

A MONTHLY DIGEST OF KEY STATE,
FEDERAL AND INTERNATIONAL
TAX DEVELOPMENTS TO KEEP
YOU ABREAST OF CURRENT AND
PENDING TAX CONCERNS

TAX INSIGHTS

Highlighting tax developments of interest to today's companies on the move.

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YEAR-END PLANNING

Tax Planning Guide and rate information

RSM Annual Tax Planning Guide – Our annual guide provides succinct analyses, tips, rate charts and other useful data to help businesses and individuals with tax planning. Discover answers to [popular tax questions](#) or delve into specific areas, including tax planning basics, investing, real estate, business and executive compensation, charitable giving, retirement, estate planning and more. This online resource is updated every fall.

[2017-18 Tax Planning Guide](#)

Summary of key federal tax rate information – Federal tax rates, limits and phase-outs directly affect your business and personal tax planning strategies. Keep our federal rate card handy to ensure you are using the most up-to-date information when making financial decisions.

[2017 Federal Individual Tax Rates Schedules*](#)

Applicable Federal Rates – Each month, the IRS provides various prescribed federal income tax rates, known as Applicable Federal Rates. Quickly access the relevant dates for a particular month using the IRS site link below.

[IRS Applicable Federal Rates](#)

**These rates might be affected by tax law changes.*



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EVENTS AND WEBCASTS

2017 legislative changes: State tax matters

LIVE WEBCAST | September 26, 2017

Presenters: Brian Kirkell, Principal; and Mo Bell-Jacobs, Manager

A number of events in the last year have caused a very active state legislative season. A new administration and the prospect of federal tax reform, the states' ever-expanding challenge to traditional boundaries of nexus, and revenue shortfalls in over half the states have resulted in a copious amount of new state tax legislation in 2017. Our state and local tax professionals will help you assess these issues and their impact on your business operations and tax filings.

Join us for a complimentary webcast on the major statutory developments affecting state and local taxation from the 2017 legislative sessions. This event will provide a high-level review of key changes, with a focus on:

- Income/franchise and sales and use tax nexus changes
- Ever-changing taxability of digital goods
- State apportionment and allocation updates
- Credits and incentives developments
- Current and past state and local tax amnesties
- Changes that can affect your 2017 filings

[For more information and to register](#)

IRS penalties: Avoidance and abatement

ON-DEMAND WEBCAST | June 06, 2017

By: Patti Burquest, Principal; and David Click, Senior Director

Join Patti Burquest and David Click for the second installment of their 2017 tax controversy webcast series, IRS penalties: Avoidance and abatement. This webcast focuses on delinquency penalties and international information return penalties—both how to avoid them and what to do when they are assessed.

[View on-demand](#)

In this one-hour session, we cover:

- Late filing, late payment and late deposits
- Unfiled or late-filed international information returns
- Unfiled, late-filed or late-furnished W-2s or 1099s

TRENDING IN TAX

MTC nexus program offers limited-time amnesty for Amazon retailers

Does inventory held in FBA distribution channel create nexus?

By: Matt Talcoff, Partner; and Michael Giannettino, Director

Many retailers have historically taken advantage of leveraging Amazon's Fulfillment by Amazon (FBA) sales distribution channel. In doing so, retailers have connected with a larger population of customer, while seemingly mitigating their [sales and use tax](#) compliance burden. However, over the years many states have learned about the specificity of the FBA distribution channel, and are now arguing the inventory that Amazon maintains on behalf of the retailer creates nexus in certain jurisdictions, regardless of materiality.

The presence of inventory in a state will, in most cases, establish nexus for a retailer. By establishing nexus, a company creates a collection and reporting requirement for certain taxes, including sales and use tax. Many retailers that have leveraged the FBA model for e-commerce sales have been assessed sales and use tax on historical sales as a result of inventory being held by Amazon on behalf of the retailer. The burden of uncollected sales and use tax on sales to customers is an expense that many retailers will never recover.

The Multistate Tax Commission (MTC) Nexus Program is offering a limited-time amnesty program for retailers seeking relief from any past due sales and use tax, including interest and penalties, and if applicable, income and franchise tax liability, including interest and penalties, in connection with its online retail sales activity in the state, excluding sales and use tax collected but not remitted. As a result of entering into the program, which is offered between Aug. 17, 2017 and Oct. 17, 2017, the taxpayer agrees to register as a seller or retailer with the state no later than Dec. 1, 2017. In doing so, the taxpayer agrees to timely collect, report and remit sales and use tax and file returns on all taxable retail sales to customers in the state.

