***Entertainment, Media, and Communications Tax Newsletter/ Volume 21/March 2014***



# *In focus*

Our first article explores the BEPS Action Plan and how it is already becoming an international tax challenge. How will the BEPS project impact EMC companies? Next, we take another look at cloud offerings as state tax positions continue to evolve. Finally, the US telecommunications market looks great to new entrants but watch out for those imposing state and local taxes.

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## *OECD Action Plan on BEPS and its impact on EMC Companies*

### *In brief*

In 2013, the Organization for Economic Cooperation and Development (OECD) published a report on base erosion and profit shifting (BEPS). The BEPS report was based on the perception that governments lose substantial corporate tax revenue because companies move profits to lower tax jurisdictions and expenses to higher ones. The report was followed by an Action Plan paper that addressed these perceived flaws in the international tax system. The Action Plan called for a detailed investigation into the business activities of multinationals and

specified 15 separate action items to be completed over the next 18-24 months. To date, there are indications that the BEPS project and related developments are already creating shifts in global tax authority behavior. It is important to note that the OECD, as well as most of the stakeholders, has a strong incentive to advance this project. It is preferable to address BEPS and therefore progress a collaborative solution within the current international tax framework rather than unilateral actions by tax jurisdictions that could potentially exacerbate the problem.

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## *In detail*

### *The Action Plan and impact on EMC Companies*

The 15 action items proposed in the Action Plan can be grouped into four general categories: (i) general actions directed at addressing BEPS such as; neutralization of the effects of hybrid mismatch arrangements, limit base erosion via interest deductions and other financial payments, and counter harmful tax practices; (ii) transparency and disclosure actions which would require taxpayers to disclose aggressive tax planning arrangements; (iii) treaty related actions that revolve around the prevention of treaty abuse; and (iv) permanent establishment (PE) and transfer pricing actions focusing on changes to the definition of PE and assurance that transfer pricing outcomes are in line with value creation with regard to intangibles, risk and capital. While the BEPS agenda is not specifically targeted at EMC companies, there will be collateral impact arising from changes in the approach of tax authorities and changes in the legislation. These changes could have a broad impact. Summarized below are some key areas relevant to EMC businesses. Note that BEPS is broadly consistent with the attitude of many taxing authorities and may give them the confidence to act. We are already witnessing countries (e.g., Netherlands and Mexico) taking action, perhaps with a goal of unilaterally becoming "BEPS compliant".

**Prevent treaty abuse**

Treaty abuse has been identified by the OECD as one of the most important sources of BEPS concerns. This action item identifies a series of measures to ensure that taxpayers cannot inappropriately use bilateral treaties to generate double non-taxation for an activity. The action, due September 2014, will attempt to develop best practice anti-abuse clauses for use within treaties and best practice anti-avoidance rules that jurisdictions can implement within their domestic tax system.

*Observation:* EMC companies that invest globally through entities located in countries with a favorable treaty network may expect an increased scrutiny of treaty benefits eligibility. Tax authorities in many countries have already become more aggressive in recent years, challenging the treaty residence status focusing on tax residence, beneficial ownership, and substance. With this action item, we may expect future treaties to increasingly include anti-abuse and anti-treaty shopping clauses, such as US style LOB provisions. Some jurisdictions have already begun proceeding in this direction (e.g., Japan/UK and Japan/Netherlands treaties).

