In this issue:

Quarterly tax developments

Things to know about this quarter's tax developments and related US GAAP accounting implications

June 2022

Building a better working world

Tax developments

Welcome to our June 2022 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 16 June 2022, 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.*

Legislation enacted in the second quarter

Companies are required to account for the effects of tax law changes on their deferred tax assets and liabilities in the period the legislation is enacted. Similarly, companies must reflect the effects of an enacted change in tax laws or rates in their annual effective tax rate computation in the period the changes are enacted.[1] If an interim change is significant, temporary differences may need to be estimated as of the enactment.

Federal, state and territories

Georgia — On 2 May 2022, Georgia enacted legislation extending the state's historic property rehabilitation tax credit through 2027 (from 2022). No new credits will be issued on or after 1 January 2028. See the **State and Local Tax Weekly for 25 May 2022**.

Iowa — On 17 June 2022, Iowa enacted legislation reducing the Bank Franchise Tax rate to 3.5% from 5% over five years. For tax year 2023, the rate will decrease from 5% to 4.7%. The rates will then decrease to 4.4%, 4.1% and 3.8% for tax years 2024, 2025 and 2026, respectively. The rate will then decrease to 3.5% for tax year 2027 and thereafter. See **Tax Alert 2022-0964**, dated 20 June 2022.

Kansas — On 14 April 2022, Kansas enacted legislation increasing its research and development (R&D) activities credit and allowing taxpayers without income tax liability to transfer the credit. Transferees may claim the credit in the year of transfer. Unused credits may be carried forward but not refunded.

Other changes include:

- Introducing a new tax credit for employers that reimburse tuition for qualified employees (expires 31 December 2026)
- Introducing a new tax credit for taxpayers that contribute to a Kansas community college or technical college for capital improvements, deferred maintenance, or the purchase of technology or equipment (for contributions made on or after 1 July 2022 and in tax years 2023 through 2026)
- Introducing a new credit for taxpayers that pay or incur qualified railroad track maintenance expenditures during the tax year (available tax years 2022 through 2031)

See the **State and Local Tax Weekly for 22 April and 29 April 2022**.

On 18 April 2022, Kansas enacted tax credits that eligible employers may claim against their income tax liability if they employ individuals with developmental disabilities or outsource work to a company that employs those individuals. The credit is available for tax years 2022 through 2027 and equals 50% of the wages paid to an eligible individual on an hourly basis, up to a maximum credit of $7.50 per hour. The credit is nonrefundable, and unused amounts may not be carried forward. See the **State and Local Tax Weekly for 25 May 2022**.

Kentucky — On 13 April 2022, Kentucky established a refundable tax credit that corporations may claim for cleaning up certain contaminated property. The credit equals the total expense paid by the corporation to remediate the property. The total credit per qualifying property, however, may not exceed $30 million, and taxpayers may not claim more than 25% of the total credit in any tax year. See **Tax Alert 2022-0564**, dated 6 April 2022.

On 25 April 2022, Kentucky enacted legislation repealing previously enacted statutory provisions that had decoupled the state's tax treatment of restaurant revitalization grants to their treatment under federal law. Accordingly, Kentucky will not tax the grants, and companies may deduct expenses paid with them. See the **State and Local Tax Weekly for 6 May 2022**.

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[1] Nonpublic business entities that have not adopted Accounting Standards Update (ASU) 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes,* should reflect the effects of enacted changes in tax law or rates in estimates of their annual effective tax rate in the first interim period in which the change is effective. For more information on ASU 2019-12, see our **Financial reporting developments publication on income taxes**.

Maryland — On 1 April 2022, Maryland enacted its own version of the federal Work Opportunity Tax Credit (WOTC). The nonrefundable credit may equal as much as 50% of an employer's federal WOTC for wages paid or incurred for a qualified individual employed in Maryland. Unused credits may not be carried over to another tax year. The law is effective 1 July 2022 and applies to tax years beginning after 31 December 2021 but before 1 January 2029. See the **State and Local Tax Weekly for 8 April and 15 April 2022**.

On 21 April 2022, Maryland enacted changes to its "More Jobs for Marylanders" program, which provides an income tax credit, among other incentives, to businesses that create manufacturing jobs in the state or nonmanufacturing businesses that locate in an opportunity zone. The changes include:

- Increasing the average annual salary an employer must pay to more than $50,000 or at least 150% (rather than 120%) of the state minimum wage
- Raising the number of qualified positions a business must create in a Tier I area to 10 from 5
- Raising the number of qualified positions a business must create in a Tier II area to 20 from 10
- Decreasing the credit to 4.75% of wages paid from 5.75% for businesses that receive their eligibility certificate on or after 1 June 2022

The changes are effective 1 June 2022. See the **State and Local Tax Weekly for 25 May 2022**.

