Japanese Services Group tax newsletter

Quarterly U.S. Tax Topics for Japanese Multinational Corporations

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Tax Return and Other Forms Due Date Changes

On July 31, 2015, the President signed H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 ("the Act"), which contains important changes to the due dates for income tax returns of C corporations, partnerships, estates and trust, as well as FinCEN Report 114 (relating to Report of Foreign Bank and Financial Accounts), Form 990 (series) and Form 5500. The Act also makes changes to the extension periods allowed for such filings. Generally, the effective date of the changes will affect tax filings for taxable periods beginning after December 31, 2015.

The Act provides the following filing deadlines for C corporations, S corporations, partnerships, estates, trusts, employee benefit plans, tax-exempt entities, and FBARs:

Types of Entity	Year-end	Current Due Date	New Due Date	Effective Date
C Corporation	December 31	March 15 with six-month extension (September15)	**April 15** with **five-month** extension (September 15) until 2026, then six-month extension (October 15)	Tax years beginning after December 31, 2015
	June 30	September 15 with six-month extension (March 15)	Until 2026, the due date **remains** on September 15 with seven-month extension (April 15).	After December 31, 2025, the due date becomes October 15 with six-month extension (April 15).
	Other fiscal-year	The 15th day of the third month after the close of its tax year with six-month extension.	The 15th day of the **fourth month** after the close of its tax year with **six-month** extension.	Tax years beginning after December 31, 2015

S Corporation	December 31	March 15th with six-month extension (September 15)	Same	No change
	Other fiscal-year	The 15th day of the third month after the close of its tax year with six-month extension.	Same	No change
Partnership	December 31	April 15 with maximum of five-month extension (September 15).	**March 15** with maximum of **six-month** extension (September 15).	Tax years beginning after December 31, 2015
	Fiscal-year	The 15th day of the fourth month after the close of its tax year with max of five-month extension.	The 15th day of the **third month** after the close of its tax year with max of **six-month** extension.	Tax years beginning after December 31, 2015
Estates and Trust	December 31	April 15th with maximum of five-month extension (September 15).	April 15th with maximum of **five and a half months** of extension (September 30).	Tax years beginning after December 31, 2015
	Fiscal-year	The 15th day of the fourth month after the close of its tax year with max of five-month extension.	The 15th day of the fourth month after the close of its tax year with max of **five and a half months** extension.	Tax years beginning after December 31, 2015
Employee Benefit Plans	Calendar and Fiscal year	The last day of the seventh month after the plan year ends with two and a half month extension.	The last day of the seventh month after the plan year ends with **three and a half month** extension (November 15 for Calendar year)).	Tax years beginning after December 31, 2015
Tax exempt Entities	Calendar and Fiscal year	The 15th day of the fifth month after the close of its tax year with three-month extension.	The 15th day of the fifth month after the close of its tax year with **six-month** extension.	Tax years beginning after December 31, 2015
FBARs	Calendar and Fiscal year	June 30	**April 15** with a maximum **six-month** extension (October 15)	Tax years beginning after December 31, 2015

Affordable Care Act

In late 2014, the Internal Revenue Service ("IRS") issued guidance and draft forms for reporting tax information about health care coverage, as required by internal revenue code (IRC) section 6055 and 6056. The reporting requirements for employer under the Affordable Care Act (ACA) is complex and challenging. In this newsletter we will discuss about the expected challenging issues for employers to meet the reporting requirements.

Large Employer (ALE) Determination

Any employer who has more than fifty full-time employee equivalents, measured on a controlled group basis, is considered an ALE. IRC Section 6056 places the burden on the employer to provide the data necessary to demonstrate that the company is not subject to taxes by measuring and tracking hours for which an employee is paid in a prior year, status in the current year, eligibility and offers of benefit coverage, as well as the affordability of the benefits.

Reporting as ALE

In order to meet the ACA's reporting requirements, the applicable employers need to go through the process necessary for IRS tax reporting and e-filing, as well as distribution of the IRS Form 1095-C to the employees. This would require manipulation to determine the proper codes, data for every month of a calendar year and that each employer file separately to include on the form. Also those employers who provide health insurance under a self-insured plan (IRC Section 6055) must provide the information necessary for the IRS to enforce the individual mandate by including in Part III of the Form 1095-C the dependents, identified by their social security number and a code for every month that they had coverage.

Various State Taxes Developments

State of California: Tips for Claiming the New Employment Credit

The New Employment Credit (NEC) is a credit available to businesses located in a designated area in the state. The NEC is available for taxable years beginning on or after January 1, 2014, and before January 1, 2021, for qualified taxpayers who hire qualified employees and have a net increase in their numbers of full-time employees when compared to a base year.

