

BDO NFP WEBINAR: NONPROFITS DOING BUSINESS ABROAD - INTERNATIONAL TAX ISSUES



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Jeff Schragg is a Tax Partner at BDO USA, LLP where he is the McLean Office Nonprofit Industry Team Leader. For over 30 years, he has counseled clients on highly complex tax and business matters. Jeff provides his clients a broad and deep knowledge of all areas of state, federal and international taxation. He has coordinated several voluntary compliance projects for tax-exempt organizations with regard to sales tax, unrelated business income and other unreported taxes.

Jeff brings a results-driven approach to closely held businesses and high net-worth individuals. Jeff brings sophisticated tax planning and advice to Fortune 500 companies, S corporations, trade associations and charities. Jeff was recognized as a 2011 SmartCPA by SmartCEO magazine. He has served on the Board of Directors of several nonprofit organizations, including roles as Board Chair and Treasurer.

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Matt provides services addressing a wide array of international tax concerns, including: cross-border structuring, foreign expansion assistance; transfer pricing; tax treaty analysis; foreign holding companies; acquisitions and divestitures planning; cash repatriation; foreign tax credit planning; U.S. anti-deferral rules, and international tax compliance projects.

Matt also has significant experience addressing tax accounting issues for multinational clients, including preparation and review of complex FAS 109 and FIN 48 income tax provision calculations and disclosures. He also has experience evaluating, testing, and documenting internal controls around the income tax process as required by Sarbanes-Oxley Section 404. Matt has over 16 years of public accounting experience; including over 10 years of “Big Four” firm experience, and has significant experience in serving the international and domestic tax needs of large corporations, including SEC registrants with global operations.

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Katherine “KC” Reeves has over 20 years of tax experience. Since joining BDO USA, LLC (BDO), she has specialized in providing International Tax and Human Resource services to a variety of clients including nonprofit organizations and government contractors. The extensive tax knowledge and breath of practical experience KC brings to each client engagement is unique and adds value to each client relationship.

Prior to joining BDO, KC served as a manager at Argy, Wiltse and Robinson, P.C. She also worked with Arthur Andersen in the Corporate Tax Group for 12 years. At Arthur Andersen, her clients were both international, such as the Danaher Corporation, and domestic, such as Children’s Hospital, The Nature Conservancy and McKenna and Cuneo. She has experience in most areas of tax law having worked on everything from large consolidated returns to human resource issues for small businesses.



Agenda

- u Today we will discuss how exempt organizations:
 - § Expand internationally (by plan or accident); and
 - § Identify tax compliance requirements for the entity and employees as well as the impact of international agreements on activities and US reporting obligations.

Entering a New Country - By Plan

- u Evaluation of Enabling Conditions
- u Policies Created on Condition of Approval
- u Leadership Approves
- u Set up proper infrastructure in country
- u Make Grant(s)
- u Send People & Assets

Entering a New Country - By Accident

- u Attending seminars
- u Make a grant
- u People travel to evaluate grant effectiveness
- u Employees working from home at their convenience (i.e., they didn't tell you)

Basic Overview of International Grantmaking

u Who is the Grantmaker?

- § Public Charity
- § Private Foundation
- § Donor Advised Fund

u Private Foundation

- § Contract or Grant
- § Equivalency Determination
- § Expenditure Responsibility

u Public Charity

- § Best Practices since no limitations similar to a Private Foundation
- § Obtain copies of Grantee's organizational documents
- § Written agreement documenting Grantee's commitments and use of funds
- § Yearly Accounting\Report

Basic Overview of International Grantmaking

u Anti-terrorism Compliance

- § Executive Order 13224, Treasury Guidelines, USA Patriot Act
- § Know your Grantee
- § Educate Staff and Board on Anti-terrorism Programs
- § Document Compliance Steps (adopt a policy)
- § Involve Legal Counsel



Executive Order 13224 blocking Terrorist Property and a summary of the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), and Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations)

EXECUTIVE ORDER 13224 - BLOCKING PROPERTY AND PROHIBITING TRANSACTIONS WITH PERSONS WHO COMMIT, THREATEN TO COMMIT, OR SUPPORT TERRORISM



Questions to Ask

- u Grantor?
- u Equivalency Determination
- u Status of US Entity

People - Questions to Ask

- u Do you know where your people are?
- u Anyone overseas?
- u Do you have the correct paperwork in place?



