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Business Traveler Tax Compliance:

Making the Case for Action

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Business Traveler Tax Compliance: Making the Case for Action

By Lorraine Cohen and John Jennings

The HR director groggily reached for the phone. “Who could be calling at 3 a.m.?” he thought. The irritated voice of the CFO whisked away the sleep fog. “The team sent to strike the deal in Shanghai has been detained by the authorities. The deal we have been negotiating for months is in jeopardy. Figure out what has happened. And fix it! You are first on the agenda at the 7:30 am Leadership Team briefing.”

Business travelers are a diverse lot. The C-level executive. The hard-charging sales representative. The technician sent to handle a customer crisis. Road warrior travel experiences vary widely, of course, from the comforts of a G650 corporate jet, to the middle seat on a puddle jumper, to a rental car and an endless highway in the windshield. But once they reach their destinations, business travelers share an important characteristic: they are subject to the rules and regulations of the jurisdictions where they work. This includes tax laws. Increasingly states or countries seek to collect income taxes on the earnings of business travelers visiting their jurisdictions

The requirement to allocate and report income, as well as, withhold and remit taxes on the earnings of business travelers, impacts employees and their employers. These reporting requirements are frequently unaddressed as no one function within an organization has the knowledge and capability to comply with the regulations. This can, unfortunately, come to light in an unwelcomed fashion, such as a predawn call relaying the rage of a C-suite executive impacted by an unanticipated regulatory action.

The likelihood of such incidents can be largely reduced by recognizing the risks emanating from a mobile workforce and working collaboratively to take action to answer the following questions:

- Who are the organization’s business travelers?
- In which jurisdictions are they working?
- What compliance obligations are generated?

Leadership of such an initiative will probably come to rest upon the shoulders of those in either the HR or tax departments, as these functions will likely be responsible for addressing the consequences of any regulatory enforcement. While leading an organization to a higher level of compliance can be perceived as having limited upside, proactively undertaking this challenge may be the preferable alternative to fielding the fallout from a 3 a.m. phone call.

This article discusses three key steps in building a solid business case for taking action:

1. Form a multifunctional team to understand and address the problem;
2. Analyze historical travel data and use it to model solutions and
3. Obtain leadership endorsement for compliance efforts.

Taking these steps can help establish priorities, provide momentum for change, and make the process manageable.

Why Are Companies Taking Action?

Growing external pressures are driving companies to address traveler tax compliance. Countries such as the United States, United Kingdom, and Canada are aggressively using increasingly more sophisticated auditing techniques to capture additional tax revenues. These initiatives include tax and immigration authorities sharing information to identify travelers and enforce the law.

A sampling of recent experiences includes:

- Tax assessments on employers with business travelers who exceed workday thresholds.
- Suspension from doing business in Australia for business traveler visa and tax noncompliance.
- Imprisonment for travelers overstaying visas or failure to pay taxes.
- IRS requests for proof of filing U.S. income tax returns for L-1 visa holders.
- IRS requests of data on all business travelers visiting the U.S. from group companies (i.e., related companies – not just one entity).

Domestically, state revenue authorities are also seeking to collect tax from nonresidents. The New York and California tax authorities are aggressively enforcing their regulations, requesting corporate documents, such as travel and expense records, in order to conduct audits. Fines imposed by state revenue agents for noncompliance are reaching tens of millions of dollars. An examination in the state of New York resulted in a \$10 million assessment for an organization's failure to properly report income and withhold taxes for employees travelling into the state. This is in addition to the underlying tax liabilities. In Illinois, a state which has not historically levied tax on individuals travelling into the state, legislation has been introduced that, if passed, would allow the Illinois Department of Revenue to collect income tax on business travelers working in Illinois.

The Need for a Cross-functional Team

The information and knowledge required to implement a successful business travel program does not typically reside within one function. A mindset of working in functional silos may paralyze an organization from taking action. While the tax department may have the knowledge to assess the tax implications of business travel, the tax department does not know which employees are traveling, where they are traveling to, or the duration or reasons for the travel. The business units which deploy employees and bear the cost of the travel, do not possess the knowledge to assess the potential tax or immigration implications. A cross-functional team is a critical requirement for success.

