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Summaries from The 2021 37thAnnual TEI-SJSU High Tech Tax Institute and The 27th Annual Tax Practitioner/IRS Fall Seminar

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Global Mobility Taxation

By: Inessa Zlobina, EA, MST Student

The 37th Annual TEI-SJSU High Tech Tax Institute Conference took place on November 8 and 9, 2021. This was the second time since its establishment that the conference was held virtually due to the continuing gathering restrictions of the COVID-19 pandemic. The conference featured panels with government representatives, tax practitioners, academic professionals, and industry professionals. The panel that spoke on global mobility taxation addressed the issues and industry trends that have arisen in the post pandemic world. Panel representatives were Eric M. Anderson, Managing Director at Andersen; Kristen Nygren, Senior Attorney, IRS; Richard Tonge, Principal, Grant Thornton; and Cosimo Zavaglia, Partner, Morgan Lewis.

Current state of "global mobility"

Mr. Tonge kicked things off by looking at the current state of "global mobility" and trying to forecast future trends going into 2022. The world has changed dramatically, according to Mr. Tonge, and the global mobility activity has slowed since March 2020 because of the unprecedented global pandemic. However, there are hopes that the mobility business will rebound. In particular, there is expected to be an influx of business travel into the U.S. after the travel ban was lifted on November 8, 2021.

Mr. Tonge further discussed the context for global mobility, which is marked by significant fluidity as the Delta variant stalled return-to-work strategies and consolidated remote and hybrid working. At the same time, global mobility functions are already undergoing rapid and permanent change. Over the last few years, global mobility professionals have been asked to help lead the digital transformation that is reshaping organizations worldwide. Feeling connected to home has proved vital for assignees, and so flexible work is here to stay post-pandemic.

Companies have changed their hiring strategies in response the "Great Resignation," a new harsh reality for businesses already struggling to attract workers back to the office. To stay competitive, more and more companies allow for remote work arrangements. Internationally, there is competition to attract immigrant professionals into their countries. For example, Costa Rica now allow digital nomads, who can work remotely without a visa sponsorship that used to be required.

This brings new challenges for corporations and employees because of tax considerations. For companies looking to embrace remote work, it is important to make sure there is clarity and understanding of all components of hybrid remote work arrangements.

According to Mr. Tonge, there are no new tools to address global mobility in the post-pandemic world. Internationally, looking at U.S. tax rules and agreements addressing individual taxation and employer considerations, the starting point are the protections that double tax treaties offer. There are approximately 70 double tax treaties which mitigate double taxation, including employment income related to period of time (typically up to 183 days in a specified 12-month period) working in a foreign country.

Similarly, the U.S. has concluded bilateral “totalization” agreements covering social security contributions with 30 countries. These agreements allow for social security contributions to be made only in the home country for a period typically up to five years.

Mr. Tonge illustrated as an example – U.S. Model Tax Treaty Article 14 (2), according to which remuneration derived by a resident of a Contracting State in respect of employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days for all twelve-month periods commencing or ending in the tax year concerned;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

c) the remuneration is not borne by a permanent establishment that the employer has in the other Contracting State

Mr. Tonge explained, that when looking at the application of a double tax treaty, its definition of residency must be considered. Companies should be aware of what puts them on the radar of tax authorities. China is a prime example of using big data to identify taxable individual sources of income and then offensively following through to identify whether there are compliance failures. Mr. Tonge, reasoned that it is going to be important for the tax department to be cognizant of the potential risks that exist, which at this stage are unknown – e.g., parameters, hybrid work policy, and the limit on the number of days that an individual is allowed to spend at a location.

IRS – limited relief and not much guidance

From the federal perspective, Ms. Nygren, IRS Chief Counsel Office (Small Business-Self-Employed), acknowledged that not only are businesses trying to navigate constantly changing work conditions by addressing hybrid work arrangements, but also that some foreign employees are stuck in the U.S. or were prematurely brought home from their international assignments. She noted, however, that as of now the IRS has not released any advice in relation to working from home or hybrid working arrangements. Instead, Ms. Nygren suggested looking at the history of what the IRS has done in the past and also informed that unless the IRS sees more cases coming from large taxpayers, they will not be offering any advice.

