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HOT TOPICS IN EMPLOYEE BENEFITS—WHAT WE'RE SEEING

Moderator: Joseph Ronan

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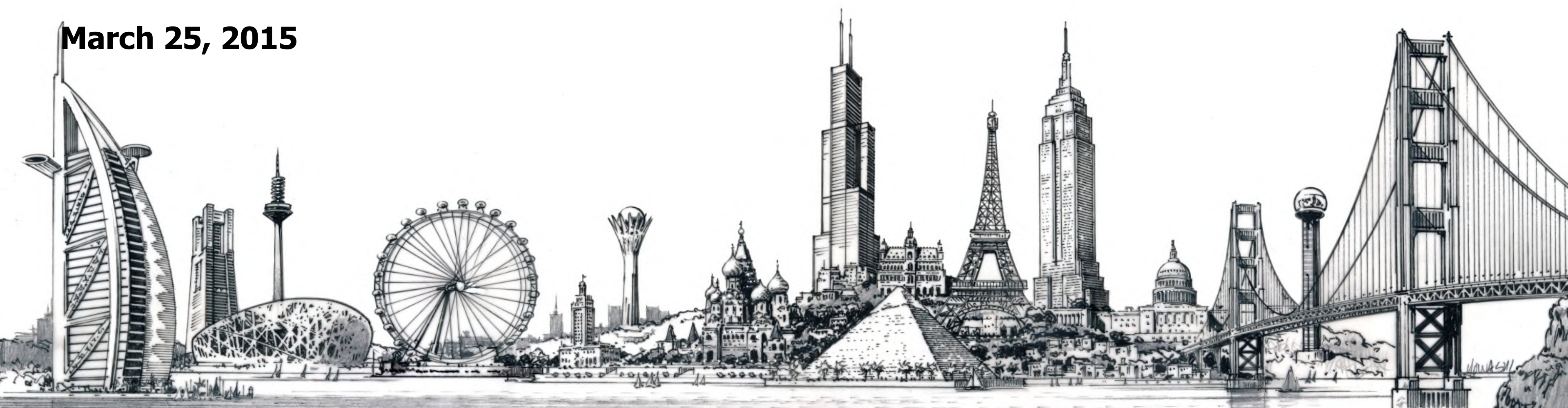
March 25, 2015



Agenda

- Health and Welfare
- Fiduciary Considerations
- Executive Compensation
- Multiemployer Plans
- Fringe Benefits
- Employee Stock Ownership Plans

HEALTH AND WELFARE

Presenter: Andy Anderson

ACA PREMIUM TAX CREDIT LITIGATION

ACA Premium Tax Credit Litigation

- *King v. Burwell* (U.S. No. 14-1114)
  - Question to be decided by the Supreme Court:
    - May the IRS by regulation extend tax-credit subsidies to coverage purchased through exchanges established by the federal government under Section 1321 of the ACA?
  - Oral Arguments March 4/Decision by late June
  - Answer to this question will determine whether federal subsidies will be available to residents of 34 states with federally facilitated exchanges
    - Estimated to be around $25 billion

ACA Premium Tax Credit Litigation – Background

- In 2012, the IRS issued regulations making health insurance premium tax credits available to individuals who purchase health insurance on both state and federally established exchanges.
- As of the end of February, roughly nine million people had obtained coverage through a federal exchange.
- Nearly 90% of these people are receiving premium tax credits.

ACA Premium Tax Credit Litigation – Background

- Under the ACA, subsidies are available only for coverage obtained "through an exchange established by the State under Section 1311." *See* 42 U.S.C. § 36B(d)(2)(A)(i)
- If a state elects not to create an exchange, the ACA authorizes HHS to establish and operate an exchange within the state.
- Sixteen states and DC have established their own exchanges, while 34 states currently rely on federally facilitated exchanges.

