

Are you considering buying, selling or investing in a regulated communications or SaaS-based technology company?

Do you have questions, doubts or concerns regarding the target entity's compliance with applicable sales tax laws and regulatory requirements?

Do you want to know how much it's going to cost to clean-up the prior period non-compliance and/or mitigate against successor liability?

Wouldn't it be nice to know the "Best" and "Worst" case scenarios and how to aim for the Best while avoiding the Worst?

## GLOBAL STRATEGIC ACCOUNTANTS CAN HELP!

### Regulated Asset Exposure Quantification Service

Combining "best of breed" legal and consultative professionals with industry-leading tax calculation technology and content, **Global Strategic Accountants, LLC (GSA)** has the answers. GSA has developed a specific practice with our Tax Analytics Lab to support buyers, sellers, investors and financial institutions with an efficient, affordable, and highly accurate solution to the historically burdensome, costly and wildly inaccurate process of determining a Service Provider's financial exposure due to unpaid or underpaid Communications Taxes and Regulatory Fees.

The pace of activity for mergers, acquisitions, spin-offs and financing (debt/equity) is heating up in the Communications and Information Technology sector. As the sector expands, companies are looking to jump into the telecommunications and Software as a Service (SaaS) business through acquisition.

Due diligence is a necessary pre-requisite when purchasing, selling, investing in, or spinning off an entire company, a segment of a company, or a substantial asset. Before the completion of the transaction, each party to the transaction should be prepared to perform a proper financial tax, and regulatory review for past performance to ensure the underlying asset has been well protected through the activities of its owner(s). ***Otherwise, any failure of performance can affect the value of the asset you are purchasing.***

Sales taxes and many regulatory fees apply to any sale or purchase, regardless of whether the target company is in a profit or loss situation, or whether the transaction is structured as an Asset or Control acquisition. The buyer and seller must understand the extent to which they may be liable for past and future audit risk and exposure to unpaid or underpaid taxes and fees.



## What is Tax & Regulatory Fee Due Diligence?

Tax and Regulatory Fee due diligence is a comprehensive examination of the different types of taxes and fees that may be imposed upon a business operating in the Communications Services and Information Technology industries, including providers of VoIP, SaaS, and other enhanced or “cloud based” services. Most frequently employed on the buy side of a transaction, the goal of conducting a communications tax and regulatory fee due diligence is to uncover significant potential tax and/or regulatory fee exposures.

**Regulatory requirements for Communications Services, including providers of VoIP require stringent licensing at the FCC and PUC levels. If the acquisition is not properly handled at these levels, sanctions and/or revocation of licenses could occur stripping away valuable assets of the acquired entity.**

## Why is the Due Diligence Process Uniquely Challenging for Communications Service & Information Technology Companies?

There are estimated to be over 300 types of telecom taxes, fees, charges, and surcharges imposed on potentially 685 different tax bases requiring potentially 48,000 different filings per legal entity across the U.S. in tens of thousands of jurisdictions at the federal, state, and local levels. The vast majority of these impositions currently apply equally to traditional telephony and enhanced communications services, such as Interconnected VoIP services and even Non-Interconnected VoIP. Increasingly, states are imposing taxes on hosted software, including SaaS. And with respect to enhanced communications services that incorporate software, the laws, regulations and precedent tend to lag behind technological advancements, creating even more challenges to businesses in need of reliable assessments of financial exposure.

Simply put, there is a level of complexity in calculating the tax and fee exposure of businesses in the Communications & Information Technologies sector that does not apply to vendors of goods. These conditions have historically conspired to turn the due diligence process into a costly, time-consuming and, ultimately, imprecise and unreliable endeavor. Yet tax and regulatory compliance due diligence remains a necessary prerequisite to any substantial business transaction.

## What are the Benefits of Tax Due Diligence?

As mentioned above, underreported tax liabilities, non-filing exposures, failure to charge sales tax or pay use tax, and regulatory fee assessment errors can all result in potentially significant exposures. If a buyer is not aware of and protected from these risks, potential exposures can come to fruition that will negatively impact the expected return or profit on a transaction predicted in financial models.

