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Accounting for Income Taxes

Quarterly Hot Topics

In this issue:

US Federal

Federal Subchapter C
Summary of final consolidated return Treasury Regulations addressing recent NOL rule changes

On October 13, 2020, the Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") released final federal consolidated tax return Treasury Regulations that primarily address recent statutory changes made by the 2017 (the "Tax Act") (P.L. 115-97) and the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136, the "CARES Act") to the rules governing federal net operating losses (NOL). In brief:

- The final Treasury Regulations (T.D. 9927) set forth amendments to Treas. Reg. § 1.1502-21, which governs consolidated federal net operating losses ("CNOL") and the CNOL deduction. The amendments to Treas. Reg. section 1.1502-21 principally concern three issues relevant to consolidated groups that were not expressly covered in the Tax Act or the CARES Act; specifically:
  - How to determine the 80-percent of taxable income limitation in the case of a "mixed" group – that is, a consolidated group containing nonlife insurance companies and other members;
  - The incorporation of the 80-percent of taxable income limitation into the operation of the separate return limitation year ("SRLY") rules; and
  - The calculation and allocation of farming losses.
- The final Treasury Regulations also amend the rules under Internal Revenue Code section 1503(d) addressing dual consolidated losses to clarify that, for purposes of the dual consolidated loss rules, the SRLY limitation is applied without regard to the new rule of Treas. Reg. section 1.1502-21(c)(1)(i)(E), which was added by the final Treasury Regulations.

- The final Treasury Regulations also include amendments to Treas. Reg. section 1.1502-47, which governs the filing of life/non-life consolidated federal income tax returns. For the most part, the amendments to Treas. Reg. section 1.1502-47 implement various statutory amendments dating back to the Deficit Reduction Act of 1984.

For additional details, please see the Deloitte tax@hand article dated October 27, 2020.

Treasury and IRS release final IRC section 162(m) Treasury Regulations

On December 18, 2020, the Treasury and the IRS released final Treasury Regulations (T.D. 9932) under IRC section 162(m).

IRC section 162(m) generally imposes a $1 million limit on the deduction allowed to be taken by a "publicly held corporation" for "applicable employee remuneration" paid to a "covered employee." The Tax Act made significant amendments to IRC section 162(m), including amending the definitions of applicable employee remuneration to eliminate exceptions for qualified performance-based compensation and commissions, expanding the definitions of a covered employee and publicly held corporation, and adding a transition rule to allow for grandfathering certain payments.

Federal Subchapter K
New guidance includes final Treasury Regulations addressing partnership withholding issues

The Treasury and the IRS released final Treasury Regulations on October 7, 2020 that provide guidance under IRC section 1446(f) related to tax withholding and information reporting on certain dispositions of interests in partnerships engaged in a trade or business within the US.

The final Treasury Regulations affect certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in a trade or business within the US, and persons that acquire those interests. They also affect partnerships that, directly or indirectly, have foreign persons as partners.

IRC section 1446(f) was added to the IRC pursuant to the Tax Act.

For additional details, please see the Deloitte tax@hand article dated October 9, 2020.

Federal Financial Instruments
New guidance address LIBOR transition

On October 9, 2020, the IRS released Revenue. Procedure. 2020-44 providing additional guidance with respect to certain federal tax issues associated with the transition from London Interbank Offered Rate ("LIBOR") and other Interbank Offered Rates ("IBOR") to other reference rates in debt instruments and other financial contracts. The guidance was issued in response to the comments on the proposed Treasury Regulations (REG-118784-18) issued on October 8, 2019. For further information, please refer to the actual text of Rev. Proc. 2020-44 and the proposed Treasury Regulations.

US International

Summary offinal sourcing regulations under IRC sections 863 - 865

On September 29, 2020, the Treasury and the IRS issued final Treasury Regulations under IRC sections 863 through 865 addressing rules for determining the source of income from sales of inventory produced outside the US and sold within the US or vice versa. The regulations generally apply to taxable years ending on or after December 23, 2019.

