Accounting for Income Taxes | Quarterly Hot Topics

US Federal

Tax News & Views, published by the Deloitte Tax LLP Tax Policy Group in Washington, DC, provides a compact, reader-friendly perspective on the latest tax developments coming out of Congress affecting businesses and high-wealth individuals.

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Wyden releases text of Build Back Better tax provisions

US Senate Finance Committee Chairman Ron Wyden, D-Ore., on December 11, 2021, released text of the tax title for the Senate's version of the Build Back Better Act, the roughly $1.75 trillion legislative package that President Biden and congressional Democrats hope to move through Congress under budget reconciliation protections.

For additional details, please see the Deloitte tax@hand article dated December 12, 2021.

Bipartisan infrastructure bill becomes law

President Biden on November 15, 2021, signed into law bipartisan legislation that provides for an investment of roughly $550 billion in new spending over the next five years on "hard" infrastructure projects and includes a limited number of tax-related incentives and revenue offsets.

The Infrastructure Innovation and Jobs Act (IIJA, P.L. 117-58) cleared the Senate on August 10, 2021, and was approved in the House on November 5, 2021.

In this edition:

The IIJA focuses chiefly on spending for roads and bridges, passenger and freight rail, public transit, broadband deployment, water infrastructure, airports, and power grid reliability and resiliency.

For additional details, please see the Deloitte tax@hand article dated November 19, 2021.

Digital assets: Infrastructure bill includes information reporting requirements

The infrastructure bill includes language amending sections of the Internal Revenue Code (IRC) to explicitly include digital assets for Form 1099 reporting and transfer statement purposes and to include digital assets in the definition of "cash" for transaction reporting purposes.

The bill includes the following changes:

- Redefined "broker": An expanded definition of broker to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."
- Defines "digital assets": "[A]ny digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the [Treasury] Secretary."
- Redefined "specified security": An inclusion of digital assets as specified securities, potentially requiring cost basis reporting.
- Transfer statement obligations: Requirements for transfer statements to be furnished between "brokers" when digital assets are transferred.
- Expanded reporting on transfers: Reporting obligations on transfers of digital assets that otherwise fall outside the scope of reporting and updating information reporting penalties to include this reporting.
- Businesses accepting payment in crypto: Reporting obligations for businesses accepting more than $10,000 in digital assets as payment.
- Effective date: Requirement to report on Form 1099 all transactions occurring in tax year 2023 and for transaction reporting on statements to be furnished after December 31, 2023.
- Rule of construction: Clarification that the amendments are not intended to create any inference regarding the current scope of IRC section 6045, including whether any person qualifies as a broker or whether a digital asset is property meeting the definition of specified security.

For additional details, please see Deloitte tax@hand article dated November 8, 2021.

US multistate

Alabama

Adopted rule change reflect move from double-weighted to single sales factor

The Alabama Department of Revenue adopted rule changes reflecting Alabama's move from employing a three-factor double-weighted sales apportionment formula to a single-sales factor formula for state corporate income tax purposes. The changes include addressing apportionment for taxpayers having a business interest in certain unincorporated entities.

For additional details, please refer to the January 7, 2022 edition of State Tax Matters.

Arkansas

New law includes some corporate and individual income tax rate reductions

Partially contingent upon the lack of certain transfers from the Catastrophic Reserve Fund, new law provides for some Arkansas individual and corporation income tax rate reductions including a reduced top corporate income tax rate of 5.7%.

For additional details, please refer to the December 17, 2021 edition of State Tax Matters.

Colorado

DOR discusses law changes involving listed "tax havens" and combined return inclusion

The Colorado Department of Revenue issued guidance addressing legislation enacted in 2021 that requires a Colorado combined group to include certain affiliates that are "incorporated in a foreign jurisdiction for the purpose of tax avoidance," and provides a rebuttable presumption that a corporation is created for "tax avoidance" purposes if it is incorporated in one of 44 listed jurisdictions.

For additional details, please refer to the January 7, 2022 edition of State Tax Matters.

DOR adopts special industry apportionment rule addressing hedging transactions

The Colorado Department of Revenue adopted state corporate income tax special apportionment rules for electricity producers that prescribe including certain receipts from hedging transactions in their receipts factors as complete exclusion "does not fairly represent the extent of an electricity producer's business activity in Colorado."

For additional details, please refer to the January 7, 2022 edition of State Tax Matters.

Connecticut

Amnesty program offering potential penalty waiver and reduced interest began November 1

The Connecticut Department of Revenue Services launched its tax amnesty program offering eligible participants the potential opportunity to pay most Connecticut back taxes at a reduced interest rate and no penalties.