There are certain criteria that have been defined by the MTC to establish eligibility into the program, including, but not limited to the following:

- At this time only the following states have adopted the terms of the amnesty program (along with stipulations); however, it is expected that more may join soon: Alabama, Arkansas, Colorado, Connecticut, Idaho, Iowa, Kansas, Kentucky, Louisiana, Nebraska, New Jersey, Oklahoma, South Dakota, Texas, Utah, Vermont and Wisconsin.
- The taxpayer has not previously been registered or contacted by the jurisdiction.

- The taxpayer does, in fact, use the FBA platform (or similar program) for distribution of product to a state that otherwise the company has no physical presence.
- The taxpayer has timely filed for disclosure with the MTC, and in accordance with the program submitted all requisite documentation and historical information.

This program provides a unique opportunity for retailers to absolve themselves of historical exposure (including taxes, interest and penalties) resulting from engaging in e-commerce sales. Keep in mind, by taking advantage of this program, you will have the burden of prospective compliance, however, it's unlikely the participating states will offer any relief from interest or penalties for retailers that do not seek to take advantage of this limited time offer.

If you sell your product through Amazon, or another similar distribution channel, we encourage you to contact a tax professional. The timing is limited to take advantage of this tax amnesty program.

Aligning executive plans with traditional employee plans

By: Anne Bushman, Senior Manager; and Mary Draayer, Director

How can you create a plan design that attracts and retains highly compensated employees? What are the opportunities in nonqualified plans?

Anne Bushman, a compensation and benefits specialist with RSM's Washington National Tax Office, and Mary Draayer, a director with the RSM US Wealth Management practice, discuss how companies can align executive plans with traditional employee plans.

[Watch full webcast](#)

Following are answers to questions submitted during the live webcast:

Does S corporation status restrict nonqualified plan implementation?

No, any entity can set up a nonqualified deferred compensation plan. The consideration of entity type relates to who the participants will be—if they are all owners of a flowthrough entity, the benefit of deferring income is offset by the deferred deduction.

Can a nonqualified plan be administered side by side with a 401(k) plan?

Yes, a nonqualified plan is in addition to a qualified plan. Many companies implement qualified plans like a 401(k) first, and then add a nonqualified plan as the business grows to provide additional incentive to management.

When offering a nonqualified plan, are there two plans for all employees and owners?

Employees who are selected for the nonqualified plan may have two accounts. Keep in mind nonqualified deferred compensation

plans are not open to all employees but a select group of highly compensated individuals and possibly owners.

To read more, go to: <http://rsmus.com/what-we-do/services/wealth-management/services-we-offer/retirement-plan-advisory/aligning-executive-plans-with-traditional-employee-plans-q-and.html>

New German bill combats harmful use of preferential IP regimes

By: Bastian Euler, Senior Manager

On June 27, 2017, Germany implemented a bill which provides significant limitations on royalty deductions or other deductions of expenses for the use of foreign intellectual property (IP) in Germany. The bill is based on the Organisation for Economic Co-operation and Development's (OECD) considerations on preferential tax regimes (base erosion and profit shifting (BEPS) Action 5) and targets holding company structures, which are benefiting from non-BEPS compliant preferential tax regimes.

Action 5 addresses concerns about preferential tax regimes that risk being used for artificial profit shifting and lack of transparency. A central part of Action 5 is the "nexus approach." This approach allows a taxpayer to benefit from a preferential IP regime only to the extent that the taxpayer itself incurred qualifying research and development (R&D) expenditures that gave rise to the IP income.

Given that most German double tax treaties provide a zero percent German tax rate on royalties paid to non-German companies and taking into account that not every treaty partner is part of the OECD, the new law prevents the use of non-German holding company structures to take advantage of preferential tax regimes that do not comply with the nexus approach. According to the new regulation, deductions for amounts paid by a German entity to non-German entities for the use of foreign IP shall be limited where the royalty earnings are

- received by an affiliated company of the German entity or branch,
- subject to a preferential tax regime and
- effectively taxed at a rate less than 25 percent.

As a result, the expense deduction is limited to the amount of the payment multiplied by a fraction the numerator of which is the actual tax rate on the royalty divided by 25 percent. For example, where a preferential tax regime provides a tax rate of 10 percent for royalty income, which is subject to the new regulation, the German deduction would be limited to two-fifths of the payment.

