



## Common Issues in Executive Compensation, Fringe Benefit, Information Reporting and Employment Tax Audits

Spring 2023

The Inflation Reduction Act included \$80 billion in increased funding for the IRS over the next 10 years; the IRS has indicated that the funds will be used for both modernizing the IRS and for increased audits. The IRS has hired thousands of auditors and is in the process of training them for targeted audits. We anticipate that a significant number of these audits will focus on issues in the executive compensation, fringe benefits, and employment tax realm.

To prepare for the possibility of an audit, it may be wise to consider conducting a comprehensive internal employment tax audit. These audits can assist employers with identifying and correcting employment tax, tax information reporting, fringe benefit, and executive compensation issues prior to the IRS conducting an audit.

Employment tax issues can touch multiple departments within companies and oversight of many of these issues may not fall directly under the purview of either tax or benefits. Employers can obtain a significant benefit from having structured meetings to discuss common issues and identify areas where compliance can be improved. Identifying and correcting issues prior to an IRS audit can significantly reduce a potential employment tax assessment and penalties.

Below we identify some of the issues that may arise.

### **1. Tax Treatment of Travel Expense Reimbursements and Per Diem Payments**

- Does the traveler have a tax home?
- Application of the one-year/break-in-service rule
- Issues with bi-coastal executives

### **2. New Deduction Disallowance Rules for Employer-Provided Parking**

3. **Personal Use of Company Plane and Application of Code Section 274(e)(2) Deduction Limitation for “Entertainment” Flights**
4. **Tax Treatment of Employer-Provided Vehicles**
  - Proper documentation and record-keeping
  - Proper characterization of commutes
5. **Tax Treatment of On-Site Employer Cafeterias**
6. **Application of De Minimis Exclusion**
  - Tax treatment of gift cards
  - Use of the company’s sky-box/sports tickets
  - Employee holiday party awards/door prizes
  - Tax treatment of wellness awards
7. **Deposit Timing Issues for Stock Options and Restricted Stock Units (or similarly structured equity-based compensation)**
8. **Failure to Obtain TINs Before Paying Vendors and Resulting Back-Up Withholding Obligation.**

Following a significant period with very little enforcement, the IRS has focused significant attention to withholding and information reporting on payments to domestic and foreign vendors. The stakes are high because payers are directly liable for any underwithheld taxes in addition to penalties and interest. Payers across all industries are taking a hard look at internal procedures to ensure that they possess the appropriate information and documentation (e.g., Forms W-8, W-9, 8233) from their vendors in order to appropriately quantify exposure and withstand an IRS examination.
9. **Information Reporting and Employment Taxation of Third-Party Incentive Payments (i.e., payments/awards to employees of a third party or a third party making payments/awards to your employees)**
10. **Information Reporting and Employment Taxation of Settlement Payments**
11. **Tax Issues Associated with Long-Term Compensation Awards that are no Longer Subject to a Substantial Risk of Forfeiture on Retirement Eligibility (because awards “continue to vest” or vest on termination by retirement)**
12. **Worker Classification/Employees Who Receive a Form W-2 and Form 1099 in the same or consecutive years**
13. **Employment Taxation and Information Reporting for Payments under the Employer’s Paid Family Leave Benefits from a Voluntary Plan – FICA Taxation**

14. **Accrual of deduction for annual bonuses paid within 2½ months of year end, without regard to whether the “all events test” is met.**
15. **Administrative errors in operation of deferral arrangements that result in need to use IRS Code section 409A operational violation correction procedures or errors in plan documentation requirements and the need to use IRS correction procedures.**
16. **Proper documentation under Code Section 409A of relocation and other reimbursement arrangements, and various individual employment and termination agreements/arrangements.**
17. **Tax Treatment of Security Protection Provided to Executives**
18. **ACA Compliance and Information Reporting Issues**
19. **Tax Treatment of Spousal Travel**
20. **Proper Application of the Employee Retention Credit**

#### **State Employment Taxation Issues**

21. **Taxation of Nonresidents for Services Performed in State (e.g., Work Performed at Company Headquarters by a Non-Resident)/ Tax Issues with Remote Workers**
22. **Taxation of Deferred Compensation that is Paid to Retirees that is not Covered by Federal Blocker**
23. **State Sourcing Rules for the Taxation of Stock Options, Bonuses and Deferred Compensation**
24. **Taxation by Residency State for Services Performed Abroad**

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For additional information on any of the above issues, or to schedule a compliance audit for your organization, please contact [Tom Cryan](#) or [Spencer Walters](#).

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