Global Mobility Taxation

Breakout B
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Global Mobility

Life Sciences Roundtable

November 2021

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Current state of 'global mobility'

What is Global Mobility in 2022?

- Outbound assignments and transfers from U.S.
- U.S. inbound, increasing from November 8th
- Return of international business travel
- Hybrid and remote working arrangements
- Full and part-time employees and consultants

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The current work environment

The context for Global Mobility

- Marked by significant fluidity – the Delta variant has stalled return-to-work strategies and consolidated remote and hybrid working
- Liberalization of U.S. and global workforce with a transformational shift away from physical work sites towards digital
- Differences in approach across industries to find a balance between the needs of the business, the importance of remote working to employees, and external pressures like the Great Resignation
- Adapting to changes in the way the business operates, contracts projects, delivers in-person

59%
Believe employees are more productive working at home

91%
Delta varient has disrupted return-to-work strategy

58%
Are undergoing transformation in the way the business works given the shift to hybrid and remote

83%
Increased the use of contingent or part-time workforce during the pandemic

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International agreements

Bilateral Agreements

- The US has concluded approximately 70 double tax treaties
  Treaties mitigate double taxation, including employment income related to periods of time (typically up to 183 days in a specified 12-month period) working in a foreign country
- Similarly, the US has concluded bilateral 'totalization' agreements covering social security contributions with 30 countries
- These agreements allow for social security contributions to be made only in the home country for a period typically up to 5 years

US Model Tax Treaty – Art. 14(2)

…remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days for all twelve-month periods commencing or ending in the taxable year concerned;

b) b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

c) c) the remuneration is not borne by a permanent establishment that the employer has in the other Contracting State

US Model Tax Treaty – Article 5

…the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. // …a person – other than an agent of independent status… -- is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts that are binding…shall be deemed to have a permanent establishment.

Technical and Economic Cooperation

In addition to personnel covered by Art… above, all other personnel (and family members forming part of their households), except citizens and permanent residents of COUNTRY, who the Government of the United States, or any agency thereof, employs (whether by direct hire, contract or other arrangement) or finances (whether by contract, grant or otherwise with any person or entity) and who are present in COUNTRY to perform work in connection with this Agreement are exempt from:

a) income and social security taxes levied under the laws of COUNTRY with respect to income derived from assistance programs;

Implications for the company

But it's employee tax, why should this be on my radar?

- Foreign registration with tax authorities
- Foreign corporate tax filing obligations

- Payroll registration and operation
    - For the company
    - For the employee personally
- Liability to foreign social security and potential increase in employee total cost to the company

- Increased international footprint
- Administrative complexity

- Liability to taxes not withheld
- Penalty and interest exposure

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Navigating risk

Nuance and Complexity

- Residency for treaty
- Economic employer
- Permanent Establishment
- 'Posting' vs Hybrid

Not clear cut

Enforcement

- Assumption of COVID relief
- Liability tied to immigration
- Tax authority sophistication
- Proactive assessment

Uncertain environment

Approaches to Mobility

- Limited risk remote work
- Assignment
- Transfer
- PE / New entity
- PEO

Toolkit

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IRS Response to travel limitations caused by COVID-19

Revenue Procedure 2020-20

- Under IRC Section 7701(b), an alien individual who meets the substantial-presence test for a calendar year is generally treated as a US resident for the year at issue.
- An alien individual may exclude certain days of presence in the United States for days that the individual had intended to leave the United States but was unable to do so because a medical condition.
- Days that an alien individual spends in the United States due to an illness that prevents the person from timely leaving, are not counted in determining the availability of treaty benefits with respect to income from dependent personal services performed in the United States.

Rev. Proc. 2020-20: Emergency Period

- The COVID-19 Emergency Period is a single period of up to 60 consecutive calendar days selected by an individual starting on or after February 1, 2020 and on or before April 1, 2020, when the individual is physically present in the United States.
- COVID-19 Emergency Travel Restrictions are travel disruptions or restrictions that prevent an individual from leaving the United States during the COVID-19 health emergency

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Rev Proc 2020-20 Application

- An eligible individual who planned to leave the United States during the individual's COVID-19 Emergency Period but was prevented from doing so due to COVID-19 Emergency Travel Disruptions may exclude up to 60 days during the individual's COVID-19 Emergency Period for purposes of applying the substantial-presence test.
- Form 8843, *Statement for Exempt Individuals and Individuals With a Medical Condition*, by the due date for filing Form 1040-NR.