ACA Premium Tax Credit Litigation – Arguments

- Opponents argue that the "established by the State" language prohibits federal subsidies for insurance purchased from a federally facilitated exchange.
- The government, on the other hand, argues that Section 1311, when read in conjunction with other ACA provisions, demonstrates that an exchange established by the federal government to enable a state to meet its Section 1311 obligation is also an "exchange established by the State."
  - Two ways a state can establish an exchange as required under Section 1311: (1) establish an exchange itself or (2) let the federal government do so.
  - In either case, the government argues, the exchange itself satisfies the Section 1311 requirement, thus making subsidies available to enrollees on federally facilitated exchanges.

ACA Premium Tax Credit Litigation – Implications

- As of the end of February, roughly nine million people had obtained coverage through a federal exchange.
- Nearly 90% of these people are receiving premium tax credits.
- If the Supreme Court invalidates regulation, a key component of the ACA will be removed.
- Likely consequences:
  – Droves of healthy individuals will drop coverage
  – Big premium increases for sicker remaining covered
  – Practically: death spiral

ACA Premium Tax Credit Litigation – Implications

- Employer mandate:
  - Penalty triggered only if a full-time employee purchases subsidized coverage on an exchange
  - Employers with employees only in the 34 states with federal exchanges would no longer be subject to penalties for not offering coverage
    - Not a practical outcome for 50-state employers

ACA Premium Tax Credit Litigation – Implications

- ACA Political Realities:
  - "Hey, Mr. President: Here are some things we'd like changed in return for fixing this little old subsidy issue…"
  - Determine your "ask"
  - Tell your Senator/Representative that this is no time for showboating
    - Get 'er done
    - Avoid the preference for political shaming

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FIDUCIARY CONSIDERATIONS

Presenter: Julie Stapel

Recent Supreme Court Argument in 401(k) Plan Fee Litigation

- Supreme Court heard a fee and expense case—*Tibble v. Edison*—on February 24.
- Like many fee and expense cases, *Tibble* involved a claim that plan fiduciaries had breached their duty of prudence by offering retail class mutual funds, among other claims.
- The issue to be reviewed by the Supreme Court, however, focused more on whether the breach occurred only at the time the investment options were initially chosen or whether the breach was ongoing.
  - If only at the time investment options were chosen, claim may have been barred by the statute of limitations.

Tibble Takeaways, So Far . . .

- Questioning at oral argument not limited to the statute of limitations point.
  - Many questions trying to identify the nature of the ongoing duty to monitor fees.
  - Suggests Court may decide something more and/or different than issue presented initially.
- Regardless of how the decision comes out, a good reminder of the importance of process.
- Fiduciary committees may wish to confirm and/or reevaluate their process for reviewing fees on an ongoing basis.

February Fiduciary Flurry

- In February, the White House announced the reproposal of the DOL's long-awaited fiduciary redefinition (or anti-conflict-of-interest) proposed rule
  - White House "Fact Sheet" and CEA Study
  - DOL "Frequently Asked Questions"
- Reproposal after controversial initial proposal in 2010
- Rule currently at OMB—presumably its final stop before being issued as a proposed rule
- Proposed rule expected to be released anytime between now and May

Fiduciary Redefinition Takeaways, So Far . . .

- Likely to have more impact on financial service providers than plan sponsors but could affect how services are delivered to plans or require additional administrative burdens and costs
- Focus on IRAs and rollovers
- Exemptions for current compensation arrangements
- ESOP valuation providers may be not be affected
- Education providers may not be affected
- “Best interests” standard
- Will be political

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EXECUTIVE COMPENSATION

Presenter: Gina Lauriero

ISS Equity Plan Scorecard Analysis

- Institutional Shareholder Services (ISS) adopted a new approach in evaluating equity compensation plans
  - Equity Plan Scorecard Policy (EPSC) is effective for annual meetings on or after February 1, 2015
  - EPSC is based on a holistic analysis intended to be more flexible
  - Departure from the pass/fail analysis previously performed by ISS

ISS Prior Approach

- Under its prior approach, ISS recommended a vote against equity plans if any of six “negative” factors existed
  - Factors included whether:
    - The cost of the company’s equity plans exceeded ISS determined limits
    - The plan permitted repricing without shareholder approval
    - There was misalignment in pay for performance
    - The company’s three-year burn rate exceeded the burn rate cap of its industry group
    - The plan contained liberal change in control provisions
    - The plan was otherwise a vehicle for problematic pay practices

