A MONTHLY DIGEST OF KEY STATE, FEDERAL AND INTERNATIONAL TAX DEVELOPMENTS TO KEEP YOU ABREAST OF CURRENT AND PENDING TAX CONCERNS

TAX INSIGHTS

Highlighting tax developments of interest to today's companies on the move.

In this issue:

BUSINESS GROWTH

4 tax issues driven by organic growth: From new jurisdictions to incentives, success breeds tax challenges

Sales growth in sales and expansion into new markets are good problems to have, but they come with their own set of tax challenges. These include coordinating the tax requirements in new geographies, understanding the implications of new facilities and tracking an expanded inventory of assets. With success comes the need to effectively address a wide range of tax issues. Here are four to keep in mind.

1. Location, location, location

Success often means pursuing growth outside your original operational footprint. Once you start crossing borders, whether by establishing a physical presence or by selling into new markets, your tax challenges multiply. Setting up facilities in a new state will mean new state income tax compliance issues and planning opportunities, but state tax nexus issues are increasingly fuzzy.

Physical presence issues aren't necessarily straightforward. How sales are made, where they are concluded, how products are delivered—these and other issues can affect whether you have nexus in a state for income tax purposes.

Registering to do business in a state is primarily a legal decision, but will also trigger tax obligations, so your tax team should be included in that decision. Increasingly, selling in a state may mean exposure to new taxes. In California, for example, if you exceed a certain sales volume, you could face a state franchise tax. Many cities and towns also have their own tax regimes.

Of course, if you expand overseas, things grow even more complex as issues like transfer pricing come into play. The base erosion and profit shifting (BEPS) project being undertaken by the Organisation for Economic Co-operation and Development and the leading rich and developing nations known as the Group of 20 (G-20) is driving the most significant changes to international taxes in decades.

2. Cost segregation for new facilities

Whether you're expanding an existing facility or building a new one, effective cost segregation can help you significantly accelerate depreciation, which can provide a healthy bump to your cash flow. Capital expenditures categorized as building are depreciated over 39 years with very limited bonus depreciation opportunities, while expenditures categorized as land improvements are depreciated over 15 years, and equipment costs are depreciated over five years. Both land improvements, qualified improvement property, and equipment costs have bonus depreciation opportunities.

Determining which expenditures fit where is not always easy. For example, if a section of floor in a plant needs to be specially reinforced to support a piece of equipment, the associated costs might be eligible to be treated as equipment instead of building. And while accelerating depreciation is the usual choice, it isn't always right. It depends on a number of factors, including your forecasted taxable income. Weigh your options against your projected financial performance to make the right choice for your company.

3. Credits and incentives

States, cities and other taxing jurisdictions don't just collect revenue, they compete for business. And they offer a wide variety of credit and incentive programs to attract those businesses. From property and sales tax relief to training grants and other programs, there is a good chance you could qualify for some form of tax relief as you consider where to establish operations. Some programs are statutory—laws spell out what businesses need to do to qualify for a particular tax break and what the incentive entails. But businesses can also often negotiate a customized incentive tailored to their needs and circumstances.

In either case, it is best to investigate credit and incentive opportunities early, before you've made a final choice about your site. Once you've announced a choice, you've lost your leverage and many of the incentive options you could have realized may be lost.

Finally, don't overlook federal incentives, such as the research and development (R&D) tax credit or the domestic production activities deduction, which help defray the costs of producing your goods or growing through innovation. Many states offer an R&D credit as well.

4. Managing tax department resources

As your business grows, your internal tax capabilities have to grow with it. How you manage your fixed assets is one example. To manage organic growth tax efficiency in this area, consider the following:

- Are your current systems and processes scalable?
- If you need to add or upgrade your system, who needs access?
- Who will make entries? How will it interface with your general ledger?
- What about your capitalization policy? Will you set a floor beneath which items normally capitalized are expensed, and then elect annual de minimis audit protection from the IRS?
- Are your fixed asset and tax provisioning processes still manual or Excel-based?

These questions have many possible answers and next steps, depending on your growth situation. It might be time to upgrade to new tools and processes. You may want to investigate outsourcing options for certain tax work. In any case, if your tax capabilities don't keep up with your business, you'll end up losing out on planning opportunities and paying more in fees and penalties as your compliance efforts fall behind.

These are just four broad examples of the tax issues enterprises face as expanding sales drive their growth. Ensuring that your tax strategies and resources keep pace with your growth will help you maximize the benefits and minimize the costs of your success.

BUSINESS SUCCESSION

Managing your personal wealth after leaving a closely held business

Business owner financial planning: Define goals, approach holistically

You've invested your time, resources and passion in your business. Now, with the decision to either transition ownership or to sell your company, are you confident that the wealth you've built will address your needs into retirement? How do you know if you have enough money to take care of your family, pursue your pastimes, support your charitable causes and maintain your lifestyle?

The following considerations can help guide you during business succession financial planning, regardless of whether your wealth is primarily tied to the sale of your business or to a portfolio you've built for retirement.