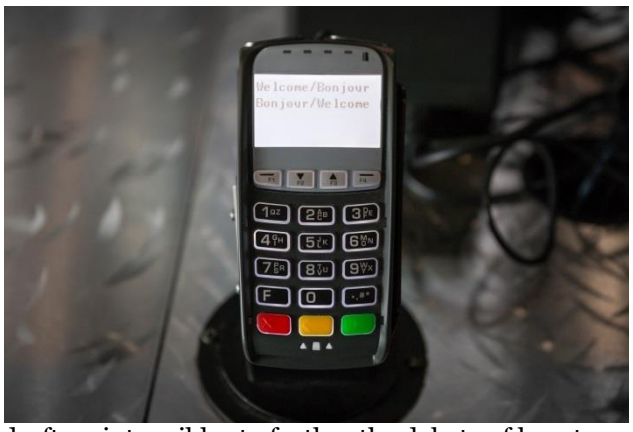
**Artificial avoidance of PE status**

Under this action item, changes to the definition of PE were proposed to prevent the artificial avoidance of PE status. The plan identified two areas of concern; first, the use of "commissionaire arrangements" where there may be a shift of profit from one country to another in circumstances where there is no substantive change in the functions performed in the first country and second, the artificial fragmentation of global operations among group entities to qualify for the "preparatory and auxiliary" exception to PE status. The OECD is working on the Model Treaty, an amendment to the dependent agent test and the specific provisions dealing with preparatory and auxiliary services. Changes are expected by September 2015.

*Observation:* Given that the definition of what constitutes a PE is expected to change, it is important for EMC companies to review their global activities and their potential to create a new PE in an unexpected location. Additionally, the widening of the dependent agent PE tests may lead to additional risks of PE challenge.

**Assure that transfer pricing (TP) outcomes are in line with value creation**

The key principle in this area is to ensure that the attribution of value for tax purposes is consistent with the economic activity generating that value. Changes to the TP guidelines and possibly to the Model Treaty will focus on ensuring that inappropriate returns do not accrue to an entity solely because it has contractually assumed risks or has provided capital. The rules will require an alignment of returns with value creation and the activities of people. The rules imply a clear "substance" agenda while reducing the importance of funding IP or bearing risks without the associated people functions. The OECD has released a revised discussion draft on intangibles to further the debate of how to assess and measure value creation. In addition, it is expected that the BEPS work stream related to the digital economy will produce a draft position paper in the near future.



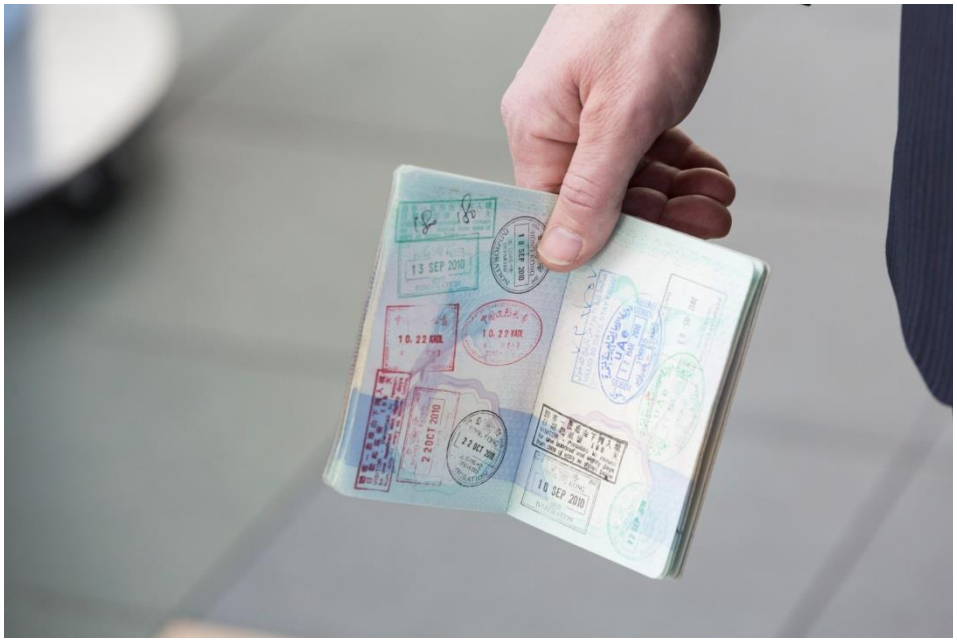

*Observation:* EMC companies are likely to see that intercompany service fees and other allocation of expenses are challenged more frequently. Intangible assets, such as copyrights and trademarks, will also come under increased scrutiny and EMC companies should review strategies allocating profits to an entity that is based in a low tax jurisdiction merely as a result of legal ownership of the intangibles. In addition, new distribution models and bundled sales or licenses will potentially be impacted by the OECD's BEPS recommendations.

