Welcome to our June 2019 Quarterly tax developments publication.

Here we describe certain tax developments previously summarized in Tax Alerts or other EY publications or identified by EY tax professionals or EY foreign member firms. These developments may affect your tax provision or estimated annual effective tax rate.

We compile this information because we recognize that, for many companies, the most challenging aspect of accounting for income taxes is identifying changes in tax law and other events when they occur so the accounting can be reflected in the appropriate period. However, this publication is not a comprehensive list of all changes in tax law and other events that may affect income tax accounting.

This edition covers certain enacted and effective tax legislation, as well as regulatory developments, legislative proposals and other items identified through 14 June 2019, except as noted.

We list EY publications that you can access through our Tax News Update website, if you are registered. Anyone interested in registering should contact Joan Osborne at joan.osborne@ey.com.

See our previous editions for additional tax developments.

Tax developments

Legislation enacted in the second quarter

Companies are required to account for the effects of changes in tax laws in the period the legislation is enacted. These changes are included in a company’s estimate of its annual effective tax rate in the first interim period that includes the effective date of the rate change, but not earlier than the period that includes the enactment date. If an interim change is significant, temporary differences may need to be adjusted as of the enactment date.

Federal, state and territories

Arkansas — On 9 April 2019, Arkansas enacted legislation reducing its top corporate income tax rate on taxable income over $100,000 to 6.2% from 6.5%, beginning 1 January 2021. For tax years beginning on or after 1 January 2022, the top rate drops to 5.9% from 6.2%. Other changes include:

- Extending the five-year carryforward for net operating losses (NOLs) to eight years for NOLs occurring in calendar year 2020 and 10 years for NOLs occurring in 2021 and onward
- Replacing the three-factor, double-weighted sales apportionment formula with a single sales factor apportionment formula for tax years beginning on or after 1 January 2021

See the State and Local Tax Weekly for 12 April 2019.

Colorado — On 31 May 2019, Colorado enacted legislation requiring companies to include, in their Colorado combined returns, affiliated US holding companies with no property or payroll. The change is effective 2 August 2019, pending a referendum petition, which may be filed against the new law before that date. If that happens, Colorado residents would vote on the petition in the November 2020 general election. See Tax Alert 2019-1071, dated 11 June 2019.

Idaho — On 3 April 2019, Idaho enacted legislation allowing companies to deduct the following for Idaho corporate income tax purposes: certain repatriated income, dividends received from foreign subsidiaries and foreign-derived intangible income (FDII). The repatriated income change is retroactively effective to tax years commencing on or after 1 January 2017. The changes involving foreign subsidiary dividends and FDII are retroactively effective to 1 January 2018. See the State and Local Tax Weekly for 5 April 2019.

Indiana — On 1 May 2019, Indiana enacted legislation requiring multistate companies to use market-based sourcing to apportion income to Indiana from sales of services and intangible property. The change is retroactively effective to 1 January 2019. See the State and Local Tax Weekly for 24 May 2019 and 31 May 2019.

Illinois — On 5 June 2019, Illinois enacted legislation requiring companies to include foreign-derived intangible income under US Internal Revenue Code (IRC) Section 250(a)(1)(A) in their state income tax base. The change applies to tax years beginning after 31 December 2018.

Iowa — On 16 May 2019, Iowa enacted legislation extending tax-free treatment to all like-kind exchanges, not just those involving real property, for tax year 2019. The legislation also eliminates the alternative minimum bank franchise tax, effective for tax year 2021. A related credit for alternative minimum tax paid will be eliminated for tax year 2022 and thereafter. See Tax Alert 2019-0889, dated 8 May 2019, and the Internal Revenue Code conformity table in this section.

Kentucky — On 9 April 2019, Kentucky enacted legislation that provides an offset to the financial statement effects of the state’s recent move to combined reporting. Under the new law, publicly traded companies and certain affiliates may deduct deferred taxes for 10 years, beginning in 2024. They may also share various tax attributes, such as NOLs and credits, among members of the combined group, provided certain conditions are met. Other changes include eliminating the bank franchise tax and the thrift tax after 2020 and subjecting financial institution income only to the corporate income tax or the limited liability entity tax, beginning 1 January 2021. See the State and Local Tax Weekly for 12 April 2019.

* A Tax Alert on this development is not available.
Maryland – On 18 April 2019, Maryland enacted legislation extending the expiration date of its research and development tax credit one year, to 30 June 2022. The legislation also extended the expiration date of Maryland’s jobs creation tax credit program two years, to 1 January 2022. See the State and Local Tax Weekly for 19 April 2019.

