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Annual Conference Scottsdale, AZ

Hybrid & Remote Workforce Issues – Corporate Income Tax Risks and Best Practices

October 24, 2022

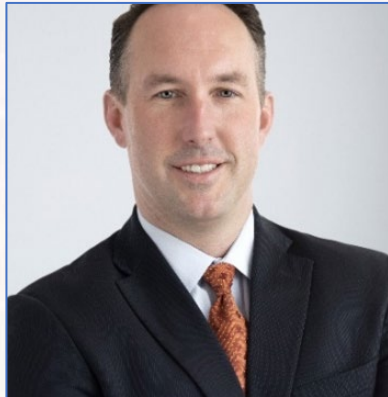
11:15 AM – 12:15 PM



Moderator



Katrina Welch
NA Director of Tax
Gordon Food Service



Thomas M. Cryan, Jr.
Ivans, Phillips &
Barker, Chartered



Brian Kirkell
RSM U.S. LLP



Barton W.S. Bassett
Morgan Lewis LLP

Learning Objectives

During the COVID-19 Pandemic, the number of employees working remotely has exploded. This discussion will focus on the corporate-level income tax issues presented by remote workers, including:

- The tax treatment of reimbursement for home office and travel related expenses;
- The state and international income tax withholding issues for remote workers;
- The potential impact of state nexus and apportionment rules; and,
- The potential international tax issues with remote workers.

Overview of Remote Work Landscape

Categories of Remote Workers

International Remote Worker - indefinite



International Remote Worker - temporary

Domestic Remote Worker – same country
but different state



Domestic Remote Worker – same country and
same state

Opportunities

- Expanded talent pool
- Potential for reduced employment costs
- Employee retention

Challenges

- Monitoring employee movement and local employment law/immigration
- Tax compliance and liability – including income, withholding, payroll taxes, social taxes
- Managing benefit obligations and exposures
- Data privacy and security

Corporate Income Tax Considerations

**Employee
Benefits**

**Employee
Withholding
and Payroll
Taxes**

**State & Local
Nexus and
Apportionment**

**Cross-Border
PE/USTB**

Polling Question 1

Does your company currently have employees working remotely across state borders?

- Yes
- No

Polling Question 2

Does your company currently have employees working remotely across international borders?

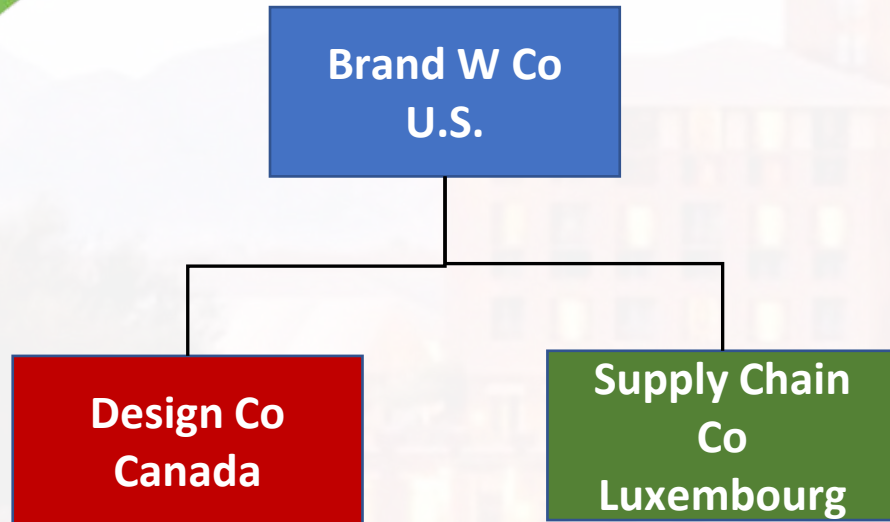
- Yes
- No

Polling Question 3

Are you confident that your company is accurately tracking remote work (including both numbers of employees and work locations)?

- Yes
- No

International Retail Co Hypothetical



- Brand W Co is a U.S.-based multinational that specializes in outdoor apparel
- Brand W's headquarters is in Denver, Colorado
- Brand W maintains a wholly-owned Canadian subsidiary that provides design services and product testing
- A wholly-owned Luxembourg subsidiary is responsible for materials procurement, product production, and managing the supply chain and ex-U.S. distribution network
- Brand W Co permitted remote work throughout 2020 - 2022 during COVID's peak
- Brand W's management is seeking to get people "back to the office" on a more formalized schedule through the rollout of a formalized hybrid work model in 2023

Brand W Co – Remote Presence

Brand W Co
U.S.

Denver
HQ



NYC



- Due to COVID work restrictions in 2020, Brand W's CFO decided to leave Denver, where she was renting an apartment near the company's headquarters, and worked from her home in New York
- She intends to continue working from New York through the close of calendar 2022
- In 2023, CFO intends to return to working regularly from Denver, although she plans to continue working remotely from New York from time to time during the year (such as holidays)
- Brand W Co does not have any other employees working in New York on a regular basis and does not maintain any physical presence in the state

