



ALERT

FEBRUARY 2019



New Illinois Corporate Income Tax Bills Seek to Tax Foreign Income

Enactment of proposed Illinois legislation that would tax worldwide or tax haven income of corporations could prompt international and constitutional controversies.

Proposed legislation in the Illinois General Assembly (S.B. 1115; H.B. 2085) would return Illinois to worldwide combined reporting as the default method for Illinois corporate income tax filers. Since 1984, Illinois has been a water's-edge combined filing state, excluding the combined return from those unitary entities with more than 80 percent of their business activity outside the United States (the so-called 80/20 rule). The proposed legislation allows an election for water's-edge combined filing, but limits the foreign dividends received deduction to 75 percent, as opposed to the current 100 percent deduction. The legislation also eliminates the 80/20 rule, and it contains a tax haven "blacklist" that would include the income and apportionment factors of entities in so-called tax havens despite a water's-edge election.

Worldwide combined reporting is not new to Illinois. In 1974, the Illinois Department of Revenue released administrative guidance stating that the 1969 Illinois Income Tax Act allowed worldwide combined reporting. See Illinois Income Tax Informational Bulletin No. 1974-1 (Oct. 15, 1974). The Illinois Supreme Court agreed in *Caterpillar Tractor Co. v. Lenckos*, 84 Ill. 2d 102 (1981). In response to the *Caterpillar* ruling, the General Assembly adopted legislation in 1984 limiting unitary combined reporting to the water's-edge, essentially excluding most foreign entities and income from Illinois tax.

When implemented properly, worldwide combined reporting is constitutional. See *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159 (1983). Nevertheless, the proposed legislation in Illinois raises a host of administrative and legal issues. Since 2004, Illinois has had addback provisions for certain payments to unitary foreign members, so it already manages the concerns that worldwide combined reporting and tax haven lists claim to address. Moreover, the tax haven blacklist, which includes Ireland and the Netherlands, invites controversy overseas and constitutional challenges domestically.

The tax impact of the new proposed regime is extremely fact dependent; some taxpayers may pay less, some more. Others might see no change under this new regime. The Illinois legislative session ends in May. Jones Day lawyers will continue to monitor this development closely.



Michael J. Wynne
Chicago



Douglas A. Wick
Chicago



Jennifer C. Waryjas
Chicago

Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm WorldwideSM

Disclaimer: Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day. All rights reserved. 51 Louisiana Avenue, N.W., Washington D.C. 20001-2113