For additional details, please see the Deloitte tax@hand article dated September 29, 2020.

Treasury and the IRS release final and proposed foreign tax credit Treasury Regulations

On September 29, 2020, the Treasury and the IRS released guidance that finalizes the foreign tax credit and expense allocation Treasury Regulations proposed originally in 2019. The final Treasury Regulations provide guidance relating to the allocation and apportionment of deductions and creditable foreign taxes, the definition of financial services income, foreign tax redeterminations, availability of foreign tax credits under the transition tax, the application of the foreign tax credit limitation to consolidated groups, adjustments to hybrid deduction accounts to take into account certain inclusions in income by a US shareholder, conduit financing arrangements involving hybrid instruments, and the treatment of certain payments under the Global Intangible Low-Taxed Income ("GILTI") provisions.

In addition, Treasury and the IRS issued new proposed Treasury Regulations that include guidance on 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; transition rules relating to the impact on loss accounts of net operating loss carrybacks allowed by reason of the CARES Act; the definition of foreign branch category and financial services income; and the time at which foreign taxes accrue and can be claimed as a credit. The document also contains proposed regulations clarifying rules relating to foreign derived intangible income

Please refer to this Deloitte alert which provides a summary of these final and proposed Treasury Regulations.

IRS issues guidance on restricting telescoping in Advance Pricing and Mutual Agreement cases

In an October 28, 2020 announcement, the IRS Advance Pricing and Mutual Agreement ("APMA") program issued guidance restricting the use of "telescoping" in the implementation of resolutions for mutual agreement procedure ("MAP") and advance pricing agreement ('APA") cases negotiated under US income tax treaties with foreign tax jurisdictions. Telescoping allows US taxpayers that have obtained a MAP or APA resolution to reflect adjustments arising in one or more prior years to be aggregated, netted, and reported into a later year, allowing taxpayers to reduce the burden of amending US federal income tax returns. Without telescoping, a taxpayer would be required to file amended federal tax returns for each year covered by the MAP or APA resolution.

For additional details, please see the Deloitte tax@hand article dated November 2, 2020.

Final IRC section 245A and 951A Treasury Regulations released

On November 20, 2020, the Treasury and the IRS released final Treasury Regulations under IRC sections 245A and 951A, coordinating the extraordinary disposition rule with the disqualified basis and disqualified payment rules.

The final Treasury Regulations finalize the proposed Treasury Regulations that were released on August 21, 2020 with one revision (as discussed in part II of the Explanation of Revisions) and are effective on January 12, 2021.

For additional details, please see the Deloitte tax@hand article dated November 20, 2020.

Final and proposed PFIC guidance released

On December 4, 2020, the Treasury and Internal Revenue Service released final Treasury Regulations regarding the determination of whether a foreign corporation is treated as a passive foreign investment company (PFIC) for purposes of the IRC, and the application and scope of certain rules that determine whether a US person that indirectly holds stock in a PFIC is treated as a shareholder of the PFIC. The regulations affect US persons with direct or indirect ownership interests in certain foreign corporations.

Also released on this date were proposed Treasury Regulations regarding the determination of whether a foreign corporation is treated as a PFIC for the IRC.

For additional details, please see the Deloitte tax@hand article dated December 4, 2020.

Treasury & IRS release correction to final GILTI high-tax exception election regulations

On December 11, 2020, the Treasury and the IRS published corrections to the Treasury Regulations on the GILTI high-tax exception ("THE") were published in the Federal Register.

The corrections amend certain requirements for making the GILTI HTE election (or revocation) on an amended federal income tax return (i.e., for a prior year). Specifically, the amendment narrows the requirement that each United States shareholder in the CFC as of the end of the CFC's taxable year to which the election relates must file amended federal income tax returns to only those United States shareholders that own, within the meaning of section 958(a), stock in the CFC.