ISS Equity Plan Scorecard Analysis Pillars

- EPSC considers a range of factors based on three “pillars”:
  - Plan Cost
  - Grant Practices
  - Plan Features
- Factors within each pillar are not weighted equally
- In allocating points:
  - Some factors are all or nothing
  - Some factors may generate a partial portion of available points

ISS Equity Plan Scorecard Analysis Pillars

- Each pillar is assigned a maximum number of potential points, which differs depending on whether the company is a member of one of the following groups:
  - S&P 500
  - Russell 3000
  - Non-Russell 3000
  - Initial Public Offering or Bankruptcy
- For all models, the total maximum points is 100
- In most cases, positive ISS recommendation if score is at least 53, absent overriding factors

ISS Equity Plan Scorecard Analysis Overriding Factors

- Overriding factors in a plan that will result in a negative recommendation regardless of point total are:
  - Has liberal change in control definition
  - Permits repricings or cash buyouts of underwater options or stock appreciation rights without shareholder approval
  - Is a vehicle for problematic pay practices or a pay for performance disconnect
  - Features other provisions that are detrimental to shareholder interests, such as tax gross-ups related to plan awards or provision for reload stock options

ISS Equity Plan Scorecard Analysis
Plan Cost Pillar

- Plan Cost
  - Potential cost of the company's equity plans relative to industry/market cap peers, measured by the shareholder value transfer model
  - Considers:
    - New shares requested plus shares remaining for future grants plus outstanding/unvested/unexercised grants; and
    - Only new shares requested plus shares remaining for future grants
      - Reduces the impact of grant overhang

ISS Equity Plan Scorecard
Grant Practices Pillar

- Grant Practices
  - Company's three-year average burn rate relative to its industry and index peers
  - Vesting schedule under the CEO's equity grants during the prior three years
  - Plan's estimated duration
  - Clawback policy that includes equity grants
  - Post-exercise/post-vesting shareholding requirements

ISS Equity Plan Scorecard Analysis
Plan Features Pillar

- Plan Features Pillar
  - Automatic single-trigger vesting upon a change in control
    - Performance-based awards will be deemed subject to automatic accelerated vesting upon a change in control unless:
      - the award is linked to performance attained as of the change in control date and/or
      - the award is prorated based on the time elapsed in the performance period as of the change in control date
    - For ISS to consider automatic single-trigger vesting to exist, all awards must be considered by ISS to be automatically accelerated upon a change in control

ISS Equity Plan Scorecard Analysis
Plan Features Pillar

- Broad discretionary vesting authority (unrelated to a change in control, death, or disability)
- Liberal share recycling
- Absence of minimum vesting period (at least one year)
  - Minimum vesting requirement must apply to 95% of the shares authorized for grant
  - Recent commentary indicates that no separate or additional carve-outs will be allowed for director grants, new hire grants, acquisition awards, or other grants

SEC Hedging Policy Disclosure Proposed Rules

- In February, the SEC issued proposed amendments to Regulation S-K Item 407 (Corporate Governance) to implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act
  - Would not prohibit hedging transactions
  - Would require <u>disclosure</u> as to whether any director, officer, or employee is permitted to purchase financial instruments that are designed to hedge or offset any decrease in market value
    - Principles-based disclosure requirement does not define hedging transactions subject to the rule
    - Would cover "all transactions that establish downside price protection—whether by purchasing or selling a security or derivative security or otherwise"
  - Would apply to equity granted as compensation or otherwise held by the individual, directly or indirectly

SEC Hedging Policy Disclosure Proposed Rules

- Enhance existing CD&A disclosure requirement
  - Proposal would cover all U.S. public companies, including emerging growth companies
  - Foreign private issuer exemption (not subject to the proxy rules)
  - Applies to all directors, officers, and other employees (not limited to named executive officers)
- Disclosure requirement would apply to:
  - Any equity securities of the company, its parent, any subsidiary, or any subsidiary of any parent of the company that are registered under Section 12 of the Exchange Act
  - Any financial instruments designed to hedge or offset any decrease in the value of the company's equity securities

