



Best Practices in Managing a Globally Mobile Workforce

Deloitte Tax LLP

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Agenda

Introduction

Current tax and regulatory environment

Corporate tax consideration:

- Permanent establishment issues

Employee tax overview:

- Tax reimbursement policies
- Individual taxation
- Payroll
- Expatriate/Inpatriate Basic Concepts

Final thoughts

Questions

Current tax and regulatory environment

Changing compliance environment — why focus now?

1 Decreased revenue bases

- Decreasing revenue bases, along with technological improvements, create enhanced capacity and more aggressive behavior by tax authorities during audits, stricter enforcement of legislation, and less leniency in the negotiation of settlements and/or assessment of penalties.
- Decreases in company revenues result in fewer resources, technological and personnel, available to monitor and facilitate compliant operations.

4 Continuously changing regulations

- Challenge to keep current on constantly changing legislation, which increases exponentially as mobility creates need to understand interaction of regulations across jurisdictions.



2 Public scrutiny (media and institutional shareholders)

- Commercial impact of negative publicity regarding noncompliant behaviors can have greater impact than fines/penalties assessed by regulators.

3 Management's risk tolerance

- Changes in management accountability and disclosure requirements have changed C-Suite's perspective on what constitutes acceptable risk.
- Changing demographics for mobile employees impacts areas of focus.

Permanent establishment issues

Principles of corporate international taxation

- A country must have jurisdiction to impose an income tax.
- Two internationally accepted concepts for imposing an income tax on “multinational income”
 - Residence jurisdiction: Company or individual — worldwide taxation regardless of source.
 - Source jurisdiction: Income earned within a country — limited taxation
- Both concepts may apply simultaneously by two countries and, absent relief, may result in double taxation.



Taxable presence — Permanent establishment

- Why is PE important?
 - Presence of international assignees may create tax exposure to the company
 - Minimum threshold of activity necessary to impose an income tax
- What constitutes a PE?
 - PE is a tax treaty concept — general international agreement on the definition, but not details
 - Fixed place of business (most common)
 - Dependent contracting agent

Secondment agreements

- Definition of secondment:
 - An employee is assigned by his/her home employer to work at an affiliated company (host employer). The employment contract with the home country employer is maintained.
 - Agreement is generally between the home and host entities, but can include the employee as a party to the agreement.
 - An assignment letter is NOT a secondment agreement.
- Benefits and terms of secondment agreement:
 - Allows employee to remain in home country benefit plans.
 - Protects home country employer from host country entity-level tax.
 - Host country employer supervises host country activities of employee.
 - Host country employer bears cost of employee.
 - Home country employer retains long-term control of employee.
- Documents should be reviewed by home and host country tax specialists, as well as the company's legal counsel.

Employee tax overview

Prior to entering new markets — holistic approach to planning and implementing expansion

Understand Business Purpose

What are your short-and long-term objectives for entering a new market?

- Strategy
- Business model
- Local market analysis
- Direct and indirect tax environment

What are the considerations in identifying, recruiting, securing, and managing talent?

- Local hires versus expats
- Employment contracts
- Labor laws
- Human Resources (HR) policies development
- Immigration
- Relocation vendor identification

Secure and Manage Talent

Determine the Right Location

What are the potential optimal locations to help you achieve your business objectives?

- Site and infrastructure
- Economic Development and Tax Incentives
- Direct and indirect tax environment
- Legal environment
- Talent availability

What are the local compliance requirements and how would you meet them efficiently?

- Secretarial and legal services
- Direct and indirect tax reporting
- Payroll withholding and reporting
- Compliance with regulatory environment

Establish Compliance Platform

Define the Investment

What nature and structure of investment most efficiently and effectively achieves your objectives?

- Legal entity/Capital structure
- Transfer pricing, fixed assets, and inventory management
- Utilization of investment funds
- Direct and indirect tax environment
- Merger and acquisition

What type of support services are needed to conduct business?

- Payroll
- Accounting
- Information technology

Set up Enabling Areas

Qualify to do Business

What are the necessary steps to meet the requirements to conduct business?

- International, local business, and industry-specific requirements
- Registrations and licenses
- Regulatory issues

What enhancements can further propel the ongoing business?

- Align talent and deployment strategies
- Align business model with operations
- Treasury services
- Legal services

Enhance the Investment

Employment alternatives: Definition of terms

Type of employment	Description/Intent	Length of time
Local nationals	<ul style="list-style-type: none"> Individuals work in the location where they are hired Typically citizens or nationals of that same country 	Permanently
Short-term assignees	<ul style="list-style-type: none"> Individuals go on assignment from their home country to a host country May or may not be subject to income and/or social tax in the host country Intent is to return to home location after end of assignment 	Generally less than one year
Long-term assignees	<ul style="list-style-type: none"> Individuals go on assignment from their home country to a host country Typically will be subject to income and/or social tax in the host country Intent is to return to home country after end of assignment 	Generally more than one year
Localized employees	<ul style="list-style-type: none"> Individuals who were on assignment but will now be compensated as a local national Change typically occurs when intention changes from temporary assignment to permanent position 	Permanently going forward
Permanent transfers	<ul style="list-style-type: none"> Individuals work in a location that is different from where they are hired Typically citizens or nationals of a country other than the location of where they are to be employed Generally no intention to repatriate 	Permanently
Business travelers	<ul style="list-style-type: none"> Individuals work in the location where they are hired, but take work-related trip(s) to one or more foreign locations Trips may be frequent in nature, but typically do not last more than a few weeks per trip, at most 	Varies
Secondees	<ul style="list-style-type: none"> Individuals who are "loaned" from the home country entity to the host country entity Secondment Agreement should be in place 	Temporary (Short-term or Long-term)