For further information, please refer to the actual text of the corrections as published in the Federal Register in 85 FR 79853 and 85 FR 79837.

Federal Periods and Methods

IRC section 274 final Treasury Regulations: deduction for business meals and entertainment expenses

On October 9, 2020, the Treasury and the IRS published the IRC section 274 final Treasury Regulations in the Federal Register. The final Treasury Regulations provide guidance on changes to the business expense deduction for meals and entertainment that generally eliminated the deduction for any expenses related to entertainment, amusement, or recreation. The final Treasury Regulations address the disallowance of the deduction for expenditures related to entertainment, amusement, or recreation activities, including the applicability of certain exceptions to this disallowance. The Final Treasury Regulations also provide guidance to determine whether an activity is considered entertainment and address the limitation on the deduction of food and beverage expenses.

Please refer to this alert from Deloitte Tax LLP which provides a summary of these final Treasury Regulations.

Final bonus depreciation Treasury Regulations under IRC sections 168(k) and 1502 and procedural guidance released

In August of 2018, the Treasury and IRS previously issued proposed Treasury Regulations under IRC section 168(k). In September of 2019, the Treasury and IRS issued final Treasury Regulations under IRC section 168(k) and a new set of proposed Treasury Regulations. In September of 2020, the Treasury and IRS issued final Treasury Regulations under IRC sections 168(k) and 1502. On November 6, 2020, the Treasury and the IRS issued Rev. Proc. 2020-50 that provides guidance for taxpayers to apply these final Treasury Regulations and permits taxpayers that apply such Treasury Regulations to revoke certain previously-made elections or make certain late elections.

Please refer to the Deloitte alert which provides a summary of these final Treasury Regulations.

Final Treasury Regulations issued under IRC section 1031 like-kind exchange rules

On November 23, 2020, the Treasury and the IRS issued final Treasury Regulations under section 1031, which provide guidance on the limitation of the application of the like-kind exchange rules to exchanges of real property and the adaptation of an existing incidental property exception to apply to a taxpayer's receipt of personal property that is incidental to the real property the taxpayer receives in the exchange, as amended by the Tax Act. The final Treasury Regulations amend the proposed Treasury Regulations, issued June 11, 2020, to revise the definition of "real property" and eliminate the "purpose or use test." The final Treasury Regulations retained the language of the proposed Treasury Regulations and clarify that the rules set forth in the final Treasury Regulations apply only for purposes of IRC section 1031 and no inference is intended with respect to other IRC sections.

US Multistate

Alabama governor directs DOR to exclude some federal CARES Act benefits from taxation

Given that the COVID-19 pandemic "severely curtailed" the Alabama Legislature's 2020 regular session and its ability to "safely, fully and fairly" consider the Alabama income tax implications of certain federal stimulus measures for businesses and individuals, Alabama Governor Ivey recently signed a proclamation that directs the Alabama DOR to exclude any tax credits, advance refund amounts, or other direct benefits received under the CARES Act from Alabama income taxation and all calculations in determining a taxpayer's federal income tax deduction for Alabama income tax purposes under Chapter 18 of Title 40 of the Alabama Code. To effectuate this Alabama income tax relief, Governor Ivey's proclamation directs the Alabama Commissioner of Revenue to appropriately revise applicable Alabama tax return forms and instructions. Subsequently, the Department issued a release indicating that it is updating instructions and guidance for its "2020 returns for income tax and Financial Institution Excise Tax to implement the tax relief measures included in the proclamation related to CARES Act stimulus payments and Paycheck Protection Program ("PPP") loan forgiveness."

For additional details, please refer to the December 18, 2020 edition of State Tax Matters

Arkansas state high court holds that receipts from sale of credits is business income

The Arkansas Supreme Court recently affirmed that a product distribution company's proceeds from its sale of environmental credits constituted apportionable business income because the facts showed that it also maintains a regular course of business of selling environmental credits and thus satisfied the transactional test for such income classification.