Nebraska — On 13 April 2022, Nebraska enacted legislation gradually reducing the state's top corporate income tax rate from 7.5.% for income over $100,000 to the following rates:

- 7.25% for tax years beginning on or after 1 January 2023 and before 1 January 2024
- 6.50% for tax years beginning on or after 1 January 2024 and before 1 January 2025
- 6.24% for tax years beginning on or after 1 January 2025 and before 1 January 2026
- 6.00% for tax years beginning on or after 1 January 2026 and before 1 January 2027
- 5.84% for tax years beginning on or after 1 January 2027

See **Tax Alert 2022-0614**, dated 13 April 2022.

On 18 April 2022, Nebraska enacted legislation creating a nonrefundable credit that employers can claim against their income tax liability if they employ eligible employees (i.e., individuals convicted of a felony) during the tax year. The credit equals 10% of wages paid by the employer to the eligible employee during the tax year and may not exceed $20,000 per employee. Employers may only claim the credit for wages paid during the first 12 months of the employee's employment. The credit is available for tax years beginning on or after 1 January 2023. See the **State and Local Tax Weekly for 13 May 2022**.

New York — On 9 April 2022, New York enacted legislation extending the expiration dates of numerous income tax credits, including the empire state film production credit, which was extended through 2029 (from 2026). The legislation also increased the amount of some credits and changed the requirements for others. See the **State and Local Tax Weekly for 8 April and 15 April 2022**.

Oklahoma — On 26 May 2022, Oklahoma enacted legislation giving companies the option to irrevocably elect 100% bonus depreciation (i.e., immediate full expensing) for "qualified property" and "qualified improvement property" placed in service after 31 December 2021. "Qualified property" and "qualified improvement property" have the same meaning as defined in Internal Revenue Code (IRC) Sections 168(k) and (e)(6), respectively, as the IRC existed on 1 January 2021. This property will remain fully and immediately deductible as an expense in the year in which it was placed in service notwithstanding federal law changes related to amortization of cost recovery starting in 2023. The law also conforms to IRC Section 179, allowing taxpayers to immediately deduct the cost of certain depreciable business assets in the tax year in which they were placed in service. The changes are effective upon enactment. See the **State and Local Tax Weekly for 3 Jun 2022 and 10 June 2022**.

Virginia – On 8 April 2022, Virginia enacted legislation sourcing income from services by certain property information and analytics firms to Virginia if the customer or client received the benefit of the service in Virginia. The location of the business's operations does not affect whether the sourcing rule applies, but the size of the firm, among other factors, may determine whether or when the rule applies. This provision is effective for tax years beginning on or after 1 January 2022. See the **State and Local Tax Weekly for 8 April and 15 April 2022**.

On 11 April 2022, Virginia increased its corporate income tax deduction for business interest to 30% from 20% of the business interest disallowed as a deduction under IRC Section 163(j). The change is effective for tax years beginning on and after 1 January 2022.

Additionally, Virginia extended its worker training tax credit three years, through 1 July 2025. The change is effective 1 July 2022. See the **State and Local Tax Weekly for 8 April and 15 April 2022**.

Wisconsin – On 8 April 2022, Wisconsin enacted legislation modifying its angel investment tax credit to allow businesses that lose their credit eligibility following a merger or acquisition to obtain a waiver from the requirement to have at least 51% of their employees in Wisconsin. To obtain the waiver, the business must meet certain requirements. The change is effective 10 April 2022. See the **State and Local Tax Weekly for 22 April and 29 April 2022**.

IRC conformity

The following chart lists the states that enacted legislation this quarter updating their date of conformity to the US IRC. 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.

State	Enactment date	Date of conformity	Effective date	Reference
Florida	6 May 2022	1 January 2022	For tax years beginning on or after 1 January 2022	See **the State and Local Tax Weekly for 6 May 2022**
Georgia	2 May 2022	1 January 2022 (with exceptions)	For tax years beginning on or after 1 January 2021	See **the State and Local Tax Weekly for 6 May 2022**
Hawaii	21 April 2022	31 December 2021	For tax years beginning on or after 31 December 2021	See the **State and Local Tax Weekly for 22 April and 29 April 2022**
Kentucky	13 April 2022	31 December 2021	For tax years beginning on or after 1 January 2022	**Tax Alert 2022-0564**, dated 6 April 2022
Maine	14 April 2022	31 December 2021	For tax years beginning on or after 1 January 2021 and any prior year as specifically provided by the IRC as of 31 December 2021	See the **State and Local Tax Weekly for 22 April and 29 April 2022**
South Carolina	16 May 2022	31 December 2021	Effective upon enactment	See the **State and Local Tax Weekly for 25 May 2022**

International

Canada – On 23 June 2022, Canada enacted legislation temporarily reducing the general corporate income tax rate to 7.5% from 15% on eligible income of qualifying manufacturers of zero-emission technology. The reduced rates apply for tax years beginning after 2021 and will be gradually phased out for tax years beginning in 2029. The rate will return to 15% for tax years beginning after 2031.

