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Accounting for Income Taxes

Quarterly Hot Topics

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New federal administrative/legislative/judicial updates

PLR rules that subsidiary REIT qualifies for the publicly offered REIT exception to the preferential dividend rule

The Internal Revenue Service ("IRS"), in PLR 201924003, concluded that a subsidiary Real Estate Investment Trust ("REIT") owned indirectly by the operating partnership ("OP") of a publicly offered REIT qualified for the publicly offered exception to the preferential dividend rule because the subsidiary REIT, its immediate parent, and the OP are included in the consolidated financial statements of the publicly offered REIT filed with the Securities and Exchange Commission ("SEC").

Although a private letter ruling does not constitute precedent and is not binding on the IRS with respect to taxpayers other than the taxpayer who received the ruling, private letter rulings are indicative of the thinking of the IRS, and the IRS places some weight on maintaining consistent ruling positions. Accordingly, if a taxpayer has determined that a subsidiary REIT made a distribution that, apart from the publicly offered REIT exception, would not have qualified for the dividends paid deduction, it should consider whether the subsidiary REIT would qualify as a publicly offered REIT or whether the subsidiary REIT should consider obtaining its own private letter ruling.

IRS issues proposed regulations addressing the determination of built-in gains and losses under IRC section 382

On September 9, 2019 the Department of the Treasury ("Treasury") and the IRS issued Proposed Treasury Regulations on the items of income and deduction that are treated as built-in gains and losses under IRC section 382. These Proposed Treasury Regulations are prospective and are proposed to be effective for ownership changes occurring after the proposed Treasury Regulations are finalized. Corporations that have significant loss attributes, and in particular, those undergoing debt restructurings or bankruptcies, as well as companies that are looking at acquiring corporations with significant tax attributes, should consider the potential impacts of the Proposed Treasury Regulations.

Treasury and the IRS recently issued proposed Treasury Regulations and Notices related to the Tax Cuts and Jobs Act (the "Tax Act")

The recently issued proposed Treasury Regulations and Notices may impact the financial statement income tax accounting calculations pursuant to ASC 740 of companies subsequent to the period of enactment.

Notice 2019-46: domestic partnerships and S corporations filing under the proposed GILTI Treasury Regulations

On August 22, 2019 Notice 2019-46 (the "Notice") was issued, which provides that the Treasury and the IRS intend to issue Treasury Regulations that will permit a domestic partnership or S corporation to apply the rules in Proposed Treas. Reg. section 1.951A-5 for taxable years ended before June 22, 2019. The Notice also provides relief from certain penalties for a domestic partnership or S corporation that acted consistently with Proposed Treas. Reg. section 1.951A-5 on or before June 21, 2019.

Very generally, if a domestic partnership or S corporation (an "Applicable Entity") issued Schedules K-1 under Proposed Treas. Reg. section 1.951A-5 before June 22, 2019, and has not (and will not) reissue Schedules K-1 under the final regulations under IRC section 951A ("Final Regulations") (T.D. 9866), the Applicable Entity may apply the Notice in one of two ways.

First, the Applicable Entity may file its partnership or S corporation return (for taxable years ended before June 22, 2019) consistent with Prop. Treas. Reg. section 1.951A-5. Provided that the requirements of the

Notice are satisfied, the Applicable Entity would be permitted to apply Proposed Treas. Reg. section 1.951A-5 for the relevant taxable year(s) (notwithstanding that the Final Regulations apply to taxable years beginning after December 31, 2017) and the penalties identified in Section 4 of the Notice would not apply to the Applicable Entity.

Second, the Applicable Entity may file its partnership or S corporation return consistent with Treas. Reg. section 1.951A-1(e) (*i.e.*, the Final Regulations). Provided that the requirements of the Notice are satisfied, the penalties identified in Section 4 of the Notice would not apply to the Applicable Entity for not reissuing Schedules K-1 based on the Final Regulations.

In both cases, the Applicable Entity must satisfy certain notification and reporting requirements. The Notice does not directly address the application of Proposed Treas. Reg. section 1.951A-5 and the potential application of certain penalties to owners of Applicable Entities (*i.e.*, partners of domestic partnerships and shareholders of S corporations).