Host Country Taxes

- u Non-profit organizations with employees working outside of their home country must tackle a complex web of international tax laws, treaties and agreements
- § Organizations need to to identify and examine key international tax issues, such as:
 - When does an employee become taxable when working outside of their home country?
 - What exceptions to host country tax are available through the tax treaty network and bilateral agreements?
 - What is the non-profits' responsibilities to withhold and report both in the United States and overseas?

Host Country Taxes

u Did you know that:

§ Any time an employee of an organization spends time in a foreign country they may create an:

- obligation for the employer to withhold a foreign income tax and report foreign income
- obligation for the employee to file a foreign income tax return and pay foreign income tax
- obligation for the organization to register to operate in foreign country
- obligation for the organization to comply with foreign tax compliance obligations
- obligation for the organization to file entity-level disclosures

US Payroll Issue - HEART Act

- u The Heroes Earning Assistance and Relief Tax (HEART) Act of 2008 (Pub.L.No 110-245) addressed the issue of US companies who engage the services or residents through offshore/foreign companies
- u Codified as IRC §3121(z)
- u Under IRC §3121(z), a “foreign person” is treated as an American employer with respect to services performed by any of its employees under a contract between the US government (or any instrumentality thereof) and any member of a domestically controlled group of entities which includes such foreign person
- u Services performed as an employee of such an employer outside of the US by a US citizen or resident alien in connection with such a contract of employment is subject to FICA tax

Income Tax Treaties

U.S. Income Tax Treaties In Effect			
Armenia	France	Lithuania	Slovenia
Australia	Georgia	Luxembourg	South Africa
Austria	Germany	Malta	Spain
Azerbaijan	Greece	Mexico	Sri Lanka
Bangladesh	Hungary	Moldova	Sweden
Barbados	Iceland	Morocco	Switzerland
Belarus	India	Netherlands	Tajikistan
Belgium	Indonesia	Netherland Antilles	Thailand
Bermuda	Ireland	New Zealand	Trinidad and Tobago
Bulgaria	Israel	Norway	Tunisia
Canada	Italy	Pakistan	Turkey
China	Jamaica	Philippines	Turkmenistan
Cyprus	Japan	Poland	Ukraine
Czech Republic	Kazakhstan	Portugal	United Kingdom
Denmark	Korea (South)	Romania	Uzbekistan
Egypt	Kyrgyzstan	Russia	Venezuela
Estonia	Latvia	Slovak Republic	
Finland			

Income Tax Treaties Signed, Awaiting U.S. Senate Approval			
Chile	Hungary	Japan (Protocol)	Luxembourg (Protocol)
Poland	Spain (Protocol)	Switzerland (Protocol)	

Agreements Between Sovereign Nations

- u Income Tax Treaties
- u Status of Forces Agreements (“SOFA”)
- u Bilateral Agreements
- u Totalization Agreements (i.e., Social Taxes)
- u Estate and Gift Tax Treaties
- u Link to List of all United States agreements

<https://www.state.gov/s/l/treaty/tif/index.htm>

Income Tax Treaties

u Tax Treatment of Personal Services Income

- § 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 resident status and physical presence limitations, 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.

Income Tax Treaties

u Tax Treatment of Personal Services Income

§ 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 calendar 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

Income Tax Treaties

u Sample Treaty Language (Dependent Personal Services)

§ Philippines

- Remuneration derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if:
 - He is present in that other Contracting State for a period or periods aggregating less than 90 days in the taxable year;
 - He is an employee of a resident of, or of a permanent establishment maintained in, the first-mentioned Contracting State; and
 - The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State.

Income Tax Treaties

u Sample Treaty Language (Dependent Personal Services)

§ Ireland

- Remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned;
 - The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

Bilateral Agreements

u 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 Organization employs a local national to work in the Host Country, this individual may not be treated the same as a US citizen working the Host Country.

Bilateral Agreements

u Sample Bilateral Agreement - India

§ All employees of the Government of the United States of America assigned to duties in India in connection with cooperative technical assistance programs and projects and accompanying members of their families shall be exempt from Indian income taxes with respect to (1) salaries and emoluments paid to them by the Government of the United States of America and (2) any non-Indian income upon which they are obligated to pay income or social security taxes to the Government of the United States of America. (Underlining added for emphasis)

Bilateral Agreements

u Sample Bilateral Agreement - Jordan

§ All personnel, except citizens and permanent residents of Jordan, whether employees of the Government of the United States or individuals and employees of public or private organizations under contract with the Government of the Hashemite Kingdom of Jordan or its agencies shall be exempt from income and social security taxes levied under the laws of Jordan with respect to income upon which they are obligated to pay income or social security taxes to the Government of the United States, and from taxes on purchase, ownership, use or disposition of personal movable property intended for their own use. (*Underlining added for emphasis*)