Ms. Nygren further elaborated on the IRS response to travel limitations caused by COVID-19. In particular, Revenue Procedure 2020-20 defines COVID-19 Emergency Period as a single period of up to 60 consecutive calendar days selected by an individual starting on or after February 1, 2020 and on or before April 1, 2020, when the individual is physically present in the U.S. COVID-

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19 Emergency Travel Restrictions are travel disruptions or restrictions that prevent an individual from leaving the United States during the COVID-19 health emergency.

Ms. Nygren explained that an eligible individual is a person who: (1) was not a U.S. resident at the close of the 2019 tax year; (2) was not a lawful permanent resident at any point in 2020; (3) was present in the U.S. on each day of the individual's COVID-19 Emergency Period; and (4) did not become a U.S. resident in 2020 due to days of presence in the U.S. outside of the individual's COVID-19 Emergency Period.

Under Rev. Proc. 2020-20, an eligible individual who planned to leave the U.S. during the individual's COVID-19 Emergency Period but was prevented from doing so due to COVID-19 Emergency Travel Disruptions may exclude up to 60 days during the individual's COVID-19 Emergency Period for purposes of applying the substantial-presence test. Form 8843, Statement for Exempt Individuals and Individuals with a Medical Condition, should be filed by the due date for filing Form 1040-NR.

Ms. Nygren further expanded on IRC section 911(a) which allows a "qualified individual" to elect to exclude from gross income the individual's foreign earned income and a housing cost amount, where:

1) An individual is a qualified individual under IRC section 911(d)(4) for the period in which the person was a bona fide resident of or was present in a foreign country if the individual left the country during a period for which the Treasury Secretary determines that individuals were required to leave because of war, civil unrest, or “adverse conditions”.

2) For 2019 and 2020, the COVID-19 emergency constitutes an adverse condition that precluded the normal conduct of business for purposes of IRC section 911(d)(4).

Ms. Nygren pointed out that, generally, the Treasury Secretary must declare what meets the waiver of time requirements under Section 911 for individuals electing to exclude their foreign earned income and who must leave a foreign country because of war, civil unrest or similar “adverse conditions” in that country.

Ms. Nygren emphasized that the global health emergency caused by the COVID-19 pandemic is “an adverse condition” according to the Treasury Secretary. Further guidance might be provided. She advised to stay tuned to an annual revenue procedure which publishes the details of which countries meet this requirement. As per current Rev. Proc. 2021-21, no countries are listed due to COVID-19 implications.

State tax implications of remote work

Mr. Zavaglia addressed state tax implications of remote work. He began with identifying four aspects of state tax considerations: Secretary of State registrations, corporate income tax, sales and use tax, and payroll tax.

Mr. Zavaglia pointed out that, in order to qualify as doing business in a state, which also requires registration with Secretary of State, it is often enough to have just one employee working for a business in a state for a short duration of time.

Based on the *Wayfair* decision, more states adopted thresholds to establish economic nexus for sales and use tax as well as for corporate income tax, which do not require physical presence in a state. These thresholds vary and may depend on a sales amount and/or a certain number of transactions as set by the state. For example, online retailers should be mindful that in situations where they are not hitting the sales or transactions thresholds, they can create nexus by having an employee working in the state. This will result in tax filing obligations.

Mr. Zavaglia reminded that the "employer nexus" to trigger withholding for most states is an employer office in the state, or some other nexus to trigger state income tax and payments of any wages subject to income tax in the state (or subject to contribution under the state's unemployment compensation laws). Often it is enough to have one employee in a state in order to qualify as having presence in a state. Whereas some states provide thresholds before withholding is triggered (e.g., New York and Connecticut), based on days worked, dollars earned, or some combination of the two. Other states require withholding on the first day of work (although for lower-paid workers, minimal allocated income may be less than the standard deduction and a personal exemption).