Minnesota – On 30 May 2019, Minnesota enacted legislation effectively excluding from Minnesota taxation certain repatriated income under IRC Section 965 and global intangible low-taxed income (GILTI). The legislation also denies federal deductions for FDII and only allows NOLs to offset 80% of income. Other changes include:

- Requiring companies to compute the limitation on interest expense deductions, using only the items from the members included in the Minnesota combined report
- Characterizing income from a controlled foreign corporation included in a domestic corporation’s net income under IRC Section 951 (i.e., Subpart F income) as dividend income that is eligible for Minnesota’s dividend received deduction (DRD) (effective 31 May 2019)
- Prohibiting deductions for dividends received from debt-financed portfolio stock under IRC Section 246A (effective for tax years beginning after 31 December 2018)

The changes related to repatriated income, GILTI, FDII, the limitation on interest expense deductions and the limit on NOLs are retroactively effective for tax years beginning after 31 December 2017. See Tax Alert 2019-1107, dated 17 June 2019.

New Mexico – On 4 April 2019, New Mexico enacted legislation mandating combined reporting for corporations in a unitary group. Companies may elect to include all consolidated group members or US members only. To offset the financial statement effects of combined reporting, the legislation permits publicly traded companies to deduct the net change in deferred taxes. Additionally, it includes special rules for carrying over NOLs pre- and post-combination and allows taxpayers to use NOLs to offset only 80% of income. Other changes include:

- Adopting an equally weighted three-factor formula for apportioning income to New Mexico, but allowing certain manufacturers and companies headquartered in New Mexico to elect to use a single sales factor apportionment formula
- Adopting a “throwout” rule that excludes certain sales from a company’s apportionment calculation
- Adjusting the definition of “base income” to permit certain deductions created by the Tax Cuts and Jobs Act (TCJA or P.L. 115-97) and prohibit others

The changes generally apply to tax years beginning on or after 1 January 2020. The deduction for the net change in deferred taxes is generally effective for tax years beginning on or after 1 January 2026. See Tax Alert 2019-0812, dated 23 April 2019.


On 24 June 2019, New York* enacted legislation effectively excluding 95% of GILTI from New York taxation. The legislation requires companies to include 5% of GILTI in their formula for apportioning income to New York. Companies include 5% of GILTI in the denominator of the formula, as part of their total income, but not in the numerator. Companies must also directly or indirectly attribute (disallow) interest expense to offset the excluded GILTI. The changes are effective for tax years beginning on or after 1 January 2019.

North Dakota – On 8 April 2019, North Dakota enacted legislation permitting eligible companies to elect to calculate their state research and experimental credit under the rules for the federal alternative simplified research credit. The change is effective for tax years beginning after 31 December 2018. See the State and Local Tax Weekly for 19 April 2019.

* A Tax Alert on this development is not available.
Oregon – On 16 May 2019, Oregon enacted a separate corporate activity tax alongside its existing corporate income tax. Generally, businesses with substantial nexus in Oregon and over $1 million of taxable “commercial activity” in the state must pay the tax, which applies at a rate of $250 plus 0.57% of the business’s taxable commercial activity over $1 million. To calculate the tax, companies must subtract from commercial activity sourced to Oregon 35% of the greater of the following amounts that they paid or incurred: (i) the amount of the cost of inputs or (ii) the company’s labor costs. The new tax is effective for tax years beginning on or after 1 January 2020. See Tax Alert 2019-0940, dated 16 May 2019.

Puerto Rico – On 14 May 2019, Puerto Rico enacted new tax incentives for investments in designated opportunity zones in Puerto Rico. The incentives, which are available to eligible businesses for 15 years, include:

- An 18.5% fixed tax rate on the net income from opportunity zones
- Tax-free dividend distributions
- An investment credit of up to 25% that is transferable
- Deferral of capital gains taxes on investment gains from qualified opportunity funds in Puerto Rico
- An income tax exemption for interest received on loans to tax-exempt businesses


South Carolina – On 16 May 2019, South Carolina enacted legislation requiring receipts from operating cable systems and video streaming services to be included in the calculation of South Carolina “sales” and “gross receipts” for apportionment purposes. The legislation also treats corporations as a cable system operator or a direct broadcast satellite service, or as having video service receipts, if they own a direct or indirect interest in a pass-through business that operates a cable system or a direct broadcast satellite service, or has video service receipts. The changes are effective upon enactment and generally apply to all open tax periods. See the State and Local Tax Weekly for 24 May 2019 and 31 May 2019.

Tennessee – On 8 May 2019, Tennessee enacted legislation that effectively imposes Tennessee excise tax on 5% of certain repatriated income. Previous guidance from Tennessee tax authorities had excluded that income from tax for tax year 2017.

The legislation also effectively subjects 5% of a company’s GILTI to Tennessee excise tax. The changes are retroactively effective to tax years beginning on or after 1 January 2018. See Tax Alert 2019-0974, dated 22 May 2019.

**Internal Revenue Code conformity**

The following chart lists the states that enacted legislation this quarter updating their general date of conformity to the US IRC for corporate income tax purposes. The chart also includes the dates on which the new conformity date was enacted and became effective. Further information on a state’s IRC conformity can be found in the cited reference.

