

Issue: August 2014

Tax Intelligence: M&A Transaction “Pre-Clearance” Letters

Situation

While most merger and acquisition (“M&A”) transactions are not driven by state unemployment insurance (“SUI”) tax implications, proper due diligence and pre-transaction planning can assist acquiring employers in avoiding unexpected outcomes. As employers contemplate M&A transactions, which often occur at year end, those responsible for unemployment tax cost management should arm themselves with sufficient information to assess potential SUI tax risks and opportunities.

Solution

Data Gathering

Collecting historical data on a target employer is an essential part of the due diligence process. From an unemployment tax perspective, obtaining three years of information relating to such items as:

Minimum Information/Data Request								
Legal Entity or Organizational Chart	Delinquency or Other State Tax Notices	SUI Tax Clearance Letters	Annual Tax Rate Notices	Quarterly Contribution Reports (“QCRs”)	Year-to-Date Wage Detail by State	Income Tax Apportionment Schedules	SUI Account Transcripts	Explanations of Large Fluctuations in Workforce

Data gathered will allow acquiring employers to determine, among other things, if a target employer has: outstanding SUI tax liabilities that the acquiring employer may be subject to; penalty tax rate assignments that may impact the acquiring employer’s SUI tax rates; past M&A transactions or intercompany workforce transfers that may have gone unreported creating potential exposure to “SUTA dumping” allegations; been “payrolling” (i.e., reporting employees under an incorrect legal entity); or improperly reported SUI wages to the wrong state(s).

Pre-Clearance Letter

Once an acquiring employer has assessed risks based on an analysis of the above information and has developed an optimal legal structure for the transaction, it is often recommended that a “pre-clearance” letter be submitted to state workforce agencies (“SWAs”), especially when an acquiring employer may materially benefit from the transaction. A significant decrease in SUI tax rates or costs may increase the level of scrutiny by SWAs.

The “pre-clearance” letter should disclose the facts and circumstances surrounding the transaction, the acquiring employers understanding of the SUI statutes, and the anticipated SUI tax consequences. This can be done anonymously, which is typically not binding on the SWAs, or with full disclosure of the identity of the parties to the transaction, which may bind the SWAs unless the facts and circumstance materially change. The letter should request a response from the SWAs confirming the acquiring employer’s understanding and interpretation of the SUI statutes. Such a response can then be referenced when the acquiring employer files the requisite compliance documents with the SWA. Often, the SWA will direct the parties to the transaction to submit the compliance documents to a specific contact familiar with the transaction to avoid improper treatment.

The assurance obtained from a “pre-clearance” letter will reduce the risk that the transaction will not be processed as expected, since SUI statutes are not always clear, are subject to interpretation, or may not directly address an acquiring employers set of facts and circumstances.

Value

With extensive knowledge of SUI statutes and current SWA practices, Equifax assists employers throughout every phase of the M&A process (Due Diligence, Planning & Design, Implementation & Compliance, and Post-Implementation). Through comprehensive data gathering and the development of “pre-clearance” letters, acquiring employers are better situated to mitigate SUI tax rate risk and take advantage of opportunities. For more information about Equifax Workforce Solutions’ M&A services, please contact Pete Krieshok at (314) 214-7325 or via e-mail at pete.krieshok@equifax.com. You can also visit our corporate blog at <http://insight.equifax.com/> for information on other employment tax matters that might impact your organization.