**Once discovered, potential risks can be mitigated or eliminated in a variety of ways.** Escrows are a common feature of transaction documents as one way of reducing successor liabilities. Sometimes, however, potential exposures can be so material that escrowed funds will not provide a sufficient remedy. In these circumstances, alternate transaction structures, purchase price reductions, installment sales, and earn-outs can all provide effective protection to a buyer. When a company fails to ever file a return, there most likely will be no time limit on the life of the exposure, since tax statutes of limitations do not run where a return has never been filed. Recommending the target to file amended returns or entering into voluntary disclosure agreements with relevant tax authorities to remedy non-filing issues can cure these problems.

While the facts often bear out that the benefits of performing a Communications Tax and Regulatory Fee due diligence can far exceed the costs, the sad reality is that the historically high cost of the due diligence process and the all too frequently unreliable, wildly divergent results of the due diligence (i.e., Buyer financed due diligence tends to OVERSTATE exposures whereas Seller financed due diligence can UNDERSTATE exposure), makes the entire process unpalatable, often creating more problems than are solved.

**THAT IS, UNTIL NOW! Thanks to our revolutionary Regulated Asset Exposure Quantification Service.**

# HOW OUR SERVICE WORKS

## FOR BUYERS/INVESTORS

### BASELINE COMPLIANCE EXPOSURE QUANTIFICATION REPORT

Backed by Telecom & Information Technology Attorneys with decades of experience representing regulated communications and SaaS businesses in M&A and financial transactions, GSA will facilitate the collection of all information and data needed to conduct an independent **Baseline Compliance Analysis**, resulting in the production of a **Baseline Compliance Exposure Quantification Report**.

A **Baseline Compliance Analysis** adopts a “conservative” approach to quantifying exposure by:

- Applying the existing, non-optimized facts to the applicable laws, regulations and rules
- Mapping comprehensive, non-optimized catalog of services and products and associated revenue to a comprehensive tax database and calculation software solution
- Processing multiple years of revenue data to produce granular, jurisdiction-by-jurisdiction tax and regulatory fee results
- And adding estimated additional financial exposure values, such as penalties, interest, fines and other external costs to be factored into a “Worst Case” scenario for purposes of determining a “conservative” and highly protective purchase price “Hold Back” value

## FOR SELLERS

### OPTIMIZED COMPLIANCE EXPOSURE QUANTIFICATION REPORT

GSA performs an independent **Optimized Compliance Analysis**, resulting in the production of an **Optimized Compliance Exposure Quantification Report**.

An **Optimized Compliance Analysis** approaches the evaluation of exposure after applying permissible and legally defensible optimizations to the facts presented, resulting in a “Best Case” outcome, including guidance on implementing measures necessary to achieve the optimal results.

Optimized Compliance Exposure Quantification Reports provide comprehensive and granular level detail, with supporting data and relevant legal citations, to assist Sellers seeking negotiating leverage in the M&A context; this Report is also valuable to companies seeking to proactively identify a pathway to achieve enhanced regulatory and tax compliance, prospectively.

## FOR BOTH

### HIGH & LOW END COMPLIANCE EXPOSURE QUANTIFICATION REPORT

GSA combines a Baseline Compliance Exposure Quantification Analysis and Optimized Compliance Exposure Quantification Analysis to deliver a comprehensive **High & Low End Compliance Exposure Quantification Report**.

The High & Low End Compliance Analysis and Exposure Quantification Report is an ideal solution to Buyers, Sellers and Investors seeking an independent evaluation of an entity’s exposure to unpaid or underpaid taxes and/or regulatory

fees, particularly in the context of M&A negotiations and due diligence.

By delivering a Report supported by granular level tax and fee data and the input and professional opinion of experienced telecommunications & technology law professionals, parties to a transaction can relieve themselves of the uncertainties and acrimony often associated with negotiating commercial terms that address compliance issues.

**IF YOU WOULD LIKE TO KNOW MORE, CONTACT:**



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