



Worldwide ERC 2011 U.S. Tax and Legal Update

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Tax Issues

- IRS Special Employment Tax Audits
- Deficit Reduction/Tax Reform: Effect on tax breaks important to relocation
- Repayment of Homebuyer Credits

Employment Tax Audits

- IRS has completed about 20% of the 2,000 special audits for 2008
- Has notified most of the 2,000 taxpayers to be audited for 2009
- No indication yet as to any specific issues identified
 - However, IRS officials have mentioned that some audits are focusing on employee/independent contractor issues
 - Will affect particularly construction and transportation industries
- No information so far as to any relocation issues identified
 - Home sale programs
 - Accounting for relocation reimbursements

Deficit Reduction/Tax Reform

- Both political parties focused on deficit, federal debt, but disagree on what to do
- Tax changes to eliminate some so-called “tax expenditures” are a feature of many plans in both parties
- Targets breaks such as:
 - Mortgage interest deduction
 - Home sale capital gain exclusion
 - Foreign earned income and housing exclusions
- Not clear whether moving expense deduction is considered a “tax expenditure”, but ERC and AMSA are gearing up to protect it if necessary

Homebuyer Credit Repayment

- 2008 credits have to be repaid over 15 years regardless
- 2009/2010 credits have to be repaid with next tax return if home ceases to be principal residence within three years of purchase
 - If sold, credit repaid only to extent of gain
 - If not sold, entire credit must be repaid
- IRS has multiple data sources, is sending letters to taxpayers seeking repayment
- No exception for relocation, so company has to decide whether to reimburse transferee, and gross up

Legal Issues

- International Activities
 - UK Bribery Act effective July
 - Foreign Corrupt Practices Act keeps DOJ busy
- US Homesale Programs
 - Real estate and finance markets
 - Current legislation and regulations
 - Other trends
- US Government Programs
 - False Claims Act becomes big business

International Activities

- UK Bribery Act
 - Extraterritorial
 - Applies to commercial activities
 - No intent necessary
 - Applies to corporate entertainment
 - Guidance published
 - Prosecutors will look at 6 principles, the key is proportionality
 - Ambiguous, but little direct effect on companies not doing business in UK

International Activities

- Foreign Corrupt Practices Act (FCPA)
 - Flurry of enforcement activity
 - Dodd-Frank adds payments and more protections to whistleblowers
 - Intent to bribe required, commercial bribery NOT covered
 - Suppliers are the Achilles heel in our industry
- Bottom line: small investment in compliance programs could yield big returns

US Homesale Programs

- Real Estate and Finance Market
 - Housing market
 - Deflation, underwater loans, stabilization in 2012?
 - Short sales, shadow inventory, “flopping”, claw back
 - Finance market
 - Effect of QRM dispute
 - Change in FHA/GSE loan limits this summer?
 - Miscellaneous state actions
 - Appraisal statutes defeated in NV, IL, MD and MO
 - NCAR option/sales contract
 - Private transfer fee (PTF) update

US Government Programs

- False Claims Act
 - Whistleblower cases brought for a piece of the recovery – enhanced by the Dodd-Frank Act
 - Marked increase in suits over the past few years
 - But Schindler Elevator shows that government information less likely to be “mined” for information forming the cause of action.
 - New statute includes also certification as small business (Sect 1341 SBJA of 2010)
 - Travel and entertainment covered (Anti Kickback Act)
 - Fortunately, buying off GSA Schedule limits exposure
 - Ounce of prevention...