Next, Mr. Zavaglia commented that due to the pandemic, most of the states provided leniency during 2020 and issued temporary relief. For example, if business activity in a state was limited to having an employee in the state working from home because of the pandemic, the state may not have required this business to register and begin withholding. For the most part, these temporary relief measures have expired and there is no certainty as to what will happen next.

COVID-19 presents many fiscal challenges to already cash-strapped states. Mr. Zavaglia warned that states are looking for ways to bridge their budget deficits. Because payroll taxes have been an area with a high audit potential, employers who allow remote work arrangements may consider updating to a payroll system capturing an employee tracking component in order to best prepare for potential audits. Employers should stay alert for up-to-date guidance on future audits in a state where a business has employees, and should regularly consult with advisors and maintain documentation on conversations with officials.

Mr. Zavaglia summarized the general rules for employee state income tax withholding applicable to resident and nonresident employees. Specifically, if an employer is doing business in a state, then income tax withholding is generally required on all wages paid to resident employees regardless of the state where wages are earned. States have various rules about whether, and how much credit is allowed against resident income tax withholding for income taxes withheld in other states.

For nonresident employees, state income tax withholding applies to wages that nonresident employees earn for work they perform (or, in some states, are "deemed to perform") in the

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nonresident state. Wages earned outside of the nonresident state are generally not subject to state income tax withholding – subject to exceptions for "convenience of the employer" states. Generally, an employer who pays wages to an employee in a state, must register with the state and begin withholding. There are exemptions, such as reciprocal agreements, for example between New Jersey and Pennsylvania.

Furthermore, Mr. Zavaglia advised to be mindful of the "convenience of the employer" rule. Some states use this for sourcing income earned by nonresidents who work for in-state employers at a location outside the state (e.g., from a home office). Under the convenience rule, the sourcing of this income depends on whether the nonresident taxpayer was working remotely for the employee's convenience or for the employer's necessity. Five states (Arkansas, Delaware, Nebraska, New York, and Pennsylvania) apply the convenience rule. Connecticut applies it only if the taxpayer's resident state applies a similar rule for work performed for a Connecticut employer. The convenience rule also has implications for the income tax credit states that allow resident taxpayers to claim for taxes paid to other jurisdictions (i.e., resident credit). Although the resident credit is generally intended to avoid double taxation, differences in the income sourcing rules between states can result in the same income being taxed by two states. Tax experts have raised the question of whether the days employees work remotely during the pandemic should qualify as convenience days or necessity days in states that apply a convenience rule. New York, for example, has issued guidance indicating that taxpayers should treat these remote days as convenience days, and thus source the income earned for these work-at-home days to New York. There have been legal challenges to this rule.

With hybrid work arrangements getting more popular, Mr. Zavaglia addressed remote work policy considerations such as approval from a payroll department before an employee begins remote work in a certain state. He highlighted the importance of setting expectations and to establishing remote work parameters, i.e., where remote and in-office rules differ; teleworking as an accommodation or as a job requirement; productivity and performance; work-hour expectations; break period expectations; and recordkeeping expectations. Additionally, according to Mr. Zavaglia, such policies should address protection of proprietary information, absences (sick leave and vacation), home as the workplace, expense reimbursement, and choice of law.

Mr. Zavaglia concluded by reminding attendees that an employer has an obligation to withhold taxes to the state. He suggested best practices such as telecommuter training and telecommuter manager training; requiring an employment contract that addresses work-from-home expectations for employees who voluntarily opt to primarily work remotely; and assuming that employees who work remotely, are working from their home/residence address of record, unless an employee says otherwise. Mr. Zavaglia further emphasized that employers need to make employees aware that working remotely has its own tax consequences. Employers should warn employees that proof of remote work location may be required, but should also refrain from giving tax advice to employees. Instead, they should encourage employees to consult their own tax advisors.