A qualified taxpayer:

- Is an employer engaged in a trade or business within a designated within a DGA.
- Is not engaged in any excluded businesses which are temporary help services or retail trades, and those primarily in food services, alcoholic beverage places, theater companies and dinner theater or casinos and casino hotels unless it is considered a small business.
- Is not engaged in a sexually-oriented business.
- Hires an individual that is a qualified full-time employee that works at least an average of 35 hours per week and meets all of the following:
    - Is hired on or after January 1, 2014.
    - Performs at least 50% of his/her services for the employer in the DGA.
    - Receives starting wages that exceed 150% of the State minimum wage.
    - Is paid hourly wages for an average of at least 35 hours per week, or is salaried, and paid for full-time employment.
    - Meets one of five conditions upon commencement of employment (see below).

A qualified tax employee

At the time of hire an individual meets any of the following conditions:

- Unemployed for 6 months or more, not having completed a degree or course of study.

- Unemployed for 6 months or more, and completed a degree or course of study more than 12 months prior to hire.
- Veteran, separated from the armed forces within 12 months.
- Recipient of the federal Earned Income Credit in the previous taxable year.
- Ex-offender convicted of a felony.
- Current recipient of CalWORKS or county general assistance.

California Employment Training Panel Incentive Program Update

The California Employment Training Panel (ETP) administers a vocational training incentive program through performance-based contracts. The goal of this program is to assist California employers' efforts to effectively train workers and maintain a skilled workforce. The program is funded by the Employment Training Tax paid by California employers, and its purpose is to spur job creation and support employers affected by out-of-state competition. Since 1982 the ETP has reimbursed employers more than $1 billion for training more than 800,000 California workers.

Summary of the ETP Program

The ETP provides $8 to $26 (per hour/per eligible employee trainee) as reimbursement for employer training expenses. Contracts generally have a two-year time frame and allow for up to 200 hours of training per trainee. Minimum wage, retention periods and an employer contribution are required to receive ETP funds. Eligible training includes most job-related skills courses provided by an employer or outside vendor.

The following priority industries receive preferential treatment:

- Manufacturing/Food Production
- Biotech/Life Sciences
- Information Technology
- Multi-media/Entertainment
- Goods Movement and Transportation/Logistics
- Agriculture
- Allied Healthcare
- Construction/Green/Clean Technology

Updates

The ETP anticipates a funding capacity of over $90 million for FY15/16, and individual employers may receive grants of up to $750,000. The ETP will begin accepting "pre-applications" for FY15/16 funding at 8:00 am on May 1st.

Sweeping Connecticut Tax Reforms Enacted

On June 30, 2015, Governor Dannel Malloy signed House Bill 7061 ("HB 7061") and Senate Bill 1502 ("SB 1502") into law. HB 7061 and SB 1502 make the following changes to the corporation business tax:

- Limit the deduction of net operating losses (NOLs) to 50 percent of Connecticut income effective for income years commencing on or after January 1, 2015.

- An alternate elective operating loss carryforward rule is available for combined groups with unused operating losses in excess of $6 billion dollars from years beginning prior to January 1, 2013.

- Impose mandatory unitary taxation applicable to income years commencing on or after January 1, 2016. This effective date was specified in SB 1502, thus amending HB 7601, which had provided that this change was to apply to income years commencing on or after January 1, 2015
  - The Connecticut combined group (referred to in this Tax Alert as the "CT unitary group") is composed of all entities with common ownership (more than 50 percent, direct or indirect) that are engaged in a unitary business. CT unitary group members with nexus in Connecticut are taxable members. CT unitary group members without nexus in Connecticut are nontaxable members.
  - The default CT unitary group uses a water's-edge basis. Optional elections are available for filing on a federal affiliated group basis or a worldwide unitary basis. The affiliated election and worldwide unitary election are only available if made on an originally filed return and are then effective for the next 10 years.

Nevada Governor Signs New "Commerce Tax" into Law

On June 10, 2015, Governor Sandoval signed Senate Bill 483 ("SB 483"), thus enacting a new "commerce tax" (effective July 1, 2015) applicable to each "business entity" engaged in business in Nevada with Nevada-sitused gross revenue exceeding $4,000,000 in a taxable year. If a business entity's Nevada gross revenue exceeds $4,000,000, the excess is subject to tax at various rates that depend upon the industry in which the business entity is "primarily engaged." In addition to the commerce tax, SB 483 also:

- Amends the Nevada payroll-based tax on financial institutions and the payroll-based business tax
- Increases the excise tax imposed on cigarettes
- Increases the annual state business license fee applicable to certain corporations organized under Nevada law and foreign corporations authorized to transact business in Nevada
- Makes various changes regarding the net proceeds of minerals tax
- Extends permanently the 0.35 percent Local School Support Tax portion of the state-level sales and use tax

WA amends nexus standards, rate preference, M&E exemption, and penalties

On July 1, 2015, Governor Inslee signed Engrossed Substitute Senate Bill 6138 ("SB 6138"),[1] which makes various changes to Washington tax law. Notable provision of the new law include:

- Adding remote seller click-through nexus for sales and use tax purposes
- Extending the economic nexus standard to the business and occupation (B&O) tax wholesaling classification
- Eliminating a B&O tax rate preference for royalty income
- Expanding the manufacturing machinery and equipment exemption to certain software manufacturers
- Increasing late payment penalties

[1] Chapter 5, 2015 Laws, 3rd Special Session (E.S.S.B. 6138; signed by Gov. Inslee, Jul. 1, 2015).