Notably, the legislation does not apply to preferential tax regimes, which are compliant with the OECD nexus approach. This means that the IP needs to be the result of R&D located where the royalty income is earned. Moreover, under the nexus approach the only IP assets that can qualify for benefits under an IP regime are patents and functionally equivalent IP assets that are legally protected and subject to approval and

registration processes, where such processes are relevant. The nexus approach explicitly excludes marketing-related IP assets such as trademarks from receiving benefits.

While the OECD would like IP regimes to be in compliance and closed to newly transferred patents beginning July 1, 2016, they have indicated that countries may enact grandfathering provisions to allow taxpayers to benefit under an existing regime until July 1, 2021. The implementation of the German regulation, therefore, affects preferential tax regimes in several OECD member states which are not yet compliant with the BEPS framework. The new rules are effective by Jan. 1, 2018. The consequences of the new regulation should be considered in any German-related tax planning involving preferential tax regimes.

IRS issues updated return due dates and extended due dates

By: Patti Burquest, Principal; Alina Solodchikova, Manager; and Ryan Carnes, Senior Associate

The IRS recently issued final and temporary regulations (TD 9821) effective July 20, 2017, which update the due dates and extensions of time to file certain tax returns and information returns. The due dates and extensions are updated to reflect new statutory requirements set by section 2006 of the Surface Transportation and Veterans Health Care Choice Act of 2015 (Surface Transportation Act) and section 201 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act).

These regulations affect taxpayers who file the following forms:

Form W-2 (series, except Form W-2G)

Form W-3

Form 990 (series)

Form 1099-MISC

Form 1041 and Form 1041-A

Form 1065, Form 1120 (series)

Form 4720

Form 5227

Form 6069

Form 8804

Form 8870

Form 1120 (series) and Form 1065

The temporary regulations amend Reg. section 1.6072-2 to change the due date for filing Form 1120 (series) from the 15th day of the third month following the close of the taxable year

(March 15 for calendar year taxpayers) to the 15th day of the fourth month following the close of the taxable year (April 15 for calendar year taxpayers). The amendments also change the due date for filing Form 1065 from the 15th day of the fourth month following the close of the taxable year (April 15 for calendar year taxpayers) to the 15th day of the third month following the close of the taxable year (March 15 for calendar year taxpayers).

Generally, these amendments apply to returns for taxable years beginning after Dec. 31, 2015. However, these amendments apply to returns for taxable years beginning after Dec. 31, 2025 for any C corporation with a taxable year ending on June 30.

Section 2006(c) of the Surface Transportation Act changes the automatic extension of time to file Form 1120 (series) from three months to six months. However, there are exceptions for C corporations with taxable years that begin before Jan. 1, 2026. These statutory exceptions are (1) if a C corporation files for a calendar year, the automatic extension is five months; and (2) if the C corporation files for a taxable year that ends on June 30, the automatic extension is seven months. These amendments apply to income tax returns for taxable years beginning after Dec. 31, 2015.

To read more, go to: <http://rsmus.com/what-we-do/services/tax/lead-tax/tax-controversy/irs-issues-updated-return-due-dates-and-extended-due-dates.html>

Rhode Island enacts tax amnesty program Program to conclude by Feb. 15, 2018

By: Girard Brisbois, Principal; Lu Awdeh, Principal; Steven Cruz, Senior Associate; and Amanda St. Jean, Senior Manager

On Aug. 3, 2017, Rhode Island Gov. Gina Raimondo signed House Bill 5175, the state's fiscal year 2018 budget bill. Among a number of provisions and changes to the state's tax law was a mandate that the Rhode Island Division of Taxation (the Division) establish a tax amnesty program conducted over a 75-day period ending on Feb. 15, 2018. Thus, the amnesty will begin in December 2017. The program is generally open to eligible taxpayers owing any state tax collected by the Division, including state corporate and personal income tax as well as sales and use taxes.

Compliance with the program requires payment by the taxpayer of all taxes and interest due from the taxpayer to the state for any taxable period ending on or prior to Dec. 31, 2016. The amnesty program provides that interest on any eligible taxes paid for periods covered under the program must be computed at the rate imposed under the state's general interest calculation, and then further reduced by 25 percent. Therefore, for example, the interest rate of 18 percent in effect for calendar year 2016 would be reduced by 4.5 percentage points, to 13.5 percent. Additionally, the tax administrator shall not seek to collect any penalties which may be applicable and shall not seek the civil or criminal prosecution of any taxpayer for the taxable period for which amnesty has been granted.