The legislation also broadened the types of clean-energy equipment that are eligible for accelerated depreciation (generally applicable to property acquired after 18 April 2021) and removed some equipment from the eligibility list (generally effective for property that becomes available for use after 2024). See **Tax Alert 2022-0990**, 24 June 2022.

Turkey — On 15 April 2022, Turkey increased the corporate tax rate to 25% from 20% for banks, asset management companies, insurance companies and other companies in the financial sector. The change applies to tax years beginning 1 January 2022.

Other changes include:

- Denying deductions for advertising expenses if the taxpayer's advertiser was banned from providing services under the so-called Social Media Law No. 5651
- Exempting from corporate income tax shareholder funds transferred to Turkish companies to replenish diminished capital
- Requiring companies applying for the corporate income tax exemption to real estate investment companies to actually hold real estate in their portfolios where previously companies were merely including "real estate" in their corporate names in order to claim the exemption (applies to tax years beginning 1 January 2022)
- Broadening the scope of the corporate income tax exemption for dividends from specified investment funds to include redemptions of fund shares and earnings from year-end valuations of the fund shares

The changes are effective upon enactment. See **Tax Alert 2022-0653**, dated 20 April 2022.

Legislation effective in the second quarter

International

Japan — Effective for tax years beginning on or after 1 April 2022, certain companies must satisfy stricter requirements to claim the research credit. Additionally, the domestic withholding tax on dividends no longer applies in certain cases. Other changes include:

- Limiting capital surplus distributions that qualify as a return of capital to the amount of capital surplus debited for accounting and legal purposes
- Relaxing the requirements for claiming the open innovation tax incentive by broadening the scope of companies in which taxpayers may invest for purposes of claiming the incentive and decreasing the length of the expected investment period
- Modifying the rules governing loss sharing in a wholly owned domestic group
- Broadening the scope of domestic-source income subject to the earnings stripping rule to include a foreign company's domestic-source income, regardless of whether the company has a permanent establishment (PE) in Japan or the income is attributable to a PE
- Increasing the credit for raising employee compensation to 15% to 30% (rather than 15% to 20%) of the difference between compensation for certain specified employees in the year beginning 1 April 2022 and prior-year compensation, provided current-year compensation is at least 3% higher than prior-year compensation

The changes were enacted 22 March 2022. See **Tax Alert 2022-0542**, dated 5 April 2022.

Effective for tax years beginning on or after 1 April 2022, companies within a wholly owned domestic group with a common Japanese parent may share losses with one another. The change was enacted 27 March 2020. See **Tax Alert 2020-0775**, dated 30 March 2020.

Peru — Effective 1 April 2022, the threshold at which companies must route payments through the Peruvian banking system decreases to PEN 2,000, or US $500, from PEN 3,500, or US $1,000. Companies that do not route payments at or above the threshold will (1) not be able to claim the payment as a deductible expense for corporate income tax purposes or (2) lose their tax basis (cost basis), depending on the type of payment. The change was enacted 3 March 2022. See **Tax Alert 2022-0384**, dated 8 March 2022.

United Kingdom (UK)* — Effective for tax years beginning 1 April 2022, a new tax regime applies to UK asset holding companies. Other changes include:

- Prohibiting UK companies from offsetting their income with losses incurred by related companies in the European Economic Area (EEA)
- Limiting the losses that EEA companies may use to offset income from their UK PE
- Removing a restriction on financially distressed companies that have adopted International Financial Reporting Standard (IFRS) 16 from using carried forward losses to offset profits arising from the reversal of onerous lease provisions
- Simplifying the requirements that a company or group must meet to qualify as a real estate investment trust
- Establishing rules that treat certain noncorporate entities as partnerships for purposes of the UK hybrid mismatch rules, as previously promised
- Extending the expiration date of the £1 million cap on certain accelerated amortization by 15 months to 31 March 2023

The changes were enacted 24 February 2022.

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.

Countries involved		Summary of changes
Georgia	Hong Kong	Provides general withholding tax rates of 5% on dividends, interest and royalties; exempts capital gains from tax. (effective 1 January 2022 in Georgia).

* A Tax Alert was not published on the legislation's enactment. For discussion of the proposed legislation, see Tax Alerts **2021-1971**, dated 28 October 2021, and **2021-2113**, dated 18 November 2021.

Other considerations

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.

Federal, state and territories

Federal — The US Court of Appeals for the Tenth Circuit has affirmed the Tax Court's determination that a company did not qualify as an insurance company and was liable for a 30% tax under IRC Section 881(a) on purported insurance premiums it had received. The appellate court noted that the company did not distribute risk by insuring or reinsuring a large number of independent risks, and the contracts it issued were not insurance in the typical sense. See **Tax Alert 2022-0939**, dated 25 May 2022.

Kentucky — In final regulations, the Government outlined how financial organizations that were previously subject to the Bank Franchise Tax must source their income now that the corporate income tax applies instead. While largely leveraging sourcing rules under the Bank Franchise tax, the final regulations also broaden the definition of a financial organization to include an entity that is more than 50% owned, directly or indirectly, by a bank or a savings and loan holding company. The final rule took effect on 1 March 2022. See the **State and Local Tax Weekly for 8 April 2022 and 15 April 2022**.