Effective teams are generally comprised of a number of functions. Each function brings its own perspective, knowledge and resources. Collectively, a holistic process can be developed and implemented.

Human Resources. HR will be instrumental in developing policies regarding the treatment of employees incurring tax obligations – who (employer vs employee) is responsible for paying the tax, how employee cash flows will be addressed and who will be responsible for the cost of additional tax filings. HR will also work with the communications team to manage the change process, conveying the policy changes and the impact on employees, supporting functions and stakeholders.

Tax. Business travel can create tax filing requirements and exposures at the entity level. The tax function will provide input on control processes to be implemented to proactively identify travel that generates tax issues for the entities employing the business travelers. This may include process flows that allow intervention, as the cost of registering entities and filing tax returns can be significant. Control over the business travel data may also allow the tax department to recover VAT, hotel occupancy taxes or other indirect taxes that the company pays on behalf of its population of business travelers.

Payroll. Payroll also has a pivotal role in the compliance process. Payroll is accountable for allocating compensation to the jurisdictions in which the employees perform services, reporting compensation, calculating the income and or social tax withholdings and remitting the payments. To function properly, payroll will likely need to interact with employees to collect the forms required to support tax withholding levels.

Finance. The increase in the level of tax compliance will often correlate to an increase in real costs. The Finance team will want to understand the financial impact of the policies and procedures being enacted.

Legal. At some organizations, the legal department may seek to establish guidelines to define the duty of care the organization maintains for its employees. In addition to individual income tax issues, a legal department may want to formalize positions around the personal security, insurance coverage and immigration support provided to employees.

Global Mobility. Some companies have a separate global mobility function that does not fall under either Tax or HR. In such cases, it is important to involve mobility professionals to establish philosophical alignment between the treatments of employees deployed on long-term assignments versus those employees who travel for business.

In addition, **internal audit** may become involved in scoping the problem, the solution, and the controls enacted to monitor and report on compliance.

The Importance of the Business Case

Two issues in particular can impede efforts to address the problem of business travel tax compliance. One, few employees are motivated to get involved (other than the HR or tax executive who receives the 3 a.m. call). Two, if the company hasn't encountered tax authority scrutiny in the past, it is not likely that the tax issue is considered an urgent problem.

A strong business case is key to building momentum to overcome these barriers, especially with respect to securing executive support for action. It is critical at the outset that company leaders acknowledge the tax obligation and recognize that noncompliance is a real and potentially damaging risk to the company, the affected employees and to them individually in their role as leaders.

The Role of Historical Data and Economic Scenario Analysis

Speaking with senior leaders will require facts and figures. Be prepared to answer their questions:

- How many business travelers do we have? And how many of these individuals have tax implications as a result of the travel we ask them to take? What is the financial impact to our employees?
- Where does the company have payroll tax obligations arising from this travel? What is the approximate exposure of existing compliance gaps? What or where are the biggest concentrations of risk? What do you recommend that we do to address this issue?

The responses to these questions require data. Although most organizations already possess the data required to answer these questions, they often do not recognize this. There are many digital crumbs that exist to identify employee travel: travel records, expense reports, corporate jet logs, IP addresses, and security badge scans.

HR data files are also vital, as they provide an employee's home location, legal employer, and job grade.

Information from tax departments, such as corporate structures, registrations, and finance, including cost sharing arrangements, can help make the analysis more accurate.

Once the data sources are identified and accessed, the analysis can commence. Each employee trip, individually as well as collectively, must be examined to determine if taxation is triggered. This requires knowledge of the tax legislation in each locality the employee has visited as well as any treaties or reciprocal agreements that can supersede the domestic legislation to provide an exemption.

When taxation is deemed to arise, economic scenario analysis can be used to quantify the costs, including the tax impacts to employees and their employers. Filtering the data to focus on certain populations can be an effective means of highlighting potential solutions.

Many organizations tackle the issue in phases, addressing small, high risk groups of employees first. Once the business travel program is established and operating effectively, the scope can be expanded to address those employee populations deemed to be less risky.