It starts with questions and your specific answers

Establishing your personal wealth goals requires some introspection from you. It's important to understand and determine your core capital requirements—the capital needed to support your lifestyle needs and wants, in addition to your estate and charitable goals. The following questions should be a part of your business succession financial planning process:

- What will be the emotional and financial impact of transitioning the business to family members versus selling to employees or a third party?
- How much is your business worth, and will you have enough money post-sale to support your needs and wishes and take care of your family?
- What will selling the business mean to you, and how will you spend your retirement or post-sale life?
- What steps are necessary to prepare your business for sale and monetize the return on your investment?
- Are there specific tax considerations and obligations to address, and how will these concerns affect your wealth planning efforts?
- How about your legacy? Will there be enough to leave money for your heirs and charitable interests?

To read more, go to: http://rsmus.com/our-insights/business-succession-planning/wealth-preservation.html

WEBCASTS

The evolving VAT landscape—What businesses need to know
Nov. 7, 2016

Private Client Services webcast series: Looking ahead to year-end
Nov. 16, 2016

Top year-end tax planning strategies for businesses
Nov. 21, 2016

2016 Fall tax summit series
In-person event. Check your local area.

TRENDING

US Supreme Court to hear Delaware unclaimed property check dispute

States contend checks wrongly escheated to Delaware under federal law

On Oct. 3, 2016, the U.S. Supreme Court agreed to address a challenge to Delaware's treatment of unclaimed MoneyGram Payment Systems, Inc. (MoneyGram) 'official checks' in the court's original jurisdiction.

In the past few years, there have been significant developments regarding Delaware's unclaimed property procedures. Unclaimed property audits have increased, and legislation was enacted addressing a number of procedural factors concerning audits after a task force found serious concerns regarding the administration of unclaimed property. More recently, a U.S. District Court found that the state's procedures *shock the conscience*. (For more information, please read our article, Temple-Inland's Delaware unclaimed property audit challenge dismissed.) And now, partially due to a multistate Treasury Services Group audit of MoneyGram, 23 states are suing Delaware claiming it over-reached in collecting certain financial instruments similar to money orders. To put into further context, Delaware's 2017 budget funding is projected to consist of 11 percent unclaimed property—the third largest source of revenue for the state and a larger portion of funds attributable to unclaimed property than any other state.

To read more, go to: http://rsmus.com/what-we-do/services/tax/state-and-local-tax/unclaimed-property/us-supreme-court-to-hear-delaware-unclaimed-property-check-dispu.html

FATCA and other year-end global information reporting considerations

As we move past certain tax filing deadlines and towards year-end planning, taxpayers should be aware of several important global information reporting and tax withholding considerations for year-end. These include:

- **Review and update FATCA classifications** – To the extent that you have acquired new entities or restructured during the year, you may need to register these entities with the IRS in order to timely comply with the Foreign Account Tax Compliance Act (FATCA) going forward. Companies should also evaluate the impact of changes to your structure on the FATCA status and year-end filing obligations of other entities in the group. Ongoing monitoring of your structure with timely registration and deregistration of entities as required will ensure sustained compliance with the rules going forward.

- **Prepare for CRS reporting** – Reporting under the Organisation for Economic Co-operation and Development (OECD)'s common reporting standard (CRS) commences in 2017. Your organization may therefore need to assign a CRS classification to legal entities in the group and determine whether they are residents of any one or more of the 90+ countries that have agreed to report information under the automatic exchange of information (AEoI) provisions of CRS. Note that while most entities classified as foreign financial institutions (FFIs) under U.S. FATCA regulations will likely be FFIs for CRS reporting purposes, there are differences in definitions that may impact your classifications and ultimately, your reporting obligations. Drill down on what those differences may mean to your organization now to avoid surprises in 2017.
- **Register sponsored entities** — In Notice 2015-66, the IRS extended the status of limited FFIs, limited branches and sponsored entities without global intermediary identification numbers (GIINs) until Dec. 31, 2016. These entities must now register and obtain GIINs before year-end. This deadline is particularly important for private equity firms and other asset managers who may have taken advantage of the sponsored entity concept for administrative ease on funds with several portfolio entities in their structures that they did not previously register.

Specifically, sponsoring entities must register their sponsored investment entities and sponsored controlled foreign corporations (CFCs) covered by Annex II of a Model 2 IGA on or before the later of Dec.31, 2016, or the date that is 90 days after a U.S. reportable account is first identified. Sponsoring entities must also register their sponsored registered deemed-compliant FFIs and sponsored direct reporting NFFEs by Jan. 1, 2017. If you are affected, consider registering to obtain GIINs well in advance of Jan. 1, 2017, to give withholding agents sufficient time to complete their internal GIIN verification processes.