<table>
<thead>
<tr>
<th>State</th>
<th>Enactment date</th>
<th>Date of conformity</th>
<th>Effective date</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>31 May 2019</td>
<td>1 January 2018</td>
<td>Effective for tax years beginning from and after 31 December 2017, through 31 December 2018</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>31 May 2019</td>
<td>1 January 2019</td>
<td>Effective for tax years beginning from and after 31 December 2018</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>Enactment date</td>
<td>Date of conformity</td>
<td>Effective date</td>
<td>Reference</td>
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<tr>
<td>Arkansas</td>
<td>10 April 2019</td>
<td>1 January 2019</td>
<td>Effective for tax years beginning on or after 1 January 2019</td>
<td>See the State and Local Tax Weekly for 19 April 2019</td>
</tr>
<tr>
<td>Georgia</td>
<td>7 May 2019</td>
<td>1 January 2019</td>
<td>Effective for tax years beginning on or after 1 January 2018</td>
<td>*</td>
</tr>
<tr>
<td>Hawaii</td>
<td>7 June 2019</td>
<td>31 December 2018</td>
<td>Effective for tax years beginning on or after 1 January 2018</td>
<td>*</td>
</tr>
<tr>
<td>Indiana</td>
<td>5 May 2019</td>
<td>1 January 2019</td>
<td>Retroactively effective 1 January 2019</td>
<td>*</td>
</tr>
<tr>
<td>Maine</td>
<td>7 June 2019</td>
<td>31 December 2018</td>
<td>Effective for tax years beginning on or after 1 January 2018</td>
<td>See the State and Local Tax Weekly for 7 June 2019</td>
</tr>
<tr>
<td>Minnesota</td>
<td>30 May 2019</td>
<td>31 December 2018</td>
<td>Effective 31 May 2019 (the day following final enactment), except adopted federal changes are effective retroactively to the same time they became effective for federal income tax purposes</td>
<td>See Tax Alert 2019-1107, dated 17 June 2019</td>
</tr>
<tr>
<td>Oregon</td>
<td>11 June 2019</td>
<td>31 December 2018</td>
<td>Effective for tax years beginning on or after 1 January 2019</td>
<td>*</td>
</tr>
<tr>
<td>Vermont</td>
<td>10 June 2019</td>
<td>31 December 2018</td>
<td>Effective for tax years beginning on or after 1 January 2018</td>
<td>*</td>
</tr>
</tbody>
</table>

**International**

**Argentina** – On 10 June 2019, Argentina enacted a 15% income tax rate for companies that invest in various technologies in Argentina, such as software development, audio-visual productions, biotechnology, nanotechnology, satellite and aerospace industries, artificial intelligence and robotics. Eligible companies may also credit foreign income taxes paid against Argentine income taxes due on Argentine-sourced income (currently, companies may only use foreign tax credits to offset taxes due on foreign-sourced income). The changes are effective from 1 January 2020 through 31 December 2029. See Tax Alert 2019-1099, dated 14 June 2019.

* A Tax Alert on this development is not available.
Canada – On 21 June 2019, Canada enacted legislation accelerating the rate of depreciation for most capital investments. The legislation allows for an immediate write-off of the full cost of certain manufacturing and processing (M&P) machinery and equipment and clean energy equipment that is acquired after 20 November 2018 and available for use before 2024. M&P machinery and equipment and clean energy equipment that becomes available for use in the period 2024 to 2027 will be eligible for an accelerated first-year rate of depreciation (allowing for 75% of the cost to be written off for property available for use in 2024 or 2025; and 55% of the cost to be written off for property available for use in 2026 or 2027).

Additionally, most other categories of depreciable property acquired after 20 November 2018 and available for use before 2028 are eligible for accelerated depreciation in the form of an enhanced first-year deduction. For companies in the resource sector, a similar enhanced first-year deduction will also allow for a faster write-off of certain Canadian development expenses and Canadian oil and gas property expenses. See Tax Alert 2019-1145, dated 24 June 2019.


Luxembourg – On 26 April 2019, Luxembourg enacted legislation reducing the nominal corporate tax rate to 17% from 18% for taxable profits over EUR 200,000. The legislation also applies the recently enacted limitation on interest expense deductions to certain consolidated groups (a Luxembourg fiscal unity) as a whole, rather than to individual members. The new rules are effective 1 May 2019. See Tax Alert 2019-0873, dated 6 May 2019.


Rwanda – On 6 May 2019, Rwanda enacted legislation identifying the circumstances under which a company will be deemed to have its effective place of management in Rwanda. The legislation also outlines the requirements companies must meet to carry NOLs forward more than five tax years. See Tax Alert 2019-0930, dated 15 May 2019.

Legislation effective in the second quarter

Federal, state and territories

International

Hong Kong* – Effective 1 April 2019, income from private collective investment funds is exempt from tax. The change was enacted 1 March 2019.

Japan – Effective for tax years beginning after 1 April 2019, new exceptions apply to the CFC rules. The amount of the research and development credit that companies may claim against their corporate income tax liability has also increased. The changes were enacted on 27 March 2019. See Tax Alert 2019-0664, dated 1 April 2019.

United Kingdom* – Effective 1 April 2019, companies may amortize certain goodwill for tax purposes at a rate of 6.5% per year. The change was enacted 12 February 2019.

