

IT'S A SMALL, SMALL WORLD AND THE TAX COLLECTOR AWAITS THE UNWARY

In an era when international and U.S. reporting requirements are increasingly requiring companies to focus on business risks and also implement control structures to manage those risks appropriately, very little attention seems to be directed to the activities of the company's business travels or the sharing of employees across borders. In this article, we look at some of the pitfalls awaiting the globally mobile employers and their employees.

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Across the country, around the world

Business travel and cross-border activities of businesses are getting more common and tax authorities are becoming increasingly pushed by governments to ensure that tax is collected from all business activities that occur in their jurisdictions. When speaking of cross-border in this context, the borders can be between states and/or between countries. States have focused increasingly on "nexus" issues (when a company is subject to tax in their state and what activities or profits should be subject to their taxes) and countries have focused increasingly on permanent establishment issues (when a company is subject to tax in their country and what activities or profits should be subject to their taxes). In actuality, these concepts are very much alike - at what point does the local tax jurisdiction (or jurisdictions, in cases where there are federal, state, local or other tax regimes) begin to have the right to collect taxes from the business and individual activities in their area and how should the activities be taxed in terms of residency or non-residency within that jurisdiction? And remember, the rules change in every tax jurisdiction.

Understanding the exposure

In an era when international and U.S. reporting requirements are increasingly requiring companies to focus on business risks and also implement control structures to manage those risks appropriately, very little attention seems to be directed to the activities of the company's business travels or the sharing of employees across borders. It is not uncommon for members of

affiliate groups to loan employees to another affiliate to perform specific tasks; and it is also not uncommon for some of these tasks to extend for longer than a few days. Depending upon the task and the length of time that the individual or individuals are assigned to it, it may be possible that the lending affiliate company may have just exposed itself to the tax regime where the employees have been working. And unfortunately, company policies often allow these assignments to be made without any discussion with the tax department or an understanding of the potential tax exposure for the company. The tax exposure is not limited to income taxes; there may also be payroll withholding tax requirements that are ignored, as well as liabilities for sales taxes, excise taxes, etc. And at least in the U.S., there are severe penalties that can be levied not only against a company, but against anyone in the company that should have been responsible to have ensured that the payroll taxes were properly withheld and remitted on a timely basis.

Help is available

Obviously, this topic is very complex and for the company just expanding beyond its home location, something that should be planned, managed and generally handled with care. For a company that is already moved beyond one store front, it is very important to understand the environment and the rules that are applicable to operating in other locations. Decosimo can help you plan and control your activities in such a way to avoid the costly pitfalls.