

Webinar on Law and Policy in Global Services

Hosted by Bierce & Kenerson, P.C. and Turner Government and Public Affairs



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Agenda

- Introductions
- Obama Campaign Promises
- Regulation of the U.S. Workplace
- International Trade Policy
- Environment
- Foreign Direct Investment
- Taxation of Americans and Foreigners in Global Services
- Data Privacy and Protection
- Obanomic Tax Policy for New Global “Level Playing Field”
- Obanomic-Savvy Global Sourcing Strategies
- Q&A

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Obama Campaign Promises

- The Promises
 - NAFTA Reform
 - China's Currency Manipulation
 - Tax on Offshoring of American Jobs

- The Reality
 - "Ruthless pragmatism when it comes to economic policy"
(NYTimes Interview May 3, 2009)
 - Abandonment of certain promises
 - Avoid Protectionism
 - No new barriers to investment or barriers on business
(Government & Finance Managers April 4, 2009)
 - No export stimulation that violates WTO principles

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Regulation of the U.S. Workplace

- Current Framework
- Easier Unionization
 - EFCA, “card check” and compulsory arbitration
 - Equal access to employees for unionization process
- Foreign Workers in the U.S.
 - Special hiring rules for TARP-assisted institutions
 - Workplace enforcement against employers
 - Employment of Foreign Nationals by U.S. companies
- Obama Policy of Labor Extraterritoriality under NAFTA
 - No new labor protections under NAFTA
 - Obama repudiates a campaign promise

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International Trade Policy

- Core elements of WTO, NAFTA and FTA's
 - Non-discrimination
 - Most-favored nation treatment
- Am. Recovery and Reinvestment Act of 2009 (the “Stimulus Bill”)
 - “Buy American” (for steel in construction projects)
 - OMB: meeting our obligations despite Buy American clause
- G-7 Treasury Ministers and G-20 Leaders: No protectionism

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Environment

- Proposal on Cap and Trade in Energy Credits
 - Effective tax on energy consumers
 - Impact American Industry and its competitiveness
 - Experience in Europe
- Extraterritoriality
 - No new regulations on environmental protections under NAFTA
 - Repudiates a campaign promise
- No political capital left after ARRA, EFCA and Tax Haven Abuse Act

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Foreign Direct Investment

- Current Regime
 - Promotion of Foreign Investment
 - Bilateral Investment Treaties - no expropriation without just compensation
 - WTO Trade-Related Investment Measures (“TRIM’s”)
 - Foreign Investors Tax Act of 1966: zero capital gains tax
 - National Security
 - CFIUS Watchdog: “National security” factor in foreign acquisitions of U.S. companies
 - Anti-Money Laundering, Homeland Security
 - Export Administration Act; Int’l Trade in Arms regulations
- FDI Agenda
 - Continue open borders for foreign investment
 - Promote foreign companies hiring Americans in the U.S.

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Taxation of Americans and Foreigners in Global Services

- Dual Goals of the Tax Haven Abuse Act of 2009 (pending)
 - Undoing Accounting Mismatch between Deferral of Taxable Income and Immediate Benefit of Foreign Tax Credits
 - Piercing Corporate Veil of Foreign Companies (controlled and managed in the United States) lacking “substantial economic effect”
 - Piercing Secrecy of Offshore Accounts of U.S. citizens and residents
- Foreign Entities Doing Business in USA: No Change in Tax Jurisdiction or Rules
 - Branch Profits Tax
 - “Permanent Establishment” limitations under tax treaties
 - “Engaging in trade or business in U.S.” - if no tax treaty
 - Transfer pricing regime based on value

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Data Protection and Privacy

- Current Legal Framework
- Policy Objectives for Democrats and Obama
 - Automation of Healthcare Information (HIT)
 - Federalization of Data Breach Notification, S. 139 (Sen. Feinstein)
 - Promote encryption as safe harbor
- Open Issues
 - Notice to Americans if Outsource Personal Information
 - Continued ad hoc approach to data privacy

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Obanomic Tax Policy for New Global “Level Playing Field”

- Promotion of Local Employment through Tax Neutrality
 - “Ensure that the tax code does not stack the deck against job creation here on our shores.”
 - Replacing tax incentives for off-shoring
 - Eliminate tax deferral
 - Closing foreign tax credit loop holes
 - New Incentives to create jobs in the U.S.
 - Make the R&D tax credit permanent
- Overhauling “Tax Haven Abuses” by Americans
 - Information sharing with foreign governments
 - Information reporting by foreign financial institutions in U.S.

