Income/Franchise:
New York City: Department of Finance Revises Plans on Rules Implementing Business Corporation Tax

The New York City Department of Finance Business Corporation Tax Regulations (Project Update), N.Y.C. Dept. of Fin. (rev. 9/12/24). As the New York City (City) Department of Finance (Department) continues to develop regulations implementing the City Business Corporation Tax (BCT) – which are expected to largely conform with New York State (State) Department of Taxation and Finance regulations implementing its Article 9-A business corporation franchise tax – it recently announced that it will *not* move forward with its initially considered methodology that used the City Unincorporated Business Tax (UBT) sourcing rules to allocate partnership income earned by corporations. According to the Department, "although the City maintains that it does have considerable discretion in establishing the allocation of partnership receipts with respect to the BCT, uniformity across the State and City corporate tax regimes will streamline the process of tax administration and reduce the cost of doing business in the City of New York."
URL: https://www.nyc.gov/assets/finance/downloads/pdf/24pdf/bct-regulations-update.pdf

Originally, the Department had considered departing from the allocation approach used by the State for income that flows from a partnership to a corporate partner – providing that any items of income or gain from a partnership would be allocated under the statutory and regulatory rules of the UBT and would not be included in the receipts factor of a corporate partner. Under this previously contemplated approach, the corporation's other income would have been allocated under the business allocation percentage (BAP), and the sum of the separately allocated partnership income and the business income allocated using the BAP would have been the corporate partner's taxable income for BCT purposes. See *State Tax Matters*, Issue 2024-18, for more details on the City's initially considered methodology.
URL: https://dhub.deloitte.com/Newsletters/Tax/2024/STM/240503_10.html

The Department's release also states that in light of recent comments and feedback:

- Related to overcoming presumptions within certain of the State's allocation provisions and for determining the existence of a unitary business, it intends to propose a regulatory framework under which it will continue making determinations based on the individual facts and circumstances of the taxpayer, rather than apply the "clear and convincing" evidentiary standard adopted by the State;
- It plans to adopt the State's regulations regarding the special allocation of income from passive investment customers but is considering departing from the State's fallback allocation approach (where investor location is not known) and imposing an 8% flat allocation;
- It will not alter the threshold number of business customers purchasing substantially similar products or services (at least 250) needed to meet the requirements of the "billing address presumption;" and
- It intends to issue further guidance on integrating the reporting of excess inclusion income (required to be reported for federal income tax purposes by Internal Revenue Code section 860E) into the BCT framework.

While the Department intends to provide additional updates on its progress towards formal initiation of the City Administrative Procedures Act ("CAPA"), it has not committed to a precise timeline for rulemaking. The release states that once adopted, the regulations would be applied retroactively to tax years beginning on or after January 1, 2015 and supersede any previously issued policy guidance. Please contact us with any questions.

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Don Roveto (New York)
Partner
Deloitte Tax LLP
droveto@deloitte.com

Jack Trachtenberg (New York)
Principal
Deloitte Tax LLP
jtrachtenberg@deloitte.com

Josh Ridiker (New York)
Managing Director
Deloitte Tax LLP
jridiker@deloitte.com

Ken Jewell (New York)
Managing Director
Deloitte Tax LLP
kjewell@deloitte.com

Mary Jo Brady (Jericho)
Senior Manager
Deloitte Tax LLP
mabrady@deloitte.com

Jeremy Sharp (Washington, DC)
Senior Manager
Deloitte Tax LLP
jesharp@deloitte.com