Louisiana — In a revenue ruling, the Government announced that companies claiming federal employee retention credits (ERCs) may deduct wages equal to those ERCs on their state income tax returns. See the **State and Local Tax Weekly for 8 April 2022 and 15 April 2022**.

In a revenue information bulletin, the Government reminded corporations that Louisiana does not conform to the federal income tax treatment of corporate net operating losses (NOLs) enacted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. It also outlined the changes that corporations may need to make to their Louisiana return if they carried back NOLs on their federal return. See the **State and Local Tax Weekly for 25 May 2022**.

Maine — The Government updated its rules on corporate income tax nexus, apportionment and combined reporting to reflect Maine's adoption of a factor-presence-nexus standard, beginning in 2022. Under the standard, a corporation has income tax nexus with Maine if its Maine property, payroll or sales exceed any of the following thresholds for the tax year: (1) property of $250,000; (2) payroll of $250,000; (3) sales of $500,000; or (4) 25% of its total property, payroll or sales. Companies calculate property, payroll and sales in the same manner used for state apportionment purposes. See the **State and Local Tax Weekly for 13 May 2022**.

Massachusetts — The Supreme Judicial Court held that Massachusetts could not impose corporate excise tax on gains that an out-of-state limited liability company (LLC), which was treated as an S corporation, realized from selling its interests in an in-state LLC, which was treated as a partnership. While finding that Massachusetts could have constitutionally taxed the gain, the court reasoned that Massachusetts law did not authorize taxation in this case because the two entities were not part of a unitary business and the S corporation's commercial domicile was in Florida. See **Tax Alert 2022-0922**, dated 13 June 2022.

New Hampshire — In updated guidance, the Government noted that New Hampshire's treatment of COVID-19 financial relief programs for purposes of the state's business profits tax and business enterprise tax will differ from federal tax treatment of those programs. New Hampshire conforms to the IRC as of 31 December 2018, which precedes enactment of those programs and subsequent changes to the rules governing their federal tax treatment. See the **State and Local Tax Weekly for 22 April and 29 April 2022.**

New Jersey — The Government changed its policy on the treatment of members of a combined group claiming protection from New Jersey's corporation business tax under P.L. 86-272. The Government previously took the position that, if one member in the combined group had nexus and sufficient activities in New Jersey to be taxed, no member that had nexus with New Jersey could claim P.L. 86-272 protection. The Government will now determine eligibility for P.L. 86-272 protection on an entity-by-entity basis for each member of the combined group. New Jersey combined groups may amend their 2019, 2020 and 2021 Form CBT-100U returns to reflect this policy change. See **Tax Alert 2022-0625**, dated 13 April 2022.

South Carolina — The Government will continue, through 30 June 2022, to disregard the locations of employees who are temporarily working in South Carolina due to COVID-19 for purposes of determining a business's nexus with the state or altering its income apportionment. The prior deadline was 31 March 2022. See **Tax Alert 2022-0617**, dated 13 April 2022.

Tennessee — The Government announced a new franchise and excise tax credit program for the state's entertainment industry. A qualified production (e.g., scripted and unscripted television, feature films, video game development, animation, commercials and audio/visual postproduction) can receive 40% of its qualified payroll expense (QPE) in tax credits (50% in some cases, depending on where the employee lives). The credit can be extended for up to 15 years and may be claimed against the applicant's combined franchise and excise tax liability. See the **State and Local Tax Weekly for 22 April and 29 April 2022**.

Tax amnesties

This table shows tax amnesties that were announced or went into effect in the second quarter of 2022.

Jurisdiction	Amnesty period	Taxes covered	Reference
Kentucky	1 October 2022 through 29 November 2022, if a third-party administers the program; otherwise, the program will run for 60 days in 2023	Corporate income taxes and other taxes administered by the Department of Revenue, with some exceptions	**Tax Alert 2022-0564**, dated 6 April 2022
Brazil	3 May 2022 through 29 July 2022	Certain corporate income taxes and other taxes stemming from the amortization of goodwill under the tax regime preceding Law No. 12,973/2014	See **Tax Alert 2022-0719**, dated 4 May 2022

International

Denmark — The Danish Tax Board (DTB) ruled that an employee working from a home office in Denmark three days a week for a Swiss company would not create a Danish PE for the Swiss employer. The DTB reasoned that the employee was not involved in the company's sales, and the employee's duties as a member of the company's board of directors would be executed in Switzerland. See **Tax Alert 2022-0757**, dated 12 May 2022.

Separately, the DTB ruled that two employees working full-time from home offices in Denmark would not create a Danish PE for their Norwegian employer. The DTB reasoned that neither employee was involved in the company's sales and the employer did not require the employees to work from home in Denmark. See **Tax Alert 2022-0757**, dated 12 May 2022.