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Obanomic-Oriented Global Sourcing Strategies

- Multi-sourcing
- Will the New Tax Rules Favor Outsourcing over Captives?
- Following the example of Japanese automakers in the 1980s
- Circumvention of TARP rules by hiring offshore

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Obanomic-Savvy Global Sourcing Strategies for Service Providers

- Integrate locally (like Japanese car makers in 1980's)
- Focus on advantage of outsourcing over captives
 - Costs
 - Skill sets
 - Variability of cost profile
- Maybe offer virtual captives
- Understand risk management and risk sharing expectations
- Develop proprietary software to escape commodity pricing

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Obanomic-Savvy Global Sourcing Strategies for Enterprise Customers

- Benefits will continue to outweigh the costs
- Outsourcing will have a slight cost advantage over shared service captives
- Supply chain risk management to support emerging mandates
 - Data protection and privacy – policies and practices
 - Business continuity
 - Relationship Governance
 - Compliance

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LAW AND POLICY IN GLOBAL SERVICES

Thursday May 14, 2009

Employee Free Choice Act (HR 1409, S560)

- Organized Labor's #1 priority for the 111th Congress
- Provisions:
 - Majority sign-up
 - Mandatory arbitration
- Filibuster-proof majority of 60 votes in the Senate
 - Senator Specter (D*-PA)
 - Senator Blanche Lincoln (D-AR)

Pro-Labor Bills & Executive Orders

- Lilly Ledbetter Fair Pay Act (PL 111-2)
- Executive Orders:
 1. Prevents federal contractors from being reimbursed for expenses that were intended to influence workers' decisions to form unions
 2. Requires federal vendors with more than \$100,000 in contracts to post workers' rights under the National Labor Relations Act
 3. Requires service contractors at federal buildings to offer jobs to qualified current employees when contracts change

H1-B Visa

- **Lower Demand for 2010**
- **Current level set in 2004, after the technology bubble burst**
- **Series of bills from past Congresses attempted to either permanently or temporarily restore the previous 195,000-visa quota**
- **Status of 111th Congress:**
 - **HR 1791- Cong. Flake (R-AZ) - would exempt foreigners with doctoral degrees from U.S. institutions from the H-1B cap, provided that the degree is in a science, technology, engineering or mathematics field**
 - **Stimulus Restrictions - restricts companies who receive TARP funds from hiring H-1Bs**
 - **Sens. Grassley (R-IA) and Durbin (D-IL) are expected to reintroduce a bill that would combat fraudulent hiring practices and ensure that employers adhere to obligations that they pay equal wages and advertise all jobs to American workers first**

Buy America

Stimulus

- U.S. made “manufactured goods” must be used in projects funded by the bill
- Applies to iron, steel, and manufactured goods for use in stimulus funded public buildings and public works
- Applies only to federal procurement contracts, not stimulus grants to states and localities
- Must be “applied in a manner consistent with United States obligations under international agreements.”

WTO/NAFTA

- President Obama warned against a "strong impulse" toward protectionism while the world suffers a global economic recession
- Election-year promise to renegotiate the NAFTA will have to wait
- Mounting job losses, declining support for free trade
- Three pending trade deals:
 - Panama
 - Colombia
 - South Korea
- "The issues are complex, and they may not be easy to resolve," Baucus (D-MT) and Grassley (R-IA)

International Tax Policy Reform

- \$198.3 billion worth of revenue-raising tax changes
- Significant changes to how U.S.-based multinational corporations are taxed
- Changes:
 - “check-the-box”
 - deferral
 - foreign tax credit
- Sweetener: R&D Tax Credit
- “Loopholes” v. International Competitiveness
- *What’s a loophole? What’s tax evasion? What’s fair?*

Cap N Trade

- **Energy & Commerce, Ways & Means – jurisdictional issues**
- **Middle-class tax cuts v. distribution of allowances free to power plants, oil companies & manufacturers to address costs v. energy efficiency & conservation**
- **House Energy & Commerce Draft Bill:**
 - **35 % of the allowances free of charge to local electric distribution companies**
 - **Additional allowances to trade-sensitive manufacturing industries**
 - **Some allowances would to the auto industry for research on new technology**
 - **Requires 15 % of electricity to come from renewable sources by 2020 and another 5 percent from energy efficiency**

Health Care Reform

- Reconciliation, “fast-track” provision included in budget
- Baucus Health Care Plan: “National marketplace with a common national standard”
 - Self-insured companies
 - Expand private insurance
 - Expand public programs such as Medicaid
- Target: Tax exclusion of health care benefits
- Pelosi, Obama Set July 31 Deadline for Health Care Bill

Immigration

“I believe it is very possible,” said Senator Charles E. Schumer, (D-NY), Chair, Senate Judiciary Subcommittee on Immigration

- Will begin series of hearing shortly
- Obama to commence a series of immigration conferences this summer

Countries Represented by Attendees

Argentina

Australia

India

Mexico

Philippines

Russia

Spain

United States

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