INSIGHTS 2023

KEY TAKEWAYS

Positioning Your Company for Strategic Growth

Laura Berry

UNDERSTANDING THE MARKET LANDSCAPE

Over the past couple of years, the economy has experienced significant volatility – in 2020 and 2021, the U.S. government pumped excess cash into our economy without the equivalent of the product being processed (GDP), and available programs (Paycheck Protection Program, Employee Retention Credit, debt relief, etc.) created inflation of up to 9.1 percent. When the government pumps cash into the economy, it initially boosts consumer spending power, leading to an increase in demand across various sectors. This is intended to stimulate economic activity and growth. However, if the supply side of the economy cannot quickly ramp up due to constraints like production limits, labor shortages or logistical issues, it can lead to an imbalance where demand significantly outstrips supply. This mismatch, especially prevalent in sectors with longer lead times like housing, can result in inflation as prices for goods and services rise due to the heightened demand.

So, how does this impact your company? You must understand where your company stands in the line of inflation to know when you should raise your prices to pass on to the consumer, otherwise, you are eating into your margin. For example, say your competition spots the inflation impact on your industry faster than you, and they begin poaching the competition's employees by offering higher wages as they have already increased their prices to match demand. Knowing your external market and continuing to evaluate it is one significant pillar in strategy planning.

To fight inflation, the government has continued to raise interest rates, making it more difficult and expensive to borrow money. This helps reduce spending to combat inflation (decrease demand).

In a recent statement following the latest meeting, the Federal Reserve (the Fed) announced that it would maintain its benchmark interest rate at approximately 5.4 percent, marking the highest level in 22 years. The Fed, which embarked on its most vigorous sequence of rate increases in forty years starting in March 2022 to combat inflation, has since moderated its approach. Since May 2023, there has been only one rate hike, indicating a pullback from its previously aggressive stance.

Consider the ripple effects of rising interest rates on your business operations. It may be prudent to intensify your accounts receivable efforts and optimize your payables to defer outflows to the latest feasible date. Assess whether your suppliers have introduced penalties for late payments or incentives for early settlement. While these measures may seem incremental individually, their cumulative effect can significantly influence your working capital and cash flow. Additionally, this could be an opportune moment to reevaluate your banking relationships. Engage with your business advisor or CPA to explore their network for a lending partner that aligns more closely with your financial needs, potentially offering more advantageous terms that support your business's liquidity and growth objectives.

IDENTIFYING GROWTH OPPORTUNITIES

- **Market Analysis:** Conduct comprehensive research to identify emerging trends, understand customer needs and spot gaps in the market. Tools like a SWOT (strengths, weaknesses, opportunities, threats) analysis can provide insights into where a company could expand or diversify. Leadership should continually analyze the company's SWOT quarterly, if not monthly. This frequency is important because leadership must continue to work on the business and not just in the business.

- **Competitive Benchmarking:** Companies should assess their competition to understand their strategies, strengths and weaknesses. This can highlight areas where your company could differentiate and capture market share or find a niche market.

KEY TAKEWAYS

IDENTIFYING GROWTH OPPORTUNITIES (CONT'D)

- **Financial Modeling:** Use financial models to forecast the potential return on investment (ROI) of different growth scenarios. Scenario planning and sensitivity analysis can help evaluate the financial viability of pursuing new opportunities, considering both best-case and worst-case outcomes.

- **Customer Feedback and Engagement:** Engage directly with current and potential customers to gain insight into their needs and preferences. This can be done through surveys, focus groups or customer advisory panels. Understanding customer pain points and desires can reveal unmet needs and guide the development of new products or services.

Companies should also look for opportunities to invest in the mental health of employees. Prioritizing mental health demonstrates a commitment to a supportive and sustainable workplace, fostering a positive organizational climate that can drive innovation and competitive advantage.

Understanding the Environmental Social Governance (ESG) movement is also essential for companies as they plan for future integration and the impact of ESG on their business. Companies can achieve sustainable, inclusive growth through a variety of initiatives, including:

- **Product Innovation:** Developing and marketing eco-friendly products or services that meet customer needs while minimizing environmental impact.

- **Supply Chain Optimization:** Implementing sustainable sourcing practices, like using renewable materials or partnering with suppliers who commit to fair labor practices and environmental stewardship.

- **Operational Efficiency:** Investing in energy-efficient technologies and processes to reduce carbon footprint and waste, leading to cost savings and improved sustainability.

- **Inclusive Hiring Practices:** Fostering a diverse and inclusive workforce, which can lead to a broader range of ideas and innovations.

- **Community Engagement:** Engaging in community development projects that support local economies while also reinforcing the company's commitment to social responsibility.

- **Transparency and Reporting:** Regularly report on ESG goals and progress, which can improve trust with stakeholders and potentially lead to investment opportunities.

The integration of ESG considerations into the strategic planning of major corporations is becoming increasingly prevalent. As a company operating in the mid-market space, the expectation is clear – it is a matter of when, not if, your clients or financial institutions will require a comprehensive Corporate ESG report. Engaging with ESG metrics is not only about compliance but also about ensuring sustainable business practices that can lead to long-term success and resilience.

Aligning opportunities with a company's strengths and capabilities is a strategic approach that can ensure the organization can not only seize new markets but also solidify its existing ones. It involves a thorough analysis of the company's core competencies, resources and competitive advantages to identify opportunities that are not just profitable but also sustainable. This strategic alignment means the company can leverage what it does best, whether that's innovative technology, exceptional customer service or a robust supply chain, to capitalize on opportunities that are a natural fit. It encourages a focused growth strategy, prioritizing opportunities that the company is uniquely equipped to pursue, which can lead to higher success rates and a stronger market position.

INSIGHTS 2023

KEY TAKEWAYS

ADDRESSING CHALLENGES: NOW AND FUTURE

- **Identify Current Challenges and Developing Solutions:** The ability to pinpoint and address current challenges is what separates thriving businesses from the rest. This proactive identification requires a deep dive into market data, customer feedback and internal processes to uncover inefficiencies or gaps in the market. The solutions we devise must be innovative and agile, reflecting the changing demands of our industry and the world at large.

- **Anticipate Future Challenges and Prepare in Advance:** The foresight to anticipate future challenges provides a strategic edge, equipping companies with the tools and knowledge to foresee market trends and potential disruptions. Through strategic forecasting and robust scenario planning, you can position your company to not just withstand future shocks, but to navigate them with confidence.

- **Overcome Obstacles and Remain Resilient:** Resilience is a core part of the strategy. Building this resilience requires cultivating a culture where innovation is celebrated, and challenges are viewed as opportunities. By investing in your people and processes, you can ensure that when faced with obstacles, you can thrive rather than simply survive.

As you and your company continue to position for strategic growth in the future, these final thoughts can also be beneficial to your overall strategy:

- **Understand the Environment:** Recognize the importance of staying attuned to the shifting market landscape and regulatory changes. Continuous environmental scanning ensures strategic agility and informed decision-making.

- **Growth Mindset:** Cultivate a culture that embraces continuous learning and innovation, which is essential for seizing emerging opportunities. A growth mindset propels the company forward, driving perpetual evolution and expansion.

- **Face Challenges:** Approach obstacles as opportunities for improvement and learning. Addressing challenges head-on with resilience and adaptability is crucial for sustaining long-term success.

- **Stay Courageous:** Encourage bold decision-making and calculated risks, as courage is the backbone of trailblazing strategies. Maintaining courage in the face of uncertainty fosters a proactive and dynamic business approach.

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Sources: Banholzer, M., Birshan, M., & Doherty, R. (n.d.). Courageous growth: Six strategies for continuous growth outperformance. McKinsey & Company.