Effective 6 April 2019, a 20% tax generally applies to income that certain foreign companies derive by using intangible property to generate UK sales of goods and services. The changes were enacted 12 February 2019. See Tax Alert 2018-2232, dated 7 November 2019. For discussion of a related development, see the “Things we have our eyes on” section of this publication.

* A Tax Alert on this development is not available.
Treaty changes

Tax treaties are agreements between countries that typically address withholding tax rates or exemptions on dividends, interest and royalties paid in multiple jurisdictions. Exceptions may apply based on the tax treaty (for instance, reduced rates may apply to certain categories of investors, capital gains from immovable property or property-rich companies may be taxable). All of the following tax treaty changes were effective in the second calendar quarter, except where indicated.

<table>
<thead>
<tr>
<th>Countries involved</th>
<th>Summary of changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Provides general withholding tax rates of 10% on dividends, 0% on interest and royalties; exempts capital gains from tax. (Effective 1 January 2020 in Austria.)</td>
</tr>
<tr>
<td>Cyprus</td>
<td>Provides general withholding tax rates of 0% on dividends, interest and royalties; exempts capital gains from tax. (Effective 1 January 2019 in Cyprus.)</td>
</tr>
<tr>
<td>Finland</td>
<td>Provides general withholding tax rates of 10% on dividends, 0% on interest and 3% on royalties; exempts capital gains from tax. (Effective 1 January 2019 in Finland.)</td>
</tr>
<tr>
<td>Finland</td>
<td>Provides general withholding tax rates of 10% on dividends, interest and royalties; exempts capital gains from tax. (Effective 1 January 2019 in Finland.)</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Provides general withholding tax rates of 0% on dividends (until the domestic laws change), 10% on interest, royalties and technical service fees; domestic law rates apply on capital gains.</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Provides general withholding tax rates of 5% on dividends, 0% on interest and 8% on royalties; exempts capital gains from tax. (Effective 1 January 2019 in Saudi Arabia.)</td>
</tr>
<tr>
<td>Philippines</td>
<td>Provides general withholding tax rates of 25% on dividends, 15% on interest and 25% royalties; domestic law rates apply on capital gains. (Effective 1 January 2019 in the Philippines.)</td>
</tr>
</tbody>
</table>
Other considerations

Federal, state and territories

Federal – The Government finalized regulations on the GILTI regime under IRC Section 951A. The final regulations are largely consistent with the proposed regulations issued in September 2018 but include some changes. See Tax Alert 2019-1132, dated 20 June 2019.

The Government finalized regulations under IRC Section 956 designed to maintain symmetry between the taxation of actual repatriations (i.e., dividends) and effective repatriations (i.e., CFC investments in US property). The final regulations respond to the new dividend exemption system, enacted under the TCJA, which generally allows US corporate shareholders to deduct certain foreign-sourced dividends but does not permit deductions for inclusions resulting from CFC investments in US property. See Tax Alert 2019-0992, dated 23 May 2019.


The Government issued temporary and proposed regulations under IRC Sections 245A and 954(c)(6) that deny, in whole or in part, the IRC Section 245A dividends received deduction and the IRC Section 954(c)(6) exception to foreign personal holding company income for certain transactions after 31 December 2017. Consequently, certain transactions that were previously not subject to tax are fully or partially taxable on a retroactive basis. See Tax Alert 2019-1133, dated 20 June 2019.


The US Tax Court held that a company in the business of milling and selling wheat flour could not claim a research credit for the tax years at issue because it failed to prove that it engaged in qualified research under the federal research credit rules. See Tax Alert 2019-0865, dated 3 May 2019.

Colorado – In two cases, the state Supreme Court held that Colorado law does not require companies to include, in their Colorado combined returns, affiliated holding companies with no property or payroll. The Court reasoned that the holding companies did not fall within the definition of an “includable C corporation” for purposes of Colorado’s combined reporting rules. See Tax Alert 2019-1071, dated 11 June 2019. For discussion of a related development, see the enacted legislation section of this publication.

State – Some states recently releasing guidance for state corporate income tax purposes related to certain TCJA provisions include:

- Maryland (GILTI)
- New Jersey (the IRC Section 163(j) limitation on interest expense deductions and GILTI)
- New York (IRC Section 965 repatriated income and the IRC Section 163(j) limitation on interest expense deductions)
- Pennsylvania (the IRC Section 163(j) limitation on interest expense deductions)

See the State and Local Tax Weekly for 26 April 2019, the State and Local Tax Weekly for 3 May 2019, and the State and Local Tax Weekly for 14 June 2019.

Tennessee – The state Court of Appeals held that an out-of-state company owed taxes on income it received from providing cable TV and internet services to Tennessee customers from 2006 through 2008. The Court disagreed with how the company applied Tennessee’s apportionment method, which resulted in the company owing less tax on its Tennessee-related income. See the State and Local Tax Weekly for 3 May 2019.