SEC Hedging Policy Disclosure Proposed Rules

- Requires annual meeting proxy disclosure of:
  - Whether the company permits any of its employees, officers, or directors to engage in hedging transactions
  - The categories of transactions/persons permitted to engage in hedging
  - The categories of transactions/persons prohibited from engaging in hedging
- Purpose:
  - To provide transparency, if action is to be taken on the election of directors, about whether employees or directors are able to mitigate or avoid the incentive alignment associated with equity ownership
- Current action:
  - Companies should wait to see how the SEC addresses comments
  - In the interim, companies should begin reviewing their own policies (or lack of policies)

MULTIEMPLOYER PLANS

Presenter: Althea Day

MPRA

- Overview
- General Implications for Employers
- Rules for Employers
  - PPA Sunset Removal
  - Withdrawal Liability
  - Bargaining
  - Increased Plan Disclosure
  - Rules for Deeply Troubled Plans

MPRA's General Implications for Contributing Employers

- Eliminates minimum excise tax specter caused by PPA sunset.
- Makes significant changes to employer withdrawal liability calculations.
- Changes default rules for successor CBAs.
- Gives employers greater access to plan information.
- Rules for Deeply Troubled Plans – may lessen the likelihood of plan insolvency and reduce employer withdrawals

Elimination of PPA Sunset

- MPRA eliminated the "sunset" provisions of the PPA indefinitely.
- Eliminated the provision that would have removed plans' automatic five-year extension of the full-funding amortization periods.
- Extended certain rules relating to zone status.
- **Effect:** Limits the specter of excise taxes except:
  - In cases when plan trustees do not develop an acceptable Rehabilitation or Funding Improvement Plan; or
  - For pre-PPA periods.

MPRA – Changes to Withdrawal Liability

- Contribution increases and surcharges mandated by Rehabilitation and Funding Improvement Plans are eliminated from withdrawal liability calculations.
- Benefit suspensions are excluded in determining the UVB liability to be allocated to employers.
- Following a partition, withdrawal liability is calculated differently depending on how long the employer remains in the plan.
  - Changes are intended to encourage employers to stay in the plans.
  - Could backfire because plans will be receiving less in withdrawal payments from other employers.

Withdrawal Liability Calculations: Annual Payments

- For plan years beginning after December 31, 2014, the following are <u>excluded</u> from all withdrawal liability calculations:
  - Rehabilitation Plan surcharges, and
  - Contributions and contribution rate increases mandated by Rehabilitation and Funding Improvement Plans, <u>unless</u>:
    - The contribution rate increases are result of increased levels of work, employment, or periods for which compensation is provided, or
    - Used for benefit improvements

Withdrawal Liability: Partitions

- **Withdrawal Liability Following a Partition**
  - For withdrawals from the original plan in first 10 years after the plan partition → employer's withdrawal liability includes liability for both original and successor plans.
  - For withdrawals occurring more than 10 years after the plan partition → employer's withdrawal liability includes liability for the original plan only.
  - **Effect:** These changes may encourage employers to remain in plans for a longer period of time.

Liability Calculations: Benefit Suspensions

- **Withdrawal Liability Following the Newly Created Benefit Suspensions**
  - The newly created benefit suspensions are ignored for withdrawal liability calculation purposes, unless the withdrawal occurs more than 10 years after suspension.
  - Thereafter, suspended benefits are treated as permanent benefit cuts for the purpose of determining the plan's UVBs.
  - **Effect:** A decrease in UVBs may result in less withdrawal liability only for those employers who remain in the plan for at least 10 plan years after the benefit suspension

Changes to Default Rules for Successor CBAs

- **Old PPA Default Rule:** If a CBA expired after first certification of Critical, Seriously Endangered, or Endangered status and the bargaining parties failed to adopt a compliant schedule within 180 days of that CBA's expiration, the Default Schedule was imposed.
- **MPRA New Rule:** If bargaining parties fail to agree on a successor CBA contribution schedule within 180 days of that CBA's expiration, the employer is deemed to remain on the schedule previously agreed to by the parties in the prior CBA.
- **Effect:** New rule could lead to future contribution increases for the employer.