As is the case with many state amnesties, taxpayers who are under any criminal investigation or are a party to any civil or criminal proceeding, pending in any court of the United States or the state of Rhode Island, for fraud in relation to any state tax imposed by the law of the state and collected by the tax administrator are ineligible for the program. Rules and regulations for the program will be promulgated closer to the start of the amnesty period.

Takeaways

Rhode Island is the fifth state to enact tax amnesty legislation this year. [Virginia](#) enacted a state tax amnesty to occur over a 60-day period within fiscal year 2018. [Ohio](#) enacted a tax amnesty as part of their budget bill scheduled to begin on Jan. 1, 2018, and run through Feb. 15, 2018. [Oklahoma](#) enacted a tax amnesty scheduled to begin on Sept. 1, 2017, and run through Nov. 30, 2017. Additionally, Texas enacted legislation authorizing an amnesty program, and in 2015, South Carolina authorized the state department of revenue to establish an amnesty. However, neither state has developed a formal program as of the date of this article. Taxpayers considering applying for amnesty or who would like to discuss the benefits and risks of the programs should contact their state tax advisor.

IRS appeals Tax Court decision in Medtronic IRS requests case be remanded for further consideration

By: *Bob Bamsey, Senior Manager*

In an [appellate brief filed for the U.S. Court of Appeals for the Eighth Circuit filed July 21](#), the Internal Revenue Service (IRS) asserts the Tax Court erred in its opinion in the transfer pricing case, *Medtronic, Inc. and Consolidated Subsidiaries v. Commissioner of Internal Revenue*. Enumerating numerous concerns with the court's rationale and conclusions, the Commissioner requests that the court's decision be reversed and the case be remanded. As [with the court opinion in Medtronic](#), the Commissioner's appeal provides insight for taxpayers interested in transfer pricing.

Background

At issue in *Medtronic* is whether the profit resulting from intercompany transactions between Medtronic's U.S. entities and Puerto Rican affiliate were consistent with U.S. regulations. The IRS argued the comparable profits method (CPM) was the best transfer pricing method for analyzing the results of the intercompany transactions while Medtronic argued the comparable uncontrolled transaction (CUT) method was the best method. In the tax court opinion, Judge Kathleen Kerrigan applied the CUT method, albeit a modified version of Medtronic's approach, with numerous adjustments made to a single comparable uncontrolled transaction (the Pacesetter agreement).

IRS appeal

In its appellate brief, the IRS concludes the Tax Court erred as a matter of law in its adoption of the CUT method and failed to

apply regulatory standards. The IRS outlines numerous concerns with the court's approach which are summarized below.

- **Litigation** – The single transaction upon which the court relied was a litigation settlement. Generally, transactions occurring in the normal course of business are sought as comparable transactions and litigation is outside the normal course of business. Hence the Pacesetter agreement could be rejected.
- **Lump sum** – The single transaction upon which the court relied included a lump sum payment. Lump sum payments can affect the compensation structure of CUT method comparable observations, and the Commissioner indicates this was not considered in the *Medtronic* decision. Hence the results of the Pacesetter agreement should be adjusted.
- **Cross license** – The single transaction upon which the court relied was a cross license. Cross license agreements are often rejected as comparable uncontrolled transactions because they involve licenses between both parties, rather than a license solely between a licensor and a licensee. Hence the Pacesetter agreement could be rejected.
- **Different intangibles** – The Commissioner argues the intangibles in the single CUT method transaction used by the court are not comparable to the intangibles at issue in *Medtronic*. Further, the Commissioner indicates the court's findings themselves demonstrate the differences. Hence the Pacesetter agreement could be rejected.
- **Different functions** – The Commissioner argues the functions of the entities in the single CUT method transaction are not adequately compared to the functions of the entities in *Medtronic*. The IRS posits functional comparability should be explored in a CUT method analysis consistent with U.S. regulations. Hence the Pacesetter agreement could be rejected and, at least, the results of the Pacesetter agreement should be adjusted.

To read more, go to: <http://rsmus.com/what-we-do/services/tax/international-tax-planning/irs-appeals-tax-court-decision-in-medtronic.html>

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