Court decisions, regulations issued by tax authorities and other events may constitute new information that could trigger a change in judgment in recognition, derecognition or measurement of a tax position. These events also may affect your current or deferred tax accounting.
**Tax amnesties**

This table shows tax amnesties that were announced or went into effect in the second quarter of 2019.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Amnesty period</th>
<th>Taxes covered</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malaysia</td>
<td>1 November 2018 through 30 September 2019</td>
<td>Corporate income taxes, among others</td>
<td>See Tax Alert 2019-0770, dated 12 April 2019</td>
</tr>
<tr>
<td>Mozambique</td>
<td>30 May 2019 through 30 May 2020</td>
<td>Corporate income taxes outstanding as of 31 December 2018, among others</td>
<td>See Tax Alert 2019-1058, dated 7 June 2019</td>
</tr>
</tbody>
</table>

**International**

**Algeria** – In a circular, the Government provided examples of “technical assistance” for purposes of determining the limitation on the deductions for the cost of technical assistance from foreign suppliers. It also provided guidance on the limitation on deductions for interest expense on loans paid to shareholders or related companies. See Tax Alert 2019-0809, dated 22 April 2019.

**Australia** – The Full Federal Court held that foreign investors in Cayman Island investment funds, not the funds themselves, had to pay ordinary income tax on gains from the funds’ sale of interests in an Australian lithium producer. The Court also concluded that the funds’ US investors could qualify for income tax benefits under the US-Australia income tax treaty. See Tax Alert 2019-0708, dated 5 April 2019.

**China** – The Government modified the tax treatment of certain financial instruments to match income and expense. Consequently, issuers may not deduct interest expense if the investor is exempt from tax on the related dividends or interest income. See Tax Alert 2019-0990, dated 23 May 2019.

In administrative guidance, the Government extended temporary income tax benefits for the integrated circuit and software industry one year, to tax year 2018, provided it is the first profit-generating year and certain conditions are met. See Tax Alert 2019-1007, dated 29 May 2019.

**Colombia** – In an opinion, the Government clarified that Colombia’s thin capitalization rules apply to loans that a Colombian company indirectly receives from a related party (e.g., a Colombian company’s affiliate loans funds to a third party, which then loans the money to the Colombian company). In contrast, the thin capitalization rules do not apply if a related party merely issues a guaranty stating that it is liable for the payment of the Colombian company’s debt with a third party, as the guarantor is not substantially deemed the real creditor in those cases. See Tax Alert 2019-0926, dated 15 May 2019.

**Greece** – In a regulation, the Government clarified the circumstances under which shared service centers or their related entities might be subject to Greece’s effective management provisions. See Tax Alert 2019-1056, dated 7 June 2019.

**Hong Kong** – In a practice note, the Government outlined the requirements that companies must meet to claim enhanced deductions for qualified research and development expenses (i.e., 300% on the first HK$2 million, and 200% thereafter). See Tax Alert 2019-0854, dated 2 May 2019.

**Indonesia** – In a regulation, the Government provided guidance for determining whether a permanent establishment (PE) exists in Indonesia. See Tax Alert 2019-0929, dated 15 May 2019.


**Italy** – In a decree, the Government replaced the new 15% corporate income tax rate on certain income with rates of 22.5% for tax year 2019, 21.5% for tax year 2020, 21% for tax year 2021 and 20.5% for tax year 2022 onward. The reduced rates apply to “qualifying taxable income.”
Other changes include:

- Simplifying access to the patent box regime, mainly by allowing companies to autonomously determine the amount of the income they derive from qualifying IP without filing a ruling request with Italian tax authorities, even when the old rules required a ruling.

- Allowing Italian companies to increase, up to €5 million, their tax basis in goodwill and other business assets following certain corporate reorganizations, provided various requirements are met (effective 1 May 2019 through 31 December 2022).

- Permitting companies to depreciate an additional 30% (i.e., up to 130%) of their tax basis in certain tangible assets, up to €2.5 million.

- Increasing the percentage of municipal taxes on immoveable property that a company may deduct for corporate income tax purposes from 40% to 50% for tax year 2019, 60% for tax years 2020 and 2021, and 70% for tax year 2022 onward.

The Decree is effective as of 1 May 2019 but must be converted into law by the Italian Parliament within 60 days. See Tax Alert 2019-0959, dated 20 May 2019.

**Mauritius** – In regulations, the Government exempted income from certain land-related transactions from tax. See Tax Alert 2019-1085, dated 13 June 2019.

**Mexico** – In regulations on the application of tax incentives for businesses in the northern border region, the Government permitted eligible companies to claim the income tax incentive for Mexico's northern border region in addition to other tax incentives. Previously, eligible companies could not claim income tax incentives for the northern border region if they claimed other tax incentives. The Government also permitted companies that have done business with non-VAT compliant companies to request income tax incentives if they stop doing business with those businesses before applying. See Tax Alert 2019-0755, dated 11 April 2019.

In regulations, the Government outlined the requirements that nonresident companies must meet to claim withholding tax benefits on interest paid by Mexican companies for certain publicly traded corporate debt bonds. The Government also clarified the requirements for claiming a reduced income tax rate on the sale of Mexican shares through an initial public offering. See Tax Alert 2019-0867, dated 6 May 2019.

