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New York: State tax agency report, implications of federal tax reform for New York taxpayers

The New York Department of Taxation and Finance issued a preliminary report addressing New York's conformity to the recently enacted federal tax reform legislation and how the federal changes will affect New York taxpayers. The report —a "preliminary report" presented to Governor Cuomo—outlines certain actions that the state may want to take in light of federal tax reform, and reflects that extensive analysis may be warranted as the tax agency considers how best to respond to federal tax reform.

Individual tax

Certain of the options presented were directed by the governor and are intended to address the repeal of the uncapped state and local tax deduction and to provide relief to New York residents adversely affected by the federal changes. In particular, the report outlines several options for converting some or all of the individual income tax to an "employer compensation expense" tax (a payroll tax) as a means of retaining the deductibility of that portion of the individual (personal) income tax converted to the payroll levy.

The report also identifies options for offering a tax credit to offset some percentage of charitable contributions made to state-operated charities as a means of converting a non-deductible state tax levy to a deductible item at the federal level.

Business tax

The report also addresses how New York business taxpayers are affected by the federal tax reforms, including how amounts included in income under the deemed mandatory repatriation will be treated in New York and whether or how the state would tax the global intangible low-taxed income (GILTI).

Under New York law, subpart F income is "other exempt income" excluded from the entire net income tax base. Thus, amounts deemed repatriated as subpart F income will not be taxable in New York. However, the report notes that an interest expense that is attributable to exempt income that is deducted at the federal level is required to be added back in computing entire net income and that this addback will indirectly increase taxable business income in New York.

- The report notes that a deduction allowed under new IRC section 965(c) effectively reduces the rate of tax that will be imposed on the deemed repatriated amounts. The report notes that New York may want to enact a specific addback for the new 965(c) deduction to avoid taxpayers getting both an exemption for the subpart F income and a deduction.

- With respect to GILTI, the report notes that if no action is taken, New York will tax a portion of GILTI income. Only a portion will be taxed in New York because the state will conform to the new deduction for GILTI under IRC section 250.

- The report addresses the effect on New York (due to the state's current "rolling conformity" rule) of numerous other business tax changes.

Read a **January 2018 report** prepared by KPMG LLP