For additional details, please refer to the November 6, 2020 edition of State Tax Matters.

California legislature allows certain non-US affiliates to deem to elect Water's Edge

Newly issued California law made several tax law changes, the most notable of which allows unitary, non-US affiliates that become California taxpayers solely due to California's economic nexus standard to be deemed to have made a water's edge election with the existing water's edge combined reporting group. This Multistate Tax Alert provides some background on this issue, summarizes the change made to the water's edge election rules, and provides some taxpayer considerations.

For additional details, please refer to Multistate Tax Alert dated October 7, 2020.

Colorado DOR updates guidance on state impact and treatment of some federal CARES Act provisions

The Colorado Department of Revenue ("DOR") released an updated publication addressing how some retroactive federal tax provisions under the CARES Act interact with Colorado corporate and individual income taxation in light of new state law addressing net operating losses and IRC section 163(j).

For additional details, please refer to the October 9, 2020 edition of State Tax Matters.

Colorado voters approve corporate income tax rate reductions

Voters in Colorado recently approved a ballot measure which, for tax years which begin after January 1, 2020, lowers the tax rate for both state corporate income taxes from 4.63% to 4.55%.

For additional details, please refer to the November 13, 2020 edition of State Tax Matters.

Hawaii guidance addresses P.L. 86-272 and new income tax economic nexus statutory thresholds

The Hawaii Department of Taxation ("DOT") issued administrative guidance addressing Public Law ("P.L.") 86-272 and reflecting legislation enacted in 2019 that imposes statutory bright-line transaction and gross receipts nexus thresholds including a lengthy listing of P.L. 86-272 protected and unprotected activities for purposes of administering Hawaii's net income taxes.

For additional details, please refer to the October 9, 2020 edition of State Tax Matters.

Maine Revenue Services addresses effect of COVID-19 pandemic-related telecommuting on nexus

Maine Revenue Services announced that for tax years beginning in 2020, it will not consider the presence of employees in Maine who commenced working remotely from Maine during the state of emergency and due to the pandemic, to establish, by itself, state corporate income tax nexus.

For additional details, please refer to the October 23, 2020 edition of State Tax Matters.

Massachusetts DOR adopts permanent sourcing rule addressing COVID-19 pandemic-related telecommuting

The Massachusetts DOR adopted a permanent administrative rule that sets forth general sourcing rules that apply to income earned by a nonresident employee who telecommutes on behalf of an in-state business from a location outside Massachusetts due to the COVID-19 pandemic.

For additional details, please refer to the October 23, 2020 edition of State Tax Matters.

Minnesota new law conforms with federal business expensing rules

New law provides Minnesota corporation franchise tax and individual income tax conformity with certain federal business expensing rules under IRC section 179, including full conformity for IRC section 179 expensing for property placed in service in tax year 2020 and later by eliminating Minnesota's addition adjustment of 80% of such federal deduction.

For additional details, please refer to the October 30, 2020 edition of State Tax Matters.

Nebraska DOR updates guidance on state treatment of federal GILTI and FDII provisions

The Nebraska DOR issued updated guidance addressing the state income tax treatment of certain provisions of the Tax Act, specifically treatment involving GILTI and foreign-derived intangible income ("FDII").

For additional details, please refer to the November 27, 2020 edition of State Tax Matters.

New Jersey DOT explains combined reporting of DRD calculation under newly signed law

The New Jersey DOT issued a notice on calculating the allocated dividend exclusion for combined group filers pursuant to new law that makes several technical corrections and revisions to clarify and simplify various aspects of New Jersey tax law that implements a mandatory unitary combined reporting regime for state corporation business tax purposes.

For additional details, please refer to the November 13, 2020 edition of State Tax Matters.