**Peru** – In a decree, the Government lifted the suspension of Peru's general anti-avoidance rule now that anti-avoidance regulations have been issued. The rule applies as of its 19 July 2012 enactment date. See Tax Alert 2019-0897, dated 9 May 2019.

**Singapore** – The Government issued transfer pricing guidelines for commodity marketing and trading activities. The guidelines address how to analyze the economic value of commodity marketing and trading activities (commodity marketing/trading activities) in Singapore. See Tax Alert 2019-1084, dated 13 June 2019.

**Taiwan** – In a ruling, the Government outlined the circumstances under which a Taiwanese parent company would be exempt from gain recognition when a subsidiary moves its headquarters from Taiwan to another jurisdiction. See Tax Alert 2019-0754, dated 11 April 2019.


**United Kingdom** – The First-tier Tribunal found in favor of the Government on whether a loan issued by a UK company had a main purpose of achieving a UK tax advantage and determined that all interest expense of the UK company should be disallowed. The case involved a specific financing structure in which a UK-parented group loaned funds to its US operations, with a subsequent loan advance between the US and a disregarded UK subsidiary held by the US for the purchase of preference shares in the US group. The intention was to secure a deduction in the US for interest paid to the parent, with no incremental tax in the UK as a result of the interest expense in the UK subsidiary through a group relief filing to offset the interest income in the parent (with the return on the preference shares being exempt from tax in the UK). See Tax Alert 2019-0911, dated 10 May 2019.
Things we have our eyes on

Federal, state and territories

Opportunity Zones — The Government proposed a second set of regulations detailing the requirements that Opportunity Zone investors must meet to defer the taxation of capital gains invested in a qualified opportunity fund (QOF). Additionally, the latest regulations address the requirements for QOFs and for QOF investments into qualified opportunity zone businesses. See Tax Alerts 2019-0823, dated 24 April 2019 and 2019-0856, dated 2 May 2019.

GILTI — The Government proposed new GILTI regulations under IRC Sections 951(b) and 951A and on Subpart F under IRC Section 951. The proposed regulations, among other things, would provide a high-tax exclusion to GILTI that taxpayers could elect to apply when the tax imposed on a tentative net tested income item exceeds an 18.9% corporate tax rate. See Tax Alert 2019-1132, dated 20 June 2019.

The Government also proposed regulations under IRC Sections 954 and 958 that would affect taxpayers’ computation of Subpart F income and GILTI. The proposed regulations would modify the active marketing exception to the definition of foreign personal holding company income and the rules for classifying a person as related to a CFC. See Tax Alert 2019-1048, dated 6 June 2019.


International


In a draft ruling, the Government detailed the requirements for applying the arm’s-length debt test in the thin capitalization rules. See Tax Alert 2019-0741, dated 10 April 2019.

In another draft ruling, the Government proposed prohibiting Australian companies from claiming interest expense deductions when borrowing from an intermediary related party located in a low- or no-tax jurisdiction, rather than directly from a foreign parent. See Tax Alert 2019-0767, dated 12 April 2019.


Gibraltar — The Government is considering introducing a notional interest deduction regime, which would permit companies to deduct certain equity costs, thereby aligning the tax treatment of equity with debt. The Government is also considering additional research-related incentives. See Tax Alert 2019-1067, dated 11 June 2019.

India — In a report, the Government recommended modifying the PE profit attribution rules to allocate profits between the jurisdiction where sales take place and the jurisdiction where supply is undertaken. This “fractional apportionment” could also apply under income tax treaties between India and other countries. See Tax Alert 2019-0849, dated 1 May 2019.

Norway — The Government proposed a statutory anti-abuse rule that tax authorities could use to disregard or recharacterize a transaction for Norwegian tax purposes. Like Norway’s common-law rule, the proposed rule consists of two parts: a motive test, which would examine whether a transaction’s objective purpose is to obtain a tax benefit; and an abuse test, which would weigh several factors, such as the transaction’s commercial merit, to determine the transaction’s purpose. See Tax Alert 2019-0769, dated 12 April 2019.
OECD — The Organisation for Economic Co-operation and Development (OECD) released its plan for addressing the tax challenges posed by the digital economy. Proposed changes, which may extend beyond digital businesses, include new profit allocation rules, new nexus rules, the reallocation of taxing rights over part of a group’s overall profit, a global anti-base erosion proposal that would give jurisdictions a right to tax income that has gone untaxed or is otherwise subject to low levels of taxation and a minimum tax on certain corporate income. See Tax Alerts 2019-1024, dated 31 May 2019, and 2019-1025, dated 3 June 2019.

Switzerland — Switzerland approved measures that would, among other things, abolish income tax benefits for eligible Swiss headquartered companies and Swiss finance branches performing treasury and financing operations in Switzerland and legislate a patent box regime in accordance with the OECD standard. Under the proposed regime, net profits from domestic and foreign patents and similar rights will be taxed separately with a maximum reduction of 90% (rate at cantonal discretion). Before the patent box can be applied for the first time, the corresponding tax deducted research and development (R&D) expenditures must be recaptured and taxed. The tax reform legislation will enter into force as of 1 January 2020 pending enactment at the Federal and Cantonal levels. See Tax Alert 2019-0960, dated 20 May 2019.