In another case, however, the DTB ruled that a sales manager working from his home office in Denmark created a Danish PE for his German employer, even though he had no contact with customers and only 5% of his work related to the Danish market. The DTB reasoned that the German company had a business interest in having a a sales manager located in Denmark since he was close to some customers located in the Nordic region. See **Tax Alert 2022-0896**, dated 9 June 2022.

Germany — The Government announced that it extended its agreements with Austria and Switzerland regarding frontier commuters until 30 June 2022. Under the agreement, frontier workers (employees resident in certain regions close to the border) working from their home office in their country of residence solely as a result of the pandemic will generally not create a home office PE for their foreign employers. According to the Government, the agreements will not be extended again. See Tax Alerts **2022-0621**, dated 14 April 2022, and **2022-0757**, dated 12 May 2022.

Hong Kong — The Court of First Instance held that Hong Kong's profits tax did not apply to a Dutch company's profits from selling electronics purchased from Hong Kong suppliers to its Dutch group company. The court noted that the company's only nexus with Hong Kong consisted of a bank account and a registered office, which were insufficient to establish that it was conducting business in Hong Kong. See **Tax Alert 2022-0817**, 20 May 2022.

India — The Income Tax Appellate Tribunal concluded that a Singapore manufacturer did not establish a PE in India when it entered into sales, distribution and marketing agreements with a related Indian company. The tribunal reasoned that the foreign manufacturer's employees were never physically present in India, the foreign manufacturer completed all sales to India, the sales commission agreement did not authorize the Indian company to conclude any contract on behalf of the foreign manufacturer and all products were shipped to Indian customers from Singapore. See **Tax Alert 2022-0896**, dated 9 June 2022.

Ireland — The Irish Revenue Commissioners announced that Ukrainians working remotely in Ireland — who would otherwise be present in Ukraine but for the war – will generally not create a PE for their foreign employers. This treatment applies for tax year 2022, and appropriate documentation should be kept. See **Tax Alert 2022-0757**, dated 12 May 2022.

Luxembourg — In an updated circular, the Government outlined the circumstances under which it will deny or permit deductions for interest and royalties paid to related corporations established in countries on the European Union's list of noncooperative jurisdictions for tax purposes. See **Tax Alert 2022-0903**, dated 10 June 2022.

Mauritius — In regulations, the Government exempted from income tax 80% of the income of licensed corporate investment dealers, provided that they satisfy certain requirements. The Government also outlined the expenses qualifying for the 200% deduction for acquisitions of "specialized software and systems." See **Tax Alert 2022-0657**, dated 21 April 2022.

Organisation of Economic Co-operation and Development (OECD) — The following countries deposited their instruments of ratification for the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (BEPS) this quarter:

- Belize (enters into force 1 August 2022)
- Cameroon (enters into force 1 August 2022)
- China (enters into force 1 September 2022)
- Hong Kong (enters into force 1 September 2022)
- Senegal (enters into force 1 September 2022)

See Tax Alerts 2022-0757, dated 12 May 2022, and 2022-0896, dated 9 June 2022.

Portugal — The Court of Justice of the European Union (EU) held that Portugal violated EU law by imposing withholding tax on dividends distributed by a Portuguese company to a German investment fund (i.e., undertaking for collective investment). The court noted that Portugal exempted dividends from corporate income tax if they were distributed to a Portuguese investment fund. See **Tax Alert 2022-0672**, dated 25 April 2022.

Spain — The National High Court held that Spain violated EU law by imposing dividend withholding taxes on a foreign sovereign fund's income from Spanish investments. The court noted that Spain does not tax the income of Spanish investment funds. See **Tax Alert 2022-0830**, dated 25 May 2022.

Sweden — In updated guidance, the Tax Agency concluded that an employee working from a home office in Sweden does not automatically create a Swedish PE for a foreign employer, particularly if the employee is working from home for personal reasons or due to government restrictions. A PE could result, however, if the foreign employer requires the employee to work from home or gains a commercial advantage from having the employee work from home. See **Tax Alert 2022-0896**, dated 9 June 2022.

Turkey — In a communique, the Government outlined procedures for companies to follow when revaluing certain assets and liabilities on their balance sheets to account for the effects of inflation in periods that inflation accounting could not be used. See **Tax Alert 2022-0790**, dated 17 May 2022.

Uruguay — The Administrative Contentious Court ruled that companies may only partially deduct acquisition costs for the construction of streets, sewers, potable water and sanitation facilities, and electric posts. See **Tax Alert 2022-0843**, dated 26 May 2022.

Through decrees, the Government extended the deadlines by which eligible companies that submitted projects must invest in large-scale construction of permanent or temporary housing in order to qualify for a 10-year corporate income tax exemption. For existing projects, the deadline to invest is extended one year, to 31 December 2023. For new projects, the deadline to submit is also extended one year, to 31 December 2023, while the deadline to invest approximately $2.5m in construction is extended one year, to 30 September 2026. See Tax Alerts 2022-0886, dated 7 June 2022, and 2022-0887, dated 7 June 2022.