Remote seller click-through nexus for sales and use tax[2]

Effective September 1, 2015,[3] the new law provides that a remote seller is required to and remit Washington sales and use tax if "substantial nexus" with Washington exists. A presumption of substantial nexus exists if:

- The remote seller enters into an agreement with a Washington resident under which the resident, for a commission or other consideration, refers potential customers to the remote seller through a link on the resident's internet website or otherwise; and
- The cumulative gross receipts from sales by the remote seller to customers in Washington through all such agreements exceed $10,000 during the preceding calendar year.[4]

A remote seller may rebut this presumption by providing proof that each Washington resident with whom the remote seller has an agreement did not engage in any activity that was significantly associated with the remote seller's ability to establish or maintain a market in Washington for the remote seller's products or services during the calendar year in question.

Economic nexus standard for B&O tax wholesaling classification

Effective August 1, 2015,[5] SB 6138 eliminates the physical presence nexus standard as applied to wholesaling activities[6] and subjects those activities to the economic nexus standard.[7] Accordingly, a business making wholesale sales to Washington customers must review its Washington receipts, payroll, and property to determine whether any of the economic nexus thresholds are met, even if the business does not have a physical presence in Washington. For purposes of counting receipts toward the dollar amount thresholds listed above, receipts from wholesale sales are sourced to Washington according to the Streamlined Sales and Use Tax Agreement sourcing provisions set forth in Wash. Rev. Code § 82.32.730.[8]

Also effective August 1, 2015, SB 6138 amends the economic nexus standard such that a taxpayer satisfying any one of the economic nexus thresholds in "the immediately preceding" tax year (as opposed to the currently applicable "in any tax year" standard) will have substantial nexus.[9]

Repeal of preferential B&O tax rate for royalty income

Effective August 1, 2015,[10] SB 6138 eliminates the preferential tax rate for royalty income, thereby subjecting such income to tax at the 1.5 percent rate.[11]

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[2] See, SB 6138, adding Sec. 501(6)(c)(ii).
[3] SB 6138, Sec. 501(2).
[4] SB 6138, Sec. 202, adding a section to be codified between Wash. Rev. Code. § 82.08.050 and § 82.08.054.
[5] SB 6138, Sec. 501(2).
[6] SB 6138, Sec. 203, amending Wash. Rev. Code. § 82.04.067(6).
[7] SB 6138, Sec. 203, amending Wash. Rev. Code. § 82.04.066.
[8] SB 6138, Sec. 204, adding Wash. Rev. Code. § 82.04.067(4)(c).
[9] SB 6138, Sec. 203, amending Wash. Rev. Code. § 82.04.067(1)(c).
[10] SB 6138, Sec. 501(1).
[11] SB 6138, Sec. 101, amending Wash. Rev. Code. § 82.04.2907(1).

Manufacturing machinery and equipment exemption for software manufactures

Effective August 1, 2015,[12] SB 6138 amends the definition of "manufacturer" to include a person that is engaged in the development of prewritten computer software that is not transferred to purchasers by means of tangible storage media.[13]

The new law also provides that this exemption does not apply to an "ineligible person," defined as an affiliated group or member of an affiliated group if:

- At least one member of the affiliated group was registered to do business in Washington prior to July 1, 1981;
- The affiliated group has a combined employment exceeding 40,000 full-time and part-time employees in Washington as of August 1, 2015; and
- The business activities of the affiliated group primarily include the development, sales, and licensing of computer software services.[14]

Increase in late payment penalties

Effective August 1, 2015,[15] SB 6138 increases late payment penalties as follows:

- 9 percent (increased from 5 percent) of the amount of tax due if payment is not received by the due date
- 19 percent (increased from 15 percent) of the amount of tax due if payment is not received on or before the last day of the month following the due date
- 29 percent (increased from 25 percent) of the amount of tax due if payment is not received on or before the last day of the second month following the due date.[16]

[12] SB 6138, Sec. 501(1).
[13] SB 6138, Sec. 301, adding Wash. Rev. Code. § 82.08.02565(2)(d)(ii).
[14] SB 6138, Sec. 301, adding Wash. Rev. Code. § 82.08.02565(4).
[15] SB 6138, Sec. 501(1).
[16] SB 6138, Sec. 401, amending Wash. Rev. Code. § 82.32.090(1).

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