2015 Engineering & Construction Conference

Tax Issues arising from a Global workforce

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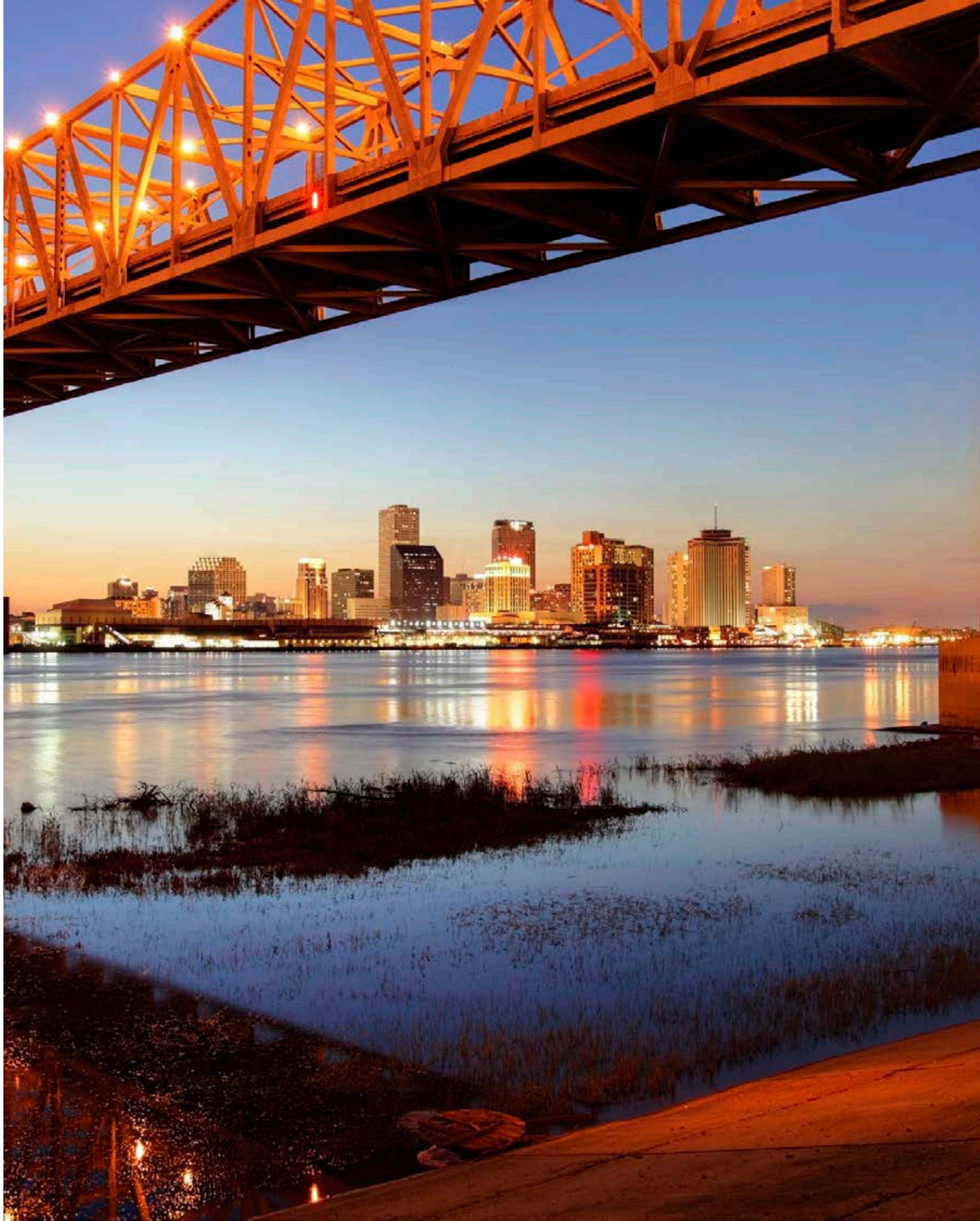


