



How to Assess and Manage International Tax Risk in a Not-for-Profit Environment

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Agenda

- Risk – What Risk?
- Framework to Evaluate Risk and Make Effective Management Decisions

Risk – What Risk?

Did you know?

- Any time an employee of an organization spends time in a foreign country they may be creating a taxable presence in that foreign location for the organization and a foreign income tax filing and payment obligation for the employee?
- The nature and duration of the activities of your employees overseas, both short term business travelers and long term assignees , may be creating risk for your organization?

Risk – What Risk?

- FIN 48 for Not-for-Profits
- Foreign Government Scrutiny

Framework to Evaluate Risk and Make Effective Management Decisions

- Gather your facts
- Review the local law
- Learn the exceptions and determine if they apply
- Evaluate the cost of compliance
- Evaluate the cost of non-compliance
- Obtain approval from appropriate levels; Document
- Determine how often to review and update decision – annually?

Framework to Evaluate Risk and Make Effective Management Decisions

Gather your facts

- Who are your employees and where are they working/traveling?
- How often do they work in each country? How many total days in the country in either a calendar year or a fiscal tax year?
- What types of visas do your employees have? Work visas? Tourist visas?
- What specific activities are they authorized to do in each country? This includes knowing not only what their job description states (manage project) but also what “authority” they have to act on the organization’s behalf.
 - For example: Are your employees authorized to sign any contracts on behalf of your organization? This includes hiring local employees, leasing transportation, renting office space, etc.

Framework to Evaluate Risk and Make Effective Management Decisions

Gather your facts (continued)

- Do you rent office space in the country?
- Do you have an organization bank account in the country?
- Have your organization or your employees (personally) made any representations to the local government regarding tax status?
- Does your contract – for example , your USAID grant or contract – have a clause which covers foreign tax obligations?

Framework to Evaluate Risk and Make Effective Management Decisions

Review the local law

According to local law:

- When does an employee become taxable in the foreign country?
- When is the organization deemed to have the level of activity that causes it to need to register to do business and meet local compliance obligations?

Framework to Evaluate Risk and Make Effective Management Decisions

Learn the exceptions and determine if they apply

- US Income Tax Treaties
- Bilateral Agreements
 - Technical Cooperation Agreements
 - Strategic Objective Grant Agreements
 - Memoranda of Understanding
 - NGO Bilaterals

Framework to Evaluate Risk and Make Effective Management Decisions

Income Tax Treaties

- **The Tax Treaties** between the US and a particular country may offer a reduced rate of, or possibly a complete exemption from, Host Country taxes.

Framework to Evaluate Risk and Make Effective Management Decisions

Tax Treatment of Personal Services Income

- Pay for certain personal services performed in the Host Country may be exempt from Host Country income taxes if the service provider is a resident of the US, is physically present in the Host Country for a limited number of days, and if they meet certain other conditions.
 - The majority of the treaties provide that in order for the personal services income to be exempt from Host Country taxation, in addition to the US residents status and physical presence requirements, the income paid to the service provider may not be cross charged or borne by a permanent establishment or a fixed base that the US employer has in the Host Country.

Framework to Evaluate Risk and Make Effective Management Decisions

Tax Treatment of Personal Services Income

(continued)

- Measuring the physical presence limitation:
 - Some treaties limit the physical presence requirement to "less than 183 days".
 - However, the 183 day period may be measured differently, depending on the treaty.
 - Ex. Some treaties contain a rolling 183 day period - which covers 183 days over any 12 month period -including 2 tax years. Other treaties contain a 183 day period measured by a calendar year (Jan-Dec).
- All treaties are not the same:
 - Philippines – 90 days during a calendar year
 - Russia – 153 days during a calendar year
 - UK – 183 days during a UK fiscal year (running April 6th to April 5th)

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Permanent Establishment Issues

- Every tax treaty has a different set of criteria to determine whether a business enterprise has a taxable business presence or permanent establishment in a country.
- Factors can include:
 - Employees located in country
 - Office space
 - Contractual agreements signed in country

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Effects of a Bilateral Agreement on Income Tax Obligations

- If there is a bilateral agreement between the U.S. and the Host Country, the details of the agreement should be reviewed to determine how or if the bilateral agreement impacts your organization and your employees.
- Many bilateral agreements exempt foreign nationals working in a Host Country from the Host Country individual income taxes.
 - However, these agreements do not generally exempt host country nationals from the host country tax.
 - Therefore, if the Company employs a local to work in the Host Country, he may not be treated the same as a US citizen working the Host Country.