New Jersey bulletin summarizes combined reporting technical corrections and clarifications bill

The New Jersey DOT issued a technical bulletin that summarizes provisions under new law that makes several technical corrections and revisions to clarify and simplify various aspects of the New Jersey tax law changes enacted in 2018, which implemented a mandatory unitary combined reporting regime for state corporation business tax purposes. According to the Division, this summary merely lists and categorizes the recent law changes by effective date, and "there will be more detailed explanations for various topics at a later point."

For additional details, please refer to the December 18, 2020 edition of State Tax Matters

New Jersey - US Supreme Court denies request to review case mandating alternative apportionment

In a case involving the New Jersey DOT's mandated use of an alternative apportionment "25-50-25" methodology prescribed in N.J.A.C. 18:7-8.10(c), (i.e. 25% of receipts allocated to the State in which costs originate; 50% of receipts allocated to the State in which the service is performed; and 25% of the receipts allocated to the State in which the transaction terminates) for purposes of sourcing a New Jersey-based company's receipts from "fax blast" messaging services for state corporation business tax purposes, the US Supreme Court denied the taxpayer's request to review whether granting such "unfettered deference" to a state tax commissioner's decision to reapportion the revenues of an interstate business violates the Due Process and Commerce Clauses.

In the underlying case, the New Jersey Superior Court, Appellate Division, affirmed the New Jersey Tax Court's 2018 unpublished decision that use of the alternative apportionment "25-50-25" methodology was reasonable in lieu of the standard "costs of performance" sourcing methodology originally employed by the taxpayer. In doing so, the New Jersey Superior Court noted that the DOR has broad discretion to adjust a receipts allocation to reflect the economic realities of a taxpayer's business, and that use of the "25-50-25" methodology in this case reasonably reflected the portion of the company's services performed in New Jersey.

For additional details, please refer to the December 18, 2020 edition of State Tax Matters

North Carolina DOR updated guidance reflects state impact of some additional CARES Act provisions

The North Carolina DOR issued an updated notice on new law addressing provisions under the CARES Act including the state individual income tax impact of changes to IRC sections 461(l) and 168(e) involving excess loss limitations for taxpayers other than corporations and cost recovery for qualified improvement property.

For additional details, please refer to the October 9, 2020 edition of State Tax Matters.

Oregon DOR extends nexus relief timeframe for COVID-19 pandemic-related telecommuting

The Oregon DOR explains that for state corporate excise tax purposes the presence of teleworking employees in Oregon through December 31, 2020 generally will not be treated as a relevant factor when making a nexus determination if such employee(s) are regularly based outside Oregon.

For additional details, please refer to the November 27, 2020 edition of State Tax Matters.

Oregon Tax Court holds for taxpayer on some apportionment and income classification issues

In an 83-page opinion that follows the Oregon Supreme Court's related decision from 2018 involving the same taxpayer, the Oregon Tax Court, Regular Division, granted partial summary judgment for the taxpayer on i) certain underlying computation and data support issues related to the taxpayer's use of Oregon's special industry "audience ratio" apportionment for interstate broadcasters, and ii) its classification of certain dividends and gains from stock holdings as non-apportionable income (i.e., "nonbusiness" income) because they did not serve operational functions in its business, for state corporate excise (income) tax purposes. The Court also partially denied the Oregon DOR motions for summary judgment on some issues related to composition of the taxpayer's unitary group, its carryforward deductions for NOLs incurred in earlier tax years, and the "addback" of certain taxes paid to other states (namely, the Texas "margin" tax).

For additional details, please refer to the December 4, 2020 edition of State Tax Matters

Oregon DOR adopts new and amended CAT rules on unitary groups, sourcing and exclusions

The Oregon DOR has adopted new and amended administrative rules governing Oregon's corporate activity tax ("CAT") that address such topics as refund offsets, sourcing, exclusions, subtractions, estimated payments and unitary groups.