New Rules for CBAs During the Funding Improvement Period

- **Old Rule:** Trustees may not accept a CBA during any Funding Improvement Period (FIP) that provides for any new direct or indirect exclusion of younger or newly hired employees from plan participation.
- **MPRA New Rule:** Trustees of plans in Endangered or Critical status may accept collective bargaining agreements that exclude from participation newly hired employees.
  - Except during **the adoption period** (i.e., the period beginning on the date the actuary certifies a plan as endangered or critical and ending on the date of the plan's adoption of a FIP or Rehabilitation Plan).

Employers Given More Access to Plan Information

- **MPRA Increased Plan Disclosure Requirements**
  - Contributing employers now have greater access to plan information.
  - MPRA expands the scope of a plan’s information disclosure requirements upon request by *a contributing employer,* plan participant, beneficiary, or union.
  - Plans <u>must now disclose</u>:
    - Plan document, SPD, trust, Form 5500, funding notices, audited financial statements, participation agreements, and Funding Improvement and Rehabilitation Plans (and Schedules).
  - Six-year reach-back time limit.

MPRA Rules for Deeply Troubled Plans

- **Implications for Employers**
  - New tools for deeply troubled plans may lessen the likelihood that some plans will go insolvent.
  - Employers may not rush to withdraw from those plans that have partitioned, merged, or cut benefits, especially if funding improves.
  - The dynamics for lump sum withdrawal liability settlements have changed and could reduce plans' willingness to accept a lump sum.

Deeply Troubled Plans – "Critical and Declining" Status

- **New "Critical and Declining" Status**
  - Plan projected to become insolvent in current or any of the 14 succeeding plan years (~15 years); or
  - Plan projected to become insolvent in current or any of the 19 succeeding plan years (~20 years) <u>and</u>
    1. Ratio of inactives to actives exceeds 2 to 1; or
    2. Plan is less than 80% funded.

Critical and Declining Status: Benefit Suspensions

- "Critical and Declining" status plans may apply to Treasury to voluntarily suspend benefits for participants—both actives and retirees.
- Two Conditions for Benefit Suspensions:
  1. Actuary certifies plan projected to avoid insolvency with proposed benefit suspensions.
  2. Plan determines that even though it has taken "all reasonable measures to forestall insolvency," plan still projected to become insolvent unless proposed benefits are suspended.

Critical and Declining Status: Benefit Suspensions

- Monthly benefit cannot be reduced below 110% of the PBGC guarantee.
- Participants/beneficiaries ages 75 to 79 have certain limitations on the suspension.
- Participants/beneficiaries ages 80 and older and those receiving disability pensions are exempt.
- Benefit suspensions are to be reasonably implemented to avoid plan insolvency.
- Suspensions must be "equitably distributed" across plan participants, taking into consideration various factors set forth in the statute.

Benefit Suspensions: Limitations

- Suspensions are subject to a vote of plan's participants and beneficiaries.
- If 50% or more of those eligible to vote reject the suspension, Treasury may override the negative vote.
- Within 14 days after a negative vote, Treasury must determine if plan is "systemically important" or plan could result in $1 billion or more in projected PBGC liabilities if suspensions not implemented.
- If plan is deemed "systemically important," Treasury has discretion to override the negative vote and either:
  - Accept proposed terms in application; or
  - Modify benefit suspensions to avoid plan insolvency.

New Tools: Plan Mergers

PBGC has new authority to facilitate plan mergers:

1. Upon request of a plan, PBGC may assist in facilitating a merger if the agency determines plan merger:
   – Is in best interests of participants and beneficiaries of at least one of the plans; and
   – Is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans.
2. PBGC may provide financial assistance to facilitate a merger involving a plan in critical and declining status based on following criteria:
   – Reduce PBGC's expected loss with respect to plans involved;
   – Necessary for merged plan to become or remain solvent; and
   – PBGC certifies that its ability to meet existing financial obligations will not be impaired by providing the financial assistance.