Final Treasury Regulations withdrawing Treasury Regulation section 1.451-5 for advance payments received for the sale of goods issued

On July 15, 2019, the Treasury and the IRS issued Final Treasury Regulations under IRC section 451(c), which repeal Treas. Reg. section 1.451-5, effective for taxable years ended on or after July 15, 2019. Treas. Reg. section 1.451-5 provided a two-year deferral for advance payments for inventoriable goods, and potentially a longer deferral for advance payments for the sale of non-inventoriable goods. IRC section 451(c), enacted as part of the Tax Act, generally codified the deferral method provided in Rev. Proc. 2004-34, which provides for a one-year deferral for the recognition of certain advance payments and thus resulted in the repeal of Treas. Reg. section 1.451-5. IRC section 451(c) is effective for tax years beginning after December 31, 2017.

As a result, taxpayers that have established a method of deferring advance payments under Treas. Reg. section 1.451-5 may continue to use Treas. Reg. § 1.451-5 to defer advance payments for the sale of goods for tax years beginning after December 31, 2017 provided such tax year ends before July 15, 2019. Such taxpayers will not be required to change to/or adopt the one-year deferral method under section IRC 451(c) for their first tax year beginning after December 31, 2017.

Bonus depreciation time sensitive election/revocation relief available

On July 31, 2019, the IRS issued Revenue Procedure 2019-33, which provides a limited time for taxpayers to revoke or make late elections not to claim 100% bonus depreciation (IRC section 168(k)(7)), to claim 50% bonus depreciation in lieu of 100% bonus depreciation (IRC section 168(k)(10)), or to claim bonus depreciation on certain plants (IRC section 168(k)(5)) for assets acquired and placed in service after September 27, 2017 in a taxpayer's tax year that includes September 27, 2017. Taxpayers could effectuate the late election or revocation by filing 1) an amended return[1] that must be filed before the taxpayer files its return for the first taxable year succeeding its 2016 or 2017 tax year, or 2) a method change which is available for a taxpayer's first, second, or third tax year succeeding its 2016 or 2017 tax year. In certain cases, a taxpayer may be considered to be deemed to have made an election under IRC section 168(k)(5), 168(k)(7) or 168(k)(10) unless it takes an affirmative action.

Proposed Treasury Regulations and new procedural guidance for revenue recognition under IRC section 451 issued

On September 5, 2019, the Treasury and the IRS issued Proposed Treasury Regulations under IRC sections 451(b) and 451(c) providing long-awaited guidance regarding certain revenue recognition provisions of the Tax Act. In addition to the above proposed regulations, on September 6, 2019, the IRS issued Rev. Proc. 2019-37, which modifies prior procedural guidance for making method changes to comply with IRC sections 451(b) and 451(c). This guidance provides favorable rules including a waiver of

[1] or Administrative Adjustment Request (AAR) by a BBA partnership

the no-back-year-audit-protection rules for certain taxpayers under exam and the option of effectuating several of the method changes to comply with the Proposed Regulations on a cut-off basis.

IRC section 168(k) final and 2019 proposed bonus depreciation Treasury Regulations released

On September 13, 2019, the IRS issued Final and Proposed Treasury Regulations under IRC section 168(k), providing guidance regarding the 100% bonus depreciation provision of the Tax Act. The Final Treasury Regulations are effective for qualified property placed in service during or after the taxable year that includes September 24, 2019. However, taxpayers may rely on the Final Treasury Regulations, in their entirety, for property acquired and placed in service by the taxpayer during taxable years ending on or after September 28, 2017. Similarly, taxpayers may rely on the Proposed Treasury Regulations, in their entirety, for property acquired and placed in service by the taxpayer during taxable years ending on or after September 28, 2017.

US Multistate

New state administrative/legislative/judicial updates

California chief counsel ruling addresses state apportionment of IRC section 338(g) elections

The California Franchise Tax Board ("FTB") has issued a chief counsel ruling addressing whether the gain realized from a deemed asset sale pursuant to an IRC section 338(g) election must be apportioned using the target's apportionment formula – responding affirmatively, as provided by California Code of Regulations, title 18, section 25106.5-9(a).

For additional details, please refer to the August 23, 2019 edition of State Tax Matters.

Connecticut new law includes phase-out of capital base tax, extension of 10% corporate business tax surcharge, and various other changes

Recently signed legislation includes multiple modifications to Connecticut's business tax laws phasing out the corporate capital base tax over four years.

Additionally, another recently signed bill in Connecticut makes additional changes to the pass-through entity tax (PET), which was passed in prior legislation.