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Scenario #1 – Egypt

- US NGO receives a USAID grant for development work in Egypt
- US entity will send several US citizen employees to Egypt
- Who has to pay taxes?
 - Do the individual or the NGO have tax responsibilities?
 - Does it matter how long they remain in Egypt?

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Scenario #1 – Egypt

US/Egypt Tax Treaty

- Dependent Personal Services – Article 16
 - Income earned by a US resident for employment exercised in Egypt is exempt from Egyptian tax if:
 - The employee spends less than 90 days in Egypt during the relevant tax year
 - The employee is a resident of the US
 - The compensation is not borne by a permanent establishment in Egypt
 - The compensation is subject to tax in the US

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Scenario #1 – Egypt

US/Egypt USAID Bilateral Agreement

- Any activity, contract, grant or other agreement financed by USAID is provided exemption from taxes on the income, profits or property of all
 - Non-national organizations
 - Non-national employees of national and non-national organizations
 - Non-national individual contractors

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Scenario #2 – Afghanistan

- A US NGO receives a Department of Defense contract providing infrastructure support services in Afghanistan
- US non-military personnel will be providing services and subcontracted personnel will also be utilized

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Scenario #2 – Afghanistan

Local Law

- Income tax is imposed on the income from Afghan sources of all persons, corporations and other legal entities whether in Afghanistan or abroad
- No de minimis time limit or income threshold is provided for exemption from Afghan tax or reporting requirements

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Scenario #2 – Afghanistan

US/Afghanistan Tax Treaty

- The US does not have a tax treaty with Afghanistan

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Scenario #2 – Afghanistan

US/Afghanistan Bilateral Agreement

- Diplomatic Note No. 202
 - Covers US military and civilian personnel of the Department of Defense present in Afghanistan in response to humanitarian and civic assistance, military training and other activities
 - The bilateral states “The Government of the United States of America, its military and civilian personnel, contractors and contractor personnel shall not be liable to pay any tax or similar charge assessed within Afghanistan.”

Framework to Evaluate Risk and Make Effective Management Decisions

Evaluate the cost of compliance

- Tax exempt status – Does it exist in the country and can your organization obtain it?
- Registering and obtaining Company Tax ID in Host Country
- Payroll/withholding obligations – May be required to implement payroll withholding for income/social/local taxes
- Bank Account – Company may be required to maintain a local bank account
- Statutory Audits – Many countries require annual audits using host country currency and accounting rates
- Corporate income tax filings – Including remitting corporate/VAT/local taxes

Framework to Evaluate Risk and Make Effective Management Decisions

Evaluate the cost of non-compliance

- What are the potential compliance penalties for failure to register and obtain appropriate licenses?
- What are the potential compliance penalties for failure to file income tax returns for the organization and to pay income or other foreign country taxes?
- What is the risk to the organization's reputation or to future grants? How can that be quantified?

Framework to Evaluate Risk and Make Effective Management Decisions

Obtain approval from appropriate levels

Document

- Who in your organization can make these decisions?
- All decisions should be documented
 - FIN 48 compliance

Framework to Evaluate Risk and Make Effective Management Decisions

Document

- FIN 48 compliance
 - Applies to not-for-profit entities
 - Need to evaluate tax positions taken on a worldwide basis
 - Quantify risk, even if currently not taxable in a country
 - Determine materiality and document

Framework to Evaluate Risk and Make Effective Management Decisions

Determine how often to evaluate

- Annual evaluation or more frequent?
- Who will be responsible?
 - Internal Audit
 - External Auditors

Framework to Evaluate Risk and Make Effective Management Decisions

Process improvements to assist compliance

Tracking

- How does the company **track** short term business travelers and long term assignees?
 - Via expense reports
 - Travel agent reports
 - Calendar tracking - employee required to keep monthly travel calendar and submit to HR/Finance/etc
- Who is responsible?
- Place responsibility on employees and their managers to self-assess and request assistance
 - The ultimate responsibility is on the Organization/Employer to track its employees and properly report all Home and Host Country taxes

Framework to Evaluate Risk and Make Effective Management Decisions

Process improvements to assist compliance

Communication

- Are the international assignees/short term business travelers aware of the tax compliance implications of their travel on themselves and the Organization?
- How does the Organization communicate these compliance implications to the international assignees/travelers?

Tax Assistance

- Does the Organization provide any tax assistance in the Host Country location?



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