Insights: Publications

# 5 Key Takeaways | SALT and Multinational Businesses: Analyzing State and Local Taxation of Foreign Company Transactions

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Kilpatrick's **David Hughes** and **Jeff Reed** recently participated in panel, sponsored by Strafford, addressing the topic of "**SALT and Multinational Businesses: Analyzing State and Local Taxation of Foreign Company Transactions**." The panel discussed how state and local tax laws apply to foreign investment and ownership by United States businesses and individuals, with attention to the Tax Cuts and Jobs Act's repatriation tax, tax haven legislation, add-back statutes, apportionment, and constitutional limitations. They all addressed common issues and traps for foreign businesses creating a footprint in the United States, including sales tax collection obligations, unanticipated state and local taxes, and combined reporting.

Key takeaways from their discussion include:

**1. Complexity of State and Local Tax (SALT) Compliance for Multinationals:** Multinational businesses face increasing complexity in navigating the intricate landscape of state and local taxes in the United States. Multinationals must manage varying rules across multiple jurisdictions, including differences in nexus standards, apportionment methods, and tax rates. The risk of non-compliance is significant, with potential for audits and penalties. Companies should adopt robust compliance frameworks and seek expert guidance to mitigate these risks.

**2. Evolving Nexus Standards and Economic Presence:** One of the most critical SALT challenges facing multinational companies is the evolution of nexus standards, especially after landmark court decisions such as South Dakota v. Wayfair, Inc. The shift from physical presence to economic nexus has expanded the tax obligations of businesses with remote or digital operations. Multinationals must now assess their activities not just in terms of physical operations but also economic engagement within each state. This change increases both administrative burden and exposure to state-level taxation.

**3. Impact of Digital Economy and Remote Transactions:** The rise of e-commerce and digital services has significantly affected SALT considerations for multinational businesses. Digital transactions can create tax liabilities in states where companies may have no physical presence, leading to new compliance challenges. Businesses are encouraged to evaluate their digital footprints and ensure that systems are in place to track and report taxable activities accurately. This is crucial for minimizing unexpected tax liabilities and audit risks.

**4. State Income Tax Challenges:** Multinational businesses must deal with numerous state income tax related issues, including conformity to the Internal Revenue Code (and the impact of treaties), combined reporting (and the meaning of an “80/20” company), intercompany expense limitations, transfer pricing, and foreign source income (such as dividends, Subpart F income and GILTI and associated apportionment issues).

**5. Importance of Strategic Tax Planning and Documentation:** Multinational companies must develop strategies that account for the diverse and frequently changing SALT landscape, including regular monitoring of legislative and regulatory changes. Proper documentation of intercompany transactions, transfer pricing, and state tax positions is essential for defending against state audits and potential disputes. Strategic planning not only ensures compliance but can also uncover opportunities for tax savings.

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