For additional details, please refer to the July 5, 2019 edition of State Tax Matters, the July 12, 2019 edition of State Tax Matters, the September 13, 2019 edition of State Tax Matters, and the Multistate Tax Alert dated July 25, 2019.

Hawaii new law imposes economic nexus threshold provisions for income tax purposes

New Hawaiian law provides that a person lacking an in-state physical presence will be presumed as systematically and regularly engaging in business in Hawaii for state income tax purposes if, during the current or preceding calendar year the person engages in 200 or more business transactions with persons in Hawaii.

For additional details, please refer to the July 19, 2019 edition of State Tax Matters.

Illinois legislature adopts substantial changes to tax laws and passes credit reforms

The Illinois General Assembly adopted substantial changes to Illinois' tax laws, including a constitutional amendment to replace the current flat income tax with a graduated income tax that is subject to ratification by the voters.

Additionally, Illinois has adopted tax credit reforms under Public Act 101-0009, which was signed into law on June 5, 2019; Public Act 101-0031, signed into law on June 28, 2019; Public Act 101-0207, signed into law on August 2, 2019; and Public Act 101-0585, signed into law on August 26, 2019.

For additional details, please refer to the Multistate Tax Alert dated July 3, 2019 and the Multistate Tax Alert dated August 16, 2019, and the Multistate Tax Alert dated September 18, 2019.

Kentucky Department of Revenue adopts combined filing and NOL rules that reflect recently enacted law changes

The Kentucky Department of Revenue has adopted changes to its administrative regulations on combined corporation income tax return filing in Kentucky, as well as net operating loss ("NOL") computations, to reflect recently enacted law changes that revise and make some technical corrections to Kentucky's mandatory unitary combined reporting regime.

For additional details, please refer to the July 12, 2019 edition of State Tax Matters, and the September 6, 2019 edition of State Tax Matters.

Louisiana new law permits certain passthrough entities to elect to pay an entity-level income tax

New Louisiana tax law permits certain passthrough entities that are treated as partnerships under the federal income tax to elect either to pay state corporate income tax at the entity level or have their members/partners report the income from the entity on their respective state income tax returns.

For additional details, please refer to the June 28, 2019 edition of State Tax Matters.

Maine new law revises Capital Investment Tax Credit, which is based on bonus depreciation

New law makes some changes to the Maine Capital Investment Credit, including providing that such credit for corporations and individuals generally is equal to 1.2% of the net increase in depreciation attributable to the bonus depreciation deduction claimed by the taxpayer under IRC section 168(k) on certain property and reported as an addition to income for the taxable year.

For additional details, please refer to the July 12, 2019 edition of State Tax Matters.

Montana Supreme Court holds in taxpayer favor that 100% of dividends received from certain 80/20 affiliates may be excluded from water's edge combined return

The Montana Supreme Court has reversed a lower trial court to hold that a multinational corporation properly excluded 100% of the actual dividends it received from certain 80/20 affiliates for purposes of its Montana corporate income tax water's edge combined return for tax years 2008 through 2010.

For additional details, please refer to the July 19, 2019 edition of State Tax Matters.

New Hampshire new law adopts market-based sourcing for sales of services and certain intangibles and includes a throw-out rule

New law revises New Hampshire provisions for some taxpayers in determining when certain sales other than sales of tangible personal property are derived from sources within New Hampshire for apportionment purposes under New Hampshire's business profits tax and business enterprise tax.

For additional details, please refer to the September 13, 2019 edition of State Tax Matters.

New Jersey combined reporting administrative guidance explains sharing of tax credits and carryovers and addresses water's edge filing and Public Law 86-272

The guidance explains that taxable members of a combined group potentially may share their tax credits and tax credit carryovers with other taxable members of the combined group that are included on the same New Jersey combined return.

Additionally, the New Jersey Division of Taxation recently updated its administrative guidance addressing New Jersey corporation business tax ("CBT") combined return filing methods within the context of New Jersey tax reforms enacted in 2018 that collectively mandate combined reporting for New Jersey CBT purposes and allow for a worldwide election.

For additional details, please refer to the June 28, 2019 edition of State Tax Matters and the July 5, 2019 edition of State Tax Matters.

New Jersey Tax Court holds that AMA is preempted by Public Law 86-272

The New Jersey Tax Court recently held that New Jersey's alternative minimum assessment (AMA) does not apply to certain entities afforded protections under Public law ("P.L.") 86-272 for tax periods after June 30, 2006, because the AMA exclusively applies to "P.L. 86-272 entities" and thus essentially coerces these taxpayers to consent and pay the New Jersey corporation business tax.