New Tools: Partitioning

- Eliminates ERISA's previous limit that a partition was allowed only for those "orphan" beneficiaries attributable to an employer in an active bankruptcy.
- New authority for PBGC, upon application from a plan in "critical and declining" status, to order partition under certain circumstances:
  - Plan has taken all reasonable measures to avoid insolvency, including the maximum benefit suspensions;
  - PBGC expects partition will reduce its long-term loss with respect to plan, and partition is necessary for plan to remain solvent; and
  - PBGC certifies to Congress that its ability to meet existing financial assistance obligations to other plans will not be impaired by the partition.

New Tools: Partitioning

- Application to PBGC with determination within 270 days.
- Requirements for PBGC approval:
  - Partitioned plan must transfer just enough of its liabilities to keep the partitioned plan solvent.
  - A successor plan becomes responsible for paying PBGC-guaranteed benefits and must be sponsored and administered by the same entities prepartition.
  - After partition, the partitioned plan must pay a monthly benefit to each partitioned participant and beneficiary in the amount that would be paid under the plan terms that exceeds the PBGC's guaranteed benefit.

MPRA: Will It Work?

- MPRA's rules arm trustees with new tools to help improve funding.
  - Not clear if trustees will use these tools and/or if they will use them properly.
  - The risk of shared liability among numerous employers is not eliminated.
- Employers have very little control over decisionmaking.
- Many of the tools to reduce liability require long-term commitments to continue in these plans (at least 10 or more years).
- These tools only help if other employers stay in as well!

FRINGE BENEFITS

Presenter: Mary Hevener

Company Cars

- The IRS has started a few audits recently of company-provided cars, challenging the adequacy of the "car logs" provided by employees to their employers.
- Although these logs need to be kept only one quarter a year, or one week a month, in many instances the logs contain very little information about the vehicle trips or business purpose.
- Many indicate 98% or 99% business use.

Company Cars

- Some IRS agents are willing to limit the adjustment simply to some relatively low percentage of deemed business use.
- Other agents are taking the position that if adequate logs are not maintained, 100% of the cars' "Annual Lease Value" must be taxed to employees.
- Still other agents are raising similar questions about reimbursements paid for use of employees' individually owned cars.

Company Cafeterias and Snack Rooms

- The IRS has commenced at least a dozen audits of company cafeterias, catered meals, and snack rooms.
- Some of these audits involve companies that are miles from any town, where the IRS is contending that the employer has not satisfied the "convenience of employer" test of Section 119 (discussed below).
- The IRS has rescinded 30-day letters for several California companies, apparently to ensure that a company with "bad facts and bad arguments" is the first matter to be considered at SF Appeals.
- IRS National Office Guidance is scheduled to be issued this summer or fall – which may help employers prove that they should win the historic arguments, on grounds that the pre-2016 law was "confusing" (thus creating grounds for waiver of never-withheld employment taxes).

Company Cafeterias and Snack Rooms

- Employee Cafeterias
  - "Convenience of the employer" under Section 119 is easily misunderstood. If properly applied, nontaxable meals can be provided to employees. It is a facts and circumstances analysis.
    - Needing to be employees available during meal breaks to be on call for emergencies.
    - Employees must be restricted to short meal breaks due to nature of the business, and the employees cannot eat elsewhere during that period.
    - Insufficient eating facilities nearby during any reasonable meal period.
    - Promoting morale and goodwill of the employee is NOT considered support for the exclusion, per Reg. § 1.119-1(a)(2)(i)(f).
  - Meals provided by an employer in an eating facility may qualify as a nontaxable fringe benefit if the facility is on or near the employer's business, and its revenue is equal to or more than the facility's direct operating costs. *See* § 132(e)(2).
  - If a subsidy is offered to employees, and they don't pay enough to cover the direct operating costs (food and food labor), the IRS may seek withholding on the imputed income of 150% of direct operating costs from the employer. Reg. § 1.61-21(j).