Global mobility and local taxes

Next on the agenda was a presentation by Mr. Eric M. Andersen on how global mobility affects local taxes. Local taxes have added another layer of complexity. Mr. Andersen provided details on possible implications of remote work arrangements from a local tax perspective. As such, Mr. Andersen explained that the pandemic has had a monstrous impact on state taxes, especially in major metropolitan areas, starting with residency issues such as migration to certain states. As many local tax measures are based on where services are performed, flight from a city may create an opportunity to reduce taxes. Mr. Andersen urged businesses to look at their numbers and to pursue tax refund opportunities, if any, to lessen tax burdens. He confirmed what the other speakers said: hybrid and remote working arrangements are here to stay. Mr. Andersen illustrated how three big cities tackle the global mobility issue as summarized in the following chart prepared based on his presentation.

	New York	San Francisco	Los Angeles
Name of the tax	Unincorporated Business tax	Business Tax	Business Tax
What's included	trades, professions, and certain occupations of an individual, partnership, limited liability company, fiduciary, association, estate or trust where Professional and other service organizations are large taxpayers: hedge funds, private equity, law firms, accounting firms, consulting firms, advertising agencies, SaaS, and licensing companies	all *persons* doing business in the city - most businesses regardless of form	all *persons* doing business in the city - most businesses regardless of form
Rate / Components	4%	Gross receipts tax depends upon NAICS category up to 0.65%. Homelessness gross receipts tax up to 0.69%. Payroll expense tax 0.38%.	0.45%

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Allocation formula	Services performed in NYC / Services performed everywhere = NYC allocation %.	Payroll allocation based upon percentage of working hours in San Francisco, percentage of business transacted in San Francisco, based upon a reasonable method given facts and circumstances.	Tax depends upon business activity up to .45% of gross receipts for "professions and occupations" businesses Taxable gross receipts measured by "work performed in the city.
Guidance Offered?	None	None	Allocation provided by City Clerk Ruling No. 15. -Receipts "directly attributable" to services -Allocation based upon cost -Default assumption that 20% of work performed outside of Los Angeles deemed gross receipts from within the city - *rebuttable* Little guidance on application of these rules but city has recognized pre-COVID telecommuting workers outside of Los Angeles may reduce the percentage of taxable gross receipts.

Mr. Andersen demonstrated the substantial savings on local taxes might be achieved, based on the data of one of his firm's clients with offices in San Francisco and New York City, if they track the locality of where work is performed by their employees. Mr. Anderson went on to consider how working hours are apportioned in other localities where the work was performed. There are different regimes across the country. For example, Philadelphia came up with their version of the convenience test. If a worker based in Philadelphia is working in New Jersey or outside of the city limits, the city considers that this employee is still working in Philadelphia and will impose their tax based on payroll expense upon this employee telecommuting. Substantiation may be the key to determining and realizing tax benefits, because the burden is on the taxpayer. Expenses and parking receipts can be used as evidence to show that the work was performed outside the city limits. Companies may employ technology solutions, such as an app on an employee's phone to track where employees perform work. Privacy concerns should be addressed.

Conclusion

The session concluded with Mr. Tonge, who emphasized the role of technology in addressing real time mobility. Over 90% of companies surveyed by Grant Thornton confirmed that their return-to-work strategy incorporated technology solutions, such as identifying the geo-location of the employees and to automating tax and risk analysis, which supports audit defense. This is critical in the post-pandemic world where hybrid work arrangements are here to stay. The role of a tax and finance department is to deal with complexity of domestic and international rules, to identify options to support the business, to mitigate attrition, and to realize a form of hybrid working with tax parameters central to format. The participants briefly discussed current challenges that their clients encounter in this post pandemic world. As the clients are located all over the map, this becomes an important area for risk management. Because the workforce is so mobile, taxes are triggered in multiple jurisdictions and liabilities arise which must be accounted for. The participants highlighted the important role of tax and finance departments in navigating these different layers of the tax complexities along with leveraging technology solutions.

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38th Annual TEI-SJSU High Tech Tax Institute

November 7 and 8, 2022

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IRC Section 1202 – Don't Overlook This Old Rule

By: Priti Trivedi, MST Student

The 37th Annual TEI-SJSU, High Tech Tax Institute, took place on November 8 and 9, 2021. One of the programs addressed "IRC Section 1202 – Don't Overlook This Old Rule" and featured panelists Thomas Bondi, Partner, Armanino; Jeff Kirkendall, Partner, Moss Adams; Erika Reigle, Senior Attorney, IRS; and Nancy Young, Partner, Seiler LLP. These panelists addressed the opportunities and challenges associated with the section 1202 gain exclusion and how investors and corporations can maximize the benefits of this exclusion.

