

Implications of a Remote Workforce

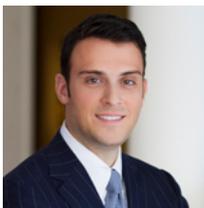


Morgan Lewis



Meeting with you today

Cosimo Zavaglia



Cosimo A. Zavaglia advises corporations, partnerships, and individuals on state and local tax controversy, planning, and transactional matters. Cosimo routinely represents clients in high-stakes state and local tax audits, appeals, and litigations in matters throughout the United States.

Laura Olson



Laura Olson is a CPA with more than 25 years of experience. She holds expertise in the following disciplines:

- Tax planning and compliance for partnerships, corporations, individuals, and trusts
- Business and accounting services
- Tax and accounting clients in various industries, with an emphasis in real estate.

Laura joined Seiler & Strong, LLP, in 2012, and became a Partner in 2020

Jaqueline Torres



Jackie Torres is the territory manager for the Large Business & International Division (LB&I); Western Compliance Practice Area (WCPA) San Francisco/Bay Area territory. Jackie provides leadership and direction of enforcement efforts on complex global cases in the San Francisco, Silicon Valley, and general Bay Area.

Mindy Mayo



Mindy is an employment tax specialist with over 20 years of experience. As a former payroll tax auditor with the State of CA, she assists her clients with a myriad of payroll tax issues.

Mindy is based in California as part of KPMG's Employment Tax Team.



Agenda

-  Setting the Stage
-  Common scenarios
-  Tax regulatory considerations
-  Questions?



Setting The Stage



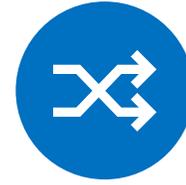
Key Considerations



Income and social tax



Employment tax



Program shaping and management



International corporate tax



Enterprise-wide



State and local tax



Stakeholder considerations

Employee	Corporate tax	Global mobility	HR & legal	Payroll & finance	Business & Culture
<ul style="list-style-type: none"> — Employee experience (i.e., attractiveness, additional filings or taxes) — Location preference — Compensation & benefits — Social security & mandatory benefits 	<ul style="list-style-type: none"> — Organization chart & entity network — Permanent establishment & state nexus — Value attribution & inter-company documentation — Risk monitoring & assessment — On-going compliance management — Licensing & regulatory considerations 	<ul style="list-style-type: none"> — Tracking & identification — Income tax residency/tax home determination — Tax filing and payment compliance — Certificate of coverages (CoCs/A1s) — Exchange control regulations 	<ul style="list-style-type: none"> — Industry benchmarking & alignment — Talent acquisition, retention & development — Health & safety — Compensation, benefits & expense policies — Policy & documentation — Immigration & employment law — Employment/assignment documentation — Data privacy & cyber considerations — Works councils and trade unions 	<ul style="list-style-type: none"> — Employment tax, state and local taxes — Domestic and international payroll reporting and withholding — Documentation maintenance — Cross-charge considerations — Accounting & reporting considerations (i.e., FIN 48, FAS5) 	<ul style="list-style-type: none"> — Business strategy & future vision — Industry approach — Cost management — Sustainability — Maintain company culture



Common Scenarios



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Meet Kevin-Hybrid Worker

Role: IT Consultant

“I can do my job from anywhere, I just want to do it well, and feel valued.”

Demographics

New York employee

Relocated at beginning of pandemic to New Jersey

Wants to continue working in New Jersey 2 days a week

Plans to travel to New York 3 days a week



State and Local Considerations

- Payroll Tax
 - Employer Headquartered in a Convenience State:
 - Imperative for employer to document: (1) the remote work arrangement with the employee and within the payroll system, and (2) the “necessity” for such arrangement (e.g., employee no longer allotted office space).
 - Employer should withhold under state laws where employee works remotely.
 - Failure to thoroughly document an employee’s transition to working remotely outside the convenience state increases the risk that “convenience” states will not recognize employee remote relocations and attempt to collect unwithheld state income tax from the employer.
 - Understand exceptions to the “Convenience” Rule
 - Locality Taxes



State and Local Considerations

Corporate Income Tax

Nexus

Apportionment

Sales and Use Tax

Secretary of State Registrations

What is “doing business”?



Personal Tax Filing Considerations

- Wages and income tax withholdings sourced to each state (Nexus)
 - Are you taxed where you live or where you work?
 - Convenience of employer rules (New York)
 - Other state tax credit
 - Temporary versus permanent remote work
- Home office Expenses



HR/Payroll Considerations

Resident/Nonresident state income tax

State Unemployment insurance on a hybrid worker-what state do you pay?

1. Localization of services
2. Base of operations
3. Direction and control
4. Resident

Who's overtime rules do you adhere to?

How do you handle workers compensation?

Is there a pay differential between the two locations?

Is there any travel involved?



Audit Considerations

- Disaster Relief - Application of Section 139
 - March 13, 2020 – COVID declared a qualifying disaster
 - Allows employer to deduct reasonable and necessary expenses incurred because of the disaster that are not otherwise reimbursed by insurance
 - Amounts paid are not included in employee income; no Federal Income taxes, FICA, FUTA, or self-employment taxes
 - State taxes will be assessed separately
- Personal Expenses vs. Expense of being Employed
 - Qualified personal expenses must be additional expenses caused by the pandemic
 - Not pre-existing expenses
 - Not compensation
- General Recordkeeping
 - Justify reasonableness of qualified expenses



Meet Megan-Remote Worker

Role: Tax Director

I would still like to be in the office once or twice a week, but I need greater flexibility to attend to responsibilities outside of work.”

Demographics

Resident of California

Moved to Colorado during the pandemic

Would like to remain in Colorado permanently

The company was previously not located in Colorado

Employee intends to set up an office at home

State and Local Considerations

- Payroll Tax
 - No reciprocal agreement.
 - “Employer nexus” to trigger withholding.
 - Employer Headquartered in a Non-Convenience State – employer should withhold under state laws where employee works remotely.
 - Employer should apportion wages based on time an employee spends working in the physical-office state and the remote-work state.
 - Local Taxes
- Corporate Income Tax
- Sales and Use Tax
- Secretary of State Registrations



Personal Tax Filing Considerations

- California Domicile rules and Dual Residency: Factors for residency
- Stock Options: Where is income sourced when exercised
- Home Office Deduction – Not available for employees
- Salary adjustment for Geographical pay differentials
- Both Colorado and California source wages to where employee performs services



HR/Payroll Considerations

Do you have a remote worker policy?

Any set footprint?

Any approval process?

Are you registered for payroll purposes in the jurisdiction?

Do you have worker's compensation set up?

Does your health benefit plan cover the employee in this jurisdiction?

Is there a pay differential to the employee?

Costs associated with additional compliance



Audit Considerations

- Application of Section 139 -
 - Relocation must be a requirement of the pandemic
 - Provides nontaxable relief for employees who face COVID-19 related expenses, including those stemming from relocations that are interrupted, or cancelled, or in which extra costs are incurred.
 - Office in the home – Section 139 allows for nontaxable employer reimbursement of additional reasonable and necessary expenses incurred by an employee to create a home office specifically due to the COVID-19 pandemic:
 - Purchasing a printer or home phone.
 - Increased cell phone expenses.
 - Increased utility costs incurred by the home office.
 - Cost of new or expanded internet access.
- General Recordkeeping
 - Justify reasonableness of qualified expenses



Questions



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