For additional details, please refer to the November 5, 2021 edition of State Tax Matters.

Delaware

High court affirms in taxpayer's favor that NOL limitation policy is invalid

The Delaware Supreme Court affirmed a trial court's summary judgment in favor of a taxpayer that challenged the validity of the Delaware Division of Revenue's NOL limitation policy as it applies to certain entities filing separate-company Delaware corporate income tax returns but which file as part of a consolidated corporate income tax return for federal income tax purposes.

For additional details, please refer to the December 3, 2021 edition of State Tax Matters.

Florida

DOR announces temporary corporate income tax rate reduction from 4.458% to 3.535%

Pursuant to state law that establishes potential reductions to Florida's corporate income tax rate contingent upon satisfaction of specified tax revenue goals, the Florida Department of Revenue announced that the Florida corporate income/franchise tax rate is reduced from 4.458% to 3.535%.

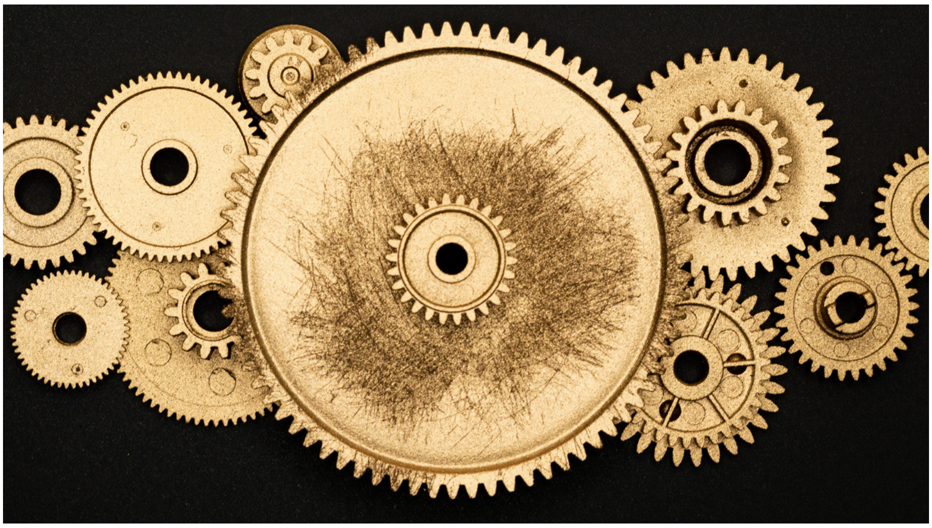
For additional details, please refer to the September 17, 2021 edition of State Tax Matters.

Illinois

DOR considers bitcoin treatment as intangible property for apportionment purposes

Responding to a taxpayer's request regarding the state corporate income tax treatment of bitcoin for apportionment purposes, the Illinois Department of Revenue concludes that bitcoin is considered an item of intangible personal property but is ***not*** a patent, copyright, trademark, or similar item of intangible property for sourcing purposes.

For additional details, please refer to the November 5, 2021 edition of State Tax Matters.



New law permits 20-year carryover on some net operating losses

For any Illinois net loss incurred for which the statute of limitation for utilization of such net loss has not expired, new law provides that such loss potentially may be carried forward for 20 years.

For additional details, please refer to the November 19, 2021 edition of State Tax Matters.

Kentucky

DOR adopts special industry apportionment rules for financial institutions

Under its statutory authority to promulgate regulations for determining alternative allocation and apportionment methods for Kentucky corporate income tax purposes for those taxpayers engaged in special industries, the Kentucky Department of Revenue adopted after comment an amended rule detailing the sourcing of receipts related to financial institutions.

For additional details, please refer to the November 12, 2021 edition of State Tax Matters.

Louisiana

DOR announces Transfer Pricing Managed Audit Program that begins November 1

The Louisiana Department of Revenue announced that it invites eligible corporation income taxpayers to participate in a voluntary initiative aimed at proactively and efficiently resolving intercompany transfer pricing issues via the Louisiana Transfer Pricing Managed Audit Program.

For additional details, please refer to the October 29, 2021 edition of State Tax Matters and the November 4, 2021 edition of Multistate Tax Alerts.

Voters approve constitutional amendment permitting passage of various tax reform items

Louisiana voters approved a state constitutional amendment that permits passage of several state tax reform bills, including changes to Louisiana's corporate and individual income and franchise tax rates, along with repeal of the income tax deductions for both corporate and individual purposes for federal income taxes paid.