For additional details, please refer to the July 5, 2019 edition of State Tax Matters.

New Jersey new law revises angel investor tax credit to include some investments in federal opportunity zones

New Jersey law increases the corporation business tax credits that are available for qualified investments under the "New Jersey Angel Investor Tax Credit Act" from 10% to 20% of the qualified investment made by a taxpayer in a New Jersey emerging technology business.

For additional details, please refer to the July 12, 2019 edition of State Tax Matters.

Oregon new law provides technical clarifications and definitions for recently enacted CAT

Under H.B. 3427, the Oregon Corporate Activity Tax ("CAT") is scheduled to go into effect for tax years beginning on or after January 1, 2020 and would be imposed on taxable commercial activity in excess of $1 million at the rate of 0.57%, plus a flat tax of $250 on the taxpayer's first $1 million of taxable commercial activity.

For additional details, please refer to the August 2, 2019 edition of State Tax Matters. For additional details on the Oregon CAT, please refer to Multistate Tax Alert dated May 20, 2019.

Rhode Island new law establishes a passthrough entity-level tax; addresses state reporting of federal audit adjustments

The new law includes amended definitions for final determination date and federal adjustment and provisions for purposes of state reporting of partnership federal audit adjustments, which appear to be in response to changes in the federal partnership audit and adjustment process under the federal 2015 Bipartisan Budget Act.

Additionally, the Rhode Island Division of Taxation recently issued an advisory summarizing recently enacted legislation, which permit certain defined pass-through entities (PTEs) to elect to pay state income tax at the entity level.

For additional details, please refer to the July 12, 2019 edition of State Tax Matters and the July 19, 2019 edition of State Tax Matters.

Rhode Island new law imposes 10-year statute of limitations on some tax deficiency determinations and collection actions

New law imposes two ten-year statute of limitations on two separate tax functions in Rhode Island involving state business corporation taxes, personal income taxes, and sales or use taxes.

For additional details, please refer to the July 26, 2019 edition of State Tax Matters.

Tennessee Department of Revenue letter ruling addresses franchise and excise tax treatment of Subpart F income under various scenarios

The Tennessee Department of Revenue has issued a letter ruling addressing whether a taxpayer is entitled to deduct subpart F income that it receives under various scenarios involving controlled foreign corporations (CFCs) pursuant to IRC section 951 for Tennessee franchise and excise tax purposes.

For additional details, please refer to the July 19, 2019 edition of State Tax Matters.

Texas Comptroller amends franchise tax rule addressing whether a taxpayer is engaged in retail or wholesale trade

The Texas Comptroller has adopted amendments to an administrative rule addressing whether an entity is primarily engaged in retail or wholesale trade for Texas franchise tax purposes, including revisions and an added definition of produce which pertains to taxpayers' eligibility to utilize the reduced franchise tax rate available for certain entities primarily engaged in retail or wholesale trade.

For additional details, please refer to the July 5, 2019 edition of State Tax Matters, the September 6, 2019 issue of State Tax Matters, the Multistate Tax Alert dated July 11, 2019, and the Multistate Tax Alert dated September 10, 2019.

Utah Supreme Court reverses trial court holding of double taxation of Utah residents' foreign business income being unconstitutional

The Utah Supreme Court has overturned a lower court's decision which previously held while the Constitutional tests for internal and external consistency may have been met by Utah's tax structure for local and interstate business income, the Utah tax structure failed under the standards set forth in existing case law applied to the taxation of foreign business income passed through to the shareholders.

For additional details, please refer to the August 23, 2019 edition of State Tax Matters.

Utah taxpayer allowed to exclude income from two foreign corporations on water's edge report despite federal election to treat them as domestic corporations

The Utah State Tax Commission recently held in the taxpayer's favor that despite its federal income tax election under IRC section 1504(d) to treat two foreign affiliates as domestic corporations for federal income tax consolidated return purposes, such entities must be excluded from the taxpayer's Utah water's edge combined report because a Utah statutory provision makes it clear that the income and activity from the corporations organized or incorporated outside the US is only included in the Utah water's edge combined report.

For additional details, please refer to the September 13, 2019 edition of State Tax Matters.