Agenda

Mobility Trends

- Domestic
- Foreign

Taxation on Trailing Equity

Non-employee Reporting

Worker Classification

Employer Tax Issues: Globally-Mobile Workforce

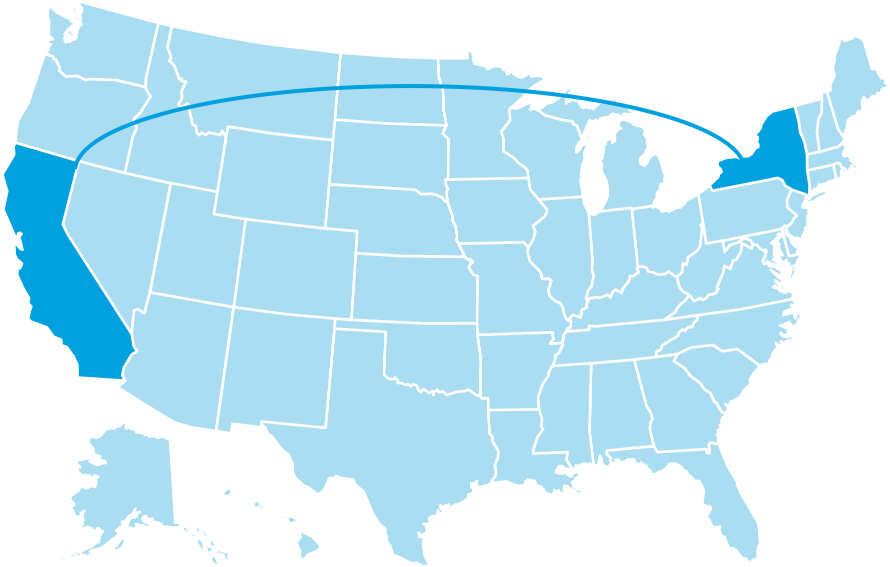
Framework for Discussion

- Have you classified them correctly (employee-contractor)?
- What are you giving them as compensation?
- Are you reporting and withholding correctly?
- Where are you providing them the compensation?
  - Temporary jurisdiction (project-based, etc.)
  - Relocation

Mobility Trends: Domestic

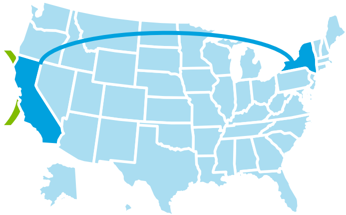
U.S. Domestic business travelers

What are the concerns with domestic travel?



- Many states have not established a de minimus reporting threshold, which creates administrative challenges to achieving full compliance.
- Many states define the employer withholding obligations as an approximation of what the employee is anticipated to owe in taxes.
- Standard deductions and/or personal exemptions may provide a de minimus limit for determining when a tax filing obligation arises.

U.S. Domestic business travelers (cont.)



California

No De Minimis
threshold

Very aggressive regarding non-resident wage withholding and tax remittances

Connecticut

De Minimis threshold
14 days

December 2, 2009 CT issued Announcement 2009(9) requiring employer wage reporting and tax withholding for non-residents working 14 or more days in CT throughout the year

Illinois

No De Minimis threshold

Has quite ‘favorable’ non-resident guidelines — Especially if firm is not located anywhere in IL

New York

De Minimis threshold
14 days

Uses an informal calendar year de minimis threshold for state tax withholding for a non-resident working in New York as reported in its state Field Audit Guidelines issued July 1, 2004 and TSB-M-12(5)I issued on July 5, 2012

U.S. Domestic Travelers: Suggested Employer Practices

Withholding for active employees should be in location(s) where work is or was performed (because the Company likely has nexus there).

- Even if this is a temporary work location.
- Even if it’s a jurisdiction in which the employee is a non-resident.
- Even if it requires looking back to prior periods for sourcing (bonus/equity)

U.S. Domestic Travelers: Suggested Employer Practices

Assuming the Company has nexus there, withholding for active employees should be in location(s) where employee is a resident:

- If there is no tax assessed in the actual work state.
- If there's a higher tax rate assessed in the residence state than in the work state, then often the difference in work state and residence state should be withheld in the residence state.

U.S. Domestic Travelers: Suggested Employer Practices

Find an owner of the process

- Tax or Finance are the likely candidates

Bring relevant team members

- Tax, Payroll, Stock Admin, Legal

Don’t limit the analysis to payroll

- Nexus: Corporate income, sales, and use taxes

U.S. Domestic Travelers: Suggested Refinements for 2014

Find travelers

- Trip reports from corporate travel desk
- Accounts payable expense reports
- Administrative assistant calendars
- Hint: Start at top of executive hierarchy and work down from there; include sales teams
- Watch “move-ins” and “move-outs”

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Mobility Trends – Cross border

Introduction

Business travelers

Individuals traveling on business for periods of varying lengths of less than one year and often to multiple countries or states with the potential to be exposed to other jurisdiction's tax regimes.