For additional details, please refer to the December 4, 2020 edition of State Tax Matters

Pennsylvania DOR addresses effect of COVID-19 pandemic-related telecommuting on corporate nexus

Following its April release of some guidance involving COVID-19 pandemic-related telecommuting and corporate nexus, the Pennsylvania DOR has issued temporary guidance relating to telework and related tax and nexus implications, which will be in effect until the earlier of June 30, 2021 or 90 days after the Proclamation of Disaster Emergency in Pennsylvania is lifted.

For additional details, please refer to the November 13, 2020 edition of State Tax Matters.

South Carolina DOR extends COVID-19 pandemic-related telecommuting relief through to June 30, 2021

Referencing its earlier guidance from May and August, the South Carolina DOR announced "temporary relief regarding a business's establishment of nexus solely because an employee is temporarily working in a different work location due to COVID-19" and which most recently was scheduled to expire on December 31, 2020, the South Carolina DOR has announced that it now will extend such relief through June 30, 2021. Accordingly, the DOR will not use changes solely in an employee's temporary work location due to the remote work requirements arising from, or during, the "COVID-19 relief period" from March 13, 2020 through June 30, 2021 as a basis for establishing nexus (including for Public Law 86-272 purposes) or altering apportionment of income.

For additional details, please refer to the December 4, 2020 edition of State Tax Matters

Vermont new law updates state conformity to IRC and revises filing and reporting deadlines

New law generally updates Vermont statutory references to the IRC for corporate income tax purposes; includes an automatic extension of the deadline for a corporate income taxpayer to file its return; and revises the time for a Vermont taxpayer to report Vermont income tax adjustments resulting from an amended federal return.

For additional details, please refer to the October 16, 2020 edition of State Tax Matters.

Wisconsin DOR addresses effect of COVID-19 pandemic-related telecommuting on nexus

The Wisconsin DOR states, "Wisconsin will not consider an out-of-state business to have nexus in Wisconsin if its only Wisconsin activity is having an employee working temporarily from the employee's home during this national emergency."

For additional details, please refer to the October 16, 2020 edition of State Tax Matters.

International

For a summary of additional international tax developments and other current major international income tax developments for the current quarter please refer to the Global Tax Developments-Accounting for Income Taxes publication. The Global Tax Developments publication will be issued shortly after the release of this publication. The Global Tax Developments publication also includes a summary of combined tax rates applicable in several key jurisdictions and the dates of enactment of rate changes, if applicable, under US GAAP.

OECD/G20 Inclusive Framework documents released

The Organisation for Economic Co-operation and Development ("OECD")/G20 Inclusive Framework on Base Erosion and Profit Sharing ("BEPS"), which groups 137 countries and jurisdictions for multilateral negotiation of international tax rules, agreed during its October 8-9, 2020 meeting that the two-pillar approach they have been developing since 2019 provides a solid foundation for a future agreement.

The following documents were released on October 12, 2020:

- Cover Statement by the Inclusive Framework on the Reports on the Blueprints of Pillar One and Pillar Two;
- Addressing the Tax Challenges Arising from the Digitalisation of the Economy HIGHLIGHTS;
- Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint;
- Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint;
- Tax Challenges Arising from Digitalisation – Economic Impact Assessment;
- Public Consultation on the Reports on the Pillar One and Pillar Two Blueprints;
- Tax Challenges Arising from Digitalisation – Top 10 Frequently Asked Questions

For additional details, please see the Deloitte tax@hand article dated October 16, 2020.

Australia
ATO finalizes long-awaited guidance on interest-free loans

On December 10, 2020, the Australian Taxation Office ("ATO") issued in final its long-awaited transfer pricing guidance on interest-free loans between related parties, in "Schedule 3 – Interest-free loans" to the ATO's financing Practical Compliance Guideline (PCG 2017/4). The schedule has effect as from 1 January 2020 and applies to existing and newly created related party interest free loans.

For additional details, please see the Deloitte tax@hand article dated December 9, 2020.