Multistate tax considerations of the Tax Act

Typically, states address conformity to the IRC through legislation, although certain states may seek to address details through administrative guidance. Legislative responses are expected to continue through 2019, depending upon when each state is in session.

The following states have recently enacted new tax legislation and/or administrative guidance in connection with the Tax Act and other new legislative updates:

Arizona

Arizona updates IRC conformity and enacts economic nexus. Arizona's Governor signed House Bill 2757 providing for a number of changes to Arizona's corporate and individual income tax law, as well as transaction privilege tax.

For additional details, please refer to the Multistate Tax Alert dated July 16, 2019.

California

California's Governor signed Assembly Bill 91 into law conforming California's tax laws to certain changes made under the Tax Act.

For additional details, please refer to the Multistate Tax Alert dated July 17, 2019 and the July 5, 2019 edition of State Tax Matters.

Florida

Florida Governor DeSantis signed House Bill 7127 (H.B. 7127), which amended Florida's tax laws affecting the corporate income tax. This new law generally updates corporate income tax statutory references in Florida to conform to the IRC provisions as in effect on January 1, 2019 retroactively providing a state corporate income tax modification for Global Intangible Low Taxed Income ("GILTI") effective January 1, 2018. Additionally, the Florida Department of Revenue ("Florida DOR") has issued two tax information publications and proposed administrative rule changes incorporating this recently enacted legislation.

For additional details, please refer to the August 9, 2019 edition of State Tax Matters, the July 5, 2019 edition of State Tax Matters, the August 30, 2019 edition of State Tax Matters, the September 13, 2019 edition of State Tax Matters, and the Multistate Tax Alert dated August 13, 2019.

Also, the Florida DOR has issued a tax information publication explaining the logistics of the recently enacted legislation that requires some state corporate income taxpayers to separately submit certain information from their federal income tax returns to the Department from its new webpage.

For additional details, please refer to the August 30, 2019 edition of State Tax Matters.

Georgia

The Georgia Department of Revenue ("Georgia DOR") discusses updated state conformity to IRC including decoupling from IRC section 163(j). The Georgia DOR has issued updated guidance that generally updates Georgia's corporate and individual income tax conformity to the IRC of 1986 provided for in federal law.

Additionally, the Georgia DOR has updated its policy bulletin discussing taxpayer eligibility for Georgia's exclusion for dividends from sources outside the United States under O.C.G.A. Sec. 48-7-21(b)(8)(A which includes a detailed chart addressing Georgia's treatment of GILTI and the foreign dividends-received deduction.

For additional details, please refer to the August 16, 2019 edition of State Tax Matters, and the August 23, 2019 edition of State Tax Matters.

Louisiana

The Louisiana Department of Revenue ("Louisiana DOR") concluded that the Base Erosion Avoidance Tax ("BEAT") provision of the Tax Act is not an income tax for state federal income taxes paid deduction purposes. Addressing IRC section 59A as enacted by the Tax Act, which establishes a base erosion minimum tax in an effort to prevent income shifting by imposing tax on certain corporations that make substantial payments to foreign affiliates, the Louisiana DOR has issued guidance on whether the BEAT is considered an "income tax" for purposes of Louisiana's statutory deduction for federal income taxes paid – concluding that the BEAT is not allowed as part of this "FIT deduction."

For additional details, please refer to the July 19, 2019 edition of State Tax Matters.

Massachusetts

The Massachusetts Department of Revenue ("Massachusetts DOR") issues administrative guidance on select international tax provisions within the Tax Act. The Massachusetts DOR has finalized administrative guidance (TIR 19-11) on how some provisions under the Tax Act may impact Massachusetts corporate taxpayers after the enactment of Massachusetts' supplemental budget bills in 2018 and 2019.

For additional details, please refer to the August 16, 2019 edition of State Tax Matters.

Michigan

In its recent tax policy newsletter, the Michigan Department of Treasury ("Michigan DOT") summarizes the state corporate income tax ("CIT") treatment of various provisions regarding foreign-sourced income under the Act and subsequently issued federal administrative guidance, including the taxation of GILTI; the taxation of FDII; and the deemed repatriation of accumulated deferred post-1986 foreign-sourced earnings and profits. According to the guidance, a CIT taxpayer's net GILTI income (i.e., GILTI income less its calculated GILTI deduction under IRC section 250) is subtracted from federal taxable income when determining its CIT tax base. The Michigan DOT has promised to issue further guidance in the future.

