



Due Diligence and Transactional Considerations in M&A

Employment tax spotlight

In the current environment, businesses are finding it advantageous to acquire the equity or assets of another entity, enter into joint ventures, reorganize related entities or restructure under a bankruptcy agreement. In conducting due diligence for a transaction or considering risks/advantages for an internal reorganization, payroll and employment tax considerations tend to be pushed to the back of the agenda, or not addressed at all. Including employment taxes as part of the regular diligence and structuring process can mitigate risk and even uncover potential refunds and tax savings.

KPMG LLP's (KPMG) Employment Tax professionals can help companies conduct a thorough due diligence of payroll taxes in transactions, assist in structuring, mitigation, and post-transaction remediation, and identify potential tax refunds and savings.

The following is a selection of considerations for the most common employment tax issues and opportunities.

Mergers and Acquisitions of a Third Party/Joint Venture



Independent Contractors/ Worker Misclassification—

Employees misclassified as independent contractors may result in tax and penalties for prior periods and, potentially, a shift in the company's entire worker model going forward.

- Does Target issue Forms 1099-MISC/NEC to individuals for nonemployee compensation?
- How does Target monitor compliance with worker classification rules?



Work from Anywhere/ Multi-State Wage Sourcing—

Remote employees and employees performing services in multiple states may create additional payroll tax compliance requirements.

- Does Target have employees performing services outside of their resident state or telecommuting from their resident state?
- Has Target reviewed and complied with compensation sourcing rules for state and local income tax withholding requirements?



Unreported Wages/Fringe Benefits—

All compensation paid for employee services is includable in taxable wages unless specifically exempted. Unreported taxable wages could result in assessment of tax, penalties and interest.

- Does Target provide benefits to employees, such as allowances, a vehicle, or education assistance?
- Does Target include the value of any of these benefits in employees' taxable wages?

Post-transaction 100-day Plan



Due Diligence Issues—The issues identified during diligence should be reviewed to determine if any policies or procedures should be revised following the transaction and implement the changes to mitigate continuing exposures.



Payroll Tax Refund Opportunities—A successor employer may be eligible to obtain refunds for overpaid social security and unemployment taxes paid for employees.

- Will the transaction occur mid-year?
- Can the company's payroll provider accommodate wage carryover?



Required Federal and State Reporting Compliance—In addition to state registrations, state departments of labor require employers to report transfers of all or a segregable unit of employees. These transfers must be reported even if the new employer is already registered for payroll tax accounts in the state.

- Will there be a transfer of employees between legal entities?
- Does the company have the appropriate resources to file the applicable state registrations, transfer forms, and closures?



Employee Management Company/Common Pay Agent/Common Paymaster—Where employees perform services for one or more related legal entities but are reported by another for payroll tax purposes, there may be an exposure for payrolling. If separate legal entities report the employees, there may be a potential for streamlining reporting and obtaining tax savings.

- Does the company have one entity reporting employees of another legal entity for payroll tax purposes?
- Has the company properly implemented the reporting structure for payroll tax purposes?

Contact us

To discuss how the KPMG Employment Tax team can help you conduct due diligence and identify opportunities in transactions, please contact one of the individuals listed below.

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