The OECD has indicated that updated TP guidelines will require alignment of returns with value creation. EMC companies should assess the need for conducting analysis (e.g., review and documentation of the functions performed) to support profit splits with their foreign entities. Cost plus, a method perhaps employed historically, is under more pressure in the current environment.

**Neutralize the effects of hybrid mismatch arrangements**

The premise for the action on hybrids stems from the need to address gaps created by the interactions between domestic tax laws through the use of such hybrid entities and hybrid instruments to achieve unintended double non-taxation or long-term deferral (e.g., by double deductions, or generating deductions without corresponding income inclusions). The OECD plans to develop model treaty provisions and provide recommendations regarding the design of domestic hybrid rules by September 2014.

*Observation:* EMC companies may use entities in their non US structures that can be treated as a partnership in one country and as a corporation in another. In addition, funding instruments can in many cases be treated as debt in one country and as equity in another. The focus on the use of hybrid instruments and hybrid entities, in coordination with the work on interest expense deduction limitation, will likely reduce the benefits of such strategies and limit the ability of such instruments to access treaty withholding tax reductions.



**Counter harmful tax practices**

This action item is aimed at the actions of governments, not companies. The BEPS report calls for solutions to counter harmful tax regimes more effectively, taking into account factors such as transparency (including exchange of information) and on requiring substantial activity for any preferential tax regime. A holistic approach is required to evaluate harmful tax practices in the BEPS context. This action item aims to initially review the member country tax regimes and then expand participation of this action item to non-OECD member states before finally developing revised criteria of harmful tax practices by September 2015.

*Observation:* EMC companies with entities in "no or low effective tax" jurisdictions or with entities that benefit from favorable tax rulings should monitor these developments. This work stream could result in an increase on the exchange of information (including rulings) between countries and will likely put pressure on tax regimes that provide incentives without significant substance and presence in such regimes.

**Limit Base Erosion via interest deductions and other payments**

The focus here is on BEPS achieved by excessive deductible payments such as interest and other financial payments. Areas of concern are instances of excessive interest deductions for the borrower in one country with no corresponding taxation for the lender in the other country and where debt is used to finance tax exempt or deferred income. Best practice recommendations will be developed by September 2015 for domestic law limitations on related and unrelated interest expense and economically equivalent payments.

*Observation:* This action item should be monitored by EMC companies using blocker entities that are financed with debt and private equity funds financing acquisitions of portfolio companies with debt. Many countries already have domestic interest deduction limitations in place, but the best practice recommendations coming out of BEPS may change some of these domestic rules and further reduce the benefit of deductions.

**Increased focus on transfer pricing documentation**

The OECD has released two documents that shed additional light on the potential future transfer pricing documentation requirements for multinational companies. The OECD published its draft of "A Model Template of Country-by-Country Reporting" in January that proposes requiring companies to provide tax authorities with information related to income allocation, taxes and other business information on a country-by-country basis. The OECD is currently assessing the comments submitted in relation to its draft. In addition, in March 2014, the OECD released a draft of "Transfer Pricing Comparability Data and Developing Countries" to address concerns expressed by developing countries related to availability of comparable data required to administer transfer pricing. Both of these drafts provide insight into the potential future of transfer pricing documentation.

*Observation:* EMC companies will have to continue to assess transfer pricing documentation requirements while also considering the potential impact of the other BEPS work streams related to value creation and the digital economy. Country by country reporting requirements could also put additional pressure on companies' IT systems.

### *Conclusion*

The BEPS agenda is expected to bring significant changes to the current international tax framework in the next two years or so and may have a substantial impact on EMC companies. Many action items of the BEPS Action Plan are consistent with the current attitude of fiscal authorities. For example, securing tax rulings can be expected to become more difficult and tax authorities expected to be more discerning and more focused on issues such as substance and business purpose as part of the ruling process. EMC companies should consider conducting a BEPS assessment to understand issues and plan for the impact of the various BEPS work streams. At a minimum, companies should monitor the progress of the BEPS Action Plan carefully.