For additional details, please refer to the September 27, 2019 edition of State Tax Matters.

Minnesota

Governor Walz signed House File 5 impacting individual income, corporate income, trust and estate income tax, and sales and use tax. This new tax law updates the date of individual and corporate income tax conformity to the IRC to December 31, 2018, effective retroactively. The new tax law modifies the Minnesota treatment of various provisions under the Tax Act, including IRC section 965, GILTI and Foreign-Derived Intangible Income ("FDII").

For additional details, please refer to the Multistate Tax Alert dated June 26, 2019.

Missouri

New Missouri tax law decouples from IRC section 163(j) retroactive to January 1, 2018 for income tax purposes. The new law provides that interest expenses paid or accrued in the current taxable year, but not allowed as a deduction for federal income tax purposes under IRC section 163(j), must be subtracted from a taxpayer's federal adjusted gross income for purposes of calculating its Missouri adjusted gross income.

For additional details, please refer to the July 19, 2019 edition of State Tax Matters.

New Jersey

The New Jersey Division of Taxation ("DOT") has released new guidance addressing the state corporation business tax ("CBT") sourcing for GILTI and FDII, including the IRC section 250 deductions and announced that its previously issued guidance from December 2018 addressing the same is now obsolete.

Subsequently, the New Jersey DOT has released a clarification that includes addressing the meaning of "if applicable" as it pertains to its statement in TB-92 that to compute the New Jersey allocation factor on "Schedule J" the net amount of GILTI and the new amount of FDII must be included in the numerator (if applicable) and denominator.

For additional details, please refer to the August 23, 2019 edition of State Tax Matters and the August 30, 2019 edition of State Tax Matters.

New York

New York enacts new treatment of GILTI and changes to the economic nexus threshold. Governor Cuomo signed into law S.B. 6615 amending New York State's tax treatment of certain federal tax provisions enacted in the Tax Act.

The new law treats 95% of the GILTI income inclusion as exempt income under Article 9-A Corporation Franchise Tax. The new law additionally provides that for New York subchapter C corporations, GILTI is not in the numerator of the apportionment fraction and 5% of the IRC section 951A(a) inclusion unreduced by the GILTI deduction under IRC section 250(a)(1)(B)(1) is included in the apportionment fraction denominator.

For additional details, please refer to the June 28, 2019 edition of State Tax Matters and the Multistate Tax Alert dated July 31, 2019.

New York City

The New York City Department of Finance recently posted two memoranda regarding foreign-sourced income provisions under the Tax Act, including the City tax treatment and allocation methodology of the FDII deduction, GILTI, and mandatory deemed repatriation amounts under the City's Business Corporation Tax, General Corporation Tax, Banking Corporation Tax and Unincorporated Business Tax.

For additional details, please refer to the September 13, 2019 edition of State Tax Matters.

Oregon

Oregon new law addresses treatment of GILTI, IRC section 250 deduction, and apportionment. New law addresses certain provisions of the Tax Act by providing that the IRC section 250 deduction for GILTI as described under IRC section 951A must be added back for purposes of determining state taxable income under Oregon's corporate excise and individual income taxes.

For additional details, please refer to the July 26, 2019 edition of State Tax Matters.

City of Philadelphia

The City of Philadelphia Department of Revenue has issued an advisory notice to help clarify an earlier advisory notice on how business interest deduction limitations under IRC section 163(j) are treated for City Business Income and Receipts Tax (BIRT) purposes. The guidance states it is the general intent for a Business Income and Receipts Tax ("BIRT") Method II taxpayer to calculate its interest expense limitation consistent with the guidance provided in the Pennsylvania Department of Revenue's Corporation Tax Bulletin 2019-03.

For additional details, please refer to the August 2, 2019 edition of State Tax Matters.

Tennessee

The Tennessee Department of Revenue ("Tennessee DOR") has issued a summary of recently enacted tax law changes, including legislation providing that repatriated earnings and GILTI as enacted under the Tax Act must be excluded when computing net earnings or net losses for Tennessee franchise and excise purposes.

Additionally, the Tennessee DOR has issued guidance on the Tennessee franchise and excise tax implications of the Tax Act, specifically the state excise treatment of GILTI and the 2018 repatriated earnings.