Brand W Co – Remote Presence



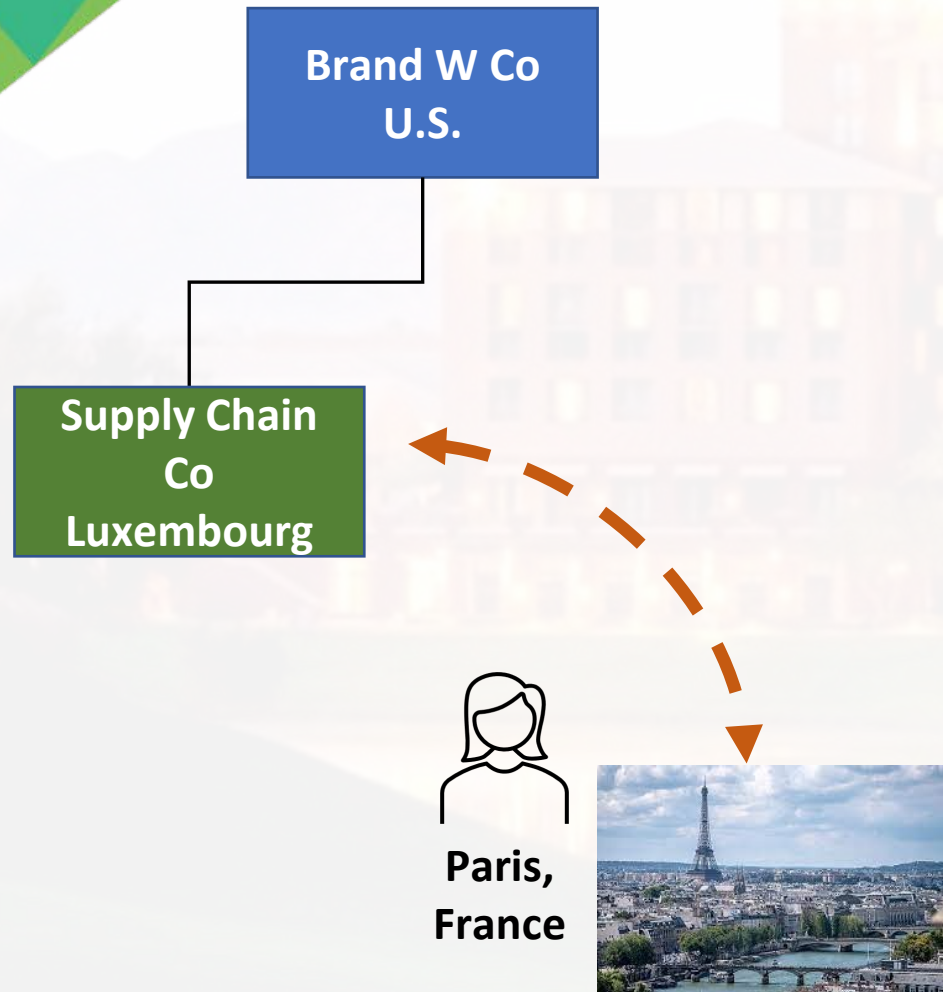
- Due to COVID work restrictions in 2020, Brand W's VP of Design moved to Vancouver where she continued to work throughout 2020 – 2022 with her Canada-based design team while taking advantage of skiing in British Colombia
- Brand W's Canadian subsidiary maintains offices in Vancouver, BC and provides contract design services to Brand W U.S. pursuant to a contract R&D agreement under which Brand W U.S. owns all developed intangible property rights

Brand W Co – Hybrid Presence



- Under Brand W's hybrid policy, which will go into effect January 1, 2023, members of the executive team are required to be physically present in the Denver headquarters building at least 10 working days a month
- Brand W will pay for travel from the executive's remote location to Denver and provide housing benefits while the executive is living in Denver. In addition, Brand W will reimburse the executive for costs associated with maintaining a home office.
- Brand W's Sales VP lives and works in Denver. During COVID he started spending time in San Francisco and eventually purchased an apartment to spend more time there
- Sales VP intends to utilize the flexibility of the Brand W hybrid policy to spend approximately 6 months a year living in and working from San Francisco

Brand W Co – Hybrid Presence



- The General Manager of Brand W's Luxembourg subsidiary lives in Paris and commutes to Luxembourg during the work week
- The General Manager is responsible for overseeing the supply and distribution chain for Brand W, and as part of her job regularly negotiates and executes contract manufacturing, supply, and product distribution agreements
- The General Manager intends to utilize the flexibility of the Brand W hybrid policy to spend approximately 2 months (60 days) working remotely from Paris
- How does the analysis change if she is commuting between Luxembourg and Denver?

Brand W Co – “Temporary” Presence



- A number of Brand W employees wish to spend extended time in India while visiting family
- The company is considering a policy by which employees may spend two months a year working remotely from India
- Brand W anticipates 5 – 10 employees utilizing this benefit per calendar year

Best Practices

Before your business makes a decision and issues new employment policy, you need to understand, communicate, and address:

- Compliance costs, human capital, and systems investments
- Historic and post-change planning and positions
- Cash tax and financial statement impacts
- Existing C&I and the potential for new C&I

Get informed. Remain flexible. Be deliberate.

Appendix

Reference Materials

Convenience of the Employer Rules

- NY: https://www.tax.ny.gov/pdf/memos/income/m06_5i.pdf
- PA: <https://www.revenue.pa.gov/FormsandPublications/PAPersonalIncomeTaxGuide/Pages/Gross-Compensation.aspx>
- CT: <https://portal.ct.gov/DRS/Individuals/Individual-Tax-Page/Nonresident-Working-in-Connecticut>
<https://www.cga.ct.gov/2021/rpt/pdf/2021-R-0008.pdf>
- DE: <https://revenue.delaware.gov/employers-guide-withholding-regulations-employers-duties>
- NE: https://revenue.nebraska.gov/sites/revenue.nebraska.gov/files/doc/business/2017cir-en_whole.pdf

OECD Guidance

Original guidance issued April 3, 2020

<https://www.oecd.org/coronavirus/policy-responses/oecd-secretariat-analysis-of-tax-treaties-and-the-impact-of-the-covid-19-crisis-947dcb01/>

Updated guidance released January 21, 2021

<https://www.oecd.org/coronavirus/policy-responses/updated-guidance-on-tax-treaties-and-the-impact-of-the-covid-19-pandemic-df42be07/>



Thank you!