KEY TAKEWAYS

SECURE Act 2.0 – What Plan Sponsors Need to Know

Anne Morris, CPA

BACKGROUND

The Consolidated Appropriations Act was passed by Congress on Dec. 23, 2022, and then signed on Dec. 29, 2022, which gave us the Securing a Strong Retirement Act (SECURE Act 2.0). While some changes are mandatory, most are optional, with various effective dates starting in 2023. Many plans will have to be amended for any changes that are chosen under SECURE 2.0. While there are 92 provisions total in the legislation, we cover those that we believe could be the most impactful to Plan.

IMPACTFUL PROVISIONS

Automatic Enrollment and Auto Escalation – Mandatory

New 401(k) and 403(b) plans must include an automatic enrollment feature, where input must be at least three percent, but no more than 10 percent. They must also auto escalate annually by one percent – they can do so up to at least 10 percent with a maximum at 15 percent. Plan sponsors must also offer the opportunity to withdraw contributions within 90 days of automatic enrollment. Those who are exempt from this provision are existing plans, church plans, SIMPLE plans, small employers with 10 or fewer employees, governmental plans and any new employers who have only been in existence for less than three years. The effective date is for plan years beginning after Dec. 31, 2024.

Required Minimum Distributions (RMDs) – Mandatory

SECURE 2.0 raised the required age for RMDs to 73 for those who turn age 72 after Dec. 31, 2022, and also increased the required age to 75 for those who turn 74 after Dec. 31, 2032. The penalty to take an RMD decreased from 50 percent to 25 percent. The effective date is for plan years beginning after Dec. 29, 2022, meaning this should have been implemented for 2023 plans.

Matching on Student Loan Payments – Optional

Employers can make a matching contribution for employees who have a “qualified student loan payment.” This means that employers may certify/verify the student loan payment, but also allows for self-certification by the employee. The match is generally at same rate and same extent as the match on elective deferrals. This has potential to be a great benefit for those paying off loans, although recordkeepers will need to determine how they will implement this into their systems. The effective date is for plan years beginning after Dec. 31, 2023.

Emergency Savings Account – Optional

The provision would be offered to non-highly compensated employees, making contributions to a savings account within a defined contribution plan. The amounts are capped at $2,500 and treated similarly like a Roth IRA. These contributions are also eligible for matching. These funds could encourage plan participants to save for short-term and unexpected expenses. Plan sponsors should consider any administrative burdens and complexities in offering it to employees. The effective date is for plan years beginning after Dec. 31.

KEY TAKEWAYS

IMPACTFUL PROVISIONS (CONT'D)

Catch-Up Contributions – Increased

The catch-up contribution increase is applicable to those at least age 50 by the end of the current calendar year, with the limit in 2023 set at $7,500 for individuals ages 60 to 63. For 401(k), 403(b) and 457(b) plans, the amount should be the greater of $10,000 or 150 percent of the regular catch-up amount for 2024. For SIMPLE plans, the amount should be the greater of $5,000 or 150 percent. The amounts will be adjusted annually for inflation, and the effective date are for taxable years beginning after Dec. 31, 2024. This accelerated savings rate for older employees should help with improved retirement readiness, however there is an expected added administrative complexity for plans and recordkeepers to track transitions between the catch-up limits for age 50 and later for age 60 to 63. Targeted communications will be needed to inform and educate catch-up eligible participants, and plan sponsors should coordinate with service providers in advance of effective dates to address communication strategies, procedural changes and system updates.

Catch-Up Contributions, Roth Feature – Mandatory

This provision requires catch-up contributions made to a participant whose wages are over $145,000 to be made on a Roth basis. The provision only applies to employees at that amount or higher. This means that highly paid participants may no longer make pre-tax contributions. This creates an added administrative complexity for plan design, and guidance may be needed for catch-up contribution election changes by participants determined to be highly paid after their elections are made. Plan sponsors should establish procedures to identify such participants and coordinate with service providers in advance of the effective date (Jan. 1, 2026) to evaluate current procedures for Roth and catch-up contribution elections, implement changes and communicate these changes to participants.

Long-Term Part-Time Workers (LTPT) – Mandatory

SECURE 2.0 changes the eligibility period for LTPTs to two years, and is expanded to include ERISA covered 403(b) plans. The effective date is Dec. 29, 2024.

Missing Participants "Lost and Found" – Required for 401(k) and 403(b)

The Department of Labor (DOL) will create an online "lost and found" database of retirement plans, and the DOL must also ensure security of the personal and plan data. The provision enables plan participants to search for lost accounts and obtain contact information for the plan administrator. Plan administrators must provide the DOL with information about their plans and terminated plan participants for plan years beginning after Dec. 31, 2023. The effective date is for plan years beginning after Dec. 31, 2024.

Special Plan Distributions – Optional

This allows plans to have special provisions to provide:

- Emergency withdrawals
- Self-certified domestic abuse withdrawals
- Terminal illness withdrawals
- Federally-declared disaster withdrawals
- Qualified birth and adoption withdrawals

These provisions generally avoid a 10 percent early withdrawal penalty tax.

KEY TAKEWAYS

Mandatory Distribution Limit

Currently, plan sponsors can distribute a terminated participant's account balance without consent if their balance doesn't exceed $5,000. SECURE 2.0 increased this threshold to $7,000. The effective date is for distributions on or after Jan. 1, 2024.

Employee Plans Compliance Resolution System (EPCRS) and Plan Corrections

If you make mistakes in your retirement plan, you can use the EPCRS to correct your mistakes and avoid the consequences of plan disqualification and remain compliant with the Internal Revenue Code requirements. Under SECURE 2.0, the EPCRS has expanded availability of types of errors than can be self-corrected. Updated guidance for the EPCRS will be issued by the Internal Revenue Service (IRS) in December 2024. The effective date is as of Dec. 29, 2022.

Next Steps and Timeline

It is highly recommended that you review your current Plan document to consider any optional provisions to include in your Plan. Communicate with your service provider on any implementation and administrative changes that could result from new provisions. You'll also want to make sure your Plan is amended in accordance with SECURE 2.0 rules. The last day of the plan year is beginning on or after Jan. 1, 2025 (Dec. 31, 2025 for calendar year plans). However, governmental and collective bargained plans would not consider their last day of the plan year until beginning Jan. 1, 2027 (Dec. 31, 2027 for calendar year plans).

2023

- RMDs pushed back to age 75 for individuals born 1951 – 1956 and age 75 for those born 1960 and later
- Roth SEP and SIMPLE IRAs allowed
- Penalty for missing RMD reduced from 50% to 25% (or 10% if timely correctly)

2024

- 529-to-Roth IRA transfers can begin
- RMDs from plan Roth accounts eliminated
- Roth catch-up contributions required if prior-year wagers >$145k
- QCD amounts linked into inflation
- IRA catch-up contributions linked in inflation
- Emergency withdrawal and domestic abuse withdrawal penalty expiations instated
- Employer-sponsored Emergency Savings Accounts start
- Surviving spouses allowed to calculate RMDs using deceased spouse's age
- New SIMPLE rules (non-elective contributions, increased contributions limits for certain plans)
- Reduction of hours for part-time workers to be eligible for retirement plans
- Student loan payments treated as selective deferrals for employer match
- Solo 401(k) plans can be established up until individual tax deadline

2025

- Additional catch-up contributions for age 60 - 63
- Auto-enrollment required for certain new employer retirement plans

2026

- Expanded disability eligibility age requirements for ABLE Accounts

2027

- Saver's Credit replaced by Saver's Match
- Disability pension payments for first responders prior to retirement age tax-free

2028

- S Corp stock sales to ESOP eligible for 10% gain deferral

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KEY TAKEWAYS

Capital Markets Lead the Economy, You Lead Your Legacy

Dr. Adrian Cronje, CFA

CAPITAL MARKETS LEAD THE ECONOMY

Every CEO should be aware that capital markets lead the economy, not the other way around. Traditional economic forecasting is quite limiting when predicting the future – especially downturns over a time frame that is useful, like 12 to 18 months, for business owners to adapt their strategic plans and pivot. Relying on economists and strategists to divine the future is like driving a car by looking in the rear-view mirror.