Also, the Tennessee DOR issued a notice on Franchise and Excise Tax treatment of IRC section 163(j). Tennessee decouples from IRC section 163(j) for tax years beginning on or after January 1, 2020, such that the deduction for business interest expense will not be limited for state purposes and also addresses related treatment of taxpayers included in a federal consolidated return that must file separate returns in Tennessee. For tax years beginning after December 31, 2017 and before January 1, 2020, Tennessee recognizes the federal limitation.

For additional details, please refer to the June 28, 2019 edition of State Tax Matters, The July 12, 2019 edition of State Tax Matters, and the August 16, 2019 edition of State Tax Matters.

Vermont

The Vermont Department of Taxation has issued guidance on the state tax treatment of certain provisions under the Act, specifically Vermont's treatment of GILTI, the FDII deduction, the limitations on business interest expense under IRC section 163(j), and mandatory deemed repatriation under IRC section 965.

For additional details, please refer to the September 20, 2019 edition of State Tax Matters.

Amnesty/Voluntary Disclosure

Illinois Department of Revenue explains upcoming Tax Amnesty Program that provides for potential waiver of underlying interest and penalties

The Illinois Department of Revenue ("Illinois DOR") issued guidance explaining its upcoming tax amnesty program pursuant to recently enacted legislation which will apply to most taxes that it collects for taxes due from any taxable period ending after June 30, 2011 and prior to July 1, 2018.

For additional details, please refer to the August 9, 2019 edition of State Tax Matters.

Additionally, the Illinois DOR has proposed administrative rule amendments to help implement this upcoming tax amnesty program.

For additional details, please refer to the August 23, 2019 edition of State Tax Matters.

Kentucky DOR announces potential waiver of late-filing penalties for additional taxpayers

The Kentucky Department of Revenue has stated it will waive any late filing penalty for C-corporation taxpayers with tax years beginning on or after January 1, 2018, if they have timely filed an extension prior to June 27, 2019, and they file their tax return up to 30 days later than the extended due date.

For additional details, please refer to the September 13, 2019 edition of State Tax Matters.

New Jersey Division of Taxation waives late filing penalty for CBT filings due October 15

The New Jersey DOT has released a notice announcing that given the extended filing date for the 2018 New Jersey CBT return on October 15, 2019, is the same due date as the federal return, it will automatically waive the late filing penalty for a CBT taxpayer with a properly extended federal return due date of October 15, 2019, if the return is filed by November 15, 2019 for extended calendar year corporations.

For additional details, please refer to the September 13, 2019 edition of State Tax Matters.

International

Protocols to US tax treaties with Japan, Luxembourg, Spain and Switzerland approved

The US Senate on July 16 and 17, 2019 approved resolutions of ratification of protocols signed during the administration of President Obama that would amend the US income tax treaties currently in force with Japan, Luxembourg, Spain, and Switzerland. Doing so gives President Trump the authority to ratify each of them.

In the case of each protocol, ratification by the President, and completion by the other country of its own ratification procedures, will permit the protocol to enter into force when (or shortly after) each country notifies the other, in accordance with the formality prescribed in the protocol, that ratification has occurred.

All the protocols other than the Luxembourg protocol would add mandatory binding arbitration provisions (often applicable in transfer pricing matters) to their respective treaties. The Luxembourg and Switzerland protocols would conform their treaties' exchange of information provisions more closely to those in other US treaties. The Japan protocol would, like the US model treaties (US Models) and US treaties with other developed countries, reduce to zero the general rate of source-country tax on interest owned by a treaty-country resident. It would also institute collection assistance provisions similar to those found in a select few recent US treaties. Finally, the Spain protocol would broadly update the provisions of the current treaty to more closely track those of US treaties with other European Union (EU) member states. Among other things, these updates would in some cases result in reducing permitted source-country tax rates, or eliminating source-country taxes altogether, as compared to the current treaty with Spain. The updates would also give the treaty with Spain a more "modern" limitation on benefits (LOB) article.

For additional details, please see the tax@hand article dated July 26, 2019.

The protocol amending the Japan-US tax treaty entered into force on August 30, 2019, the date Japan and the US exchanged instruments of ratification, and applies to withholding taxes on dividends and interest paid or credited on or after November 1, 2019. For additional details, please see the tax@hand article dated August 30, 2019.

