NJ A4495 enacted conforming CBT to IRC Sec. 250 deduction and amending mandatory combined reporting provisions

Overview

On October 4, 2018, Governor Murphy signed Assembly Bill 4495 (A4495),[1] which adds provisions to the New Jersey Corporate Business Tax (CBT) and makes certain technical corrections related to the recently-enacted A4202. (For additional details on the enacted provisions of A4202, please see our July 9 MTS tax alert available here.) The amendments enacted by A4495 provide for the following:

- Adoption of a provision conforming the CBT to the federal deduction under IRC Section 250.
- Changes the effective date for purposes of mandatory combined reporting from privilege periods beginning on or after January 1, 2019 to privilege periods *ending* on and after July 31, 2019.
- Modifies the computation of the three-year average element of the allocation formula applied to the net dividend income included in entire net income for periods beginning after December 31, 2016 and before January 1, 2019.
- Reinstates the limit on dividend received exclusion when there is a net operating loss carryover.
- Amends the net operating loss and interest addback provisions.

In this tax alert, we summarize the significant elements of A4495, as well as offer some taxpayer considerations.

Section 250 deduction

The 2017 Tax Cuts and Jobs Act (TCJA)[2] promulgated a tax on global intangible low-taxed income (GILTI) under IRC Section 951A for tax years beginning on or after January 1, 2018. In addition, the TCJA introduced a new deduction under the special deductions for corporarions provisions, IRC Section 250, for corporate taxpayers impacted by GILTI.

A4495 provides that for privilege periods[3] beginning on and after January 1, 2018, corporate taxpayers are permitted a deduction toward entire net income in the amount of the full value of the deduction the taxpayer was allowed under IRC Section 250. This new deduction is allowable to the extent the corresponding income has not been excluded or otherwise exempted under other provisions of the New Jersey CBT.[4]

The conforming deduction related to IRC Section 250 only applies to corporate taxpayers.

Combined filing provisions

A4202, enacted on July 1, 2018, adopted mandatory combined reporting for certain unitary businesses. A4495 changes the effective date for requiring a combined group filing to privilege periods *ending* on and after July 31, 2019. (Prior to this amendment, mandatory combined reporting was effective for privilege periods beginning on and after January 1, 2019).[5] The effective date change impacts fiscal year CBT taxpayers with tax years ending July 31, 2019, or otherwise before December 31, 2019.

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[1] P.L. 2018 c.131. A copy of the adopted law is available here.
[2] P.L. 115-97.
[3] A privilege period is the calendar or fiscal accounting period for which a tax is payable. N.J. Rev. Stat. § 54:10A-4(j).
[4] A4495, p2, lines 8-21
[5] A4495, p30, lines 5-6

Further, A4495 provides for periods ending on or after July 31, 2019, "the minimum tax of each member of a combined group filing a mandatory or elective New Jersey combined return shall be $2,000 for the group privilege period."[6]

A4495 also adds a clarification that adjustments to interest addbacks do not apply to related members included in a New Jersey combined return.[7]

Dividend-related provisions

For 80 percent or more owned subsidiaries, New Jersey CBT provisions allow for a exclusion of a certain percentage of dividends, paid or deemed paid, included in federal taxable income. For periods beginning on or before December 31, 2016, the dividend exclusion rate for 80 percent or more owned subsidiaries had been 100 percent.

For periods beginning after December 31, 2016 and before January 1, 2019, A4202 amended the dividend exclusion rate for 80 percent or more owned subsidiaries to 95 percent. A4202 also provided that the portion of the dividends included in entire net income is reduced by a special allocation factor to calculate the New Jersey tax liability owed, based on a three year average of the allocation factor or 3.5 percent, whichever is lower.[8] A4495 adjusts the three includible years in the average calculation to 2014 to 2016 (from 2015 to 2017). For privilege periods beginning on or after January 1, 2019, the dividend exclusion rate for 80 percent or more owned subsidiaries is 95 percent with no application of the special allocation noted above.

Additionally, A4495 reinstates the limit on the dividend received exclusion where taxpayers have net operating loss carryovers,[9] a limitation that had been previously repealed by A4202.[10]

Net operating loss (NOL)

Pursuant to the enactment of A4202, New Jersey amended various NOL provisions resulting from the adoption of mandatory combined reporting. Generally, under A4202, NOLs incurred in privilege periods prior to January 1, 2019 are subject to an NOL conversion calculation, while NOLs incurred for a tax year starting on or after January 1, 2019 are separately carried forward. A4495 aligns the effective date for a "prior net operating loss conversion carryover" to privilege periods ending before July 31, 2019, in accordance with the modification to the effective date for mandatory combined reporting. Further, the legislation clarifies that the base year for purposes of the prior NOL conversion carryover is the last privilege period ending before July 31, 2019.[11]

A4495 also codifies limits[12] on a NOL carryforward when a 50 percent or more change in ownership of a corporation occurs due to redemption or sale of stock and the corporation changes the trade or business that generated the loss. Additionally, similar limitations apply where the "facts support the premise" that the corporation was acquired for the primary purpose of using the NOL carryforward. These limitations do not apply to members included in a New Jersey combined return.[13]

Considerations

The amendment provided by A4495 to adopt the IRC Section 250 deduction reinforces that CBT taxpayers are otherwise required to include GILTI and foreign derived intangible income (FDII) in the CBT taxable base. It should be noted that neither A4202 nor A4495 address the characterization of GILTI or FDII for purposes of the allocation factor.

Taxpayers affected by the adoption of mandatory combined filing should also closely analyze the potential implications of A4495's various amendments, including the change in the effective date and the minimum tax provisions.

Contacts:

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[6] A4495, p34, lines 22-25
[7] A4495, p7, lines 18-20
[8] New Jersey recently created a new Form CBT-DIV 2017 to supplement the 2017 Form CBT 100 or BFC-1 to account for the impact of IRC Section 965 upon the CBT. The Form CBT-DIV (which is required to be filed prior to January 31, 2019) and instructions are available here.
[9] A4495, p10 lines 2 and 3
[10] N.J.S.A. 54:10A-4(k)(6)(B)
[11] A4495 p17, lines 14-16
[12] N.J.A.C. sec. 18:7-5.14
[13] A4495 p19, lines 3-13

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