The Value of Leadership Endorsement

Because the issue of business traveler tax liability has held a low profile for so long, it may not yet be on the radar of a company's board and senior management. Only rarely is the issue reported in the media, and a simple web search typically will not produce many high-profile examples of companies and individuals facing trouble because of noncompliance. As a result, it can be difficult for HR and tax leaders to convince senior management that the issue is a priority.

Different stakeholders will have different perspectives. An HR executive might be most concerned that employees are spared expense and trouble. Another executive might just want to make sure the company isn't facing an unacceptable level of financial risk. Yet another may be concerned about potential reputational

Making the Business Case

A mid-size company with employees who travel frequently realized that an increased focus by taxing authorities on multistate business traveler liabilities had created significant tax risk. California, New York, Delaware, and Georgia were among the highest risk states. And the risk was substantial: For three recent tax years, the total tax risk in the four highest risk states exceeded \$9 million. Overall, the tax risk was more than \$50 million for those three years.

Company executives decided to implement a process that reduced employee impact, leveraged existing or planned infrastructure, and addressed the associated risk. The executives divided the execution of the new policy and process into two phases. Phase 1 focused on high-risk states and outsourced management of data gathering and analysis, identification of travelers, and tax-related support. Phase 2 focused more broadly on compliance with other U.S. states' related tax regulations.

The benefits of this strategy included mitigating tax risk exposure for the current year and addressing it in a more broad-based way going forward. It was a practical approach that brought the company into compliance and was defensible to external auditors.

risks among a variety of stakeholders, from customers and vendors to regulators, analysts, and investors.

When making a business case for why a policy and corresponding program need to be instituted, it is important to speak in terms that will resonate with management. They will want to understand the relative potential costs of action vs. inaction and see a risk/reward analysis. Supporting the case for action with facts and figures will be essential in gaining executive support, particularly that of the chief financial officer, who is likely a prime candidate to serve as the initiative's executive sponsor. Along with having the data, it is important to present compelling reasons why this should be addressed and offer a suggested path forward to mitigate the risk.

Developing a dataset that is reliable and using it both to quantify a company's exposure and model related costs are important steps in developing the business case. For example, a company may decide to go with a policy that involves just 20 percent of its business travelers, but addresses 80 percent of its risk. Such factors can help company leaders consider the issue in the broader context of the company's objectives and strategies before giving the greenlight to policy implementation.

Next Steps on the Road to Compliance

Creating and presenting a solid business case for establishing an approach to traveler tax compliance sets the stage for the next phases of the effort. Once the understanding and buy-in of key leaders has been earned, efforts can focus on creating and implementing guidelines, policies and processes. Then with the program up and running, ongoing review will help in adapting to changing conditions and demands and mitigating risk on an ongoing basis. And, those 3 a.m. calls can become a thing of the past.

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Lorraine Cohen is a Partner in the Global Employment Services (GES) practice for Deloitte Tax LLP in San Francisco. She has over 25 years of experience serving global companies including expatriate tax program management consulting and compliance, tax planning, and human resource policy consulting.

Lorraine has extensive experience with respect to the management of international mobility policies, multi-country tax planning, payroll compliance and compensation structuring for many large multinational clients. Responsibilities also include coordination of U.S. and local-country tax compliance and consulting services for clients worldwide.

Lorraine is the National Leader for Deloitte's Business Traveler service offering. She has been one of the leads on the development of our Global Advantage Business Traveler tools and has developed the approach and methodology for this service for Deloitte Tax globally. She has been a frequent speaker on business traveler issues for many years.

Lorraine also has experience in the area of global equity consulting including tax and legal due diligence, assistance with local approvals and filings, and employee communications.

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John is a Partner and co-leader of Deloitte's US Business Traveler practice, focusing on helping multinational companies address the tax compliance emanating from a global work force. Since 2012, he has focused on the redesign of our business traveler tax compliance service offering and supporting technology.

John has nearly 20 years of experience assisting multinational organizations address the human resources and tax challenges of transferring personnel and compensation plans across borders. With an international portfolio of clients, he has led numerous global compensation and benefit consulting projects for companies in a wide array of industries.

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