There are four key capital markets leading the economy that you should monitor closely, using them in conjunction with one another:

Stock Market
Future Corporate Profitability

Credit Market
Optimism In Corporate Sector

Bond Market
Future Interest Rates & Federal Reserve Policy

Commodity Market
International Economy
(Especially China)

While headline stock market indices appear to have escaped the bear they first entered in the summer of 2022, performance has been driven by a concentrated handful of stocks. The average stock has actually not advanced by much over the last year. Still, corporate profitability has held up better than many anticipated in the face of a significant period of interest rate increases.

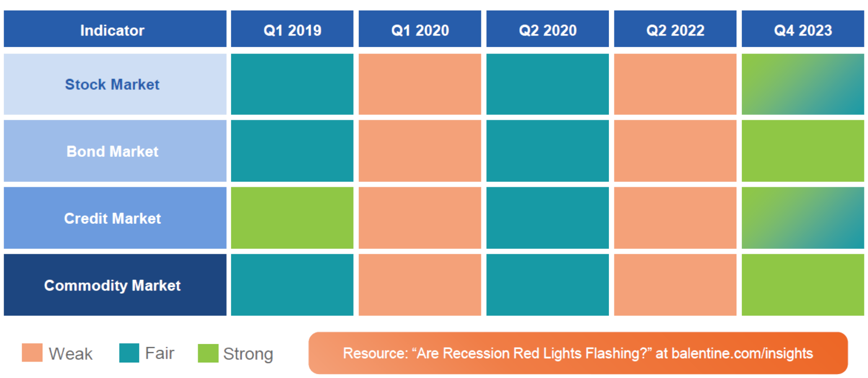
The signal from the bond market has remained consistently pessimistic however, with the yield curve remaining inverted since the summer of last year. The bank lending channel plays an important role in our economy, with the ability of banks to make profits by taking deposits short and lending long. Regarding yield curves in the bond market, an inverted curve is typically an indicator of an upcoming recession in that it creates a headwind to banks' profitability and willingness to lend.

The credit market, or the market for corporate bonds, tells us about corporate America's ability to finance itself outside of the traditional banking channel. High yield (or lower quality corporations) over the long haul have to finance themselves with premium on average of 500 basis points (bps) over equivalent Treasury bonds in order to entice investors. Once that spread rises above 500bps, the corporate bond market is saying we are in the beginning of a slow-down or approaching a recession as they are anticipating greater defaults. The corporate bond market spread had remained tight, within 500bps, signaling a more optimistic outlook than the bond market.

CAPITAL MARKETS LEAD THE ECONOMY (CONT'D)

Commodity markets tell a great deal about the health of a global economy. Unlike when the Great Recession started in 2008, the U.S. no longer produces a majority of global GDP, even if it is still the largest economy in the world today. In aggregate, Brazil, Russia, India and especially China produce a much more significant percentage of global GDP today than before, both producing and consuming commodities at an astonishing rate. Therefore, buoyant commodity markets are sign of health for their economies. In saying this, be careful to parse out gold and silver (commodities that act more like a currency) from broader commodity complex, such as copper, iron ore and nickel – these are the things that drive industrial production. Commodity prices have not made material gains over the last year, speaking to weakness in economic growth in international economies.

Overall, the capital markets are sending mixed signals about the future economic outlook. While the credit market is most optimistic, the bond market is the most pessimistic. It remains unlikely that the economy will adjust to a new era of more expensive and less abundant capital without at least a short and shallow recession. So far a very strong labor market, where labor demand has far exceeded labor supply, has stood between the current muddle through economy and an officially dated recession, though cracks are starting to appear with the unemployment rate finally ticking up.



PREPARE TO BE A PREDATOR, NOT PREY

- The COVID-19 pandemic forced adaptability, but don't wait for another recession or pandemic to be prepared.
- Improve your agility for decision-making and creativity to optimize organizational risk exposure.
- Supply chain management is important to your resiliency. Move from a mindset of "just in time" to "just in case."
- Improve the process of turning inventories to cash flow.
- Value creation comes not from multiple expansions but from recurring revenue and underlying pricing power.
- Observe and embrace the "tech-celeration," e.g., e-commerce, digitization, on-demand business models, automation, artificial intelligence, blockchain protocol and virtual communication.
- Keep in mind that the cost of capital has increased when engaging in mergers and acquisitions.
- Adapt to new buying behaviors of your customers in a post pandemic world.
- Implement your marketing and sales to accommodate a virtual world – data on client and prospect engagement is valuable.
- Hiring and retaining talent is more than just what you pay. Culture and the work environment is more important.
- Re-imagine your operations with new technology in the workplace.
- Improve your balance sheet strength and free cash flow.
- Improve pricing power and strategy with inflation as a tailwind.

KEY TAKEWAYS

FIRST GENERATION WEALTH

Balentine works with entrepreneurs, and as entrepreneurs ourselves, we've learned a lot about not just how to run and scale a business, but the implications within your family and the many transitions business owners face. That's why we have released a book to help entrepreneurs sort through what you should be asking yourself and exploring to set yourself and your family up for success. Being so immersed in day-to-day business affairs often prevents entrepreneurs from anticipating and preparing for the many forks in the road of their entrepreneurial and life journeys. The purpose of this book is to uncover the questions they need to ask themselves throughout their journey so that they can stay in control of their own destinies, shape their legacies, pass on the fruits of their labor and, perhaps most importantly, live lives of fulfillment and meaning. Our cardinal rule, "your greatest asset has nothing to do with money," is explored in depth in this book. You can learn more about the book at firstgenerationwealth.com.

PRINCIPLE 1

Don't mistake wealth for legacy

PRINCIPLE 2

Distinguish between your business and the business of your family

PRINCIPLE 3

See the world through the next generation's eyes

CONCLUSION

The Economy:

- There will likely be a bumpy transition (short and shallow recession) to a new healthier era of higher interest and scarce capital.
- The labor market remains the biggest bottleneck.
- Inflation expectations remain anchored for now.

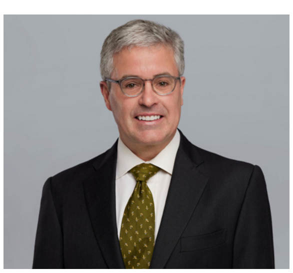
Your Business:

- Always prepare to be a predator, not prey.
- Value creation not from multiple expansions, but from recurring revenue streams and underlying pricing power.
- The cost of capital for M&A has increased.

Your Legacy:

- Don't mistake wealth for legacy.
- Distinguish between your business and the business of your family.
- See the world through the next generation's eyes.