United Kingdom — The Government proposed changes to the rules governing the imposition of a 20% tax on income that certain foreign companies derive by using intangible property to generate UK sales of goods and services. Proposed changes include:

- Extending the application of the tax to income of foreign companies that reside in a jurisdiction with which the UK has an income tax treaty but are excluded from the treaty’s terms (e.g., a Barbados International Business Company)
- Narrowing the definition of residence to exclude companies that are liable for tax only on income received from sources within a jurisdiction
- Broadening the definition of UK sales to include companies that acquire and resell objects without changing them
- Exempting companies located in certain jurisdictions from paying the tax

See Tax Alert 2019-1014, dated 30 May 2019. For discussion of a related development, see the section in this publication on “Legislation effective in the second quarter.”
FASB proposes simplifying the accounting for income taxes

What you need to know

- The FASB proposed changes to ASC 740 as part of its initiative to reduce the cost and complexity of applying accounting standards.
- The proposal would eliminate certain exceptions related to the approach for intraperiod tax allocation, the methodology for calculating income taxes in an interim period and the recognition of deferred tax liabilities for outside basis differences.
- The proposal would simplify aspects of the accounting for franchise taxes, transactions that result in a step up in the tax basis of goodwill, and enacted changes in tax laws or rates.
- The proposal would clarify that single-member limited liability companies and similar disregarded entities that are not subject to income tax are not required to recognize an allocation of consolidated income tax expense in their separate financial statements, but they could elect to do so with appropriate disclosure.
- Comments are due by 28 June 2019.

Overview

The Financial Accounting Standards Board (FASB) issued a proposal that would simplify the accounting for income taxes, eliminate some exceptions to the general approach in Accounting Standards Codification (ASC) 740 and clarify certain aspects of the guidance to increase consistency in how the guidance is applied.

The proposal is part of the FASB’s broader simplification initiative that is aimed at reducing the cost and complexity of applying accounting standards. Many of the changes the FASB proposed were recommended by stakeholders.

Key considerations

Exceptions the proposal would eliminate

The proposal would eliminate the following exceptions to the general approach in ASC 740:

Exception to the general intraperiod tax allocation principle

The proposal would eliminate the exception to the general guidance in ASC 740-20 on how to allocate income tax expense or benefit for the year to continuing operations, discontinued operations, other comprehensive income, and other charges or credits recorded directly to shareholders’ equity.

The general guidance requires entities to first determine the tax effect of their pretax income from continuing operations without regard to the tax effect of the other items. However, under the current exception, entities that have a loss from continuing operations but combined pretax income from all other items are required to consider all items when they determine the amount of tax benefit that results from the loss from continuing operations.
Stakeholders said this exception is difficult to apply and doesn’t benefit users of the financial statements because the outcome is often counterintuitive. That is, a tax benefit may be allocated to continuing operations and an offsetting tax expense may be allocated to another item, even though total tax expense in the period is zero. Stakeholders also noted that there is diversity in practice in how the exception is applied.

**Exception to the general methodology for calculating income tax for an interim period**

The proposal would eliminate an exception to the guidance that generally requires companies to make their best estimate of the annual effective tax rate for the full fiscal year in each interim period and apply that estimate to the year-to-date pretax income (or loss).

If the year-to-date ordinary loss exceeds the anticipated ordinary loss for the year and the entity expects to realize a tax benefit for all anticipated ordinary losses, the exception in ASC 740-270-30-28 limits the income tax benefit recognized to the amount of the tax benefit determined based on the year-to-date ordinary loss. That is, an entity is not permitted to recognize tax benefits in excess of the amount that would be recognized if its year-to-date ordinary loss were the anticipated ordinary loss for the year. Under the proposal, an entity would no longer limit the tax benefit recognized in an interim period if it expects to realize a tax benefit for the entire amount of the anticipated maximum year-to-date and full-year ordinary loss.

The FASB said the benefits this exception provides to users of the interim financial statements do not justify the complexity it adds to the calculation.

**Exceptions to the recognition of deferred taxes when investment ownership changes**

The proposal would eliminate the exceptions to the general requirements for recognizing and not recognizing outside basis differences that relate to undistributed earnings that predate changes in ownership of equity method investments and foreign subsidiaries. Instead, it would require entities to account for the tax effects of an entire outside basis difference that relate to an investment in which there is an ownership change as if the entity had always accounted for the investment based on the new ownership.

The FASB said both exceptions add to the cost and complexity of accounting for outside basis differences and reduce comparability because they apply to only the portion of the outside basis difference of an investment that exists before the change in ownership.

**Entity loses control of a foreign subsidiary**

Under the exception in ASC 740-30-25-15, an entity is required to freeze an outside basis difference that relates to its equity in undistributed earnings of a foreign subsidiary or corporate joint venture that becomes an equity method investment. That is, the entity is not required to recognize a related deferred tax liability if the entity wasn’t already recognizing it (i.e., if the entity asserted that the foreign subsidiary’s earnings were indefinitely reinvested or would be remitted in a tax-free liquidation), unless it is apparent that those earnings will be distributed before the change in status. Eliminating this exception would require an entity with a foreign subsidiary that becomes an equity method investment to record a deferred tax liability for the total outside basis difference related to the equity method investee on the date of the ownership change.