Section 1202 overview and planning opportunities

Section 1202 was enacted in 1993 to encourage investment in small businesses operating as C corporations. Section 1202 defines qualified small business stock (QSBS) as shares of a qualified small corporation. It generally permits a non-corporate shareholder to exclude up to 100% of the gain from the sale or exchange of QSBS issued after September 27, 2010 and held for more than five years. A gain exclusion of 50% and 75% is available for QSBS issued between August 1993 and September 27, 2010. The overall exclusion per issuer is limited to $10 million or 10 times the aggregate adjusted basis of the disposed shares. This section became more attractive when the exclusion was raised to 100% for shares issued after September 2010 and when the capital gain tax rate increased from 15% to 20% in 2013.

Mr. Bondi and Mr. Kirkendall discussed qualifications for a QSBS treatment. A small corporation must meet the gross assets test of $50 million or less, and 80% of these assets must be used in an active trade and business. No service businesses such as accounting, law, engineering, farming, restaurants, hotels, and others, qualify for this treatment.

Mr. Bondi and Mr. Kirkendall emphasized taking advantage of section 1202 in the reorganization and incorporation of an entity. They gave an example of a taxpayer who holds QSBS with a current fair market value of $5 million and zero-cost basis with a holding period of four years who exchanged shares in a domestic corporation in a triangular merger transaction for $1 million cash and $4 million shares of non-QSBS buyer. The $1 million boot is taxable immediately. If the taxpayer holds the shares for another two years and sells for $12 million, then $4 million of gain will still qualify for the QSBS exclusion, and the rest is taxable.

Mr. Kirkendall emphasized that recapitalization, as defined under section 368, can also qualify for exclusion, as defined under section 1202(h)(4)(a), if QSBS can be exchanged for other QSBS, and if a transaction qualifies as a reorganization, as defined under section 368. When the holder ultimately sells the replacement QSBS, the holder will claim the section 1202 gain exclusion if the holder meets the five-year holding period requirement. However, anti-churning rules prohibit shareholders from converting non-qualified shares into QSBS shares.

Ms. Young discussed aggregating Section 1202 gain exclusion substantially by spreading it over more than one "taxpayer," each with a separate $10 million cap and 10 times aggregated adjusted basis cap. Founders can structure the ownership of QSBS to include a spouse, adult children, and other family members. In addition, exercising stock options early to cover the holding period, making 83(b) elections, and section 1045 rollovers may qualify under the section 1202 exclusion. For example, if the taxpayer successfully rolls over the sales proceeds under section 1045, gain on the original QSBS will be deferred if it is held for more than six months and by rolling the sales proceeds over into replacement QSBS until the replacement QSBS is sold. Lastly, shareholders can also take advantage of gift and estate tax exemption or structure the trust as a non-grantor trust for income tax purposes but not as a completed gift for gift and estate tax purposes. Section 1202 planning should also consider state tax consequences.

Proposed tax law considerations

Mr. Bondi emphasized that very little guidance in this area is provided by the IRS. All the panelists agreed that legislative history and some private letter rulings are the only guidance available to help make decisions for tax practitioners. Another challenge is that the QSBS-issuer does not advise the shareholders on whether they qualify for a section 1202 exclusion. The burden falls on shareholders to take a position on how the gain should be treated on their tax return. Ms. Reigle said, “we are aware that additional guidance is needed.” She noted proposed changes to section 1202, including retaining the exclusion benefits for taxpayers with an AGI of $400,000 and below, retaining the 50% exclusion for all taxpayers, and eliminating the 75% and 100% exclusion for taxpayers with an AGI above $400,000. These changes as included in the Build Back Better Act would be effective for QSBS sales after September 13, 2021.