FOR MORE INFORMATION, PLEASE CONTACT



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KEY TAKEWAYS

Top Considerations in Filing for ERC & Preparing for an ERC Audit

Tomika Bullet, CPA

ERC HISTORY AND ELIGIBILITY

The ERC was first introduced in March 2020 via the Coronavirus Aid, Relief, and Economic Security (CARES) Act to help businesses retain and pay their employees during the COVID-19 pandemic, with employers originally eligible to receive the credit through 2021. Employers claiming the ERC were originally not allowed to also apply for Paycheck Protection Program (PPP) loans, another incentive for businesses introduced around the same time. However, the Consolidated Appropriations Act (CAA) later made changes to ERC eligibility in December 2020, including the allowance for PPP loan participants to also claim the ERC as long as they used wages not used for PPP loan forgiveness. The CAA also increased the 2021 maximum credit amount ($7,000 per quarter), reduced the 2021 reduction in gross receipts percentage in order to qualify (20 percent) and changed the threshold for qualifying as a 2021 large employer (500 average full-time employees). In March 2021, the American Rescue Plan Act (ARPA) extended the ERC through Dec. 31, 2021, and also made eligibility available for certain Recovery Startup businesses and those defined as severely financially distressed employers (SFDEs). Later in 2021, the Infrastructure Act terminated ERC for wages paid in fourth quarter of 2021 for employers that were not Recovery Startup businesses.

With the potential of substantial payouts and limited CPA ERC resources, ERC promoters are charging 20-25 percent contingency fees, meaning there is considerable concern about these promoters taking advantage of those hoping to be eligible and file for the ERC. Additionally, the IRS has received approximately 3.6 million ERC claims – as of July 31, 2023, IRS Criminal Investigations has initiated 252 investigations, equaling $2.8 billion of potentially fraudulent ERC claims. Fifteen of the 252 investigations have resulted in federal charges.

IRS MORATORIUM AND WITHDRAWAL OPTION

In September 2023, the IRS announced a moratorium on processing ERC claims effective Sept. 14 until Dec. 31, 2023. No new claims will be processed, although previously submitted claims would still be processed. Since then, the IRS also announced a withdrawal option for the ERC. Withdrawing an amended return for an ERC claim means the IRS will treat it as if the return was never filed. Employers must meet all the following criteria to be able to use the withdrawal process for their ERC claim:

- The ERC claim was made on an adjusted employment tax return (e.g., Form 941X).
- The return was filed only to claim the ERC with no other adjustments included.
- The employer must withdraw the full amount of the ERC credit.
- The ERC claim has not yet been paid, or if it has been paid, the employer as not cashed the ERC refund check.

IRS MORATORIUM AND WITHDRAWAL OPTION (CONT'D)

If an employer does not meet all the above criteria, an amended return must be filed to adjust their ERC claim.

ERC withdrawal consideration warranted, but not limited to, the following:

Eligibility Errors

- Gross receipts miscomputation
- Supply chain issues did not meet government mandate standards
- Filed as a recovery startup business but average gross receipts were greater than $1 million

Computation Errors

- Included 1099 contractors
- Included same wages for PPP forgiveness
- Filed as a recovery startup business but did not limit $50,000

Employers can withdraw their ERC claim by making a copy of their Form 941 and write "Withdrawn" in the left margin before printing and signing with their authorized name and date in the right margin. The form must then be faxed to the IRS (855-738-7609). If an employer has been selected for an ERC audit, the withdrawal should be sent directly to the identified IRS Agent or to the mailing address per the audit notice. Also, any uncashed ERC refund checks should be voided and mailed with the withdrawal request to the IRS. Further details can be found on the IRS's website.

The following could be warning signs that you are dealing with an ERC promoter.

ERC PROMOTER WARNING SIGNS

- Unsolicited calls or advertisements mentioning an "easy application process."
- Statements that the promoter or company can determine ERC eligibility within minutes.
- Large upfront fees to claim the credit.
- Fees based on a percentage of the refund amount of ERC claimed.
- Aggressive claims from the promoter that the business receiving the solicitation qualifies before knowing the business's tax situation.
- Suggestions from ERC marketers urging businesses to submit ERC claims because there is "nothing to lose."

KEY TAKEWAYS

ERC AUDITS AND TIPS

The IRS has indicated that they will place a focus on ERC audits. Substantial documentation is required to show eligibility and accuracy for the ERC credit based on prior issued notices from the IRS, including:

- Specific quarters eligible for ERC
- Qualified wages verification
- ERC credit computation accuracy
- ERC limitations based on full-time employees
- Coordination with ERC and other COVID-19 benefits

Fraud indicators that the IRS looks for include the following:

- EIN obtained in 2020 and 2021
- No Form 941 filed prior to 2020
- No prior employment tax deposits made prior to ERC filing
- ERC claims filed with a residential vs business address
- No evidence of financial resources to pay large number of wages claimed for ERC
- Minimal to no public records evidencing business operations
- Form 7200 filed with no subsequent Form 941 reconciling the advance amount
- Form 941 filed but no income tax return

The statue of limitation on assessment for Forms 941 is as follows:

- 2020 - Three years, until April 15, 2024
- Q1/Q2 2021 Three years, until April, 15 2025
- Q3/Q4 2021 Five years, until April, 15 2027

Possible penalties include, but are not limited to:

- 662 - Accuracy related, 20 percent
- 663 - Civil fraud
- 7202 - Fradulent Return, $10,000 (50,000 corporations).

We anticipate that there's more to come regarding the ERC. Guidelines for a settlement program are expected to be announced by the IRS later this month. ERC audits will be ongoing through 2027, which will be five years for some quarters, and legitimate claims may still be filed upon conclusion of the moratorium.

In the meantime, an ERC Risk Assessment can help you determine whether you should consider an ERC withdrawal option, file another amended return or rest easy with the claim you've already filed.

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KEY TAKEWAYS

Building a Cybersecurity Strategy To Protect & Enable Your Business

Al Tanju, CPA, CISM, CISA, CGMA

WHY CYBERSECURITY FOR 2024 AND BEYOND?

Having a cybersecurity strategy in place for your business has become imperative now more than ever. According to data from IBM, the average cost of a data breach in the United States is $9.4 million, with the average time to identify a cyberattack being 277 days. Customer data, employee data, intellectual property and much more are greatly at stake and must be protected from attacks. In fact, it is estimated that 25 percent of cyberattacks are from ransomware, 24 percent of attacks render an organization's systems inoperable and 51 percent of attacks are directed at business partners and software supply chain.

EXPECTED CYBER THREATS IN 2024

- Phishing
- Ransomware
- Data Breach Extortion
- Cloud Vulnerabilities
- Business Email Compromise
- Internet of Things (IoT)
- Artificial Intelligence (AI)
- Exposure Through Supply Chain
- QR Code Phishing
- Cyber Warfare

Cyberattacks can be motivated by a range of reasoning, including criminal, political, personal or social motivations. Cyber criminals primarily target a business's to make money.

MOTIVATION

Criminal	Political
Personal	Social

TARGET

Money	Customer data (PII)
Financial data	Email addresses and login credentials
Client lists	Intellectual property

KEY TAKEWAYS

BUILDING A STRATEGY

The journey to developing a cybersecurity strategy looks like the following steps.

1. UNDERSTAND BUSINESS OBLIGATIONS

To begin building a thorough cybersecurity strategy, organizations must start by first understanding their business's most important assets that require protection as well as what their specific threats and risks may be. Great questions to ask include:

- What are the most important assets of the business, e.g., intellectual property, customer data, employee data, key services, etc.?
- Where are these assets held, e.g., in the cloud, on premium servers, laptops, SaaS system, etc.?
- What is the financial impact of a service disruption?
- What is the environment your company operates within?
- Are you subject to any regulations?
- What would an attacker gain from attacking your company?
- What is the company's tolerance to risk?
- What could impact our reputation?

2. DETERMINE HOW MUCH YOU WOULD SPEND

Your organization's leadership should determine what they would realistically budget for a cybersecurity strategy, including development, training and implementation. Much of this will be determined on how you value your critical assets as well as the defined level of potential risk exposure.