### *Late development*

As we go to press, the OECD issued a discussion draft addressing the tax challenges related to digital businesses, including proposals for modifying existing PE rules (BEPS Action 1: Address the Tax Challenges of the Digital Economy). We will discuss this development in a future article. *View PwC Tax Bulletin: OECD summarizes the options for addressing the tax challenge of the digital economy*

## *Taxation of the cloud continues to be taxing*

While the term "cloud computing" no longer sounds foreign to consumers or businesses, and most certainly not to tax professionals, taxpayers, including EMC companies, continue to struggle when trying to identify the sales tax issues surrounding the cloud. Taxpayers are increasingly seeking guidance from tax advisors or from state revenue departments via letter rulings for help in determining the taxability of their products. Often, taxpayers are taken by surprise when a product they have been providing to their customers has morphed into a taxable item simply due to software elements or enhancements.

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Tax challenges stretch across all three major cloud service offerings, and taxpayers can only dream of getting to clear skies on the taxability of the cloud phenomenon. As far as state issued guidance is concerned, over the last few years, software as a service (SaaS) has seen a wide variety of responses across many states. However, with limited, highly fact driven guidance from the states, there is still a great deal of uncertainty as to whether variations of SaaS offerings are subject to sales tax in a number of states, and many states are still lagging behind in providing clear statutory or regulatory guidance to the taxpayers. In addition, the applicability of sales tax to sales of SaaS is just a small piece of the unknown territory of cloud taxability. Most

states still remain silent as to how platform as a service (PaaS) and infrastructure as a service (IaaS) are taxed for state tax purposes, both for income and sales and use taxes, with minimal guidance available on the nexus and sourcing issues surrounding any cloud services.

Many articles have been written and published about cloud computing. This article simply highlights some recent state trends on cloud service offerings.

### *To tax or not to tax… that is the question*

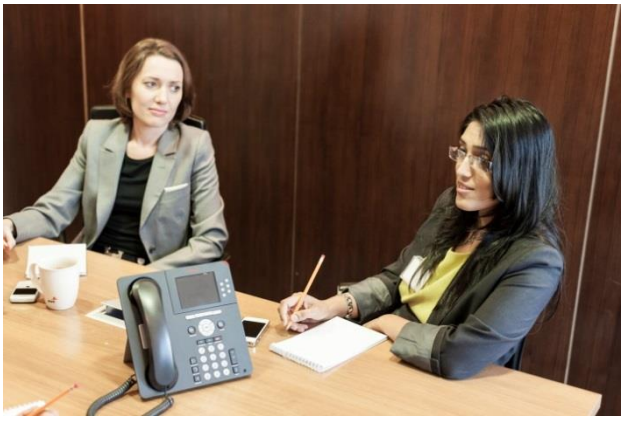
Many states are addressing the taxability of the SaaS product model through administrative and regulatory guidance. While some states are looking for ways to tax cloud service offerings, other states have decided not to tax SaaS products. A number of states that tax cloud service offerings have issued rulings that hinge on very specific fact patterns. In such states, the determination of SaaS taxability must be analyzed on a case-by-case basis. Several tests have come up in the analysis of the applicability of sales tax to SaaS including the transfer of ownership and control, the transfer of title, and the true object test.

For example, the Ohio Tax Commissioner recently ruled that a company's sales of its cloud collaboration services were taxable. The company provided cloud-based applications and related services to support customers' telecommunications equipment. Cloud services are taxable in Ohio as automatic data processing services if the services are used in business and the benefit of the services are received in Ohio.

Similarly in Utah, a company's sales of its cloud collaboration services were taxable. The company also provided cloud-based applications and related services to support customers' telecommunications equipment. Utah defines sales to include any transaction under which a right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract. Therefore, the Utah State Tax Commission ruled the sale of the cloud collaboration services is a taxable use of the software owned by the taxpayer.