Bilateral Agreements

u Sample Bilateral Agreement - Sudan

§ All personnel except citizens and permanent residents of the Republic of the Sudan, whether employees of the Government of the United States or individuals and employees of public or private organizations under contract with the Government of the Republic of the Sudan or its agencies or the Government of the United States or its agencies, who are present in the Republic of the Sudan for the purpose of performing work in connection herewith and whose entrance into the country has been approved by the Government of the Republic of the Sudan shall be exempt from income and social security taxes levied under the laws of the Republic of the Sudan with respect to income upon which they are obligated to pay income or social security taxes to the Government of the United States, and from taxes on purchase, ownership, use or disposition of personal movable property intended for their own use. (Underlining added for emphasis)

Taxable Business Presence - Permanent Establishment

u Gather your facts

- § Who are your employees and where are they working/ traveling?
- § How often do they spend time 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 perform 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 organizations 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.

Taxable Business Presence - Permanent Establishment

- u Gather your facts (continued)
 - § Does the organization rent office space in the country?
 - § Does the organization have a bank account in the country?
 - § Has the organization or its employees (personally) made any representations to the local government regarding tax status?
 - § Does the contract - for example, USAID grant or contract - have a clause which covers foreign tax obligations?

Taxable Business Presence - Permanent Establishment

u Permanent Establishment Issues

§ Although many of the US tax treaties follow the same format and criteria to determine whether a business enterprise has a taxable business presence or permanent establishment in a country, not all treaties are the same.

§ Factors can include:

- Employees located in country
- Office space
- Contractual agreements signed in country

§ Must evaluate on a country by country basis

**Not all US not-for-profits are exempt overseas*

Taxable Business Presence - Permanent Establishment

u 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 requires registering to do business and meet local compliance obligations?



Taxable Business Presence - Permanent Establishment

- u 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



Processes

u Process improvements to assist compliance

§ Tracking

- How does the organization track short term business travelers and long term assignees?
 - Via expense reports
 - Travel agent reports
 - Calendar tracking
- 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
 - Local office in foreign location should be tracking citizenship of employees and flagging US citizens and Green Card holders

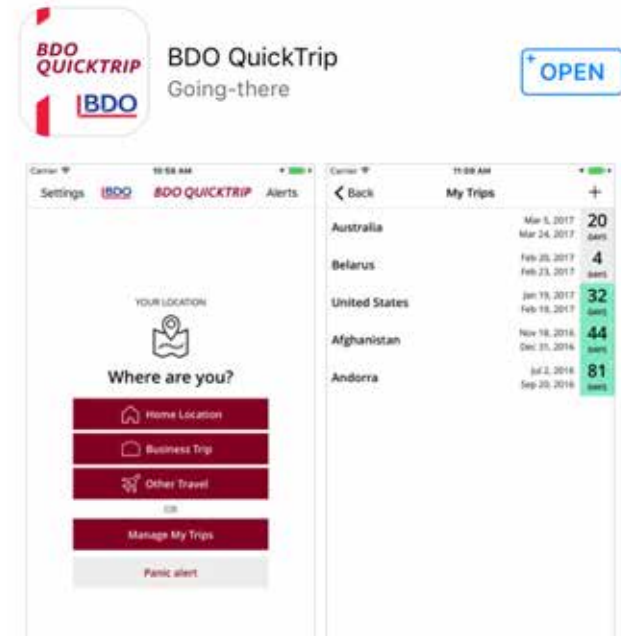
BDO QUICKTRIP

DIGITAL TOOL DESIGNED FOR BUSINESS TRAVELER MANAGEMENT

BDO QuickTrip offers a dedicated, intuitive and secure HR portal allowing the employer quick access to all traveler information in real-time. The tool can run detailed analysis reports grouping items to aid all relevant reporting functions.

The traveler is provided with an easy to use smartphone app which enables them to enter their business trips manually, or using the GPS functionality within their phone. At the end of a business trip, a record of the trip can be downloaded for country tax reporting should the need arise.

Alerts are issued in the event of a taxable event (based on a continually managed research library of tax trigger points across the globe) enabling you to contact us to discuss any remedial action or planning required to ensure continued compliance and tax-efficiency.



Processes

u 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?

Compliance with Reporting Requirements

u US Information Reporting

- § Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations
- § Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation
- § Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities
- § Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships
- § FINCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR)

QUESTIONS





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