3. CHOOSE A SECURITY FRAMEWORK

Choose a security framework developed by experts to serve as the foundation of your cybersecurity strategy that will enable you to remain compliant while also remaining secure (acknowledging that compliance does not always equal security). Some examples of security frameworks include NIST and CIS. Choosing a security framework will also help you assess the maturity of your cybersecurity strategy over time against such a reputable framework.

4. BUILD A ROADMAP

In order to build a roadmap, the following should be accomplished:

1. Establish risk tolerances.
2. Determine the impact of risk.
3. Prioritize the biggest risks to your business objectives.
4. Create a defined plan that addresses the aforementioned items.
5. Set management targets to evaluate the plan's maturity and effectiveness.

5. ASSESS RISK TOLERANCE LEVEL

Using the following criteria, you can determine if the risk tolerance level at your organization is high, moderate or low.

1. High Risk Tolerance
   a. Most likely your organization does not operate within finance, healthcare, technology, research or education industries.
   b. You have no compliance requirements.
   c. You do not have sensitive data.
   d. Clients do not expect you to have strong security controls.
   e. Innovation and revenue generation come before security, so more risk is accepted.

KEY TAKEWAYS

5. ASSESS RISK TOLERANCE LEVEL (CONT'D)

2. **Moderate Risk Tolerance**
   a. Most likely your organization operates within the government, research and education industries.
   b. You have come compliance requirments (e.g., HIPAA, PCI, GDPR).
   c. You have some sensitive date and are required to retain records.
   d. Clients will eventually need strong security controls for their activities.
   e. Due to sensitive date, information security is more visible to senior leadership.

3. **Low Risk Tolerance**
   a. Most likely your organization operates within finance, healthcare, energy/utilities and technology industries.
   b. Customers require and expect your organization to maintain strong security controls.
   c. Information security is highly visible to senior leadership.
   d. Your organization has multiple remote locations.

6. DETERMINE POTENTIAL BUSINESS IMPACT

Collectively determine what the functional, informational and recoverability impacts would be due to a cyber disruption or breach. Consider these questions:

- Is there a hard-dollar impact from downtime? This refers to when a business disruption directly impacts revenue or profits. For example, when online ordering shuts down, it affects sales and, therefore, revenue.
- Is regulatory compliance a factor? Depending on the circumstances, vulnerabilities can be a violation of regulatory compliance that could cause significant fines.
- Are any critical services dependent upon this asset? Functional dependencies are sometimes not obvious and assets that appear insignificant can have huge impacts on critical services.
- Is there a health or safety risk? Some operations are critical to health and safety. For example, medical organizations have operations that are necessary to ensure uninterrupted critical health services. An exploited vulnerability that impacts these operations can have life and death consequences.

7. IMPLEMENT, MONITOR AND MAINTAIN

Once your cybersecurity strategy is in place, continue to implement based on your policies and procedures while also monitoring and maintaining effectiveness.

- Monitor progress and manage common challenges.
- Update the cybersecurity strategy based on business changes.
- Reassess at least annually.
- Verify security and compliance are in place and operating effectively.

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KEY TAKEWAYS

Designing and Deploying Your Digital Employee

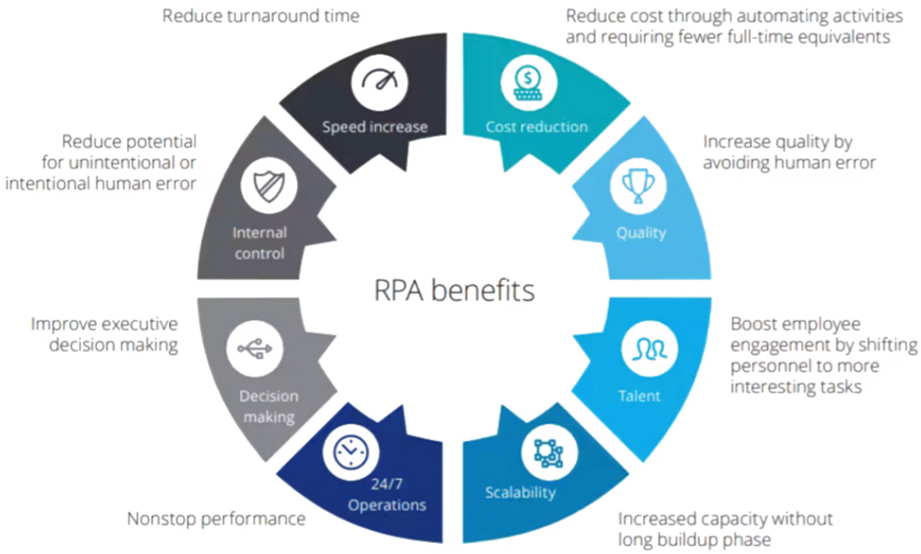
Valerie Barckhoff

ROBOTIC PROCESS AUTOMATION (RPA)

RPA is a software that performs repetitive/monotonous tasks that helps to free up human resources so that workers can perform more complex tasks while also reducing and eliminating human error. Using a sequence of steps in a process, RPA can make tasks happen automatically without human intervention. RPA does not require software to be restructured and is an easy, low-cost tool to integrate into daily tasks. Some everyday tasks that can be automated include:

- Create, open and read emails
- Log in using credentials
- Move files and folders
- Copy and paste
- Fill in forms
- Read/write to databases
- Follow decision rules
- Make calculations
- Extract data

The benefits of RPA include increased efficiency, decreased cost and reduction in effort. RPA has the capacity to provide multiple "full-time employees" to accomplish specific automated tasks, while preserving resources that would otherwise be going to hiring and training paid human employees.



KEY TAKEWAYS

AUTOMATION ANYWHERE

Our partner, Automation Anywhere, has a platform for intelligent automation and bot development for organizations. They build a control room that is a cloud-based bot editor, which can access desktop applications and web-based systems. The bots can then be deployed unattended on virtual machine, or attended on a desktop with human interaction.

COMPONENTS AND BENEFITS OF AUTOMATION

Through Automation Anywhere's platform, organizations can access a dashboard that allows them to do the following:

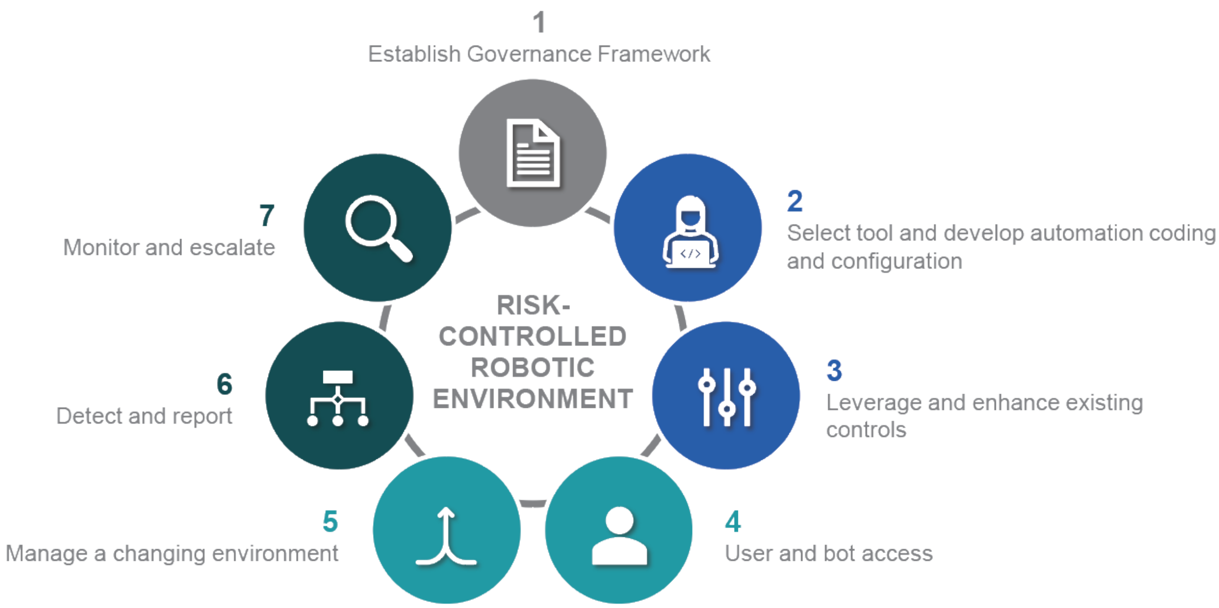
- **Discover** – Identify automation opportunities and build bots automatically.
- **Digitize** – RPA and artificial intelligence (AI) combine to intelligently read and classify data to automate processes reliant upon a document.
- **Automate** – Includes features like a control room, bot runner, bot editor, bot creator and a credential vault.
- **Optimize** – Provides insight about business processes using gathered productivity data.