Things we have our eyes on

National, state and local governments continue to seek to increase their revenues. Companies should continue to monitor developments in this area. Some of these potential tax law changes are summarized here.

Federal, state and territories

Foreign tax credits – Senate Finance Committee Chairman Ron Wyden (D-OR) and Senate Finance Committee Member Rob Portman (R-OH) released a discussion draft of proposed legislation that would disallow foreign tax credits for taxes paid to Russia or Belarus. The proposal would also eliminate other US tax benefits for persons within its scope, including tax treaty benefits, benefits under IRC Section 892, the trading safe harbor under IRC Section 864(b) and the shipping exemption under IRC Section 883. See **Tax Alert 2022-0652**, dated 20 April 2022.

In a generic legal advice memorandum, the Government addressed how to properly allocate and apportion amounts it calls "deferred compensation expense" (DCE) under the IRC Section 861 regulations for calculating a taxpayer's deduction for foreign-derived intangible income (FDII). Specifically, the Government asserted that so-called DCE deductions should be allocated to FDII for the tax years in which the compensation becomes deductible under federal income tax accounting principles, even if the compensation is based on employees' service in years before the FDII deduction existed. See **Tax Alert 2022-0854**, dated 31 May 2022.

Illinois – In draft regulations, the Government proposed making it easier for Illinois companies to prove that a foreign country has jurisdiction to tax their income in that country. In doing so, the draft regulations would effectively decrease the Government's application of the throwback and throwout rules, which allow the state, for apportionment purposes, to attribute an Illinois company's foreign sales of goods to Illinois (throwback) and disregard its services in a foreign country (throwout) if the foreign country does not tax the Illinois company. See the **State and Local Tax Weekly for 6 May 2022**.

New Jersey – The Government proposed amending New Jersey's combined reporting regulations to reflect changes made by the state legislature to the Corporation Business Tax Act (CBTA) in 2018 and 2020. For combined reporting groups, the proposed regulations would affect the following:

- Tax computation (including tax rates, minimum taxes and surtaxes)
- Determination of research and development credits
- Computing combined group entire net income (ENI) (including the interplay of the federal IRC and Treasury Regulations with the CBTA)
- Alternative apportionment claims
- Discretionary income and combined group adjustments
- Dividend received exclusion and tiered subsidiary dividends
- Deductions for NOLs and prior NOLs
- Credit sharing among combined group members
- Combined filing definitions and entities includable in a combined filing
- Unitary business standards
- Computing the net deferred tax liability deduction for transitioning to combined reporting from separate reporting

See **Tax Alert 2022-0864**, dated 2 June 2022.

New York – In draft regulations, the Government outlined the internet-related activities in which out-of-state businesses may engage without being subject to New York's corporate franchise tax. The Government's positions on protected and unprotected internet activities largely follow those expressed by the Multistate Tax Commission (MTC) in its recently revised "Statement of Information concerning practices of the MTC and supporting states under P.L. 86-272." See **Tax Alert 2022-0734**, dated 6 May 2022.

Puerto Rico — The Government proposed allowing companies to elect a 10.5% tax on industrial development income from sales of goods and services instead of the 4% excise tax on foreign corporations, which the latest US foreign tax credit rules do not consider creditable. A 15% rate would apply if jurisdictions adopt, before 1 January 2024, the 15% global minimum tax proposed by the OECD. Companies electing the 10.5% rate, or the automatically triggered 15% income tax rate, could also exempt 20% to 90% of their industrial development income from tax for Puerto Rico tax purposes. Exemption percentages will depend on certain conditions, such as the level of industrial development income, number of employees, capital investments made and the number of municipalities in which the business operates. See **Tax Alert 2022-5590**, dated 20 June 2022.

International

Argentina — The Government proposed imposing a one-time 15%"windfall income tax" on "extraordinary income" resulting from the increase in international prices. Companies would be deemed to have a windfall and pay the tax if they have net taxable income or financial statement income, after adjustment for inflation, of ARS $1 billion or more and either:

- Have a gross profit margin of 10% or more, after adjustment for inflation

  Or

- Increased their gross profit margin by 20% or more, after adjustment for inflation, over the prior year