Tax loss carry back legislation passed

The 2020-21 Australian federal budget, handed down on October 6, 2020, included a temporary loss carry back measure, and the bill was passed by Parliament on October 9, 2020. Under the temporary loss carry back measure, a corporate tax entity is able to choose to carry back income tax losses (but not capital losses) incurred during any of the 2019-20, 2020-21, or 2021-22 years, to earlier taxable income years (but no earlier than the 2018-19 year). This measure is available to corporate tax entities with aggregated turnover of less than AUD 5 billion in a relevant loss year.

For additional details, please see the Deloitte tax@hand article dated October 27, 2020.

France
2021 draft finance bill released

The French government released its 2021 draft finance bill on September 28, 2020. Parliamentary discussions began on October 12, 2020 and are expected to be finalized by the end of December with a vote and enactment.

For additional details, please see the Deloitte tax@hand article dated October 3, 2020.

Ireland
Finance Minister announces Budget 2021

The Ireland Finance Minister reaffirmed the longstanding commitment to the 12.5% corporate tax rate, along with announcing a proposed update of Ireland's corporation tax roadmap that will include the introduction of interest limitation rules and anti-hybrid rules, as well as guidance from recently published reports of the OECD BEPS inclusive framework on the tax challenges of digitalization.

The knowledge development box, which is the first OECD compliant intellectual property ("IP") regime supporting businesses in retaining and exploiting qualifying assets, has been extended for a further two years, through December 31, 2022. The Minister announced that, as from October 13, 2020, sales of IP will be subject to a balancing adjustment, which essentially claws back any relief previously claimed where the proceeds received from the sale exceed the tax basis in the IP.

For additional details, please see the Deloitte tax@hand article dated October 16, 2020.

Germany

Upper house of parliament approves ratification of MLI

The German upper house of parliament approved the ratification of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") on November 6, 2020, after the lower house of parliament approved the MLI already on October 8, 2020. On November 22, 2020 the German president ratified the MLI, the ratification was published in the Federal Gazette dated November 27, 2020.

For additional details, please see the Deloitte tax@hand article dated November 9, 2020.

Luxembourg

Draft 2021 budget law presented to Chamber of Deputies

On October 14, 2020, Luxembourg's Finance Minister presented the draft 2021 budget law to the Chamber of Deputies.

The draft budget law proposes a temporary measure related to the fiscal unity regime to align it with a 2020 decision of the Court of Justice of the European Union ("CJEU"). This regime change, upon a joint request by all group members, would apply as from fiscal year 2020 and until fiscal year 2022.

In 2015, Luxembourgish legislation was amended to be aligned with CJEU case law allowing a group whose parent company is based in another European Economic Area ("EEA") state or who has a permanent establishment there to form a "horizontal tax consolidation" with its resident (first- or lower-tier) subsidiaries. The purpose of this measure is to allow vertically consolidated groups to convert to a horizontal form without the tax consequences of a dissolution of the tax group.

For additional details, please see the Deloitte tax@hand article dated October 15, 2020.

Mexico

Certain tax planning arrangements to be reported retroactively as from January 1, 2021

Mexico introduced a new chapter in its Federal Tax Code as part of its 2020 tax reform requiring taxpayers and/or tax advisors to report certain tax planning arrangements ("reportable schemes").

These rules will become effective on January 1, 2021 and will have retroactive effect for arrangements made in 2020 or before. Starting in 2021, tax advisors and/or taxpayers that designed, implemented, organized, or managed tax planning arrangements during fiscal year 2020 or later where the arrangement generates a tax benefit in Mexico will be responsible for reporting the scheme to the Mexican tax authorities.

For additional details, please see the Deloitte tax@hand article dated October 20, 2020.

United Kingdom

Supreme Court gives judgement on limitation issues in Franked Investment Income Group Litigation Order

The UK Supreme Court on November 20, 2020 gave its judgement in Test Claimants in a recent court case which is the latest judgement in the Franked Investment Income ("FII") Group Litigation Order , which concerns long-running litigation on claims brought by UK multinational companies who argued that the (now repealed) advance corporation tax and FII rules imposed higher tax burdens on UK groups with foreign subsidiaries compared to UK groups without foreign subsidiaries, and hence infringed EU law.

