Tax Haven legislative enactments and proposals

March 24, 2016

In brief

Prior to 2015, various forms of tax haven laws were enacted in Alaska, D.C., Montana, Rhode Island, Oregon, and West Virginia.

In 2015 Connecticut enacted and then modified a new tax haven law, Oregon broadened its tax haven laws, and DC modified the blacklist in its existing tax haven law.

The 2016 legislative session has been very active, with Alabama, Colorado, Kansas, Kentucky, Louisiana, Maine, and New Jersey introducing new tax haven bills.

Below we summarize certain tax haven developments from 2015 and 2016 as of the date of this Insight. You can access our tax haven tracker here for the current status of bills indicated below. We will update this tracker on a regular basis to provide current information regarding these and other legislative proposals.

In detail

A typical state tax haven statute requires a unitary non-US entity doing business in or incorporated in a tax haven country to be included in an otherwise water’s-edge unitary return. A tax haven country may be defined through application of several considerations, such as whether the country: imposes an income tax at a certain rate, has a tax regime that lacks transparency, or has created a tax regime favorable for tax avoidance (Alaska, D.C., and West Virginia have this type of tax haven statute). Alternatively, a state may provide of list of tax haven countries in its statute (e.g., Montana and Oregon).

Rhode Island has enacted its own unique tax haven law.

2015 and 2016 enacted legislation

Connecticut – Enacted new tax haven laws, treaty exception

On June 3, 2015, Connecticut enacted H.B. 7061, which requires combined reporting effective for tax years beginning on or after January 1, 2015. A combined group includes entities incorporated in tax haven jurisdictions. The legislation defines tax haven as a jurisdiction with certain qualitative characteristics such as a tax regime that lacks transparency or a tax regime that is favorable for tax avoidance. Under H.B. 7061, the commissioner is required to publish a list of jurisdictions that the commissioner believes to be tax havens. Combined reporting was delayed to tax years beginning on or after January 1, 2016, in S.B. 1502. Click here for our Insight.

On December 8, 2015, Connecticut enacted S.B. 1601, which adopts a treaty exception to the tax haven law. Under the treaty exception, a tax haven does not include a jurisdiction that has entered into a comprehensive income tax
treaty with the US. Additionally, S.B. 1601 eliminates the commissioner’s requirement to publish a list of tax havens. Connecticut law retains the series of qualitative factors necessary for a country to qualify as a tax haven. Click here for our Insight.

Oregon – Modifies countries, excludes apportionment representation

On July 21, 2015, Oregon enacted S.B. 61, which updates Oregon’s tax haven list and excludes tax haven entity factors from an Oregon group’s apportionment formula.

S.B. 61 makes minor changes to Oregon’s tax haven list. Effective for tax years beginning on or after January 1, 2016, S.B. 61: (1) includes Guatemala and Trinidad and Tobago as tax havens and (2) deletes Monaco from the tax haven list.

S.B. 61 significantly modifies a combined group’s apportionment calculation when a tax haven entity is included in the group. Effective for tax years beginning on or after January 1, 2016, when a tax haven entity is required to be included in an Oregon combined return, its income but not apportionment factor information will be included in an Oregon combined return. S.B. 61 provides that a taxpayer may petition the Department of Revenue to use an alternative apportionment formula (e.g., to include a tax haven entity’s factor information); however, when requesting alternative apportionment the burden is on the taxpayer to show that the statutory apportionment formula does not fairly represent the taxpayer’s Oregon business activities. Click here for our Insight.

District of Columbia – Blacklist enacted, repealed

D.C. defines a tax haven country through application of several qualitative factors. On August 11, 2015, Mayor Muriel Bowser signed D.C. Act 21-148, which expands D.C.’s definition of a ‘tax haven’ by adding a list of jurisdictions that qualify as tax havens. This act became law after the required 30-day Congressional approval. Click here for our Insight.

On February 27, 2016, Temporary Act 21-252 was enacted, and will expire on October 9, 2016. The act temporarily removes the blacklist. The Council will have to enact a permanent act that passes Congressional approval for the blacklist removal to be effective beyond October 9, 2016.