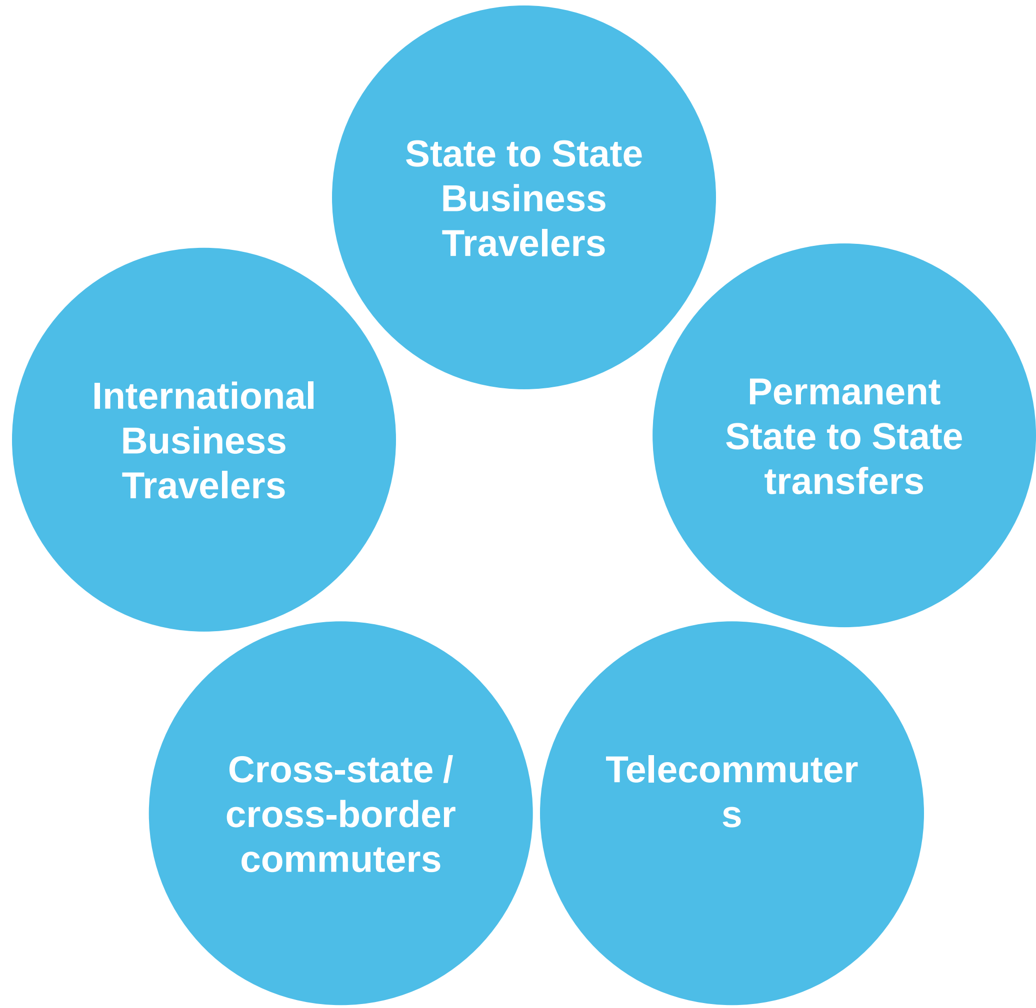
These employees are frequently not on the mobile employee "radar screen". They are typically working in alternate locations on projects, visiting suppliers or customers, or attending business meetings. They are not a traditional "expatriate" or "assignee" tracked by Human Resources.

Compensation is typically delivered from the home country/ state employer and may include per diems and/or expense reimbursements for items such as travel, accommodation, meals, incidentals, etc.

They typically do not change their residency or tax home and in most cases, family members do not travel with the employee.

These employees are not usually covered by a relocation or assignment policy and there may or may not be a cross charge to the locality(ies).

Similar challenges may be faced by telecommuters and cross-state/cross-border commuters



Why focus now? – Risks with business travel

Employer	Employee
Payroll, income and social tax • Host and home payroll reporting and withholding requirements • Withholding compliance obligations • Employer Social Security obligations; not always in line with income tax requirements (e.g., income tax treaties) • Incremental employee income and social tax costs (if equalized) • Corporate tax - Nexus risks • Withholding waivers	**Income and social tax** • Incremental income and social tax costs • Equalization and tax reconciliations
Reputation • What would be the impact on the Company's reputation if non-compliance was made public? • How would the Company's relationship with the tax authority be affected?	**Tax filings** • Tax ID registration/application • Individual income tax return filing requirements to claim foreign tax credits, or treaty positions
Commercial • Were the costs of business travel accurately estimated for budgeting purposes?	**After-tax pay** • Equalization • Responsible for own taxes
Labor law • Does the presence of business travelers in another jurisdiction expose the Company to labor laws of that jurisdiction?	**Employee experience** • Positive or negative experiences of process and travel to host jurisdiction • Willingness for future deployment
Immigration • Ensuring the correct visas and work permits are obtained	**Immigration** • Risks associated with entering a jurisdiction on the wrong visa • Detention/deportation

Employer Tax Issues: Globally-Mobile Workforce

- Services Global – Cross-border service teams – employer issues

Application of treaty – need to still file treaty applications (e.g. Vietnam)

Withholding rules differ from treaty application – e.g. Canada, UK – where threshold for reporting and withholding is lower.

