

19-2 January 14, 2019

FINANCE MEMORANDUM

Issuer's Allocation Percentage under the Unincorporated Business Tax and the General Corporation Tax for Issuers and Obligor Taxed under the Business Corporation Tax

Under the unincorporated business tax (UBT)¹ and the general corporation tax (GCT)² investment income is allocated to New York City using the taxpayer's investment allocation percentage, which sources investment income within and without the city. The investment allocation percentage is determined by using an issuer's allocation percentage for each stock, bond, or security (other than governmental security) held by the taxpayer. The issuer's allocation percentage enables investors to source each one of their investments within and without the City for determining UBT and GCT tax liability on their investment income.

Calculation for Sourcing Investment Income under the UBT and the GCT

The investment income of S-corporations, subject to and filing GCT returns, and unincorporated businesses, subject to and filing UBT returns, is allocated to the city by multiplying such income by an investment allocation percentage. The investment allocation percentage is determined by:

- 1) Multiplying the amount of investment capital invested in each stock, bond, or other security (other than governmental securities) during the period covered by its return by the issuer's allocation percentage of the issuer or obligor;
- 2) Adding together the products so obtained; and
- 3) Dividing the sum so obtained by the total investment capital invested during such period in stock, bonds and other securities.³

The investment allocation percentage calculation under both the UBT and the GCT requires an issuer's allocation percentage for all issuers and obligors in order for such taxpayers to source their investment income. For UBT purposes, the New York City Administrative Code (the "Code") states that the issuer's allocation percentages for those issuers and obligors that are taxed under the GCT and the business corporation tax⁴ shall be the percentage of entire capital required to be allocated within New York City on its report for the preceding year.⁵ Under the GCT, the issuer's allocation for GCT issuers and obligors is determined in the same manner as under the UBT.⁶ After the enactment of the business corporation tax, under which C-corporations would now be taxed, determination of the issuer's allocation percentage for C-corporations is not specifically defined under the GCT, as there is no specific reference made to the new

¹ S Chapter 5 of Title 11 of the New York City Administrative Code.

² Subchapter 2 of Chapter 6 of Title 11 of the New York City Administrative Code.

³ Code section 11-604.3(b) for GCT and section 11-508(f)(1) for UBT.

⁴ Subchapter 3-A of Chapter 6 of Title 11 of the New York City Administrative Code.

⁵ Code section 11-508(f)(2)(A).

⁶ Code section 11-604.3(b)(1).6

subchapter 3-A. However, the investment allocation percentage calculation requires an issuer's allocation percentage for issuers and obligors that are C-corporations in order for GCT taxpayers to source their investment income from such C-corporations.

Under discretionary authority⁷, the Department has determined that for GCT tax purposes, the issuer's allocation percentage for issuers and obligors subject to tax under the business corporation tax shall be the percentage of entire capital required to be allocated within New York City on its report for the preceding year. This issuer's allocation percentage is the same as the percentage required to be used by statute under the UBT.⁸ The City will publish the issuer's allocation percentage of business corporation tax taxpayers in the same manner as it publishes the issuer's allocation percentage of GCT taxpayers for both GCT and UBT taxpayers to source their investment income within and without the City.

⁷ Code section 11-604.3(b)(1)(iii).

⁸ Code section 11-508(f)(2)(A).