2016 Proposed legislation

Alabama – New tax haven legislation

Introduced on February 11, 2016, H.B. 202 would adopt mandatory combined reporting. A combined group would include the entire income and apportionment factors of any member that is ‘doing business’ in a tax haven.

A tax haven is not defined by a list of jurisdictions, but rather as a jurisdiction that has “no or nominal effective tax on the relevant income” and that satisfies other factors, including, but not limited to having laws that lack tax transparency or prevent information exchange or that provide a tax regime favorable for tax avoidance. The provisions would be applicable for tax years beginning after December 31, 2014.

Kansas – New tax haven legislation

Introduced on February 17, 2016, H.B. 1275 provides that, applicable for tax years beginning on or after January 1, 2017, net income includes the taxable income or loss of a unitary group member incorporated in a tax haven jurisdiction (called “a foreign jurisdiction for the purpose of tax avoidance” in the bill). The bill identifies criteria for jurisdictions considered tax havens. The Department of Revenue (DOR) will use these criteria to determine a list of tax havens through administrative rule.

The director of the DOR may allow corporations with a subsidiary incorporated in tax havens to not report tax haven income if the subsidiary is incorporated in the tax haven for reasons that meet the federal economic substance doctrine.

The bill allows subtractions for: (1) Subpart F income from a tax haven entity and (2) dividends distributed out of current earnings and profits by a tax haven entity to any C corporation included in the Colorado combined group.

If the bill is passed by the legislature, the voters would have to approve the measure on the November 2016 ballot because of the Taxpayer Bill of Rights since the bill would raise new tax revenue.

H.B. 1275 passed the House on March 7, 2016, and was introduced in the Senate on March 9, 2016.

Acknowledgements

This summary relates to the legislation enacted by each state and country, the dates they were enacted, the effectiveness dates, and any future related legislation. Please note: There are numerous bills and acts related to tax haven legislation. Please refer to the bills and acts for the most up-to-date information.

On August 11, 2015, Mayor Muriel Bowser signed D.C. Act 21-148, which expands D.C.’s definition of a ‘tax haven’ by adding a list of jurisdictions that qualify as tax havens. This act became law after the required 30-day Congressional approval. Click here for our Insight.
Turks and Caicos Islands, U.S. Virgin Islands and Vanuatu.

The bill would also require the department to report every other year to respective committees with recommendations for an updated list of countries that may be considered a tax haven.

H.B. 2680 does not provide an applicable effective date. The bill provides that “[t]his act shall take effect and be in force from and after its publication in the statute book.”

Kentucky – New tax haven legislation

Introduced on January 5, 2016, H.B. 86 would require unitary combined reporting. The bill provides that, for tax years beginning on or after January 1, 2016:

- the entire income and apportionment factors of an entity ‘doing business’ in a tax haven would be included in the combined group
- a transaction with an entity incorporated in a tax haven would be considered a reportable transaction, which would require disclosure to the state
- any ‘tax benefit’ accruing from a transaction with an entity incorporated in a tax haven would be disallowed

The bill provides that tax haven jurisdictions include: Andorra, Anguilla, Antigua, Aruba, The Bahamas, Bahrain, Barbados, Barbuda, Belize, Bermuda, British Virgin Islands, Caicos Islands, Cayman Islands, Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Grenadines, Guernsey-Sark-Alderney, Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Nevis, Niue, Panama, Samoa, San Marion, Seychelles, St. Kitts, St. Lucia, St. Vincent, Turks, U.S. Virgin Islands; and Vanuatu.

The bill was posted in committee on January 5, 2016. A bill with the same provisions, H.B. 342, was introduced on February 5, 2016. On February 8, 2016, it was assigned to the Appropriations and Revenue Committee.

Louisiana – New tax haven legislation

Introduced on February 17, 2016, H.B. 74a would, effective for taxable years beginning on or after January 1, 2017, adopt mandatory combined reporting. A combined group would include the entire income (without regard to federal treaties) and apportionment factors of any member that is doing business in a tax haven.