Company Cafeterias and Snack Rooms

- In most of these audits, the agents cite regulations that were overridden in 1978, yet are still on the books.
- In some of these audits, agents have contended that "bottled water" and "popcorn" are not on the regulatory list of *de minimis* fringes, and therefore are taxable.
- In other audits, agents have contended that delivered food is "effectively reimbursed" and thus Section 119 does not apply.
- In one audit the agents have contended that an "eating facility" must be "a large square room in which hot and tasty meals are provided."

Company Cafeterias and Snack Rooms

- Even if the employer can prove that the Section 119 exclusion applies, there are also issues about the deductibility for income tax purposes of the meals (which, to be deductible, must qualify for exclusion under Section 132(e)(2)).
- Part of these issues—for both exclusion and deduction—exist because the IRS has never issued guidance either under important 1978 changes, or under the *Boyd Gaming* statutory changes, which deem all employee meals to be excludable under Section 119 if at least half of the meals are excludable under Section 119, and which deem payments equaling operating costs to have been made for all Section 119 meals when measuring direct operating costs for purposes of the Section 132(e)(2) exclusion.

Contractors and Form 4669 Developments

- The IRS challenges contractor status only occasionally in payroll tax audits—although the IRS is gathering data, presumably to try to push for repeal of Section 530 (the moratorium on worker classification audits in place since 1978).
- Many states—particularly California—are becoming much more aggressive about worker classification audits.

Form 4669

- In December 2014, the IRS released a new version of Form 4669—the form used for 40 years to ensure abatement of payroll taxes imposed on employers that reported, but did not withhold, on worker compensation.
- The new Form 4669 requires employers to attest that the compensation that was paid was "subject to withholding taxes" (in contrast to the prior form, which only admitted that amounts were paid that were NOT subject to withholding). This new admission may result in penalties being imposed on the employers for failing to withhold.

Form 4669

- The new Form 4669 also requires the signing employee (or contractor) to attest that the worker "paid all taxes due" on the reported compensation. Many workers will likely refuse to make that attestation.
- Comments may be filed by the IRPAC objecting to several of these features of the new Form 4669—which likely will make abatements of payroll tax assessments harder to negotiate.

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EMPLOYEE STOCK OWNERSHIP PLANS

Presenter: Brian Hector

ESOP Myths

Myth: The owner will lose control of the company.

Reality: An ESOP doesn’t change the company’s corporate governance. The board of directors appoints the ESOP trustee, which can be an internal employee or independent person or entity. The ESOP trustee is the legal shareholder and votes the shares on behalf of the retirement plan participants, except if required to pass through the voting to participants. The board and management remain in control of the company, even when the ESOP owns a majority of the company.

ESOP Myths

Myth: The owner will have to sell all of the company.

Reality: An ESOP allows the owner to decide how much of the business to sell and the time frame for ownership transition. Often, the owner will initially sell a minority interest, then complete a second-stage transaction at a later date.

However, in the case of a C corporation, there is a special tax savings provision that allows the sellers to defer indefinitely the capital gains tax on any or all of the stock sold to an ESOP, provided that the ESOP purchases at least 30% of all of the outstanding stock, and provided that the sellers reinvest the proceeds in "Qualified Replacement Property."

ESOP Myths

Myth: An ESOP company will have to disclose financial information to the ESOP participants.

Reality: As a qualified retirement plan, ESOPs must provide participants an annual statement showing the value and number of shares held for their benefit. There are no other financial disclosures required.

ESOP Myths

Myth: An ESOP must be 100% invested in shares of company stock.

Reality: An ESOP is only required to be “primarily” invested in shares of company stock over the life of the ESOP. Therefore, an ESOP will usually have two accounts: a company stock account and an other investments account. All investments other than company stock will be credited to the other investments account, i.e., cash.

ESOP Myths

Myth: Having an ESOP will make it more difficult to sell the business to a third party in the future.

Reality: The ESOP is just an additional shareholder of the company. Whether the company has, for example, four shareholders rather than three shareholders makes little or no difference to the buyer.

