

# Global Tax and Immigration

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*Best of the West*

*8<sup>th</sup> Annual*

*Relocation  
Summit*



*Mastering Mobility in the New Norm*

# Today's Speakers



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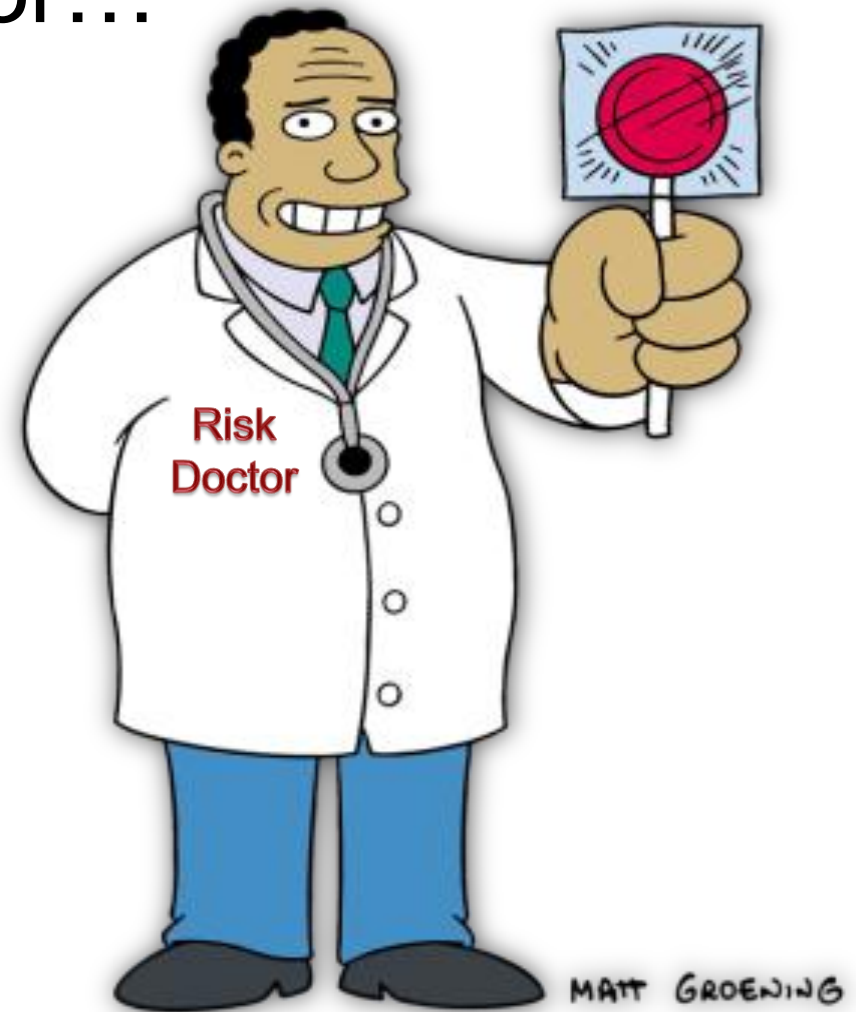


# Global Immigration

# Discussion Today



How immigration compliance is like a visit to your doctor...



# Discussion Today



- What are the Risks?
  - Business failures, deportation, fines and penalties, confinement, and reputation
- Where are the Risks?
  - “Stealth” expats, mergers, and acquisitions, project work, FCPA
- How to Manage the Risks?
  - Identification, assessment, tools, education, policy, and guidelines



# Risks of Non-Compliance



- Business Failure, Assignment Failure
  - Surprisingly common
  - Refused visa / turned away at the border
- Fines and Penalties
  - Increased enforcement
  - Higher penalties
- Confinement, Deportation
- Reputational Risk
  - Investment dollars, market reputation, “watch lists”



# Where are the Risks?



- Risk = Uncertainty
- Goal = “Control not elimination”
- Stealth Expats (aka “Illegal Immigrants”)
  - Employees working without official sanction
  - Inaccurate assumptions
    - Employees and management
    - Delays or expense associated with normal process
  - Pervasive
    - 80-90% of companies