The benefits of automation include:

- Improved efficiency of client operations.
- Freed time to focus on more interpersonal relationships and troubleshooting.
- Improved scalability, where it can train many task bots at once and expect the same level of consistency between them.
- Low-cost, as each bot costs a fraction of what would be required to pay a full-time employee.

RISK-CONTROLLED ROBOTIC ENVIRONMENT

As with new and innovative forms of technology, addressing risk with RPA is imperative and can be done with the following considerations for a risk-controlled robotic environment.



KEY TAKEWAYS

To ensure governance in RPA implementation, consider the following solutions and strategies:

- Explain the goal of a specific bot to employees.
- Allow employees to appeal decisions made by bot.
- Security to protect credentials.
- Design reviews, data flow analysis.
- Internal audits.
- Monitoring logs, flag unexpected processes.
- Consistent framework for scalability.

WHY YOU NEED A CENTER OF EXCELLENCE (COE)

For widespread implementation across an organization, it may be helpful to have a group of specialists to oversee deployment of RPA using a COE. A COE team can include IT experts, citizen developers, process managers, functional experts and representatives from other organizations. Their responsibilities include discovering new processes, building automations, deployment and management, enabling tools and frameworks, designing new systems and measuring/monitoring automation success.

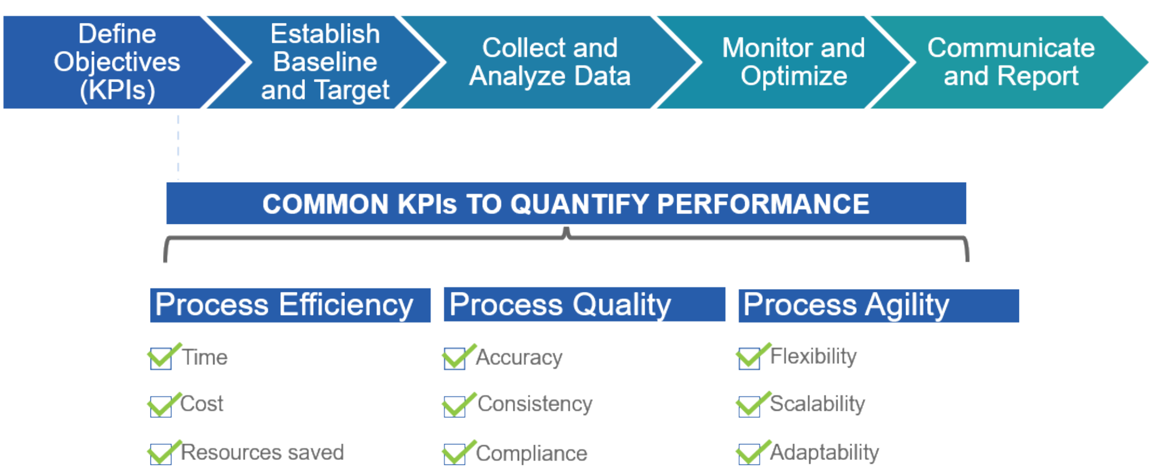
The benefits of a COE include:

- Efficient bot development lifecycle
- Integration of IT with RPA
- Easy scalability
- Increased ROI

MEASURING AND MONITORING PERFORMANCE

Once an organization has defined objectives and key performance indicators (KPIs), they may then establish a baseline and target for their automation goals. After data has been collected and analyzed, it may be monitored, optimized, reported and communicated.

The following captures common KPIs used to quantify automation and RPA performance.



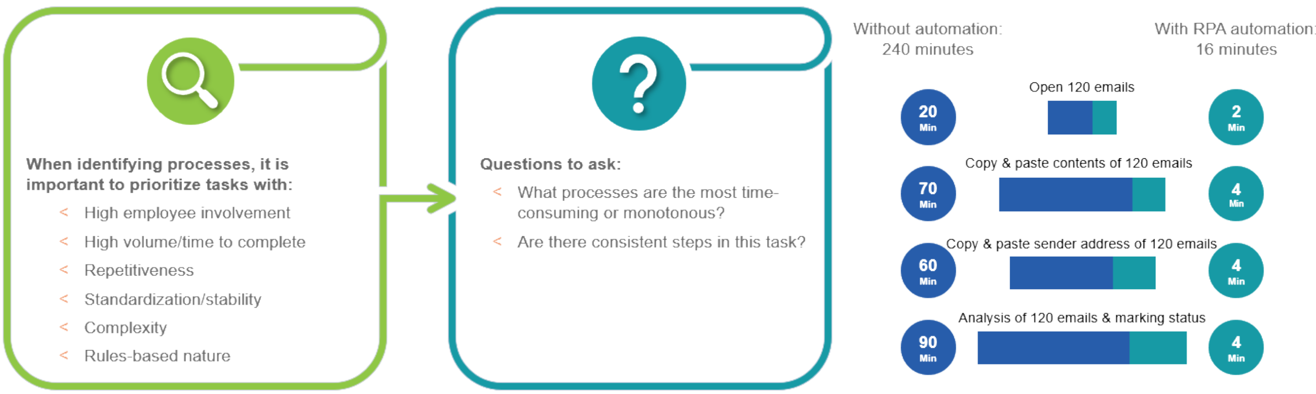
KEY TAKEWAYS

GETTING STARTED WITH RPA IMPLEMENTATION

When identifying processes, it is important to prioritize tasks that have high employee involvement, repetition, standardization, complexity and would take a long time to complete. Ask yourself what processes are the most time-consuming and monotonous, and if there are consistent steps in those tasks.

It may also help to consider a cost-benefit analysis of RPA for your organization. You can begin to calculate ROI for RPA projects in three steps:

1. Calculate the current cost of the task.
2. Determine the cost of implementing an RPA platform.
3. Create a monthly cost comparison table to determine your ROI.



BUILDING A SUSTAINABLE RPA FRAMEWORK

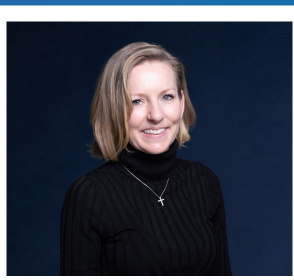
Consider the following when building a framework for your RPA implementation.

Continuous Improvement

- **Identify** – Reduce waste in process flow.
- **Plan** – How can the process be changed?
- **Execute** – Implement changes.
- **Review** – Did charges meet expectations?

Innovation and Adaptability

- Encourage creativity.
- Embrace and integrate new technology for existing bots.
- Communicate about bot solutions and its relationship to organizational goal.



