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Payroll in Focus
Employer Related Taxes | Payroll Compliance



Deloitte Tax LLP
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Agenda

- Foreign Nationals Working in the US
- Business Travelers and the Current Regulatory Environment
- Long Term Incentive Income – multi-jurisdiction reporting requirements

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Foreign Nationals Working in the U.S.

Foreign Nationals Working in the U.S.

0-90 Days

- Business Visitor (B-1 or Visa Waiver)
- Statutory income tax exemption possible under IRC Sec. 861(a)(3) if:
 - (1) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year, and
 - (2) such compensation does not exceed \$3,000 in the aggregate, and
 - (3) the compensation is for labor or services performed as an employee of or under a contract with a foreign employer

0-183 Days

- Treaty vs. non-treaty countries
- Treaty options vary by country (<http://www.irs.gov/Businesses/International/Businesses/United-States-Income-Tax-Treaties---A-to-Z/>)

183-365 Days

- Tax Resident vs. non-resident
- Reporting and Withholding Requirements

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Foreign Nationals Working in the U.S.

- **U.S. Company Reporting and Withholding Obligation**
 - Tax Withholding Requirements
 - Cross-charging
 - Shadow Payrolls
 - Forms Required
 - 8843
 - W-4
 - W-9 vs. W-8BEN
 - 1099 vs. 1042s
- **Business Expenses**
 - Accountable Plans
 - Per Diem Approach – US State Department (http://aoprals.state.gov/web920/per_diem.asp)
- **Certificate of Coverage**
 - Totalization Agreements (www.ssa.gov) (<http://www.irs.gov/Individuals/International/Taxpayers/Totalization-Agreements>)
- **ITINs / SSNs**
- **Permanent Establishment Issues**

Business Travelers and the Current Regulatory Environment

What are the risks associated with business travel?

Employer	Employee
Payroll, income and social tax <ul style="list-style-type: none"> Host and home payroll reporting and withholding requirements 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) 	Tax filings <ul style="list-style-type: none"> Tax ID registration/application Individual income tax return filing requirements to claim foreign tax credits, or treaty positions
Corporate tax <ul style="list-style-type: none"> Permanent Establishment — do the activities create a PE and tax filing requirements for the Company? 	Income and social tax <ul style="list-style-type: none"> Incremental income and social tax costs Equalization and tax reconciliations
Reputation <ul style="list-style-type: none"> 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? 	After-tax pay <ul style="list-style-type: none"> Equalization Responsible for own taxes
Commercial <ul style="list-style-type: none"> Were the costs of business travel accurately estimated for budgeting purposes? 	Immigration <ul style="list-style-type: none"> Risks associated with entering a jurisdiction on the wrong visa Detention/deportation
Labor law <ul style="list-style-type: none"> Does the presence of business travelers in another jurisdiction expose the Company to labor laws of that jurisdiction? 	Employee experience <ul style="list-style-type: none"> Positive or negative experiences of process and travel to host jurisdiction Willingness for future deployment
Immigration <ul style="list-style-type: none"> Confirming the correct visas and work permits are obtained 	
Talent retention <ul style="list-style-type: none"> Managing the personal exposure to the employees 	

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Changing compliance environment — why focus now?

1. Decreased revenue bases

- Decreasing revenue bases, along with technological improvements, create enhanced capacity and more aggressive behavior by tax authorities during audits, stricter enforcement of legislation, and less leniency in the negotiation of settlements and/or assessment of penalties.
- Decreases in company revenues result in less resources, technological and personnel, available to monitor and facilitate compliant operations.

2. Public scrutiny (media and institutional shareholders)

- Commercial impact of negative publicity regarding non-compliant behaviors can have greater impact than fines/penalties assessed by regulators.

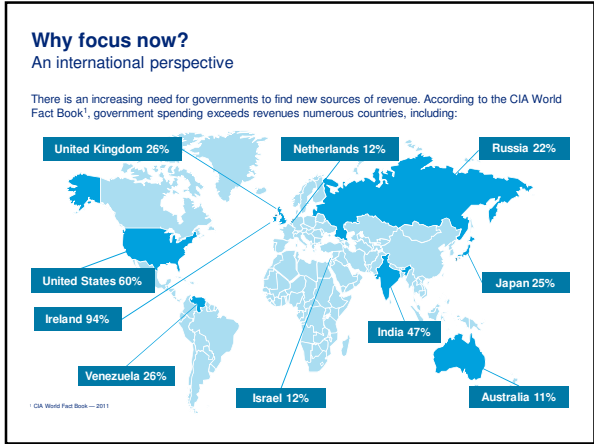
3. Management's risk tolerance

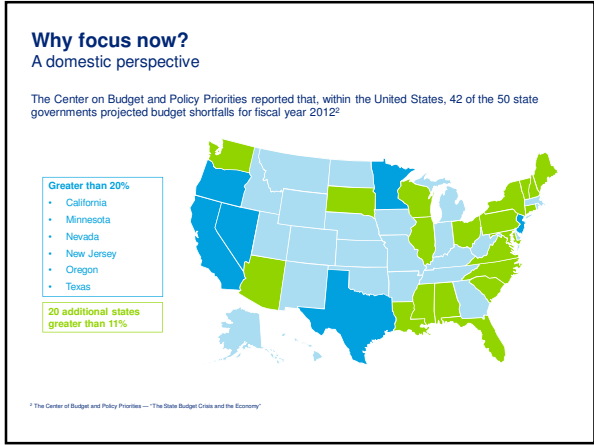
- Changes in management accountability and disclosure requirements have changed C-suite's perspective on what constitutes acceptable risk.
- Changing demographics for mobile employees impacts areas of focus.

4. Continuously changing regulations

- Challenge to keep current on constantly changing legislation, which increases exponentially as mobility creates need to understand interaction of regulations across jurisdictions.

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Long Term Incentive Income –
multi-jurisdiction reporting requirements

What is an equity award trailing liability?

- An employee may be granted an equity award in one country, vest in that award in a second country, exercise in a third country, and ultimately sell the shares in a fourth country
- There could be employer reporting and withholding obligations as well as individual tax implications in each jurisdiction

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Appendix

U.S. Payroll Requirements

Type of Tax	U.S. Citizen or Resident Working Outside of the U.S. as an Employee of a U.S. Company	Non-U.S. Citizen or Resident Working in the U.S. (whether or not employed by a U.S. Company)	Non-resident Alien Working Outside of the U.S. as an Employee of a U.S. Company (commonly referred to as TCNs)
Federal Income Tax	Required unless employee qualifies for foreign earned income exclusion (must complete Form 673) and/or wages subject to foreign income tax withholding (must complete new Form W-4)	Required unless employee qualifies for treaty exemption, U.S. domestic de minimus rules (less than 90 days in U.S. and less than US\$3,000 wages related to those days) or has exempt type of visa (F, J, or M Visa and non-U.S. employer)	Not required
State Income Tax	Required unless employee is able to terminate State tax residency and/or domicile	Required and must check to see if state honors Federal treaty exemptions	Not required
FICA	Required, with the exception an employee working in a country where the U.S. has a Totalization Agreement in place and a U.S. certificate of coverage is not obtained	Required, unless employee is transferred from a country where the U.S. has a Totalization Agreement in place and the home country certificate of coverage has been obtained	Not required, although some Totalization Agreements allow TCNs who are transferred from the U.S. to an Agreement country to obtain a U.S. certificate of coverage

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