Mergers and Acquisitions
Employment Tax Consulting and Compliance Services

Situation
When anticipating a merger, acquisition, or internal reorganization, there are several key federal, state, and local employment tax issues that should be addressed including external reporting requirements and internal payroll considerations. The employment tax requirements associated with these transactions are often driven by the type of transaction (e.g., stock purchase, asset acquisition, statutory merger or internal reorganization). A transaction occurring in the middle of a calendar year or quarter adds another layer of complexity with respect to Form W-2 reporting requirements, corresponding quarter-end and year-end filing procedures, federal and state successor wage base implications, and state unemployment tax rates.

Public Law 108-295—the SUTA Dumping Prevention Act of 2004—increased the burden of reporting changes as a result of these transactions from a state unemployment perspective. With the adoption of conforming statutes and regulations, state unemployment workforce agencies have the ability to assess substantial penalties for noncompliance. State agencies have implemented measures through SUTA Dumping Detection Software (SDDS) to track employee movements between legal entities to isolate employers that are not in compliance.

Also, under the Questionable Employment Tax Practices (QETP) initiative, federal and state taxing jurisdictions have entered into Memoranda of Understanding (MOU) whereby information can be shared among state agencies, the Department of Labor, and the Internal Revenue Service in an effort to enforce compliance with employment tax statutes and related regulations and rules.

Based on increasing complexities regarding compliance with unemployment reporting requirements, these efforts have become extremely time-consuming and require a high level of competence. A slight misstatement or failure to file the appropriate documents may result in audit exposure and tax assessments.

Other Considerations

Unemployment Claims Management
It is imperative that unemployment claims are processed under the correct employer’s state unemployment account. The following steps are crucial:
- Notify state workforce agencies of the merger, acquisition, or reorganization so the claims process is not disrupted.
- Verify that benefit charges related to unemployment claims are being applied to the correct employer.
- Verify that the state unemployment tax rates of the affected employers reflect the appropriate amount of benefit charges based on required/optional transfers of experience.

Merger and Acquisitions
Types of transactions
The type of transaction will impact employment tax compliance requirements.
- Stock Purchase
- Asset Acquisition
- Internal Reorganization
- Statutory Merger or Consolidation
- Divestiture
- Legal Entity Conversion

Additional Considerations—Employment Tax
In addition to the items reviewed, Equifax can consult on a variety of employment tax issues arising from a merger and acquisition transaction that may reduce overall tax costs, exposures, or result in financial and administrative savings including:
- Bankruptcy emergence – Equifax can assist in navigating through the special employment tax considerations that apply to companies emerging from bankruptcy.
■ **Taxpayer advocacy services** – Equifax can assist in resolving outstanding employment tax audit, notice, or assessment of the potential target.

■ **Common agent implementation** – Equifax can review a post-transaction legal entity structure to evaluate whether the implementation of a common agent may result in administrative savings.

■ **Research and recovery services** – Equifax can review historical mergers, acquisitions, or reorganizations involving employee movements between legal entities to identify and recover overpaid employment taxes.

**Solution**

Equifax has developed a complete solution designed to assist employers with meeting employment tax requirements related to merger, acquisition, and other restructuring activity while also providing consultation regarding the potential financial impacts of these transactions from an employment tax perspective. The four-phase approach developed by Equifax is customized to fit each employer’s needs when undergoing merger and acquisition transactions.

**Due diligence**

- Gather information on target company to uncover potential employment tax opportunities and risks
- Evaluate target company’s employment tax policies, procedures, and practices
- Review employment tax records, compliance filings, and tax delinquencies
- Detailed review of SUI tax rates
- Prepare an “opportunities and risks assessment”
- Gather information necessary to complete the planning and design phase

**Planning and design**

- Prepare and maintain a detailed employment tax work plan with timelines and anticipated dates of completion, including coordination with a third-party payroll provider.

■ Compute and quantify the combined state unemployment experience in the applicable tax rate computations.

■ Evaluate and document opportunities for savings associated “successor” wage treatment for FICA and federal/state unemployment tax.

■ Document the requirements and year-end filing procedures inclusive of federal and state income tax withholding, federal and state unemployment, and transfers of state unemployment experience rates inclusive of Forms 941 (and Schedule D), 940, W-2, W-3, W-4, state unemployment returns, and state/local withholding returns (and Schedule D equivalents).

**Implementation**

■ Assist employers with filing all necessary state employment tax forms to properly report the transaction including:
  - State unemployment tax and state/local withholding tax registration of successor accounts
  - Partial and total state unemployment transfers of experience
  - Closures of unemployment and withholding tax accounts of predecessor employers

■ Analyze applicable charge and payroll detail to complete unemployment experience transfer applications.

■ Maintain a summary chart of all employment tax accounts established and closed.

**Post implementation**

■ Monitor compliance filings and respond where necessary in pursuit of intended outcomes

■ Follow up with the state agencies to secure unemployment tax account numbers

■ Confirm state unemployment transfers of experience in the tax rate calculations

■ Protest and resolve potentially incorrect state unemployment tax rate assignments

**Value**

The employment tax impact of mergers, acquisitions, and internal reorganizations requires a clear understanding of federal, state, and local laws. Equifax has the largest team of dedicated employment tax resources in the U.S. and a Government Relations group that tracks federal and state legislation regarding merger and acquisition transactions to assist your organization in achieving a full understanding of its employment tax obligations and any associated savings opportunities.

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