# Risks – Stealth Expats



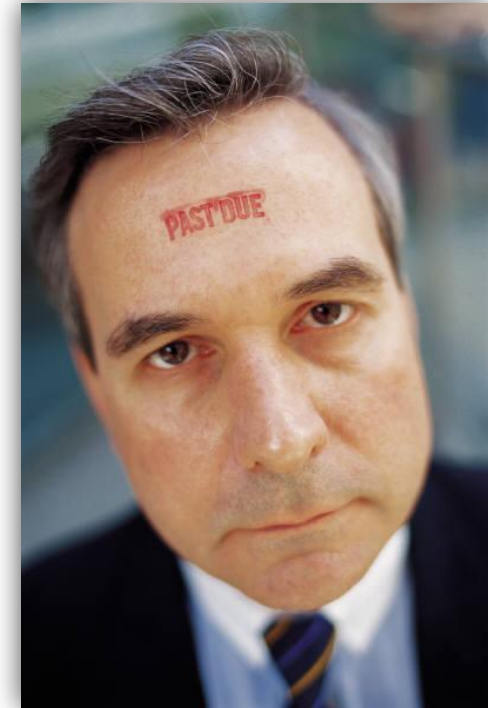
- Typical symptoms in companies with stealth expats
  - Lack clear widely enforced short-term assignment or travel policies
  - Highly decentralized expat or travel programs
  - Intra-regional vs. In/Out of central location
  - Issues with unintentional tax presence



# Risks – Mergers and Acquisitions



- Buying non-compliance
  - Legacy behaviors
  - Fundamental change in business operations
- Creating Risks
  - Change of status requirements
  - Job titles, salaries, entities, and more



# Risks – Project Work



- Bidding and Contracting
  - Sparse consideration for immigration requirements
  - Inaccurate assumptions
  - Engineering, IT, and more
- Internal Projects
  - Evolving work duties
  - Lack of scrutiny



# Identifying Risk



## Seven Suggestions:

- Unregulated travel – No policy
- Expatriation policy – Expensive or inflexible
- Unplanned tax presence anywhere
- Decentralized immigration policies
- Mergers or acquisitions (with foreign workers)
- Project work
- Suppliers, counsel or agents (FCPA non-compliance)



# Managing the Risk



- Seek Qualified council



- Recognize no “One Size Fits All” approach
- Recognize that managing these risks can have serious impact on business

# Managing the Risk



- Give business stakeholders Tools/Resources
- Educate partners
- Obtain senior management buy-in
- Ensure that decisions involving risk are made in the right place, with the right tools







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The information contained herein is general in nature and based on authorities that are subject to change. Applicability to specific situations is to be determined through consultation with your tax adviser.

# With You Today



**Jeannette Wistner**  
KPMG  
Senior Manager  
International Executive Services

# Risk Management for Business Travelers



- The identification and assessment of tax on business travelers (domestically and internationally) continues to be a focus
- There has been significant movement by organizations to implement procedures to assess their exposure
- Government regulation will continue to increase
- Public pressure growing
  - NY Times article
  - State audit emphasis
  - Global attacks on short term business travel

# Identifying Potential Exposures



Frequent business travel can create two types of exposure:

- Financial
  - Corporate level
    - Failure to report income and/or withhold income tax
    - Failure to withhold/pay social insurance
    - Potential permanent establishment concerns
  - Individual level
    - Failure to pay individual income tax
    - Failure to file individual income tax returns
    - Failure to obtain proper work permits/visas
- Reputational – client specific

# “Audit Level” Concern?



- KPMG often views the issues related to mobile employees to rise to the “audit level.” That is to say, exposures that are potentially material to the organization’s financial statements.
- Justification for this view
  - It is the accumulation of tax exposure, penalties, interest, etc. that raises these issues to “material”
  - Example
  - Other audit examples

# What is Your “Traveler” Risk Factor?



- Organizations “at risk”:
  - Companies that have a population of employees who travel frequently
  - Organizations which have operations in CA, CT or NY, with employees from other states traveling there
  - Companies with global operations in non-treaty countries
  - Public companies with equity/incentive compensation plans in place
  - Organizations with extremely high paid employees in “deal making” roles, e.g., PE firms, M&A teams, etc.