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Digital Services Taxes

By: Tam Nguyen, MST Student

The 37th Annual TEI-SJSU High Tech Tax Institute was honored to have a prestigious panel presenting on the highly complex topic of digital services taxes (DSTs). This panel consisted of Ken Harvey, Partner at Armanino; Jenny Austin, Partner at Mayer Brown; John Clausen, Managing Director at Moss Adams; and Mike Shaikh, Partner at Baker McKenzie LLP. This panel discussed the implementation of DSTs to address problems in international commerce, and the OECD's Pillar One framework being created for the international community. With the world becoming more digitized by the minute, these taxes will likely become implemented by many governments.

International commerce problem

Mr. Harvey began by discussing a problem over 50 years old about how international commerce is taxed. In the past, if the taxpayer didn't have a permanent establishment (PE) in the country, then it wasn't subject to taxes there. With the rise of digital commerce, countries now want more tax revenue from these sales as most taxpayers do not have a permanent establishment in most countries that they are selling to.

This is challenging for countries as they must identify suppliers, sellers, and service providers who are selling domestically. Then the country must identify the customers those businesses are selling to. Ms. Austin brought up an example of a United Kingdom resident taking a vacation in Spain. While in Spain, the United Kingdom resident books a tour to see the Eiffel Tower in Paris. In this scenario, which country has the right to tax this digital transaction? To solve this problem, countries must decide who is taxed and where they are going to be taxed.

Implementation of digital services taxes

With digital commerce becoming more and more prevalent, countries want to enforce a tax on online transactions to broaden their tax base. One solution would be to create DSTs targeted towards online advertising, video streaming or downloading, ecommerce sales or services, and crypto transactions. The focus is on business-to-consumer transactions rather than business-to-business transactions. The governments that are currently enforcing DSTs are all implementing them differently, so it is difficult for a taxpayer to ensure they are in compliance.

In Europe, for example, a 3% tax has been proposed on gross revenues from the following digital services: selling online space, digital intermediary activities, and selling user data. The DSTs would apply to domestic and foreign companies with worldwide income of 750 million euros (approximately 846 million U.S. dollars) and European revenues of 50 million euros (approximately 56 million U.S. dollars). France was the first country to enact DSTs—followed by Italy, Austria, and Spain. In total there are just over 30 countries around the world that have enacted DSTs.

Nevertheless, the United States is generally opposed to DSTs as they mainly target U.S. companies. State governments, however, have not been hesitant to pursue DSTs. They believe that because of the transition to a digital economy, there is a tax base erosion with fewer in-person transactions. As more transactions happen online, digital goods and services transactions are seen as an untapped source of revenue to make up for losses incurred due to less taxes collected from in person transactions. Maryland was the first state to enact a DST: HB 732, which created a gross receipts tax on digital advertising services provided by companies with a minimum of $100 million in gross annual revenues. Other states have already proposed new taxes on the sale of digital advertising services, consumer or user data, and social media providers. Some states have placed this new tax as high as 15% on gross receipts, which is concerningly high for taxpayers who already must abide by income tax and sales tax.

Pillar One

Pillar One is an international proposal to provide a tax framework to address the issues arising from the transition to a digital economy. As currently drafted, Pillar One would affect the largest companies whose revenue exceed 20 billion euros (approximately 22.5 billion U.S dollars). It allows countries to reallocate taxing rights for these companies to the market countries. Nexus is determined when a company derives at least 1 million euros of revenue (approximately 1.1 million U.S. dollars) from a country. For smaller countries with gross domestic product lower than 40 billion euros (approximately 45 million U.S. dollars), nexus is set at 250,000 euros (approximately 282,000 U.S. dollars) of revenue. After nexus is determined, 25% of residual profit above the 10% profitability threshold is subject to tax and allocated to market countries by a revenue allocation key.

This new tax framework would eliminate the need for countries to rely on the permanent establishment principle to determine tax liabilities. Certain rules still need to be developed such as safe harbor amounts and relief from double taxation. Even though many details are still to be developed, Pillar One is expected to come into effect globally in 2023. Once Pillar One is in effect, countries would remove any active DSTs, and all countries would tax companies under this new framework.