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KEY TAKEWAYS

ChatGPT & Generative AI: Corporate Law Outlook

Juliana Neelbauer

*Disclaimer: The following is not legal or tax advice or a prediction of future matters or law. It is a survey of some business issues and tax and legal considerations regarding AI usage in transactions. For specific tax or legal advice related to your clients' business and accounting concerns and needs, please engage and discuss AI issues with your accountant and tax attorney

One of the most pressing questions regarding artificial intelligence (AI) is: Are we all losing our jobs? The answer is somewhat in that our roles and tasks will change, as they did with the rise of fax machines, word processors, e-signatures and email in the past. A more pressing question for accounting and business leader is, "Are client transactions are at risk due to generative AI usage?" The answer is "Yes." This is because AI platforms and tools are not replacements for human judgement or trust, nor are they insurance policies against transactional and asset risks. In many ways, jobs and business operations will evolve and adapt to these tools and integrate them into delivery pipelines, which in the immediate term, will require human supervision as an insurance policy on outputs and compliance.

Every organization must ask the question, "Should we be using this technology?" For example, law firms may be allowed to use ChatGPT and other AI tools to create initial drafts for marketing communications or master templates, but they may not be allowed to input confidential information, or even specific client information that is publicly accessible, including transaction terms, intellectual property elements or market research, since most of the public generative AI platforms state plainly in their terms of use that inputted information is stored, structured and then used to train the AI tool for other future outputs.

POSSIBLE USES OF AI IN BUSINESS

- **Initial Drafts** – The initial creation of drafts or outlines based on data input.
- **Dictation and Meeting Minutes** – Plugin technology is already available for many video conferencing tools.
- **Converting Data Formats** – For example, you can convert data in an Excel document into a report very quickly for stakeholders upon request.
- **Unidirectional Outputs** – This is when we provide AI with a prompt, ask it to solve a certain problem or complete a complex task, and then we receive an output based on the instructions of the prompt.

MECHANICS OF GENERATIVE AI

- **Data Collection** – AI tools rely on collecting as much data as possible to improve the quality of their outputs, making them (theoretically) smarter through each deployment.
- **Programming** – Once data and algorithms are in place, developers may then finetune programming by adding additional controls, rules, bounds, limiters, refining code base, etc., as they test different outputs from those initial testing stages.
- **Training** – This requires taking all of the collected data sets both in the initial development and programming phases, and then putting them all together to create the master corpus from which an initial launched tool, and then later a legacy tool, will be utilized to keep building and feeding the data set, which will train itself to become smarter.

KEY TAKEWAYS

MECHANICS OF GENERATIVE AI (CONT'D)

- **Testing and Quality Assurance** – AI tools must constantly be tested for the quality assurance of their products at a higher level and intensity because of the nature of AI technology. ESG can also have a larger impact on testing and quality assurance of AI tools.

- **Delivery** – Generative AI tools can be offered to the general public as a service with limitations on licensing in outputs to use and reuse based upon the terms of use and training data license compliance.

- **Licensing and Assignment** – This includes the "nuts and bolts" of what is licensed and assigned to customers, end users, joint ventures and collaborators.

AI LEGAL LANDSCAPE

The European Union (EU) is proactive in attempting to lead the way with an Omnibus Comprehensive Law that addresses how business owners and governments deploy AI. The EU released its Regulation on Artificial Intelligence in April 2021 that is still under review. In 2022, the European Commission also released the Artificial Intelligence Liability Directive in March 2022, which means that any individual, employee, customer or vendor that believes an organization is in violation of the Artificial Intelligence Act or any other AI-related regulation in the EU, they would be subject to or at risk of having a private claim filed.

In the United States, the following are important to note regarding the AI legal landscape:

- **Copyright Author Status Laws** – Focusing on the status of authors and their rights.
  - **Blueprint for an AI Bill of Rights,** U.S. President's Office, 2023
  - **Automated Employment Decision Tools (AEDT),** New York City, Dec. 2021
  - **Virginia Consumer Data Privacy Act (VCDPA)**, Mar. 2021
  - **Copyright Office approval letter of Midjourney's Zarya of the Dawn,** Feb. 22, 2023. This approval did not provide AI with authorship status of the graphic novel, but rather a thin copyright for the human and what the human contributed as an editor of the inputs and outputs of the generative AI platform as a tool.

- **Copyright Infringement** – AI creates outputs using pools of data that include the work of other people, creating questions around copyright infringement.
  - **Blueprint for an AI Bill of Rights,** U.S. President's Office, 2023
  - **Andersen et al v. Stability AI Ltd. et al:** Class action against Stability AI, Midjourney and DeviantArt Inc. for using copyrighted images in data lakes that train generative AI tools.
  - **Fair Use Limits** for U.S. copyright protecting rights. This could be the case for trade dress or even trademarks.

- **U.C.C. Article 12** – Proposed and under review by state legislators and regulators in the U.S., this law, once adopted, governs transactions in a subset of digital assets called "controllable electronic records." This is currently adopted by 11 states: Alabama, California, Colorado, Delaware, Hawaii, Indiana, Nevada, New Hampshire, New Mexico, North Dakota and Washington.

AI LEGAL LANDSCAPE (CONT'D)

- **Revised U.C.C. Article 9** – Proposed and under review by state legislators and regulators in the U.S., this law clarifies how a secured party perfects a security interest in digital assets and ensures that it has priority. Most states have adopted Article 9, and the update for digital collaboration has been adopted by Alabama, Colorado, Delaware, Hawaii, Indiana, Nevada, New Hampshire, New Mexico, North Dakota and Washington.

AI IN CONTRACTS – HOW WILL THEY CHANGE?

- **Intellectual Property Consideration**
  - Both parties:
    - Confirm the licensing status of all data used for the initial training.
    - Confirm licensing and assignment provisions in terms of service and use.
  - AI-using party:
    - Train human authors, artists, engineers and inventors regarding how to incorporate AI into their human work to maximize human authorship (Midjourney).
    - Deliver assessment to customer regarding scope of assignable IP.
    - Remove the "best efforts" language in IP provisions for supporting registrations.
  - Party receiving AI delivery:
    - Confirm expectations of registrability up front. Require support for registration in roadmap. Understand limitations for registration of AI-generated works.
- **Confidentiality Considerations**
  - AI-using party: Train AI prompt engineers and AI-management staff on how to avoid using this information, creating a private data lake and local AI instance, or how to anonymize the data. Declare what protected data will be used and how, and how it will be stored.
  - Party receiving AI delivery: Conflict check any AI apps that are used; require confidentiality protection for AI training any prompting.
- **Misrepresentation / Reps and Warranties Considerations**
  - Include an AI disclosure in the representations and warranties section or the performance sections.
  - Note compliance with applicable disclosure requirements and follow those parameters in drafting.
- **Key Man Considerations**
  - AI-using party: Acknowledge the humans who are key to the performance and retraining/monitoring of the AI, but avoid AI listed as a key man and list a "key man" role rather than individual whenever possible.
  - Party receiving AI-delivery: Tie responsibility to the human, if only one exists in the jurisdiction with the AI technical competence for the industry, or to the particular app preferred.
- **Breach Materiality and Curing Considerations**
  - AI-using party:
    - Ensure that reporting and log disclosure of AI processes and decision trees is available to the other party and regulators.
    - Attempt to segment the AI responsibility to non-material terms via definitions.
    - Adjust cure periods and methods to accommodate AI retraining or debugging.
  - Party receiving AI delivery: Require transparency of AI processes and AI decisioning reports upon delivery.

KEY TAKEWAYS

AI IN CONTRACTS – HOW WILL THEY CHANGE? (CONT'D)

Payment Considerations

- **AI-using party:** Include related cure periods for technical issues or human disputes of AI payments. Soften materiality of failure to pay due to AI error or improper amount delivery. Make the evaluation process transparent regarding human vs. computer responsibilities.