Ability to sponsor work permits where no entity in the foreign location.

If no treaty – ability to report and withhold, and be compliant.

Cost of deployment, equalization.

PE creation due to individuals working at a third party site.

Taxation on Trailing Equity

Taxation of Trailing Equity

Assess Exposure: Consider elements

- Stock Options/Restricted Stock

Permanent v. Temporary Transfer

- Temporary transfer – likely a company liability
- Permanent transfer – employee responsible for understanding and paying trailing liabilities

Reporting and Withholding

Employers responsible for reporting trailing equity and potentially withholding.

Taxation of Trailing Equity

Assess : Tracking, Reporting, Withholding

- Stock Administration and Payroll
- Double Withholding implications
- Social Tax Issues

High Risk Countries

UK

Japan

United States (states such as NY,CA)

1099/1042 Reporting

Non-Employee Reporting

Assess 1099 (domestic) or 1042(foreign)

- All compensation (cash, equity, taxable fringe, etc.)
- Capture Directors – review state requirements

W8 v. W9 – non-completion withholding must be applied

W8

Non US resident or citizen. Not performing personal services in the US, or from effectively connected income.

W9

US resident or citizen

Worker Classification

Common misconceptions of worker classification

- Project workers are not employees
- Temporary workers are not employees
- Former executives returning as “consultants” are independent contractors

Rev. Rul. 87-41 — Twenty common law factors

1. Instructions
2. Training
3. Integration
4. Personal services
5. Hire, pay assistants
6. Continuing relations
7. Set work hours
8. Full time required
9. Employer's premises
10. Order, sequence set
11. Oral, written report
12. Hour, week, month pay
13. Business expense pay
14. Furnish tools and materials
15. Significant investment
16. Realize profit, loss
17. More than one employer
18. Services available to public
19. Right to discharge
20. Right to terminate

IRS 2006 audit manual on worker classification

- Created 3 categories of evidence:
  - Behavioral control
  - Financial control
  - Relationship of the parties

Worker classification

"Red flags"

- Former employees
- Form 1099 & Form W-2
- Form 1099 – Multiple years
- Industry focus
- Leads
  - IRS internal database
  - Contractor originated
  - State info sharing

Facts & Circumstances Considerations

- Is there a web presence for the contractor?
- Does 100% of work come from single source?
- Who pays any assistants? The contractor directly or the company?
- Paid hourly or by the job?
- Expenses paid separately or part of the overall fee?

Amounts at risk--taxes

- 25% income tax withholding (federal)
  - If 1099-MISC issued IRS will often take this off the table
- 5-10% income tax withholding (state)
  - States aren't as generous about taking anything off the table
- 7.65% FICA (Social Security + Medicare)
  - Matched by the Company
  - $113.7K wage base for Social Security
  - No wage base for Medicare
- FUTA (Federal Unemployment tax) 0.6% (normally)
  - $7K wage base
  - Paid by Company
- SUTA (State Unemployment tax): Rate varies
  - Approximately 6.0%; Wage base varies widely

Tax rate comparison

E.g. Tax Year 2013	3509(a) Rate -1099	3509 (b) Rate –No 1099
ER Share of FICA	7.65%	7.65%
EE Share of FICA	1.53% (20% of 7.65%)	3.06% (40% of 7.65%)
Total FICA	9.18%	10.71%
ITW	1.50%	3.00%
Total	10.68%	13.71%

	No Relief	Section 530 Relief	CSP 1 YR (audit)	CSP 25% (audit)	VCSP 10% (no audit)
Tax Rate	13.71% + Penalties and interest	N/A	10.68%	2.67%	1.07%

Voluntary worker classification settlement program

- A new program that allows employers to resolve past worker classification issues at a reduced cost by voluntarily reclassifying their workers
- Available to businesses, tax-exempt organizations and government entities that currently erroneously treat their workers as independent contractors, and would like to correctly treat them as employees in the future

Eligibility for Voluntary Program

- To be eligible, an applicant must:
  - Consistently have treated the workers in the past as nonemployees
  - Have filed all required Forms 1099 for the workers for the previous three years
  - Not currently be under audit by the IRS, and not currently be under audit by the DOL or a state agency concerning the classification of these workers

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