Conclusion

The problem of taxing companies internationally has been a problem for several decades. With digital commerce becoming the dominant way to conduct transactions, imposing proper taxes due to each country became more difficult. The implementation of DSTs can help countries overcome the difficulty of abiding by the longstanding permanent establishment principle. DSTs helps governments increase their tax base and provide revenue from sales that are being conducted in their jurisdiction. Several DSTs are enacted throughout the world at national and state levels with many more governments actively considering them. This new tax is seen as necessary as the world continues to move towards digital transactions. DSTs have propelled the international community to create Pillar One that will become a global framework for every country to follow.

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Evolution During a Pandemic: The 27th Annual Tax Practitioner/IRS Fall Seminar

By: Dale Loepp, CPA, MST Student

Being able to thrive in the midst of change has always been a mark of distinction for the tax professional. However, developments over the past two years have launched a significant evolution in tax practice that no one could have predicted. These developments, which include new laws, new roles, and new risks for tax preparers, were highlighted at the 27th Annual Tax Practitioner/IRS Fall Seminar, co-sponsored by San José State University's Lucas College and Graduate School of Business, and a number of local chapters of the California Society of Enrolled Agents. This seminar, held on November 9 and 10, 2021, provided a lively forum in which participants could update their knowledge on "hot topics" in federal and California taxation, and gain a broad overview regarding the direction of the profession in light of the upheaval brought on by the COVID pandemic. Attended by more than 300 virtual participants, the event showcased nearly twenty different speakers: tax practitioners, academics, and personnel from the Internal Revenue Service and Franchise Tax Board. Presentations not only included law-specific topics such as the Employee Retention Credit, Estate and Gift Tax developments, but also included presentations focusing on economic trends, the current state of IRS operations and services, and new perspectives on tax preparers' ethical responsibilities, especially in light of current realities.

While it would be impossible to summarize here all of the information presented during this seminar, several broad themes did emerge over time. First, Congress's response to the pandemic has clearly stretched the resources and roles of both the tax professional and government agencies, especially and including the Internal Revenue Service. Second, communicating as tax professionals, a process already undergoing development prior to the pandemic, has been catapulted squarely into the internet age. Third, changes in office environments and remote work arrangements have presented new ethical and security challenges for tax preparers. And fourth, some of the fundamental ways in which we undertake and understand commercial transactions are likely to change with the increased presence and use of virtual currency. Taken together, these basic shifts not only challenge tax preparers to think through and revise many of their long-standing business practices, but also encourage practitioners to explore exciting new horizons in the way tax professionals can better serve their clients.

While understanding new developments in tax law has always been part of being a responsible tax practitioner, the pandemic turned the attention, at least temporarily, of both preparers and governmental agencies toward a patchwork of programs intended to bring economic relief: for example, various Federal and state stimulus payments, the Paycheck Protection Program, the Employee Retention Credit, and advance payments of the Child Tax Credit. Clients have understandably relied upon their tax professionals for assistance with these programs and to help them understand the programs' ever-shifting regulations and accompanying tax strategies.

Sharon Fisk and Tim McCormally of the IRS's Office of Professional Responsibility reminded seminar participants that accepting new and unfamiliar projects on behalf of pleading clients may force the tax preparer beyond their level of expertise and could also potentially threaten independence. McCormally observed that tax professionals might even be tempted to simply "wing it" in order to meet the urgent needs of their clients, when the situation actually calls for either additional professional education or even the referral of business to someone who is more qualified. Especially in the current environment, tax preparers may not be able to be all things to all their clients.

