pat McCrory (R) signed SB 20 to update corporate income tax conformity with the IRC as of January 1, 2015. However, the law also provided that any amendments to the IRC enacted after December 31, 2013, that increase North Carolina taxable income for the 2014 tax year become effective for tax years beginning on or after January 1, 2015.

McCrory also announced that final budget figures indicate that revenue has met the statutory trigger required for a 1 percent reduction in the state corporate income tax rate effective January 1, 2016. Also, after months of debate, McCrory signed HB 97, which provided numerous state tax law modifications, including:

- A three-year phase-in of single-sales-factor apportionment, commencing with tax years beginning on or after January 1, 2016;
- An informational reporting requirement for certain taxpayers reflecting the taxpayer's calculation of its tax year 2014 sales factor using market-based sourcing;
- An intercompany interest expense addback adjustment;
- Revisions to the corporate income tax rate reduction statutory trigger; and
- Various franchise tax capital base changes, including a new "net worth" tax base, expansion of the affiliated indebtedness adjustment relative to this new base, and a minimum tax increase.

Texas

Texas Gov. Greg Abbott (R) recently signed HB 32, HB 3230, and HB 2896, which amended Texas's franchise tax rates, the rehabilitation of certified historic structures credit, and the broadcast apportionment rules.

HB 32 reduced the franchise tax rate from 1 percent to 0.75 percent of taxable margin for all taxpayers not primarily engaged in retail or wholesale trade and not filing an "EZ computation report." For taxpayers engaged in retail or wholesale trade, HB 32 reduced the franchise tax rate from 0.5 percent to 0.375 percent of taxable margin. HB 32 also expanded the eligibility to file the franchise tax EZ computation report.

HB 3230 modified the rules for taxpayers electing the rehabilitation of certified historic structures credit by amending the definition of eligible costs and expenses to clarify that a nonprofit corporation exempt under Texas Tax Code section 171.063 may include eligible costs and expenses incurred when determining the tax credit.

Finally, HB 2896 updated how broadcasters apportion their taxable margin. Specifically, the legislation provided that a taxable entity that is a broadcaster shall include in the numerator of the apportionment factor receipts arising from licensing income from broadcasting or otherwise distributing film programming by any means only if the legal domicile of the broadcaster's customer is in Texas. Further, the new law defined broadcaster, customer, film programming, and programming.

Under SB 1001, a credit or refund is also mandated if: (i) the taxpayer and IRS agree to an extension, or a renewal of an extension, of the period for proposing and assessing a deficiency in federal income tax for that tax year or there is a change in or correction of federal taxable income for that tax year; and (ii) the taxpayer files a claim for the credit or refund before the expiration of the time period within which the Utah State Tax Commission may assess a deficiency. Apparently, the intent of this new law is to equalize the periods for which the tax commission may assess additional tax with the periods taxpayers may claim refunds.

Washington

Washington Gov. Jay Inslee (D) signed Engrossed Substitute SB 6138, which amended application of the state's B&O tax economic nexus standard and eliminated the preferential tax rate for royalty income. ESSB 6138 eliminated the physical presence nexus standard as applied to wholesaling activities and instead subjected those activities to an economic nexus standard. ESSB 6138 also amended Washington's economic nexus standard so that a taxpayer satisfying any one of the economic nexus bright-line thresholds in the immediately preceding tax year (as opposed to those previously applicable in any tax year standard) will have substantial nexus.

Conclusion

From a review of these corporate income tax law changes, it appears that numerous states successfully tried to become more "tax friendly" for businesses while others focused more on decreasing budget shortfalls, with revenue-raising measures targeted at businesses. A handful of jurisdictions achieved revenue-neutral yet significant tax reforms. Regardless of the state's tax policy path, taxpayers should become familiar with these tax law changes, as well as the underlying legislative trends, to understand how their business organizations may be affected today and in the future.

— Valerie Dickerson (Washington, DC)
Partner
Deloitte Tax LLP
vdickerson@deloitte.com

Shona Ponda (New York)
Senior Manager
Deloitte Tax LLP
sponda@deloitte.com

FATCA: IRS publishes Notice 2015-66 announcing extension of certain transitional rules under Chapter 4

On September 18, 2015, the IRS published Notice 2015-66 announcing its intent to amend the chapter 4 regulations, extending the transitional rules for the following:
URL: https://www.irs.gov/pub/irs-drop/n-15-66.pdf

- The commencement date for withholding on gross proceeds and foreign passthru payments;
- The use of limited branches and limited foreign financial institutions; and
- The deadline for sponsoring entities to register their sponsored entities and re-document such entities with withholding agents.

Additionally, the IRS announced its intent to amend the rules for grandfathered collateral obligations.

Deloitte's global leadership team is currently reviewing the notice and is developing a Point of View detailing out the changes.

— Denise Hintzke (New York)
Partner
Deloitte Tax LLP
dhintzke@deloitte.com

Anne Mericle (New York)
Senior Manager
Deloitte Tax LLP
americle@deloitte.com

Recent Legislation Increases Information Reporting Penalties

Taxpayers with information reporting requirements

The Trade Preferences Extension Act of 2015, Public Law No: 114-27 ("Legislation"), which was signed into law on June 29, 2015, amends penalties applicable under IRC section 6721, Failure to file correct information returns, and IRC section 6722, Failure to furnish correct payee statements. The amendments apply to returns and statements required to be filed after December 31, 2015. These increases may impact taxpayers across all industries, not just within financial services.