**Entity gains control of an equity method investee**

Under the exception in ASC 740-30-25-16, a deferred tax liability previously recognized for a foreign equity method investment cannot be derecognized if the equity method investee becomes a subsidiary, even if the entity asserts, after obtaining control, that foreign earnings are indefinitely reinvested or can be remitted in a tax-free liquidation. The proposal would effectively allow entities to apply the exception to recognizing deferred tax liabilities on undistributed earnings to earnings that predate the change in ownership if they assert that those earnings are indefinitely reinvested or will be remitted in a tax-free liquidation.

**Other proposed simplifications**

**Allocation of consolidated tax expense to separate financial statements**

The proposal would clarify that single-member limited liability companies (SMLLCs) or similar disregarded entities that are not subject to income tax are not required to recognize an allocation of consolidated income tax expense in their separate financial statements; however, these entities may elect to do so if they make appropriate disclosures.
Stakeholders had said that, under current guidance, some groups that file consolidated tax returns allocate a portion of the current and deferred tax expense to SMLLCs not subject to income tax for presentation in the SMLLCs’ separate financial statements, while others do not. The FASB proposed the clarification to address this diversity in practice.

The FASB said it proposed allowing SMLLCs and other similar disregarded entities that are not subject to income tax to recognize an allocation of income taxes in their separate financial statements because certain entities (e.g., rate-regulated entities) may need to do so for business reasons. However, an SMLLC or a similar disregarded entity that elects to recognize such an allocation would have to disclose that fact and provide certain other disclosures required by ASC 740.

**Accounting for the interim period effects of changes in tax laws or rates**

The proposal would eliminate the potential for the effects of enacted tax law changes to be recognized in different reporting periods by requiring the effects of enacted changes in tax law to be considered in the calculation of the annual effective tax rate in the first interim period that includes the enactment date.

This differs from the existing guidance that requires an entity to recognize the effect of the enacted tax law on deferred tax assets and liabilities in the period of enactment and the effect of the enacted tax law on the annual effective tax rate (i.e., on the interim period income tax calculation) to be recognized in the period that includes the effective date of the tax law.

The FASB noted this change would align the guidance for accounting for changes in tax law in interim periods with the general principle that the effects of enacted changes in tax laws are recorded in the period that contains the enactment date.

**Accounting for franchise taxes**

Certain jurisdictions impose franchise taxes (or other similar taxes) that are calculated using the greater of two tax computations: one based on income and the other one based on items other than income.

To reduce complexity in the calculation and recognition of deferred taxes, the proposal would amend the guidance to require entities to recognize these taxes by (1) identifying the portion of the tax that is an income tax and accounting for it under ASC 740 and (2) considering any residual amount a non-income tax.

ASC 740 currently requires companies subject to this type of franchise tax to first identify and recognize the portion of franchise tax that is not an income tax and consider any residual amount an income tax to be accounted for under ASC 740.

**Accounting for a step-up in the tax basis of goodwill**

Certain taxing authorities (primarily outside the US) allow corporate taxpayers to elect to step up the tax basis of certain assets in exchange for a current payment to the taxing authority or in exchange for existing tax attributes (e.g., net operating loss carryforwards). When the tax basis step-up relates to goodwill from a prior business combination that was not deductible, a deferred tax asset is not recorded for the increase in tax basis, except for any amount of newly deductible goodwill that exceeds the remaining balance of book goodwill (under ASC 740-10-25-54).

Stakeholders indicated that, in some situations, applying the guidance in ASC 740-10-25-54 does not represent the economics of the transaction, particularly when the step-up in the tax basis of goodwill occurred because the entity used cash or existing tax attributes.

The proposal would require that an entity determine whether the step-up in tax basis relates to (1) the initial recognition of book goodwill, in which case no deferred tax asset would be recorded (except for any amount of newly deductible goodwill that exceeds the balance of book goodwill), or (2) a separate transaction, in which case a deferred tax asset would be recorded for the amount of the newly deductible goodwill, subject to a valuation allowance. The Board said the proposal would reduce the cost of applying ASC 740 and would better reflect the economic consequences of separate transactions.
**Codification improvements**

The proposal would make two other improvements to ASC 740. It would specify in ASC 718-740-45-7 that the tax benefit of tax-deductible dividends on allocated and unallocated employee stock ownership plan shares must be recognized in continuing operations. It would also delete the example in ASC 323-740-55-8 of the accounting for an investment in qualified affordable housing projects using the equity method that includes an error related to when the impairment was recorded.

**Effective date and transition**

The proposal would be applied using different transition approaches (e.g., retrospective, prospective) because the changes would have different effects on the financial statements. The FASB said it will determine an effective date, and whether early adoption would be permitted, after it receives feedback on the proposal.