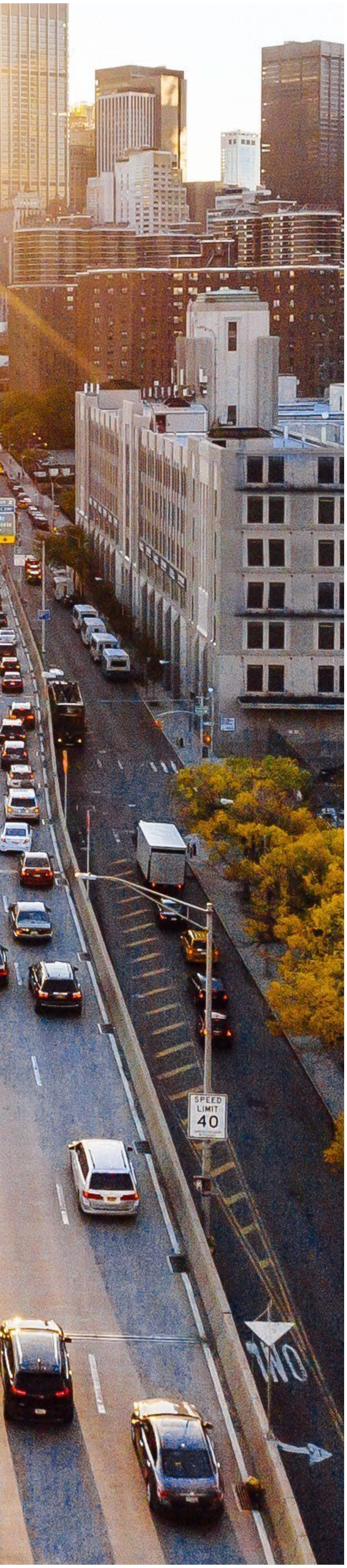
See **Tax Alert 2022-0935**, dated 16 June 2022.

Brazil —Tax authorities met with the OECD to discuss Brazil's adoption of a new transfer pricing system that would align with the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. The new system would include an arm's-length standard, which Brazil's current transfer pricing system does not have. See **Tax Alert 2022-0612**, dated 13 April 2022.

Canada — In the 2022-23 federal budget, the Government proposed increasing the general corporate income tax rate to 16.5% from 15% for banks, life insurers and any financial institution related to a bank or a life insurer. A related group, however, could exempt the first $100 million from income tax. The proposal would be effective for tax years ending after 7 April 2022. The Government also proposed applying a one-time tax of 15% (i.e., a Canada Recovery Dividend) on the 2021 taxable income of banks and life insurers whose 2021 taxable income exceeded $1 billion (to be imposed in the 2022 tax year and payable equally over five years).

Other proposals include:

- Denying a deduction for dividends received on Canadian shares (DRDs) when financial institutions in a consolidated group claim both a DRD and a two-thirds deduction for dividend compensation payments without risking economic loss on the underlying shares
- Limiting or denying deductions for the "contractual service margin," which stems from the adoption of IFRS 17 for insurance contracts and represents deferred insurance profits that are gradually included in income for accounting purposes
- Tightening the withholding tax rules so that withholding tax (generally 25%, unless reduced by a tax treaty) applies to interest paid by a Canadian-resident borrower to a party not subject to withholding tax (e.g., a US or Canadian resident), or subject to a lower rate of withholding tax than that of the related foreign lender under an interest-coupon-stripping arrangement (i.e., an arrangement in which the lender sells its right to future interest payments but retains the right to repayment of principal)
- Amending the definition of "tax benefit" under the general anti-avoidance rules (GAAR) so that Canadian tax authorities can use GAAR to adjust tax attributes before they are used to reduce, avoid or defer tax
- Implementing either Pillar One of the OECD's rules on base erosion and profiting shifting (BEPS) or a domestic digital sales tax if the Pillar One rules are not in place by 1 January 2024



- Implementing Pillar Two of the OECD's BEPS rules, including a "qualified income inclusion rule," which would add a domestic minimum top-up tax to Canadian law, thereby preventing other countries from imposing a "top-up tax" on Canadian companies whose effective tax rate is less than 15%
- Introducing a new tax credit for capital investments in carbon capture, utilization and storage projects

See **Tax Alert 2022-0583**, dated 11 April 2022.

Separately, the Government proposed implementing anti-hybrid mismatch arrangement rules that would generally align with the recommendations in the OECD's BEPS Action 2 report. See **Tax Alert 2022-0751**, dated 11 May 2022.

Eswatini — In its 2022/2023 budget, the Government proposed decreasing the top corporate tax rate to 25% from 27.5% and replacing the country's territorial taxation system with a worldwide taxation system for qualifying tax residents. Other proposed changes include:

- Limiting loss carryforward balances
- Increasing interest withholding tax rates to 15% from 10% for nonresidents
- Introducing a capital gains tax for business as an anti-avoidance measure

See **Tax Alert 2022-0663**, dated 22 April 2022.

European Union — At the Economic and Financial Affairs Council (ECOFIN) meeting on 17 June 2022, EU Finance Ministers came close once again to adopting the EU's latest draft directive on a global minimum tax under Pillar Two of the OECD's BEPS 2.0 project. The latest draft would generally extend the directive's implementation deadline by one year, to 31 December 2023 for the income inclusion rule (IIR), and 31 December 2024 for the undertaxed profits rule (UTPR). It also addresses the administrative burden on small businesses and the link between the introduction of Pillar One and Pillar Two.