On the other end of the spectrum, the Tennessee Department of Revenue held that a taxpayer's remote storage services and virtual computing services are not subject to sales tax. The Department concluded that no sale, transfer, or electronic delivery of tangible personal property or computer software occurred in conjunction with the remote storage service or virtual computing service. The services are most accurately categorized as data processing or information services, and therefore are not subject to tax.

In another example, the Virginia Department of Taxation ruled that cloud-based and hosted telecommunications services are not subject to tax in Virginia since there is no transfer of tangible personal property. A Virginia taxpayer provides services such as voice messaging, presence applications for instant messaging, audio conferencing, web conferencing and wireless/mobile communications. The hardware and software required for these services are located outside Virginia. Accordingly, transactions for the cloud-based or hosted services are exempt from the retail sales and use tax as a professional service.



### PaaS and IaaS Taxability

Although many states have specifically addressed the taxability of SaaS, the majority of the states remain silent in regards to the taxability of IaaS and PaaS. Similar to SaaS, the determination will depend on whether the states

consider a particular cloud computing offering to be tangible personal property, or a taxable service, or a transaction not subject to tax.

New Jersey was one of the first states to specifically address all three forms of cloud. In New Jersey, the sale of SaaS and PaaS are not sales of tangible personal property but are sales of a service. However, the PaaS provider must pay sales tax on the purchase of any hardware, software or other equipment used to provide the service, except where the business use exemption is applicable. The sale of IaaS is also not a sale of property or an enumerated service. The IaaS provider must pay tax on any purchases of tangible goods, telecommunications services, utilities, charges for servicing or repairing, etc., for use in the performance of their service contracts.

**Emerging Trends**

In addition to struggling with determining the taxability of various service offerings, taxpayers should also be aware of some of the trends we are seeing emerge via all of the rulings that have been issued. These trends include the importance of accurate and complete documentation, home rule tax issues, retroactive moratoriums, and aggressive nexus positions.

*Documentation*
Although the taxability of cloud computing still lacks clarity in many states, it is clear that many times the determination is made on a case-by-case basis through considering all available facts and documentation. Taxpayers should be prudent in maintaining readily retrievable records with a detailed product description, as well as books and records breaking down the charges made into product categories. Though cumbersome, in an audit situation, a good set of supporting facts may favorably shift the taxability determination or at least reduce some penalties due to an error made in good faith.

*Home Rule Localities*
Taxpayers and practitioners need to be cautious when determining the taxability of cloud services in home rule localities. For instance, the Colorado Court of Appeals held that a technology company's purchase of downloaded computer software was subject to the Boulder City Use Tax because the tax applies to all downloaded software regardless of the method of conveyance. In addition, the Court concluded that remote access to online data services and software are subject to the municipal use tax. At the same time, software provided through an application service provider in Colorado, delivered to a Colorado customer by electronic software delivery, or transferred by load and leave is not considered delivered to the customer in a tangible medium and, therefore, is not subject to the Colorado sales tax.

*Moratorium*
In various renditions of one of its tax bulletins, Vermont addresses the taxability of various services that are similar to, or may be viewed as, components of cloud computing. Originally, the state took the position that the sale of computer memory storage for large volumes of computer data, either created through the customer's use of a computer program on a remote computer or downloaded from the customer or third party's computer to the remote server, was subject to sales tax as the sale of tangible personal property. The bulletin was later revised to remove computer memory storage as taxable. To take this position even further, Vermont legislation enacted a temporary moratorium on sales of prewritten software accessed remotely, effective retroactively for sales made after December 31, 2006, and sales before July 1, 2013. Taxpayers may apply for refunds of tax paid on sales of remotely accessed prewritten software. Taxes paid on such charges previously will be refunded upon request if within the statute of limitations and documented to the satisfaction of the state commissioner.