For additional details, please refer to the November 19, 2021 edition of State Tax Matters and the November 18, 2021 edition of Multistate Tax Alerts.

Maine

Revenue Services summarizes new bright-line nexus standard for corporate income tax

Maine Revenue Services has released a summary of recently enacted Maine tax-related legislation, including new Maine corporate income tax nexus provisions that incorporate a bright-line economic nexus standard as a practical structure for the current general "economic nexus" standard.

For additional details, please refer to the September 17, 2021 edition of State Tax Matters.

Michigan

Appellate court says alternative apportionment warranted for deemed asset sale gain

On remand in a case involving the gain on sale of an out-of-state business pursuant to an IRC section 338(h)(10) election and application of the standard apportionment formula under the Michigan business tax for the prior short-year at issue, the Michigan Court of Appeals reaffirmed for the taxpayer that alternative apportionment is warranted under the facts.

For additional details, please refer to the October 8, 2021 edition of State Tax Matters.

New Jersey

Appellate court reverses and remands ruling on CBT royalty expense 'addback' exception

The New Jersey Superior Court, Appellate Division, reversed and remanded lower court rulings involving the state corporation business tax intercompany royalty expense addback adjustment, holding that the New Jersey Division of Taxation's limited application of the unreasonable exception and its accompanying schedule was an appropriate exercise of its discretion.

For additional details, please refer to the September 24, 2021 edition of State Tax Matters.

New York

MTA surcharge rate for Article 9-A taxpayers to remain the same in 2022

A technical memorandum issued by the New York Department of Taxation and Finance provides that the Metropolitan transportation business tax surcharge rate for Article 9-A taxpayers is 30%.

For additional details, please refer to the November 26, 2021 edition of State Tax Matters.

North Carolina

New law includes corporate income tax phase-out, franchise tax changes, and PTE tax

New law in North Carolina includes updating state income tax conformity with the Internal Revenue Code, phasing out the state corporate income tax, simplifying calculation of the state corporate franchise tax, creating a new pass-through entity tax, and making various changes to North Carolina's individual income tax provisions.

For additional details, please refer to the November 26, 2021 edition of State Tax Matters and the November 30, 2021 edition of Multistate Tax Alerts.

Oregon

Tax Court reconsiders case on inclusion of dividend and Subpart F income in sales factor

The Oregon Tax Court, Regular Division, modified its ruling from 2020 in a case involving dividend income and subpart F income received by a taxpayer from its controlled foreign corporations and whether Oregon statutes require portions of such income that are not subtracted from federal taxable income to be included in, or excluded from, the taxpayer's sales factor.

For additional details, please refer to the October 22, 2021 edition of State Tax Matters and the November 15, 2021 edition of Multistate Tax Alerts.

DOR adopts various Corporate Activity Tax (CAT) rule changes

The Oregon Department of Revenue adopted rules addressing changes and clarifications to the corporate activity tax (CAT) pursuant to legislation enacted in 2021 that requires certain taxpayers to file short tax period returns; addresses differing accounting periods between unitary group members; provides unitary group designated filer requirements; and excludes some insurers subject to Oregon's retaliatory tax.

For additional details, please refer to January 7, 2022 edition of State Tax Matters.

DOR adopts new rule defining terms for and application of sourcing broadcasting sales

The Oregon Department of Revenue adopted a new rule establishing definitions for "programming" and "subscription services" for purposes of determining broadcasting sales in Oregon pursuant to legislation enacted in 2021, as well as provides which taxpayers are eligible to elect the sourcing method based on audience and/or subscriber location.

For additional details, please refer to January 7, 2022 edition of State Tax Matters.

Pennsylvania

Court upholds DOR policy that 2017 NOL cap ruling doesn't apply to earlier years

In a case involving application of the percentage cap for net loss carryover deductions contained under state law for the 2014 tax year at issue following the Pennsylvania Supreme Court's 2017 decision that deemed the fixed-dollar statutory cap of $3 million invalid, a Pennsylvania Commonwealth Court affirmed the 2017 decision's prospective-only application.

For additional details, please refer to the September 17, 2021 edition of State Tax Matters.

South Carolina

DOR extends COVID-19 pandemic-related telecommuting relief through to March 31

The South Carolina Department of Revenue now states that it will not use changes solely in an employee's temporary work location due to remote work requirements arising from, or during, the "COVID-19 relief period" from March 13, 2020 through March 31, 2022 (most previously, through December 31, 2021) as a basis for establishing nexus or altering apportionment of income.