The Ninth Circuit reverse the Tax Court in *Altera*

On June 7, 2019, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") reversed the Tax Court decision in *Altera Corporation & Subsidiaries v. Commissioner*, 145 T.C. No. 3 (2015). At issue was the validity of Treas. Reg. section 1.482-7A(d)(2), which mandates that stock-based compensation ("SBC") costs related to the intangible development activity of a qualified cost sharing arrangement ("QCSA") must be included in the joint cost pool of the QCSA (the "all costs rule"). A three-judge panel ruled 2 to 1 that the all costs rule is consistent with IRC section 482 and that, therefore, such costs must be included in the cost pool.

This is the second case in which the Ninth Circuit has considered this issue, and the first case in which the issue has been considered since the regulations were amended in 2003 to specifically include SBC costs in the all costs rule. The Ninth Circuit invalidated a prior version of the all costs rule that did not specifically mention SBC costs.

For additional details, please refer to the Deloitte IRS Insights article dated July 8, 2019.

Accounting Developments

FASB tentatively changes effective dates for new Accounting Standards

On July 17, 2019, the FASB tentatively decided to change the manner in which it staggers effective dates for major standards and to amend the effective dates in some of its recently issued or amended major Accounting Standards Updates ("ASU") to give implementation relief to certain types of entities. Specifically, the Board tentatively decided to change the effective dates of standards on topics in the *FASB Accounting Standards Codification* ("ASC") as follows:

- *Derivatives and Hedging* (ASC 815): Defer the effective date for nonpublic business entities (non-PBEs) by one year.
- Leases (ASC 842): Defer the effective date for non-PBEs by one year.
- *Financial Instruments — Credit Losses* (ASC 326): Defer the effective date for (1) smaller reporting companies (SRCs) by three years, (2) non-SEC filer PBEs by two years, and (3) non-PBEs by one year.
- *Financial Services — Insurance* (ASC 944): Defer the effective date for (1) SEC filers, excluding SRCs, by one year, (2) non-SEC filer PBEs and SRCs by three years, and (3) non-PBEs by two years.

The FASB plans to issue two proposed ASUs that incorporate its decisions: one on the amended effective dates for the credit losses, derivatives and hedging, and leases standards and one on the insurance standard. Each proposed ASU is expected to have a 30-day comment period. Once the tentative changes are formally approved, the delay in the adoption of these standards will also result in the delay of any implications the accounting changes have on an entity's income tax provision for financial reporting purposes.

For additional details and a full summary of the tentative changes, please see the Heads Up issued on July 18, 2019.

SEC Staff issues statement on LIBOR transition

In August of 2019, the SEC staff issued a statement that discusses the expected discontinuation of LIBOR use and how the transition from LIBOR may significantly affect financial markets and market participants. The statement provides questions and considerations for market participants related to new or existing contracts and other business risks, as well as guidance from the SEC's divisions of Corporation Finance, Investment Management, and Trading & Markets and its Office of the Chief Accountant. The statement emphasized that the LIBOR transition could significantly affect a market participant's financial reporting

and its accounting in different areas, including (1) debt modifications, (2) hedge accounting, (3) valuation (i.e., inputs used in valuation models), and (4) income taxes.

For additional details, please see the Heads Up issued on August 6, 2019.

FASB tentatively determines transition method and effective dates for ASU to simply the accounting for income taxes

On September 4, 2019, the FASB Board discussed comments received on its proposed ASU to modify ASC 740 to simplify the accounting for income taxes. Amongst the key topics discussed during the meeting, the Board tentatively determined the transition method entities can apply in adopting the various provisions of the proposed amendments, the effective dates applicable to public and non-public business entities, and the ability for entities to early adopt the amendments. The Board directed the FASB staff to draft a final ASU for the Board's approval.

For additional information on the tentative decisions reached by the FASB Board, refer to the FASB summary of the September 4, 2019 meeting.

Learn More

A Roadmap to Accounting for Income Taxes

On December 6, 2018, Deloitte published the 2018 edition of **A Roadmap to Accounting for Income Taxes.** This Roadmap provides Deloitte's insights into and interpretations of the income tax accounting guidance in ASC 740 and IFRS Standards. Throughout the 2018 edition of the Roadmap, new guidance has been added, including a new appendix, "Frequently Asked Questions About Tax Reform," and minor edits have been made to existing guidance to improve its clarity.

A Roadmap to Accounting for Income Taxes is available for immediate download on IAS Plus.

We hope that you find our Roadmap useful and informative.

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- Accounting for Income Taxes—Quarterly Hot Topics Archive
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- Global Tax Developments Quarterly—Accounting for Income Taxes

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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