Previously, all EU Member States expressed support for the latest proposal except Poland, which objected on the grounds that Pillar One and Pillar Two should be implemented at the same time. At the 17 June 2022 meeting, Poland backed adoption of the draft directive, while Hungary withdrew its prior support. The issue will be revisited at the next ECOFIN meeting. See **Tax Alert 2022-0957**, dated 20 June 2022.

Separately, the European Commission proposed allowing EU companies to deduct their annual difference in net equity (i.e., a notional interest deduction) to encourage them to finance investments with equity contributions instead of debt. The European Commission also proposed limiting interest deductions to 85% of net interest (interest payments less interest received). See **Tax Alert 2022-0753**, dated 12 May 2022.

Ireland — The Government announced a public consultation on how Ireland will implement the OECD's Pillar Two framework under BEPS 2.0 into law. The consultation, which ends 22 July 2022, includes questions for taxpayer consideration on how to address the IIR, the UTPR, the qualified domestic top-up tax and the subject to tax rule. See **Tax Alert 2022-0857**, dated 1 June 2022.

New Zealand — In an officials' issue paper, the Government outlined reasons for adopting the global anti-base erosion (GloBE) rules under Pillar Two of the BEPS 2.0 project. It also analyzed how and when the rules should apply if they are adopted. See **Tax Alert 2022-0881**, dated 7 June 2022.

OECD — In a public consultation document, the OECD outlined draft rules for identifying which multinational enterprises (MNEs) must allocate their profits under Pillar One of the BEPS 2.0 project. Based on the consultation document, MNEs would generally allocate their profits under Pillar One if their total revenues are greater than €20 billion and profitability exceeds 10% within a defined period. See **Tax Alert 2022-0598**, dated 12 April 2022.

In a second public consultation document, the OECD discussed how to identify profits from extractive activities (e.g., mining, drilling for oil or natural gas) for purposes of excluding them from profit allocation under Pillar One of the BEPS 2.0 project. See **Tax Alert 2022-0673**, dated 25 April 2022.

At a public consultation meeting on 25 April 2022, the OECD addressed technical questions from businesses about the GloBE rules under Pillar Two of the BEPS project, which were released in March 2022. Topics addressed include:

- The treatment, for GloBe purposes, of refundable tax credits that are economically similar to government grants
- The treatment of current tax expenses and deferred tax expenses as items that are booked as consolidation adjustments for GloBE purposes
- How to treat, for GloBE purposes, deferred tax attributes associated with losses incurred before the introduction of the GloBE Rules when a jurisdiction does not have a corporate income tax
- The effect of the recast of deferred tax liabilities at the 15% minimum rate on the computation of a company's effective tax rate

See **Tax Alert 2022-0696**, dated 29 April 2022.

In another public consultation document, the OECD defined "regulated financial services" for purposes of identifying the types of financial institutions whose revenues and profits are excluded under Pillar One of the BEPS 2.0 project. See **Tax Alert 2022-0777**, dated 16 May 2022.

Turkey — Members of the Turkish Parliament introduced draft legislation that would establish the Istanbul Finance Center (IFC), an economic incentives regime designed to strengthen Turkey's financial sector. Eligible companies could deduct 100% of their earnings derived from exporting financial services carried out at the IFC from their corporate income for tax years 2022 through 2031. After that, eligible companies could exclude 75% of those earnings. Companies would have to show the earnings separately on their corporation tax returns. See **Tax Alert 2022-0904**, dated 10 June 2022.

Uganda[*] — The President assented to a bill that would allow companies to deduct expenses and losses incurred in generating rental income, up to 50% of the gross rental income. Other changes include clarifying the definition of a beneficial owner for income tax treaty purposes and extending the income tax exemption for the Bujagali Hydro Power Project by one year, to 30 June 2023.

The bill is proposed to be effective 1 July 2022 and will be enacted upon publication in the Official Gazette.

United Arab Emirates — In a public consultation document, the Government outlined the main features and governing principles of its new corporate income tax, which will apply for tax years beginning on or after 1 June 2023. It also discussed transfer pricing rules and the criteria for determining whether a foreign company has a PE in the United Arab Emirates. See Tax Alerts **2022-0695**, dated 29 April 2022, and **2022-0757**, dated 12 May 2022.

United Kingdom — The Government proposed temporarily imposing an additional 25% tax on oil and gas profits, which would apply from 26 May 2022. Companies would not be able to offset previous losses or decommissioning expenditures against profits subject to the tax. The tax would phase out if oil and gas prices return to historically normal levels and, in any event, expire after 31 December 2025. A related proposal would permit oil and gas companies to claim a new 80% investment allowance, similar to the UK's 130% "super deduction" for certain new plant and machinery assets, to encourage them to invest in oil and gas extraction in the UK. See **Tax Alert 2022-0846**, dated 26 May 2022.

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[*] A Tax Alert has not been proposed in this development. For discussion of the bill as originally proposed, see **Tax Alert 2022-0834**, dated 25 May 2022.