### *Nexus*

With many states considering the remote access of software to be the use of tangible personal property, it is not a far stretch for states to assert that the use of that property in a state could create nexus for a SaaS provider. Recently, in a ruling in New Mexico with regard to a web-based tool, the Department concluded that an out-of-state taxpayer was engaged in business in New Mexico due to having subscribers in the state because it was selling a license to use the web-based tool and the license was a form of property in the state. For gross receipts tax purposes, the location of the license is the place where it will normally be used. Since the location of the license was presumed to be the end user's business location, the out-of-state taxpayer had property in the state. This aggressive approach not only subjects the transaction to sales tax, but also may create income tax nexus in the state.

### *Conclusion*

As the above discussion highlights, the tax issues around cloud computing are far from being resolved. In approximately 20 states, the determination of cloud taxability relies on the existing rules around the taxability of software or enumerated services, such as data processing. Other states have taken the position that cloud offerings are not tangible personal property or enumerated services and are, therefore, not subject to tax in those states. However, as cloud computer technology continues to evolve so will state tax positions. The challenge for EMC companies, and taxpayers in general, is to stay current with respect to changes in the various tax jurisdictions.

## *US inbound telecommunications companies may face unforeseen state tax issues*

The barriers to entry into the US telecommunications industry first began to break down in 1982 with the mandate of the breakup of the then existing Bell System. The breakdown took another leap forward with the Telecommunications Act of 1996 (1996 Act). In today's communications landscape, there are new telecommunications companies entering the US market with innovative and developing technologies, and many of these new ventures are new entrants to the United States. Some are start-up companies, but many established foreign telecommunications companies seek to expand their footprint to the United States. No matter the size, inbound telecommunications companies must be mindful of the unique and expansive taxes that can apply to a telecommunications company.

*" When a tele-communications company enters the United States to provide tele-communications services, its services cannot be performed without a complex set of contracts and agreements with existing US tele-communications companies.*

### The US tax landscape for telecommunications companies

Many countries impose a value added tax (VAT), a goods and services tax (GST), or a similar levy on the proceeds earned from the provision of telecommunications services. Accordingly, as foreign telecommunications companies explore new ventures in the United States, they may be aware of a potential for federal taxation and an indirect tax (i.e., something similar to a VAT or GST). What these companies may not realize is that in addition to a federal income tax (from which they may have certain tax treaty protections), they may be liable for income/franchise/privilege taxes, sales/use taxes (i.e., the so called VAT or GST taxes) at the state and local levels, and excise taxes on telecommunications at the federal, state and local levels.

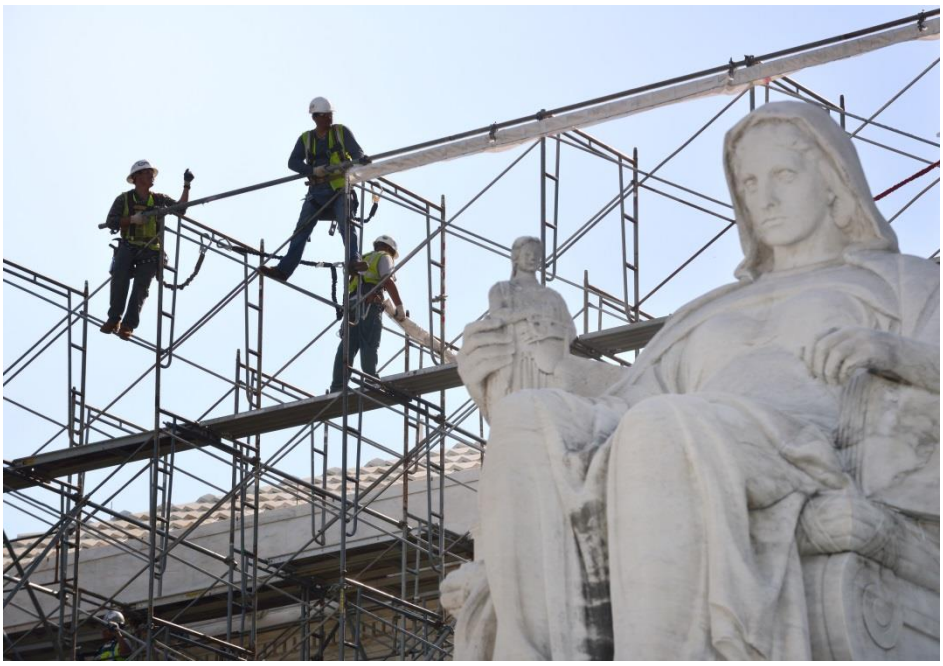
Additionally, telecommunications companies are exposed to tax in a myriad of jurisdictions within the US. When a telecommunications company enters the United States to provide telecommunications services, its services cannot be performed without a complex set of contracts and agreements with existing US telecommunications companies. In each market within the United States, there is an incumbent local exchange company (ILEC) that owns facilities and equipment in that market. Largely from the scheme set forth in the 1996 Act, foreign telecommunications companies plug themselves into the ILEC's facilities through a variety of interconnection contracts and agreements to provide telecommunications service. The nationwide provision of service, which is not hard to achieve as demonstrated below in the nexus discussion, can expose telecommunications

