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Uber Tax Audit By IRS & Abroad Is Big, But Not Over Driver Employment Taxes

Uber went public recently, but its shares have since dropped in price. The company has losses, and they could get bigger. Uber's recent [SEC filing](#) says the IRS is auditing the company's [2013 and 2014 tax returns](#). Plus, Uber is under audit [by state and foreign tax authorities](#), apparently due to the company's transfer pricing positions. That basically involves how costs and income are allocated among different locations. The whole world isn't involved, but it is a nice subset of countries. Uber's 2010 through 2019 tax years are still open in the U.S., Brazil, Netherlands, Mexico, United Kingdom, Australia, Singapore, and India. Uber says it believes adequate amounts have been set aside for any additional tax liability that might turn out to be due. However, given the number of years that are open, and the number of matters being examined, Uber cannot estimate the size of the potential hit. Uber expects the gross amount of unrecognized tax benefits to be reduced within the next twelve months by at least \$141 million. For most people, that would be serious money. Here's what Uber said:

The Company is subject to taxation in the U.S. and various state and foreign jurisdictions. The Company is currently under a federal income tax examination by the Internal Revenue Service ("IRS") for tax years 2013 and 2014. The Company is also under examination by various state and foreign tax authorities. The Company believes that adequate amounts have been reserved in these jurisdictions. To the extent the Company has tax attribute carryforwards, the tax years in which the attribute was generated may still be adjusted upon examination by federal, state or foreign tax authorities to the

extent utilized in a future period. For the Company's major tax jurisdictions, the tax years 2010 through 2019 remain open; the major tax jurisdictions are U.S., Brazil, Netherlands, Mexico, United Kingdom, Australia, Singapore, and India.



Although the timing of the resolution and/or closure of audits is highly uncertain, it is reasonably possible that the balance of gross unrecognized tax benefits could significantly change in the next 12 months. Given the number of years remaining subject to examination and the number of matters being examined, the Company is unable to estimate the full range of possible adjustments to the balance of gross unrecognized tax benefits. The Company does expect the gross amount of unrecognized tax benefits to be reduced within the next twelve months by at least \$141 million, which is related to ongoing matters with tax authorities regarding the Company's transfer pricing positions.

There is more in Uber's filing, even mentioning the rules about company ownership changes and [Section 382 of the Internal Revenue Code](#). However, so far, Uber does not anticipate its tax attributes being limited now under that rule. How will all the tax issues shake out for Uber? It is way too early to tell. Uber started rides in 2010, and its foreign tax issues go back all the way. Even

if you ignore the foreign countries and only consider the IRS audit, it seems hard to imagine that it will not be protracted. Most IRS audits take significant time, and a company of the size and complexity of Uber is not likely to be an exception. Of course, the foreign tax audits are unlikely to be quick either.

What is one issue that has been the subject of litigation, strikes and proposed legislation and more, but appears not to be covered by the audits? The independent contractor v. employee status of drivers. Indeed, when it comes to taxes, liability, benefits and more, the worker status of drivers could be the biggest issue of them all. It could be the Uber issue of all Uber issues. On that point, Uber may have distanced itself from the claims and the lawsuits. Uber, Lyft and other companies have fought hard to keep drivers as independent contractors, not employees. But lawsuits and laws could change that, and tax audits might raise the specter of this issue too. So far, Uber has managed to avoid serious financial hits from this biggest of all tax issues. But as more and more tax authorities are poking around, the more it is at least conceivable that this issue could come up. Stay tuned.

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.