Section 6721(a) imposes a penalty on the following:

- Any failure to file an information return with the Secretary on or before the required filing date.
- Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

Section 6722(a) imposes a penalty on the following:

- Any failure to furnish a payee statement on or before the required filing date; and
- Any failure to include all of the information required to be shown on the return or the inclusion of incorrect information.

The Legislation increases the penalties under sections 6721 and 6722 from $100 to $250 per return or statement, and the annual cap or limit on penalties per calendar year under each section is increased from $1,500,000 to $3,000,000. As such, for a filing that is both an information return for purposes of section 6721 and a payee statement under section 6722, the potential amount of penalties that could be assessed under these sections is $6,000,000.

Additionally, if the failure to file information returns or payee statements is a result of intentional disregard, the Legislation increases the penalties under section 6721 and under section 6722 from $250 per return/statement to $500 per return/statement; or, if greater, 10% of the aggregate amount required to be reported correctly.

Note that all of the above penalties are adjusted for inflation under sections 6721(f) and 6722(f).

In an effort to enforce information reporting, the IRS is taking the following actions:

- Collecting more information about payments made on both a US domestic and global basis,
- Elevating priority of certain reporting requirements as a specialty examination issue, and
- Making greater use of technology to identify issues or incidences of noncompliance.

— Denise Hintzke (New York)
Partner
Deloitte Tax LLP
dhintzke@deloitte.com

Anne Mericle (New York)
Senior Manager
Deloitte Tax LLP
americle@deloitte.com

California Updates Federal Tax Conformity to January 1, 2015

On September 30, 2015, Governor Jerry Brown signed into law Assembly Bill 154 (A.B. 154),1 which includes the following modifications to California law:

- Advances California's federal tax conformity to the Internal Revenue Code (IRC) as of January 1, 2015;
- Resolves ambiguities surrounding the validity of Senate Bill 401 (S.B. 401);
- Provides additional exceptions to the 20 percent large corporate understatement penalty;
- Conforms to federal net operating loss carryback procedure allowing an extension of the time to pay tax;
- Conforms to federal limits on compensation deductions for covered health insurance providers;
- Conforms to federal denial of deduction for annual fee on branded prescription pharmaceutical manufacturers and importers; and
- Conforms to various other changes made to the IRC between 2009 and 2015.

This tax alert summarizes these law changes, which are effective immediately and operative for taxable years beginning on or after January 1, 2015.
URL: http://www2.deloitte.com/us/en/pages/tax/articles/multistate-tax-alert-california-updates-federal-tax-conformity.html?id=us:em:na:usic:eng:tax:101915

Calendars to watch

Each edition, be sure to mark your calendars for some of the more important events (recent and upcoming) as well as tax developments making in impact on businesses investing into the United States.

Recent and Upcoming Activities

October 27	**Dbriefs webcast:** OECD transfer pricing guidelines: After crossing the finish line, what's next? Register **URL:** http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/october/2015/dbriefs-OECD-transfer-pricing-guidelines-after-crossing-the-finish-line-whats-next.html?id=us:em:na:usic:eng:tax:101915
November 3	**Dbriefs webcast:** BEPS and indirect taxes: Why US corporate tax executives should be concerned. Register **URL:** http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/november/2015/dbriefs-beps-and-indirect-taxes-why-us-corporate-tax-executives-should-be-concerned.html?id=us:em:na:usic:eng:tax:101915

December 14	**Dbriefs webcast:** Staying ahead of common tax accounting pitfalls and year-end update. Register **URL:** http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/december/2015/dbriefs-staying-ahead-of-common-tax-accounting-pitfalls-and-year-end-update.html?id=us:em:na:usic:eng:tax:101915
December 17	**Dbriefs webcast:** BEPS update: What final guidance means and how countries are adopting it. Register **URL:** http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/december/2015/dbriefs-beps-update-what-final-guidance-means-and-how-countries-are-adopting-it.html?id=us:em:na:usic:eng:tax:101915
October 10	**Dbriefs webcast archive:** BEPS update: Release of the final package. Watch **URL:** http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/october/2015/dbriefs-beps-update-release-of-final-package.html?id=us:em:na:usic:eng:tax:101915
October 14	**Dbriefs webcast archive:** Real estate industry outlook: Three disruptive trends to watch for. Watch **URL:** http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/october/2015/dbriefs-real-estate-industry-outlook-three-disruptive-trends-to-watch-for.html?id=us:em:na:usic:eng:tax:101915
October 15	**Dbriefs webcast archive:** Tax provision and compliance software: Annual tax technology update. Watch **URL:** http://www2.deloitte.com/us/en/pages/dbriefs-webcasts/events/october/2015/dbriefs-tax-provision-and-compliance-software-annual-tax-technology-update.html?id=us:em:na:usic:eng:tax:101915

Recent Tax Developments

October 6	**Global Transfer Pricing Alert:** OECD Releases Final BEPS Report **URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-016-6-october-2015.pdf
August 31	**Transfer Pricing Alert:** IRS Releases New Competent Authority Revenue Procedure **URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-transfer-pricing-alert-15-014-31-august-2015.pdf
July 10	**United States Tax Alert:** Treasury Releases Draft Amendments to the 2006 US Model Income Tax Convention **URL:** http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-alert-unitedstates-10-july-2015.pdf

Have a question?
If you have needs specifically related to this newsletter's content, send us an email at clientsandmarketsdeloittetax@deloitte.com to have a Deloitte Tax professional contact you.