companies to over 13,000 taxing jurisdictions and the preparation of almost 48,000 tax returns. Moreover, the overall state and local effective transactional tax rate for telecommunications companies is over 14%.

**Tax nexus is a threshold issue for telecommunications companies**

For companies entering the United States, the first issue that needs to be addressed is nexus. Nexus is a fundamental concept of state taxation that describes the minimum contact a company has with a state necessary to establish a state's right to impose a tax obligation on that company (or any other type of business organization). While an overall federal constitutional standard for nexus applies to all state taxes, the practical application of these standards has developed through case law.

**Income tax nexus**



For income tax[1] purposes, the US Supreme Court has established guidelines to determine whether a state may compel an out-of-state company to file and pay state income taxes. The Court generally requires a state to establish "some definite link, some minimum connection, between a state and the person, property, or transaction it seeks to tax."[2] The ownership of property or location of employees in a state generally establishes nexus for an out-of-state corporation.

In addition to creating nexus through its physical presence within a state (e.g., property or payroll), state taxing authorities assert that an out-of-state corporation may create nexus through the in-state activities of an agent or affiliate. This theory is known as agency or affiliate nexus. Under this theory, nexus generally exists between a state and an out-of-state corporation when an in-state person or corporation acts as an agent representing the interests of the out-of-state corporation. The crucial factor governing agency or affiliate nexus is whether the activities performed in state on behalf of the out-of-state corporation are significantly associated with the out-of-state corporation's ability to provide its services in the state. Other factors governing nexus include whether the taxpayer's activities have regular, systematic, or continuous contact with the state.

**Application of income tax nexus rules to telecommunications companies**

As noted above, foreign telecommunications companies are able to access local markets through a series of interconnection contracts and agreements. It is this relationship between the foreign telecommunications company and the ILEC or other contracting local telecommunications companies that may create an agency or affiliate relationship with the state. As such, multiple state authorities have asserted income tax nexus for telecommunications companies that use other's telecommunications networks within their state. For example, the Kentucky Circuit Court affirmed that nexus exists when an out-of-state telecommunications company has the absolute right to use the physical networks of a state's local telecommunications companies.[3] The Court reasoned that a taxpayer's operating property was physically connected with Kentucky on the basis that the taxpayer had the right to use a local telecommunications company's telephone lines, equipment, and employees.[4]

**Nexus rules have application for non-income taxes as well**

For non-income taxes (or indirect taxes),[5] including sales and use taxes as well as telecommunications excise taxes, a certain level of nexus is required (similar to income taxes) between a taxpayer's activities and a taxing state in order for a state to impose a sales tax collection requirement on an out-of-state company. Nexus for indirect tax purposes is determined on a legal entity basis and is defined as sufficient connection of the taxpayer with the state so as to require registration and collection of that state's sales and use taxes. An interstate seller of tangible personal property will have nexus in a state if the seller's activities constitute a substantial, or physical, presence in the taxing jurisdiction.[6] Pursuant to the decision in Quill, examples of activities constituting nexus in the state can be any one of the following: having property, inventory or employees in the state; soliciting business either by employees, independent contractors, agents, or other representatives; providing services; or delivery of tangible personal property in company owned vehicles.[7]