Indemnification Considerations

- **AI-using party:** Include indemnification caps or exclusions for certain types of foreseeable, but assumed, risks of AI use.
- **Party receiving AI delivery:** Remove caps oxs for certain foreseeable, but unassumed, risks of AI use.

Limitation of Liability Considerations

- **AI-using party:** Adjust limitation of liability to protect against responsibility for mutually assumed risks of AI use, where appropriate.
- **Party receiving AI delivery:** Adjust limitation of liability to protect against foreseeable, but unassumed risks of AI use.

Non-Solicitation Considerations

- Add an AI exclusion into exceptions for non-solicitation by public posting.
- Foresee the foreseeable! ...and adjust AI tool prompts accordingly.

Force Majeure Considerations

- **Service Providers:** Edit to be inclusive of AI issues.
- **Customers:** Explicitly exclude AI-related errors or service interruptions.

FOR MORE INFORMATION, PLEASE CONTACT

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KEY TAKEWAYS

Capitalizing on Tax Changes in 2023

Nicole Suk, CPA

WHAT WE KNOW

The following is a timeline of scheduled Tax Cuts and Jobs Act (TCJA) changes and sunsets over the next decade:

After the end of 2021:

- Businesses are now required to capitalize and amortize research and experimentation costs over five years, rather than expense immediately.
- The deduction for business net interest expenses will be limited to 30 percent of EBT, rather than 30 percent of EBITDA.

After the end of 2022:

- Full expensing for short-lived business investments will begin phasing out.
- 2022 was the last year for 100 percent bonus depreciation, which will decrease by 20 percent each year until it phases out in 2027.

After the end of 2025:

- The reduction of individual tax rates will expire.
- The increase in the standard deduction, elimination of the personal exemption and doubling of the child tax credit will expire.
- Limits on the individual state and local tax deduction and the mortgage interest deduction will expire.
- The increase of the individual alternative minimum tax exemption will expire.
- The newly created pass-through deduction (Section 199A) will expire.
- Three international-related provisions (GILTI, FDII and BEAT) will become more restrictive.
- The increased estate tax exemption will expire, reverting back to pre-TCJA amount adjusted for inflation.

Considering what is scheduled to sunset from the TCJA, it is recommended that taxpayers look to gift their assets now through either company ownership or irrevocable life insurance trusts, consider necessary changes in their entity type and use any tax attributes before the alternative minimum tax sunsets at the end of 2025.

Per the Corporate Transparency Act, which is effective Jan 1, 2024, beneficial owners are now required to report more transparency to the Financial Crimes Enforcement Network (FinCEN) with identifying information regarding the individuals who directly or indirectly own/control a company. Beneficial owners are any persons who exercise substantial control over a reporting company, or own/control at least 25 percent of the ownership interests of a reporting company. There are exceptions for large businesses.

WHAT MAY BE

The following includes legislation that is either proposed or under consideration for 2024:

Biden Budget Proposal FY2024

- Similar to the “Build Back Better Act,” key features would increase the corporate income tax rate to 28 percent, create a 25 percent billionaire minimum tax to unrealized capital gains for high-net-worth taxpayers and increase the rate for certain international tax rates, among other provisions.

KEY TAKEWAYS

WHAT MAY BE (CONT'D)

American Families and Jobs Act

- This collectively includes three bills currently in the House of Representatives: The Tax Cuts for Working Families Act, Small Business Jobs Act and Build it in America Act.

Tax Cuts for Working Families Act

- The bill includes a bonus guaranteed deduction of $2,000 for single tax filers, $3,000 for heads of household and $4,000 for married join filers, with a phase out by five percent above $200,000 for single filers, $300,000 for head of household filers and $400,000 for joint filers.

Small Business Jobs Act

- This bill would increase the 1099 and 1099-K reporting thresholds, expand qualified small business stock 1202 incentives and permanently increase Section 179 expensing thresholds.

Build it in America Act

- This bill would retroactively restore certain tax incentives that expired after 2022: Sec 174 R&D expensing, 30 percent EBITDA on interest expense limitation, and return to 100 percent bonus depreciation.

- The bill would terminate the superfund tax on petroleum, repeal certain energy tax credits allowed under the Inflation Reduction Act and modify the current clean vehicle credit.

KEY ACTION ITEMS ON CURRENT ISSUES

Section 174 R&D Capitalization

- The Internal Revenue Service (IRS) finally released interim guidance on Sept. 8, 2023, via Noice 2023-63, which addresses the capitalization and amortization of specified research or experimental (SRE) expenditures under Section 174, the treatment of SRE expenditures under Section 460 and the application of Section 482 to cost sharing arrangements involving SRE expenditures. The allowable SRE expenditures include, with specifications:
  - Labor Costs
  - Materials and Supplies
  - Cost Recovery Allowances
  - Patent Costs
  - Certain Operation and Management Costs
  - Travel Costs

The notice also outlines what is excluded from being SE expenditures, such as:

- General and administrative service department costs
- Interest on debt financing for SRE activities
- Various website and software costs
- Amorization amounts for spefic expenditures
- Taxpayers should take note that all Section 41 expenses are Section 174 expenses, but not all Section 174 expenses are Section 41 expenses.

Employee Retention Credit (ERC)

- The IRS issued a moratorium in September that halted further acceptance of new ERC claims until at least Dec. 31, 2023. About a month later, the IRS issued ERC withdrawal guidelines for those concerned about their ERC claim. The IRS is also taking further steps now to rectify compliance reviews and correct claims.

In order to engage in the ERC withdrawal process, all of the following must apply:

- You made the claim on an adjusted employment tax return (Forms 941-X, 943-X, 944-X).
- You filed your adjusted return only to claim the ERC, and you made no other adjustments.
- You want to withdraw the entire amount of your ERC claim.

KEY TAKEWAYS

KEY ACTION ITEMS ON CURRENT ISSUES (CONT'D)

- The IRS has also warned taxpayers about potential red flags for ERC promoters, who may charge large percentage fees, promise to determine eligibility "within minutes" and advertising an "easy application process," among other things.

- Taxpayers should meet with a qualified tax advisor to review their ERC claim to determine if withdrawal or an amended return are viable options for the taxpayer

STATE AND LOCAL CHANGES

Georgia Pass-Through Entity Tax

- The Georgia pass-through entity tax was amended through HB 412 on March 29, 2023, and it is effective for the 2023 tax year. The bill amends the income taxation of partnerships, removes the limitation on which partnerships may be elected and aligns Georgia's treatment of pass-through entity election more with other states.

Georgia SB 56

- Effective Jan. 1, 2024, SB 56 imposes sales tax on the retail sale of specified digital products, other digital goods or digital codes sold to an end user. Taxable items would include digital books, magazines, music and video games that meet the right of permanent use and conditional continued payment criteria. The bill would not apply to streaming or subscription services, and electronically delivered software other than what is specified as a digital product remains exempt from sales tax and aligns Georgia's treatment of pass-through entity election more with other states.

    - Several states are reducing corporate tax rates, including Arkansas, Iowa and Kansas.

    - New Hampshire has decoupled from Section 163(j) effective Jan. 1, 2024.

    - Texas has increased its franchise tax exemption amount to $2.47 million effective Jan. 1, 2024.

    - New Jersey has passed some of the most significant reform in years by adopting an economic nexus standard similar to those applied by many states for sales and use tax nexus purposes, as well as changing the definition of "entire net income."

    - New Jersey Assembly Bill 4694 adopts the "convenience of the employer" rule, where compensation paid to nonresident employees for work performed outside of the state is subject to taxation in the employer's location if the employee is working remotely for their convenience. In New Jersey, the rule is only imposed on nonresidents from states that have adopted the same rule.

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