Payroll Insights

Employment tax news to guide you now and for the future

December 2021

John's Fresh Take: Tax compliance

It appears employment tax compliance scrutiny is going to increase. An IRS deputy commissioner, in remarks at a recent taxation conference, stated that the IRS has found a number of employment tax evasion issues and plans to increase scrutiny of employment taxes in the future. This forecasted increased scrutiny reinforces the need to monitor and review reporting and withholding requirements for accuracy and compliance.

Companies reconsider domestic and global tax compliance

After the drastic shift to remote work for many industries as a result of the COVID-19 pandemic, companies are now considering how tax compliance will need to adapt as their employee population does, or does not, return to physical offices.

For U.S.-based employers, the first indication that an employee has permanently relocated or is now spending a significant amount of time in another state may be when an address change form is filed and/or the completion of an updated Form W-4, *Employee's Withholding Certificate.* In some cases, these events are the first that payroll departments became aware of a change either because the employee didn't consult anyone in the company or had "approval" from a manager or HR, who may not have known about the employment tax considerations or requirements.

In addition to the U.S. tax considerations, some employers may have employees who choose to work remotely from another country. As restrictions have lifted, some countries began offering incentives that would be beneficial to remote workers but could have long-term impact on employers. There are many reasons that a company may not want to have permanent establishment or nexus in a global or domestic jurisdiction, which could have larger implications than the employee considered.

As jurisdictions improve at identifying possible unreported tax revenue streams, the audit risk is expected to increase. The employee work location information disconnect could have larger tax implications for the company, such as reputational risk, increased government scrutiny, and allocation of revenue/profits in all new applicable jurisdictions.

Many companies are reconsidering existing policies or working to develop new policies to prepare for the future of tax law and compliance, especially once business travel resumes in a more meaningful way. Based on the conversations with clients, many are becoming more risk-adverse in this space and are using this time to establish guardrails and better internal procedures around their tax footprint. For some organizations, this may include a list of locations (global, state, or local) that are off-limits to employees other than for approved business travel in order to prevent unknowingly generating an employment tax obligation in a jurisdiction in which the company doesn't have an existing presence.

IRS increases limits to retirement plan contributions

For tax year 2022, the annual contribution limit for 401(k) plans is expected to increase, along with other retirement-related amounts. As of November 4, 2021, the IRS has stated in Notice 2021-61 that contribution limit is to increase to $20,500, from $19,500, for sections 401(k), 403(b), and 457.

Other amounts adjusted in the notice include:

— the limitation for defined contribution plans, IRC 415(c)(1)(A), increases to from $58,000 to $61,000;

— the limitation for the annual benefit under a defined benefit plan, IRC 415(b)(1)(A), increases from $230,000 to $245,000;

— the compensation limit for qualified plans, IRC 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii), increases from $290,000 to $305,000;

— the dollar limit for key employees in a top-heavy plan, IRC 416(i)(1)(A)(i) increases from $185,000 to $200,000;

— the limitation for highly compensated employees under IRC 414(q)(1)(B) increases from $130,000 to $135,000;

— the limitation for SIMPLE retirement accounts IRC 408(p)(2)(E) increases from $13,500 to $14,000;

— the compensation limit for control employees for fringe benefit valuation purposes under IRC 1.61-21(f)(5)(i) increases from $115,000 to $120,000.

The catch-up contribution limit for employees age 50 or over who participate in retirement plans, remains unchanged for 2022. The limit for section 401(k), 403(b), and 457 plans remains at $6,500, and the catch-up limit for SIMPLE plans remains at $3,000, according to the Notice 2021-61.

New Jersey ends COVID-19 temporary suspension period for nexus

Effective October 1, 2021, New Jersey has ended its temporary suspension of the sales tax nexus standards. This suspension also affected employer requirements to withhold in the state for employees who may have, or continue to be, working remotely from New Jersey. Affected employers should begin withholding for individuals performing services as an employee in the state. Additional considerations may be necessary for employees who are subject to state telecommuting rules and/or reciprocity guidance.

New York updates state retirement plan requirements

Eligible New York employers now need to automatically enroll their eligible employees into the state retirement savings program under Bill S.B. 5395-A, which became effective immediately when signed on October 21. Some employees may be able to opt-out of participation if the employee so choses.

Employers who have been in business for at least 2 years, have had at least 10 employees in the last year, and did not offer a qualified retirement plan will be required to join the Secure Savings Program. The bill includes guidance on how employers must communicate changes to employees, along with details of the specific opt-out form. Employers will be required to make deposits on the employee's behalf, although deductions from the employee wages cannot occur until after the first 30 days the employee has been enrolled in the plan.

For employees that opt-out, there will be an open-enrollment period when the individuals may change their mind. Employers are instructed to not terminate existing qualified retirement plans in lieu of the state's Secure Savings Program. Summary from Governor's office

State updates: 2022 employment tax rates and rules

Similar to guidance on how to properly process and file year-end returns, states have started issuing guidance on 2022 employment tax rates and rules. Employers should be working with their tax teams and payroll providers to ensure the proper set-up as we enter the new tax year.

Maine

Effective November 4th, Maine's Department of Revenue Services released the 2022 withholding tables. The state allowance and maximum standard deduction increased, and the tax brackets under the percentage method changed. Additionally, a new penalty of $50 for failure to file Forms W-2 or 1099 will go into effect for forms due January 31, 2022.

Nevada

Effective November 10, the governor's office confirmed that the unemployment tax rates will not increase for 2022.

North Carolina

Effective November 10, the governor's office confirmed that the unemployment tax rates will be calculated in the same way as 2021 for tax year 2022 under NC Senate Bill 311.

Ohio

Ohio has lowered the online reporting threshold for Forms W-2 and 1099-R to require online reporting for employers filing at least 10 forms.

Virginia

Effective November 5, the Virginia Department of Revenue updated the 2022 tax withholding guide, without making any changes to withholding formulas.

Meet your Employment Tax Professional:

Erica Stohler

Erica is a Manager in KPMG's Employment Tax practice based in McLean, Virginia. She has about 10 years of employment tax experience and holds a Certified Payroll Professional designation. Erica specializes in projects that include large data sets, such as regular rate of pay calculations and multi-state nonresident withholding. She enjoys working with clients to resolve systemic issues so that the payroll process can be efficient and allow professionals more time for real emergencies.

Erica lives in Alexandria, VA with her husband and dogs, Freya and Dally. She enjoys hiking, watching hockey and SEC football, and live music.

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