For additional details, please refer to January 7, 2022 edition of State Tax Matters.

Texas

Comptroller adopts amended regulations for R&D activities

The Texas Comptroller of Public Accounts filed adopted rule amendments with the Office of the Secretary of State to incorporate numerous changes to the Texas franchise tax research and development (R&D) activities credit and the Texas sales and use tax R&D exemption.

For additional details, please refer to the October 15, 2021 edition of Multistate Tax Alerts.

Vermont

Adopted administrative rule revisions reflect market-based sourcing law

The Vermont Department of Taxes has adopted rule changes reflecting state law that implements market-based sourcing for sales other than tangible personal property state corporate income tax purposes.

For additional details, please refer to the December 3, 2021 edition of State Tax Matters.

Wisconsin

Receipts from company's sale of credits deemed characterized as approtionable income

The Wisconsin Tax Appeals Commission recently held that receipts from a vehicle distribution company's sale of certain Wisconsin environmental credits should have been included as apportionable income on the combined Wisconsin corporate franchise tax return of the company's unitary group for the tax year at issue, rather than non-business income allocable outside Wisconsin.

For additional details, please refer to January 7, 2022 edition of State Tax Matters.

International

This compilation is intended to be an overview of major international tax developments during the quarter that may have ASC 740 implications. For more summaries of other current international income tax news and developments for the current quarter, please refer to the additional publications listed at the end of this section.

Multiple jurisdictions

OECD

Five European nations, US agree on transitional approach to DSTs as regards Pillar One

On October 21, 2021, the governments of Austria, France, Italy, Spain, the United Kingdom, and the United States published a new joint statement announcing a compromise agreement on a transitional approach to phasing out the five European countries' existing digital services tax (DST) regimes. This follows the agreement in early October between 136 countries of the G20/OECD Inclusive Framework on BEPS on the two-pillar solution to address the tax challenges arising from the digitalization of the economy. Pillar One of the solution would reallocate taxing rights in favor of market countries coordinated

with the removal of all DSTs. July 1, 2021, the G20/OECD Inclusive Framework on BEPS ("inclusive framework") published a statement on the key components of global tax reform, agreed by 130 of its members.

For additional details, please see the Deloitte tax@hand article dated October 22, 2021.

OECD inclusive framework publishes Pillar Two global minimum tax model rules

On December 20, 2021, the G20/OECD Inclusive Framework on BEPS ("inclusive framework") published Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two) ("model rules"). This follows on from the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, agreed by more than 135 of its members on October 8, 2021.

The main income inclusion rule and its "backstop," the undertaxed payments rule, are designed to ensure that large multinational groups pay corporate income taxes at a minimum level of 15% in every country in which they operate. Countries are not required to introduce the rules, but the model rules provide a template for adoption in domestic law in a consistent and coordinated way. The model rules consist of chapters on:

- Scope;
- Income inclusion rule and undertaxed payments rule;
- Computation of "'GloBE income or loss" (tax base);
- Computation of "adjusted covered taxes;"
- Computation of effective tax rates and top-up tax;
- Corporate restructurings and holding structures;
- Tax neutrality and distribution regimes;
- Administration;
- Transition rules; and
- Definitions.

For additional details, please see the Deloitte tax@hand article dated December 20, 2021.

European Union

Final text of EU public CbC reporting directive published

The final text of the EU public country-by-country (CbC) reporting directive was published in the EU official journal on December 1, 2021, and will enter into force on December 21, 2021. EU member states then have 18 months (i.e., until June 22, 2023) to transpose the directive into their national laws.

EU public CbC rules:
The directive will require multinationals (either EU-parented groups and their subsidiaries or non-EU-parented groups with large EU subsidiaries or branches) with annual global consolidated revenue exceeding EUR 750 million that are active in more than one EU member state to publish certain tax information on a country-by-country and annual basis, including:

- Nature of the company's activities;
- Number of full-time equivalents;
- Profit or loss before income tax;
- Accumulated income tax;
- Income tax paid; and
- Accumulated earnings.

For additional details, please see the Deloitte tax@hand article dated December 2, 2021.

Australia

ATO updates discussion paper on tax implications of Inter-bank Offered Rate reform

On November 23, 2021, the Australian Taxation Office (ATO) released an updated discussion paper on the tax implications of the Inter-bank Offered Rate (IBOR) reform, which updates the discussion paper released by the ATO on August 12, 2021.

For additional details, please see the Deloitte tax@hand article dated December 2, 2021.