- **Replace pre-FATCA W-8s** — The ability to rely on old versions of Forms W-8 collected pre-FATCA expires on Dec. 31, 2016. To avoid potential exposure for under withholding on payments associated with expired W-8 Forms, withholding agents will need to develop a process for collecting, reviewing and storing new forms for customers, vendors and investors.
- **Modify systems and processes for new Form 1042-S** — The IRS has released a new Form 1042 and 1042-S for 2016 with new fields that may require you to collect additional data before year-end to ensure that an accurate and complete return can be filed. Most significantly, new box 13j of the 2016 Form 1042-S requires a new limitation of benefits (LOB) code when a reduced treaty rate of withholding is applied. The new LOB code is assigned based on information from Form W-8. Modifications to your systems and additional processes may need to be developed before year-end in order to capture LOB information from W-8 forms that must be reported on the new 2016 Form 1042-S. Don't wait until year-end to address these requirements. Modify systems and processes now so that you are prepared to meet the challenges of these new forms.
- **Reconcile tax deposits** — Withholding agents should request IRS transcripts and reconcile amounts withheld per their books and records to actual deposits per the IRS' records and address any discrepancies prior to year-end. The IRS has indicated its intention to reject a larger number of refund claims this year. Additionally, new technology used by the IRS will allow for better matching of information (such as the recipient's name or taxes withheld) per recipient copies of 1042-S to information in the service's systems or as reported by withholding agents.

Business succession planning: Why it is critical to revisit your plan now

The task of planning for a smooth and tax-efficient transfer of a family business to the next generation could soon become much more challenging. But opportunities still exist in the near term to achieve significant benefits from proactive planning.

Our private client services professionals will address the following topics:

- What the business succession planning landscape looks like today ... and perhaps tomorrow
- Proposed regulations under section 2704 and the window of opportunity for wealth transfer before they become final
- Selection and design of techniques for transferring business interests to the next generation(s)

Download webcast slides.

Current issues and opportunities for ESOP companies
Notes from this year's ESOP conference season

More companies are interested in ESOPs, and an increasing number of companies are using them. But there remains a divide. Companies and advisors with little exposure to or knowledge of ESOPs still seem to fear them. Following are some key ESOP trends.

100 percent ESOP transactions are more common

More companies are using or considering 100 percent ESOP transactions in today's market than a few years ago. Along with these 100 percent transactions come some interesting transaction details:

- Private equity investors are now showing interest in ESOP companies. Companies used to think of an outside private equity buyer and ESOP as an either(or) proposition, but that's no longer the case. Because of the increasing prevalence of 100 percent deals, sellers need sources of capital beyond unsubordinated bank debt. Private equity investment can fill that gap. Private equity investors usually want to act as partners in operating the company, though, so transactions with private equity firms get complex.
- Companies pursuing 100 percent transactions tend to use alternative financing structures, such as warrants or other tools, to provide upside to parties outside the ESOP. These tools can be valuable and vital to the transaction, but ESOP companies need to fully understand these options before implementing them and consider future implications from the beginning.
- Partnerships and LLCs are now also pursuing ESOPs. These entities need to either convert to or elect corporate status, which raises complex tax rules that must be considered carefully before the transaction.
- These are typically highly leveraged transactions. As such, the plan sponsor must make sure that they continue to have access to the financing lines they need to support day-to-day operations.
- Even with an increased number of transactions, there is neither clear tax or regulatory guidance, nor consensus within the ESOP community, regarding some common transaction details. For example, if a company redeems shares and then sells them to an ESOP, should the share price be the same for both transactions? What is an appropriate term for an inside loan? Do step transaction rules apply when a seller takes a note or cash from an ESOP and then either swaps the note or loans the cash back to the company? Can a partnership convert without tax to a C corporation in anticipation of an ESOP transaction closing shortly after the incorporation?

Companies and advisors with little exposure to or knowledge of ESOPs may avoid these transactions out of fear of the complexities or rush in without properly evaluating the risks. While ESOP transactions can be very complex, they may also provide great outcomes for selling shareholders and sponsoring companies and their employees when properly structured.

To read more, go to: http://rsmus.com/what-we-do/services/tax/lead-tax/current-issues-and-opportunities-for-esop-companies.html

6 steps to solving the country-by-country reporting challenge

How to comply with CbC reporting requirements

Download article

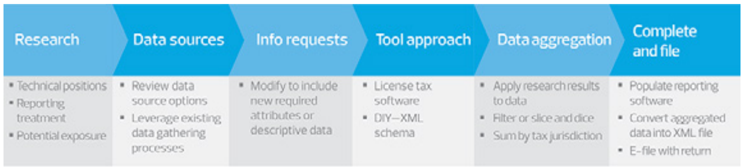
In June 2016, the United States released final regulations on country-by-country (CbC) reporting aligned with the base erosion and profit shifting (BEPS) action plan. Action Item 13 requires taxpayers to articulate consistent transfer pricing positions that will provide tax administrators with the data necessary to:

- Assess transfer pricing risks
- Determine where to most efficiently deploy audit resources
- Provide the information necessary to commence and target needed audit inquiries

The new U.S. CbC reporting regulations are effective June 30, 2016, and will require U.S. multinational entities with global revenues of $850 million or more to file CbC reporting Form 8975 as part of their corporate tax return.

One challenge for affected companies: how best to comply?

6 steps to CbC reporting success



As illustrated above, affected companies may want to consider a six-step process to successfully comply with CbC reporting requirements.

To read more, go to: http://rsmus.com/what-we-do/services/tax/tax-function-optimization/6-steps-to-solving-the-country-by-country-reporting-challenge.html

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