The distinctions between income tax nexus and indirect nexus have been eroding over time, and states are consistently taking more aggressive legal positions to establish nexus with respect to all tax types. For example, states are increasingly applying concepts such as agency or affiliate nexus to establish and/or circumvent the bright-line requirement of physical presence mandated by the U.S. Supreme Court (i.e., Quill) for the creation of sales and use tax nexus. States are also moving towards a factor presence test (i.e., sales over $500,000, property over $50,000, and payroll over $50,000). Taxpayers should carefully consider the waning nexus distinctions before deciding whether their activities would trigger nexus and consequent payment and/or collection obligation. In fact, it is quite possible for states to argue that a telecommunications company that has interconnection contracts and agreements throughout the United States, providing it with nationwide coverage, could have both income and indirect tax nexus in all fifty states.

Overall, nexus is the first inquiry when determining a company's tax liability and obligations within a state. If there is no income or indirect tax nexus, then there is no tax obligation in the state. Only once nexus has been established is a taxpayer required to start filing income/ franchise/privilege, sales/use, and/or telecommunications/excise taxes. It is important to note that even if the

telecommunications services provided by the company in the state are not subject to sales tax (i.e., purchases of goods and services for resale), the taxpayer may still be required to register and file sales tax returns.

**Apportionment and allocation and inconsistent rules among the states add more layers of complication**

Once nexus is established, the telecommunications company's next challenge is to determine its tax liabilities in each state in which it has established nexus.

For income/franchise tax purposes, this will require the telecommunications company to create an apportionment model based on the apportionment factors that exist in each state in which it has established nexus. The property and payroll factors are straightforward, but the sales factor could be more of a challenge. While many states may still require a cost of performance (COP) approach, many states are moving towards a market place approach.

For indirect tax purposes, the sourcing rules are not consistent among the states. Sourcing can vary greatly depending on the state's categorization of the type of telecommunications service being provided as well as the sourcing methodology the state uses for that type of service. Examples: long distance service sold on a call by call basis may be sourced based on the state in which two out of three points (origination, termination, and service address) are in the same jurisdiction (i.e., "2 out of 3 test" or "Goldberg Rule"); wireless service is sourced based on the customer's primary place of use as per the Mobile Telecommunications Sourcing Act (MTSA); and private line service may be sourced based on the location of the channel termination points in some states and 50/50 in other states. Understanding the sourcing rules requires a detailed understanding of each service provided by the telecommunications company.

## *Conclusion*

The US telecommunications market is very desirable for new entrants. The US population craves technology and is quick to adapt to new and faster telecommunications services. Some of the industry's greatest innovations are in foreign based telecommunications companies, and these companies are looking to build a US marketplace. But, these inbound telecommunications companies must be mindful of the myriad of state and local taxes that could be imposed. Where the telecommunications company typically sets up a modest budget for both taxes and related compliance activities for its entrance into a VAT or GST country, the US inbound telecommunications company may need to significantly increase its budget for the United States.

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[1] Hereinafter, any reference to income taxes includes not only income taxes, but also franchise and privilege taxes, which may be based in whole or in part on income and capital.
[2] See, e.g., Miller Brothers Co. v. Maryland, 347 U.S. 340 (1954).
[3] Annox, Inc. v. Kentucky Revenue Cabinet, 2003 Ky. Tax LEXIS 246 (Ky. BTA Nov. 18, 2003), aff'd. No. 03-CI-1605 (Ky. Franklin County Cir. Ct. Feb. 17, 2005).
[4] Id.
[5] Hereinafter, indirect taxes include all transactional taxes including but not limited to sales and use taxes as well as telecommunications excise taxes.
[6] Quill Corporation v. North Dakota, 112 S.Ct. 1904 (1992).
[7] Id.

## *Let's talk*

For a deeper discussion of how this issue might affect your business, please contact:


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