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Revenue Procedure 2020-27

- IRC Section 911(a) allows a "qualified individual" to elect to exclude from gross income the individual's foreign earned income and a housing cost amount.
- An individual is a qualified individual under IRC Section 911(d)(4) for the period in which the person was a bona fide resident of or was present in a foreign country if the individual left

Waivers Published Annually

- The Treasury Secretary must declare what meets the waiver of time requirements under Section 911 for individuals electing to exclude their foreign earned income and who must leave a foreign country because of war, civil unrest or similar “adverse conditions” in that country
- The Global health emergency caused by the coronavirus (COVID-19) pandemic is “an adverse condition” according to the Treasury Secretary
- An annual revenue Procedure is published that details what countries meet this requreiment.
- Rev. Proc. 2021-21 – no countries listed due to COVID-19 implications.

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State Tax Implications of Remote Work

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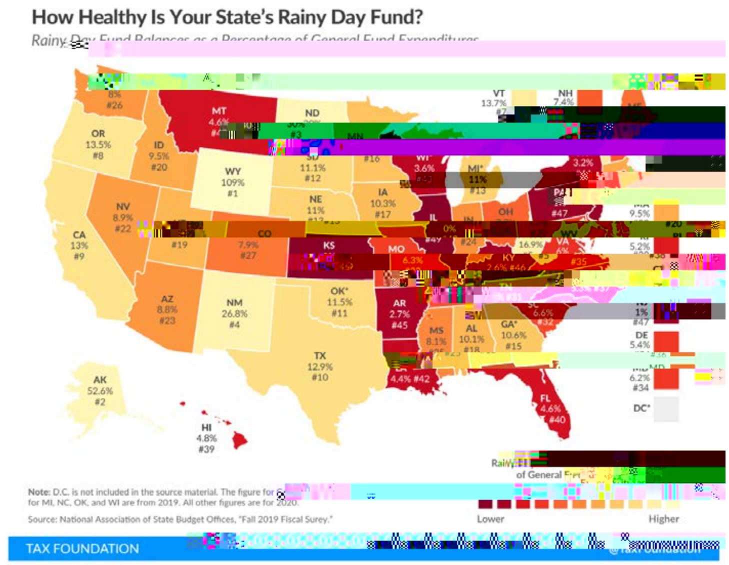
State Taxation of Workers in Multiple States: Employer Withholding

- The “employer nexus” to trigger withholding for most states is:
  - Employer office in state, or some other nexus to trigger state income tax; and
  - Payments of any wages subject to income tax in the state (or subject to contribution under the state’s unemployment compensation laws).
-

State Leniency During 2020, But What Happens When Pandemic Emergency Relief Is No Longer Warranted?

- **Cash-Strapped States**
  - Significant fiscal challenges as a result of COVID-19*
- **Prepare for Future Audits**
  - Stay up to date on state guidance
  - Regularly consult with advisors
  - Documentation



Employee State Income Tax Withholding Standards, In General

- Resident Employees
  - If an employer is doing business in a state, then income tax withholding is generally required on all wages paid to resident employees regardless of the state where wages are earned.
  - States have various rules about whether (and how much) credit is allowed against resident income tax withholding for income taxes withheld in other states.
- Nonresident Employees
  –

"Convenience of the Employer"

- Connecticut, Delaware, Nebraska, New York, and Pennsylvania (as well as Arkansas until recently and Massachusetts during the pandemic) tax wages attributable to services performed by employees outside of the state if the services could have been performed at the employer's in-state office, unless:
- The out-of-state services were performed out of o wi(o)1.6(4( )0.(i)3.