Along with brand new programs and enhanced tax credits, the pandemic has also forced the rapid adoption of new means of human interaction and information exchange, just as the virtual nature of this seminar itself demonstrated. The system of communication between taxing authorities and the tax practitioner, as well as between taxing authorities and individual taxpayers is currently in a state of flux. However, based on some of the tools that that IRS has already adopted, one can get a good sense of where the IRS is headed on this front. The burden of Congressionally-mandated economic relief and new remote-working environments have exposed serious fault lines in the IRS's traditional phone-call and paper-correspondence systems. In response, the IRS has been rolling out a series of innovations that incorporate taxpayer and tax professional internet portals—adapting certain features which were first modeled by California's Franchise Tax Board. Face-to-face audits and conferences have largely shifted to virtual settings, a trend which seminar presenter Albert Ju, IRS Exam Territory Manager, predicted would continue for the foreseeable future. Tax Pro Accounts will soon gain added functionality beyond simply being able to file Powers of Attorney and Tax Information Authorizations. With enhanced mobile-friendly identity verification, taxpayers will increasingly be communicating directly with the IRS using IRS online portals and services. All of these enhancements have required a significant commitment by the IRS to an expanded workforce and increased employee development, processes which have also employed virtual methods. Over time, both taxpayers and tax professionals will see significant changes in the way they interact with the IRS.

Of course, new means of communication and exchanges of information haven't been limited to the IRS. Remote working and lack of face-to-face interaction between tax professionals and clients have also revolutionized both the means of communication and the way tax work is documented. New and unusual physical work environments have created scenarios that are much more difficult to monitor or supervise than those of the traditional office, and these new forms of communication and information exchange automatically bring on new risks. Fisk and McCormally observed that tax practitioners will need to closely examine and probably redesign many of their systems and procedures. Encrypting document exchanges and drop boxes, developing means to oversee remote working environments, and examining firewalls, password policies, servers, and disaster recovery plans all require additional scrutiny in these new and evolving work environments. Professional practices and work settings, even if remote, must still comply with Circular 230 and practitioners were urged to take advantage of IRS Publication 4557 to help create a strong and viable written security plan to protect their clients.

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Several seminar speakers reported ways in which criminals have also taken advantage of new vulnerabilities brought on by the pandemic. Older and more familiar techniques such as email phishing and hacking, malware, ransomware, and identity theft have all continued apace—but new and innovative techniques have also been tried, exploiting pandemic work settings such as mostly-empty business suites and home offices. Seminar presenter Special Agent Mark Pearson of the IRS's Division of Criminal Investigation highlighted some of the innovative ways in which criminals have taken advantage of new vulnerabilities. Cybercriminals posing as janitorial crews have broken into tax systems—rich sources for data and identity theft—now made especially attractive by new flows of government payments. Home smart speakers and internet connections have proven particularly susceptible to security breaches. Agent Pearson reiterated many of the concerns expressed by Fisk and McCormally, stressing the need for an updated, written data security plan that covers all of an individual firm's potential work environments.

Another dimension of change for the tax professional is the increased use and popularity of virtual currency, which, as Special Agent Pearson observed, is often employed in cybercriminal schemes because of the difficulty in tracing transfers. Professor Annette Nellen, Director of the Masters of Science in Taxation Program at San José State, presented many of the unresolved tax issues posed by virtual currency as part of the seminar's "hot issues" panel discussion. As this medium of exchange both evolves and increases in number and type, basic questions about the nature and definition of virtual currency and its sale or exchange remain unaddressed by Congress—although the IRS is beginning to recognize the difficulty of detecting and regulating this economic activity which occurs outside the traditional banking system. Professor Nellen helpfully provided participants with a link to a website that she maintains compiling tax information on this topic: http://www.21stcenturytaxation.com/virtual-currency-and-tax.html. Obviously, this is an area which will require increased scrutiny and attention by preparers for a long time to come.

Employing many different perspectives, this seminar demonstrated that the way tax professionals serve their clients will be significantly redefined over the coming years; almost everything we do is now undergoing some element of transformation. Of course, tax law will continue to develop and change and tax practitioners will need to find systems to keep abreast of these changes, but adapting to new ways of communicating, a multiplicity of new work environments, and even fundamentally different ways of doing business may all eventually prove to be an even greater challenge for the tax practitioner in near term.

The SJSU MST Program will continue its co-sponsorship of this excellent annual program. Expected dates for the 28th Annual forum are October 26 & 27, 2022. For more information, visit https://www.sjsu.edu/taxinstitute/ or https://missioneas.org/.