For additional details, please see the Deloitte tax@hand article dated December 3, 2020.

Accounting Developments

The following Financial Reporting Alerts on considerations related to COVID-19 and an economic downturn have been updated or released through the fourth quarter. Please refer to the Deloitte's publications listed below for more information:

Financial Reporting Alert 20-2: Financial Reporting Considerations Related to COVID-19 and an Economic Downturn, updated on September 18, 2020 includes discussion of key US GAAP financial statement considerations related to recent COVID-19 developments.

Financial Reporting Alert 20-3, COVID-19 and Financial Reporting Trends - Accounting for the Pandemic in the Current Quarter, published on June 5, 2020 includes guidance on which accounting hot topics should companies keep in mind related to COVID-19 as they prepare quarterly financial statements.

Financial Reporting Alert 20-4: COVID-19 and Non-GAAP Measures, published on July 1, 2020 considers key considerations for registrants related to reflecting the specific impact of COVID-19 in their non-GAAP measures.

Financial Reporting Alert 20-5: COVID-19 Financial Reporting Trends – Different News or More of the Same?, published on October 20, 2020 considers financial reporting and accounting challenges that are top of mind for many companies, as well as insights into different alternatives that companies are pursuing in response to these challenges.

Deloitte's Quarterly accounting roundup: Q4 2020 update on important developments is available to view on-demand and addresses the issues standard-setters and regulators have been addressing recently including:

- Accounting, standard-setting, and reporting developments for the quarter, including any developments related to COVID-19.
- Coverage of the 2020 AICPA Conference. Recent positions on accounting and reporting of accounting and auditing standard-setters and regulators.
- Other hot topics.

For other 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 us at Dbriefs Webcasts.

Additional Resources and Other Interesting Topics

IRS Clarifies Guidance on the Deductibility of Business Expenses Paid with Forgiven PPP Loans

On November 18, 2020, the IRS issued a revenue ruling and revenue procedure to reiterate and clarify its position on the deductibility of business expenses paid with proceeds from forgiven Paycheck Protection Program ('PPP") loans. Rev. Rul. 2020-27 provides that taxpayers may not claim a deduction for otherwise deductible business expenses that are paid with proceeds from forgiven PPP loans. Rev. Proc. 2020-51 provides a safe harbor allowing a taxpayer to claim a deduction in its taxable year beginning or ending in 2020 for certain eligible expenses if specific criteria are met.

For more information on the guidance issued, see the Deloitte tax@hand article dated on November 20, 2020.

Fiscal Year 2021 Focus Guide released by LB&I

The IRS Large Business & International division (hereinafter "LB&I") released its Fiscal Year 2021 Focus Guide. The Focus Guide is LB&I's annual publication that outlines its strategic vision and goals for the upcoming fiscal year. In its Fiscal Year 2021 Focus Guide, LB&I reaffirms its commitment to the IRS' strategic goals for the period 2018-2022, which include: empowering all taxpayers to meet their tax obligations; protecting the integrity of the tax system by encouraging compliance through administration and enforcement; collaborating with external partners to improve tax administration; cultivating a well-equipped and diverse workforce; advancing the role of data to improve operations; and increasing effectiveness in IRS operations.

For additional details, please refer to the November 2020 issue of IRS Insights.

Learn More

Additional resources you may find helpful

- Accounting for Income Taxes—Quarterly Hot Topics Archive
- TaxFirst Webcast Series
- Deloitte Tax Accounting & Provision Services Home Page
- Deloitte Tax Accounting & Provisions Dbriefs Webcasts Series
- Deloitte Heads Up Newsletter Archive
- Global Tax Developments Quarterly—Accounting for Income Taxes
- tax@hand

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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