France

2022 finance law enacted

France's 2022 finance law was published in the official journal on 31 December 2021 without substantial modifications to the version adopted earlier in the month by the French parliament and was therefore enacted on that date. Amongst other provisions, there was a change to article 182 B of the FTC (withholding tax on royalties, non-commercial profits, remuneration for any kind of services, including sports services) by allowing a 10% withholding tax basis reduction on payments made to nonresident companies located in an EU/EEA country. This was done to ensure compliance with EU law going forward.

For additional details, please see the Deloitte tax@hand article dated January 3, 2022.

Italy

Law decree significantly revises patent box regime

A fiscal decree has substantially revised the patent box regime legislation by replacing the partial income tax exemption for qualifying income with a super tax deduction for research and development expenses related to eligible intangible assets; the new regime entered into force on October 22, 2021.

Among other measures, article 6 of the decree substantially revises the patent box regime legislation. The new patent box regime will allow eligible taxpayers to claim a super tax deduction equal to 90% of their R&D costs in addition to the current 100% deduction, resulting in an overall deduction of 190% of eligible R&D expenses. This replaces the current patent box regime, which allows taxpayers to exempt from corporate income tax (IRES) and regional income tax (IRAP) up to 50% of their income deriving from the direct or indirect exploitation of intangibles.

For additional details, please see the Deloitte tax@hand article dated October 25, 2021.

Mexico

2022 economic package and tax reform proposals approved by Chamber of Deputies

On 20 October 2021, the plenary session of Mexico's Chamber of Deputies approved the Treasury Department Report (report) that includes the decree to revise, add, or repeal, among others, various provisions of the Income Tax Law and the Federal Tax Code for 2022, together with the reservations made by the deputies. The Senate is expected to review and approve the rules with no changes by 31 October.

For additional details, please see the Deloitte tax@hand article dated October 22, 2021.

United States

IRS issues final guidance related to foreign tax credit; clarification of foreign-derived intangible income

The IRS released final regulations relating to the foreign tax credit, including the disallowance of a credit or deduction for foreign income taxes with respect to dividends eligible for a dividends-received deduction; the allocation and apportionment of interest expense, foreign income tax expense, and certain deductions of life insurance companies; the definition of a foreign income tax and a tax in lieu of an income tax; the definition of foreign branch category income; and the time at which foreign taxes accrue and can be claimed as a credit. The document also contains final regulations clarifying rules relating to foreign-derived intangible income (FDII). The document was filed on 12/28/2021.

For additional details, please see the final regulations published in the federal register on January 4, 2022.

Accounting developments

Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method

Since the issuance of ASU 2014-01, which allows investors to use the proportional amortization method to account for low-income housing tax credit (LIHTC) investments if the criteria in ASC 323-740-25-1 are met, stakeholders have continued to support expanding the proportional amortization method to investments in tax credit programs other than LIHTC investments. At its meeting on September 22, 2021, the FASB decided to add a project on this topic to the Emerging Issues Task Force's (EITF) technical agenda. At its November 11, 2021 meeting, the FASB staff held an educational session (i.e., non-decision-making meeting) and gathered initial feedback from the EITF on any technical topics on which additional research is needed as well as on any additional stakeholder outreach that the staff should perform. The EITF is expected to redeliberate this issue at its next meeting after considering the FASB staff's additional research.

For additional details and a full summary of the November 11, 2021 meeting of the EITF, please refer to the November 2021 EITF Snapshot.

Updated: Deloitte's Roadmap *Income Taxes*

In November, we issued an update to our Roadmap *Income Taxes*. The 2021 edition includes new guidance and editorial enhancements to reflect our latest thinking and input from standard setters and regulators. It also includes On the Radar, a new section (also available as a stand-alone publication) that briefly summarizes emerging issues and trends related to the accounting and financial reporting topics addressed in the Roadmap.

Up-C structure services

For Up-C structures, the Up-C Services group offers virtual webcasts from Deloitte specialists covering recent US federal income tax and ASC 740 developments relevant to these businesses organized as Up-Cs. Please visit us at Up-C Structure Services or contact Jill Wilde at jiwilde@deloitte.com (+1 904 665 1433) to be added to our virtual webcast distribution list.

Other

For upcoming webcasts that give you valuable insights on important developments affecting your business and feature practical knowledge from Deloitte specialists and CPE credits, please visit Dbriefs webcasts.

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As always, we are interested in your comments on our publications. Please take a moment to tell us what you think by sending us an e-mail.

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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