QUESTIONS?

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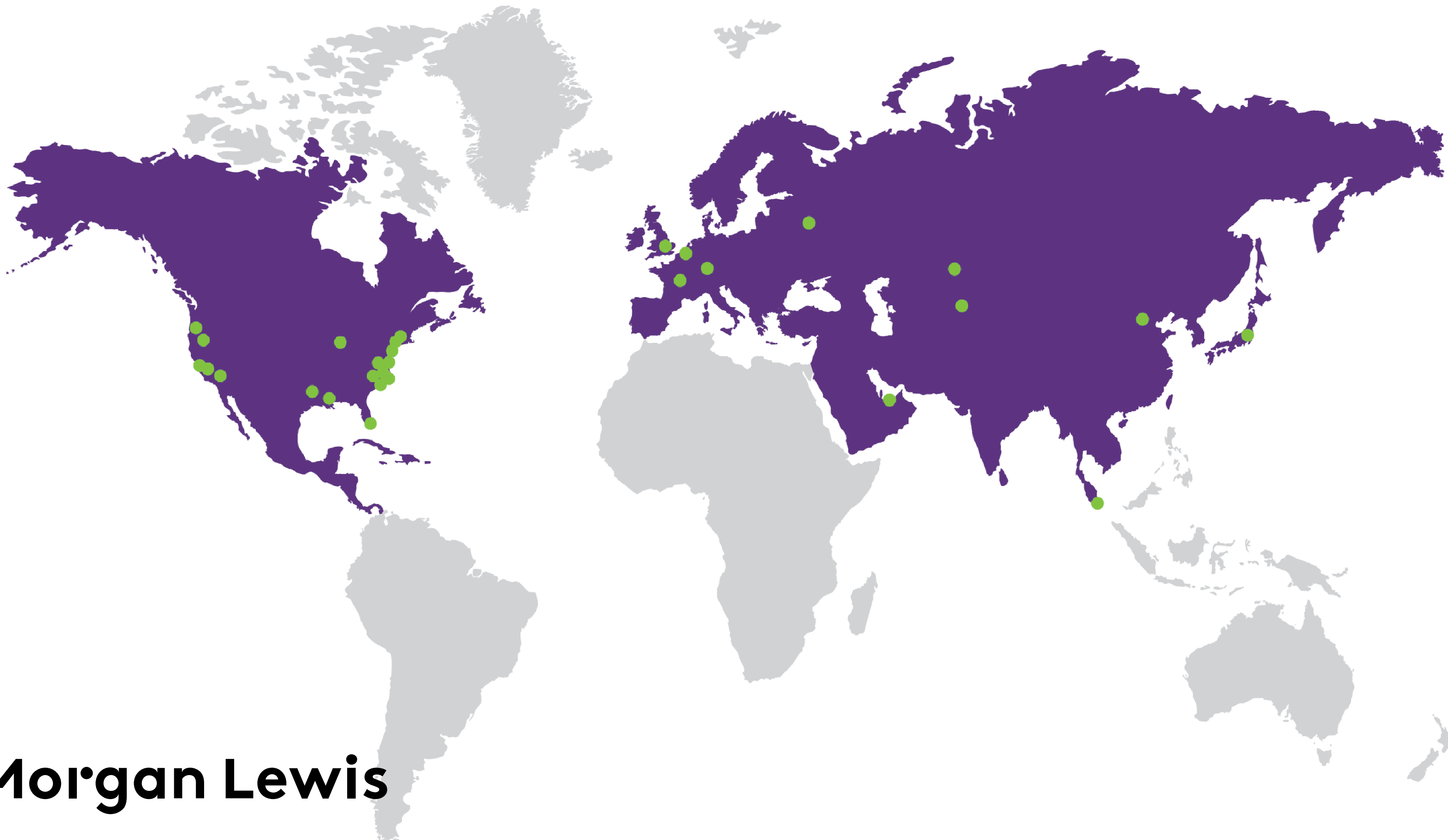

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THANK YOU