# Consider This...



## Example 1

- Financial Services Client
  - Total compensation expense of \$31,528 M
  - Employing approx 284,000 people
  - Average employee salary doubled\* \$222,000
  - Global operations: UK, Brazil, Korea, NY, CA
- Assumptions
  - Approx 5% of employees travel frequently (45 days +)
  - Approx 2.5% of employees travel to UK
  - Approx 5 employees travel to Brazil

*\*Assume it is higher salaried employees who are traveling more frequently*

# It Can Add Up



- Potential domestic non-resident withholding exposure
  - $\$222,000 \times 14,200$  (5% of employees)  $\times 20\%$  (45/240 days worked in NR state)  $\times 8\%$  (min. tax rate of NY/CA) = \$50M
- Potential UK tax exposure
  - $\$222,000 \times 7,100$  (2.5% of employees)  $\times 12.5\%$  (30/240 days worked in UK)  $\times 40\%$  (tax rate in UK) = \$79M
- Potential Brazilian tax exposure
  - $\$444,000 \times 5$  (employees working in Brazil)  $\times 10\%$  (24/240 days worked in Brazil)  $\times 27.5\%$  = \$6M
- TOTAL = \$135M for one year

# Other Consequences to Consider



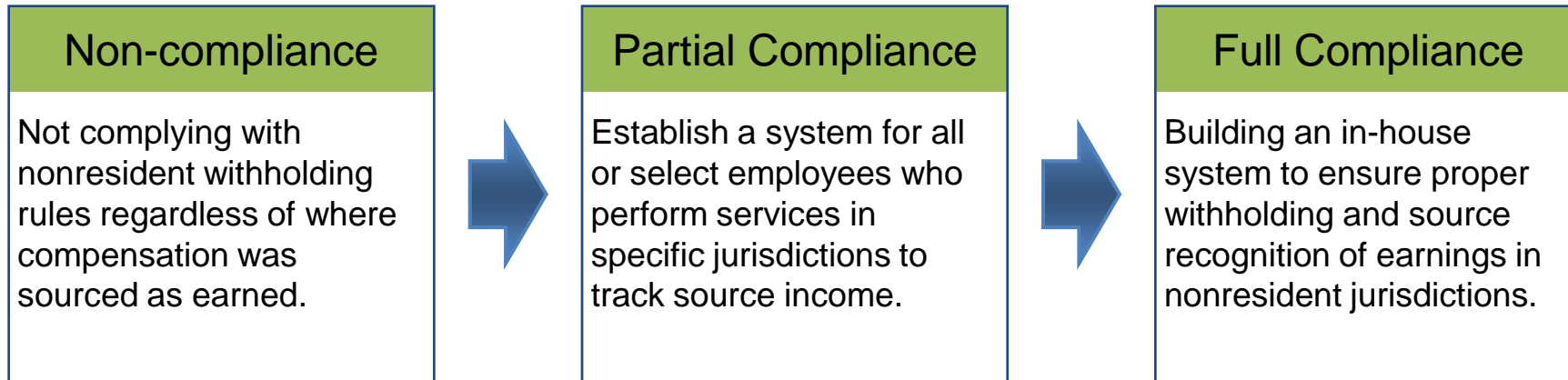
- PE Concerns
- Nexus Issues
- Reputation if fail to comply disclosed
- Employee Detainment

# Headline News



- IRS to Conduct Employment Tax Audits of 6,000 Businesses
  - IRS planning to conduct audits over the next several years, started in March 2010
  - IRS Audits will focus on the following
    - Fringe benefits
    - Officer Compensation
    - Worker Classification
- Mobile Workforce State Income Tax Fairness and Simplification Act

# Varying Approaches to Managing Business Travelers



- Any approach that does not involve withholding and remitting taxes on all wages earned, could have an associated tax exposure, including penalty and interest assessment.

# Mobile Employee Taxation – Next Steps?



- Evaluation/Assessment
  - Identify states/countries and employees likely to have material activity
  - Identify records/sources that provide indicators of activity
- Compliance Policy Design
  - Determine processes to be used for global compliance
  - Communicate policies to employees
  - Determine internal audit procedures
- Voluntary Disclosure Programs

# Contact Details



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