ON THE ROAD AND AT RISK
Managing tax exposures created by business travel

Learn more about how technology can help.

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We work in an increasingly global environment. Technology and the fast-paced nature of business are extending companies’ operations well beyond their immediate confines and across state and country borders. However, few companies manage — or even know — their risk exposure from business travel.

As audit rates climb, organizations can't afford to put compliance on the back burner and developing a process to manage business travel related exposures, however basic at the outset, is critical to containing the risks. The first step is understanding your company’s ‘presence’ and ‘activities’ profile across jurisdictions.

**Why does travel to some areas carry higher risk?**

Every state and country has their own set of rules regarding how they tax nonresident businesses and individuals. States and countries also vary in how strictly they enforce their tax policies. Internationally, the United States, Canada, the United Kingdom and India are among the more vigilant countries when it comes to collecting taxes from non-residents.

**What kinds of issues are created by business travel?**

Business travel has the potential to create a series of compliance exposures for the company as well as your employees. These exposures can be thought of in three broad buckets:

- **CORPORATE EXPOSURES**
  - Nexus/PE
  - Registering to do business
  - Corporate income apportionment

- **EMPLOYER OBLIGATIONS**
  - Payroll withholding
  - Deferred comp. taxes
  - Equity/stock comp. taxes
  - Safety & security

- **EMPLOYEE EXPOSURES**
  - Income allocation
  - Residency risk
  - Immigration (international only)
What are some of the more common nexus discovery unit tactics?

- **An increasingly high volume of nexus questionnaires are being sent by auditors.**
  Auditors no longer target the travelers in your company — they will send questionnaires to everyone in the organization, including Human Resources. Auditors will also make random calls to people throughout the organization to ask about the activities and whereabouts of salespeople and other traveling employees.

  **Example**
  
  One company came under fire after an HR representative sent back a questionnaire with an exhaustive list of salespeople's duties, including “general schmoozing” and several other activities never listed in job descriptions or anywhere else.

- **Sometimes a customer’s audit becomes your audit.**
  A company can come to an auditor's attention when one of their customers is audited.

  **Example**
  
  The state of New York targeted Company A through their existing customer relationship. The auditor was on-site at the customer and saw Company A’s name on the visitor sign-in sheet. She checked to see if Company A was registered with the state and discovered that, in fact, they were not. The auditor sent the information on to the state’s investigations unit to send an inquiry and Company A found themselves in the midst of an audit.

- **Public information remains a rich resource for auditors.**
  While the company website and 10-K may be the most obvious sources to check, don’t forget about job openings and job descriptions. Review the company customer lists and ask yourself, “If I have a customer in State X where we don’t currently file any tax return, how did we get that customer? How do we service the client? And why are we not filing an income tax return for that state?”

  **Example**
  
  One company listed every event they sponsored on the company website. Of course, an auditor noticed the list and asked the company for the names of all employees who attended those sponsored events.
When determining nexus, is it the quantity or the quality of the contacts in a state that matters?

In some cases the number of contacts in a state is the critical variable, while at other times it’s the importance and nature of those contacts that matters to state authorities. For example, in the two New York cases of Orvis and Vermont Information Processing (VIP), the court decided that substantial nexus did not require substantial physical presence.

Both Orvis and VIP were based in Vermont, with no offices or property in New York, yet both companies sold to customers in New York. Orvis had annual sales of about $1.5 million to New York customers and over the course of three years, the company sent salespeople into New York 12 times to solicit business. VIP offered free-of-charge IT maintenance visits to its New York customers and over the course of three years VIP employees made 40 customer service visits to New York.

In both of these instances, the courts found substantial nexus. Although the number of visits was not high, the repeated nature of the Orvis visits and VIP’s promise to visit customers as needed both counted as substantial presence.\(^1\)

What if my company only visits a state once? Can there still be nexus?

For some states, just one contact can be enough to trigger nexus.

**Example**

One company sold ice cream machines to restaurants in Washington. They visited a key customer who owned 10 franchise locations once per year to demo the machines to employees. Washington found this annual contact sufficient for nexus. Although the contact was only one day per year, the quality was training and fostering a deeper relationship with the key customer, which “established or maintained the market for the taxpayer’s product in the state.”

Do remote employees pose a risk?

Companies are increasingly hiring employees to work remotely, especially for technical and engineering roles. Having an engineer working for you in Iowa doesn’t necessarily make you liable for taxes to that state. If the remote employee is not soliciting business, their location is a happenstance. However, the company would still need to register in Iowa for unemployment tax and withholding tax. Does this create payroll issues where there are one-off employees? **Yes, absolutely.**

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\(^1\) Orvis v. Tax Appeals Tribunal and Vermont Information Processing Inc. V. Tax Appeals Tribunal, __ N.Y.2d __ (Nos. 138 and 139, June 14, 1995)
What do auditors typically demand of companies during an audit?

We’ve seen auditors ask us to prove the negative and show why there is no collection obligation, and therefore no liability, in a state where sales are made. This is incredibly difficult for companies to do if they have no process in place to gather and record data on employee travel and sales activities.

What are the different challenges faced by centralized departments vs. decentralized departments?

Decentralized departments face distinct challenges. For decentralized departments it is sometimes unclear if an employee from Entity A traveling to State X causes nexus for Entity B, if she happens to mention some of the products or services offered by Entity B. Affiliate nexus rules are expanding, creating more blurred lines between legal entities.

In this scenario, it is critical to have continuous routine checks of nexus-creating activities. Do you review your company’s public profile each year? Each quarter? You probably should.

Is it possible to broker agreements with states?

While it may be possible to broker agreements with states regarding employees operating within their borders, enforcing those agreements can be challenging at best and uncertain at worst.

Example

Several hundred consultants from a large consulting firm descended upon Colorado for projects in the late 1980s through early 1990s. Upon learning of all of these nonresidents, Colorado imposed significant tax and penalties on the company for failing to withhold a portion of those employees’ wages in Colorado.

However, this company already had made an agreement with several states, including Colorado, to withhold only for the employee’s resident state to ease administrative burden. When faced with the high number of visiting consultants, Colorado stated that the “agreement” had been merely unbinding guidance and imposed the liabilities
What are the problems in most companies' current systems for understanding their business's mobile footprint?

For many companies, the biggest problem is that they simply do not have any process in place, or any way to collect travel data. This means that companies have little to no visibility into tax exposures until well after they have been created. Often, the tax department is the last to find out about employee travel.

When the company is eventually required to reactively decipher their travel history (typically because of an audit), the process is incredibly manual, inefficient and unreliable. Through lack of preparation, companies surrender control. Not being prepared can be inordinately costly and painful, as well as bring into question the company’s credibility.

How can companies manage their tax exposure from domestic and international business travel?

The first step to managing multi-jurisdiction tax exposures is to have a process. There are three key steps when putting in place a process to manage location based tax exposure:

1. **Diagnose the problems and exposures** through periodic and/or continuous reviews. Common exposures include payroll withholding, nexus and permanent establishment.

2. **Revise or fine-tune your workflows** to address the exposures in a timely manner. This can mean catching up payroll at year end, creating a new legal entity for your presence in another country or any other number of steps.

3. **Put preventative mechanisms in place**. Continuous or frequent monitoring of employee travel can help you extract actionable insights for tax, payroll and human resources processes. Early warnings of exposures can help you plan ahead and possibly avoid the exposures altogether. New technology solutions — like Monaeo — can help you understand your mobile footprint and automate this process.

Questions about multistate tax issues?

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