Remote Work Policy Considerations

Importance of Setting Expectations

- Establish remote working parameters (& clarify where remote and in-office rules differ)
  - Teleworking as an accommodation or as a job requirement
  - Productivity & performance
  - Work-hour expectations
  - Break period expectations
  -

Importance of Setting Expectations

- Establish remote working parameters (& clarify where remote and in-office rules differ)
  - Protecting proprietary information
  - Absences (sick leave & vacation)
  - Home as the work-place
  - Expense reimbursement
  - Choice of law

Additional Best Practices

- Telecommuter training & telecommuter manager training
- Require employment contract that addresses work-from-home expectations for employees who voluntarily opt to primarily work remotely
- For employees working remotely, assume they are working from their home/residence address of record, unless employees say otherwise
- Warn that proof of remote work location may be requiof of 1.4(o EMC /Lbl <</MCID 34 >>

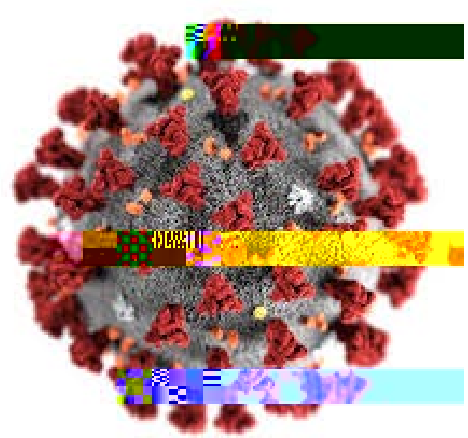
Global Mobility and Local Taxes

Eric M. Anderson

COVID-19 and State and Local Taxes

- Pandemic has had monstrous impact on State taxes, especially in major metropolitan areas
  - Residency issues: migration to Hamptons, CT, FL, NV etc.
  - Home office work: employee taxation and the "Convenience Rule"
  - And rates will likely go up

- Many local tax measures are based on where services are performed
- Flight from cities may have created an opportunity to reduce taxes

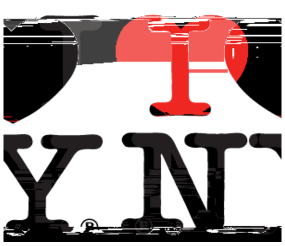


Poll Question

In 2022, I expect our employees will be working from home:

A. All the time
B. Most of the time
C. Some of the time
D. Rarely

Cities We’ll Discuss Today



- Applies to all *persons* doing business in the City - most businesses regardless of form

- Three primary components:
  - Gross receipts tax depends upon NAICS category up to 0.65%
  - Homelessness gross receipts tax up to 0.69%
  - Payroll expense tax 0.38%

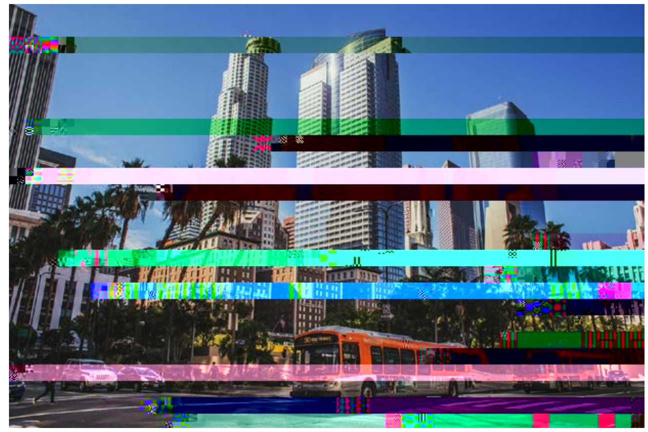
-

- Payroll includes all W-2 compensation of employees plus “pass-through” compensation from flow-through entities

- Payroll allocation based upon:
  - **Percentage of working hours in San Francisco**
  - **Percentage of business transacted in San Francisco**
  - **Based upon a reasonable method given**

Los Angeles Business Tax

- Applies to all persons doing business in the City
- Tax depends upon business activity up to .45% of gross receipts for "professions and occupations" businesses
- Taxable gross receipts measured by "work performed in the City"



- Allocation provided by City Clerk Ruling No. 15
  - Receipts "directly attributable" to services

Other State and Ce62(e)-840a8 /P <</MCID 22 >>E

- May consider impact in states and localities that apportion based upon where work performed
- Beware $$ grabs due to budget deficits - Philadelphia is considering temporary telecommuting employees as performing services in the City if the primary work location is in the City
- Substantiation may be the key to determining and realizing tax benefits

Proof of Burden is on the Taxpayer