A tax haven is defined as a jurisdiction that has any of the following:

- been identified by the Organization for Economic Co-operation and Development (OECD) as a tax haven
- no or nominal effective tax on the relevant income
- laws that prevent tax transparency
- a tax regime that prevents information exchange
- created a tax regime favorable for tax avoidance

H.B. 74a is effectively dead since it was not enacted before the end of Louisiana’s special session.

Maine – New tax haven legislation

Introduced on March 2, 2016, L.D. 1634 provides that, applicable for tax years beginning on or after January 1, 2016, ‘net income’ includes the taxable income or loss of a unitary group member incorporated in one of the following jurisdictions: The Principality of Andorra, Anguilla, Antigua and Barbuda, Aruba, the Commonwealth of the Bahamas, the Kingdom of Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, the Republic of Cyprus, the Commonwealth of Dominica, Gibraltar, Grenada, the Bailiwick of Guernsey, the Republic of Ireland, the Isle of Man, the Bailiwick of Jersey, the Republic of Liberia, the Principality of Liechtenstein, the Grand Duchy of Luxembourg, Malta, the Republic of the Marshall Islands, the Republic of Mauritius, the Principality of Monaco, Montserrat, the Republic of Nauru, the Caribbean Netherlands, Niue, the Independent State of Samoa, the Republic of San Marino, the Republic of Seychelles, the Federation of St. Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the United States Virgin Islands, or the Republic of Vanuatu.

However, an amendment was offered in the Senate on March 10, 2016 removed all of the tax haven language from the bill. Note that Governor LePage vetoed similar legislation, L.D. 1120, on April 28, 2014.

Massachusetts – New tax haven legislation

H.B. 2477 (House Docket 1234) introduced March 11, 2015 and companion docket S. 1524 (Senate Docket 1699) introduced on April 15, 2015, proposes to include as a member in a Massachusetts combined report those entities incorporated in a tax haven jurisdiction (defined by a list, which includes Switzerland and the Netherlands). Click here for our Insight discussing these bills.

Unless and until these bills are relegated to a study by vote of the Committee (or the Legislative term ends), these bills can become active. The Legislative term will not end until
the end of 2016, so there is still a chance of the bills being voted out favorably by the Joint Committee on Revenue. Though introduced in 2015, these bills are included here as they technically remain active for the 2016 session.

**New Jersey – New tax haven legislation**

**A. 1720**, introduced January 27, 2016, would adopt mandatory combined reporting. A combined group would include the entire income and apportionment factors of any member that is incorporated in a tax haven.

Under A. 1720, a tax haven is not defined by a list of jurisdictions. A tax haven jurisdiction is to be determined by the Director of the Department of Revenue. An entity incorporated in a deemed tax haven may not be required to be included in the group if “it is proven to the satisfaction of the director that the member is incorporated in a tax haven for a non-tax business purpose.”

The bill provides no applicable effective date. The bill would “take effect immediately and apply to privilege periods ending after its date of enactment.”

**S. 982**, introduced on February 4, 2016, would adopt mandatory combined reporting. A combined group would include a related company that does business in a tax haven jurisdiction.

Under S. 982, a tax haven is defined as a jurisdiction that has “no or nominal effective tax on the relevant income” and that satisfies other factors including having laws that prevent tax transparency, having a tax regime that prevents information exchange, or having created a tax regime favorable for tax avoidance.

An exception exists to the extent it is proven, to the satisfaction of the Director, that its business in that jurisdiction is outside the scope of the laws, provisions, and practices that cause the jurisdiction to meet the bill’s definition of a tax haven.

S. 982 provides no applicable effective date. The bill would “take effect immediately and apply to privilege periods ending after its date of enactment.”

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**Let’s talk**

If you have questions regarding any of the bills mentioned above, please contact a member of PwC’s State Legislative Services group or PwC’s SALT Inbound Team.

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