Tax reimbursement policies

Tax reimbursement policies

- Part of overall international assignment policy
- Laissez-Faire — “Whatever”
- Tax protection — “No more, could be less”
- Tax equalization — “No more, no less”



Tax reimbursement policies (cont.)

Tax protection

- Objective — employee pays all actual taxes, including host and home country; however, if as a result of the assignment, employee is paying additional tax, tax protection covers the employee for the excess taxes
- If the employee is paying less taxes than he/she would have paid at home, he/she benefits from the tax windfall
- Administratively easier than tax equalization



Tax reimbursement policies (cont.)

Tax equalization

- Objective — employee pays a hypothetical tax equal to what he/she would have paid had he/she remained in the home country (pays tax typically on stay-at-home compensation such as base, bonus, etc.)
- Companies generally bear the tax cost for items such as housing, home leave, education, cost-of-living adjustments, foreign service premiums
- Requires coordination between HR, payroll and tax service provider to ensure proper withholding, reporting and accounting

Expatriate/Inpatriate Basic Concepts

Expatriate/Inpatriate Basic Concepts

- Hypothetical tax withholdings
 - Estimated tax liability had the assignee not gone on assignment
 - Retained by the company and used to fund the host country tax liability and/or other costs of the assignment
 - Pre-tax deduction
- Examples of Negative Adjustments:
 - Tax Equalization repayments to the company
 - Host country tax refunds
 - Gross downs
- Examples of Positive Adjustments:
 - Tax Equalization payments to the assignee
 - Benefits in kind i.e. housing, foreign taxes paid, other assignment allowances
 - Gross ups

Individual taxation

Individual taxation: Business travelers and short-term assignments

- If assignment is short-term, tax home does not change
 - Short-term = an assignment realistically expected to last and does last for less than one year
 - If original intention of assignment length is one year or more, tax home changes even if the assignment ends up lasting less than one year
- “Away-From-Home” rules
 - Travel/living expenses are deductible as employee business expenses
 - Certain company-paid items are non-taxable (excluded from Form W-2)
 - Examples — transportation, meals and lodging

Individual taxation: Business travelers and short-term assignments (cont.)

- Income tax treaties
 - Can be used to reduce/eliminate host country taxation
 - General requirements to exclude wage income under the treaty
 - Less than 183 days in host country
 - Salary not paid by or borne by country company
 - Employee must be employed by employer who does not have a permanent establishment or fixed base in the host country
 - Be careful of exact treaty language (183 days in tax year or calendar year or 12-month period)

What are the risks associated with business travel?

Employer	Employee
<p>Payroll, income and social tax</p> <ul style="list-style-type: none"> • Host and home payroll reporting and withholding requirements • Employer Social Security obligations; not always in line with income tax requirements (e.g., income tax treaties) • Incremental employee income and social tax costs (if equalized) 	<p>Tax filings</p> <ul style="list-style-type: none"> • Tax ID registration/application • Individual income tax return filing requirements to claim foreign tax credits or treaty positions
<p>Corporate tax</p> <ul style="list-style-type: none"> • Permanent Establishment — do the activities create a PE and tax filing requirements for the Company? • Unclaimed VAT refunds 	<p>Income and social tax</p> <ul style="list-style-type: none"> • Incremental income and social tax costs • Equalization and tax reconciliations
<p>Reputation</p> <ul style="list-style-type: none"> • What would be the impact on the Company's reputation if non-compliance was made public? • How would the Company's relationship with the tax authority be affected? 	<p>After-tax pay</p> <ul style="list-style-type: none"> • Equalization • Responsible for own taxes
<p>Commercial</p> <ul style="list-style-type: none"> • Were the costs of business travel accurately estimated for budgeting purposes? 	<p>Immigration</p> <ul style="list-style-type: none"> • Risks associated with entering a jurisdiction on the wrong visa • Detention/deportation
<p>Labor law</p> <ul style="list-style-type: none"> • Does the presence of business travelers in another jurisdiction expose the Company to labor laws of that jurisdiction? 	<p>Employee experience</p> <ul style="list-style-type: none"> • Positive or negative experiences of process and travel to host jurisdiction • Willingness for future deployment • Repatriation experience
<p>Immigration</p> <ul style="list-style-type: none"> • Confirming the correct visas and work permits are obtained 	
<p>Talent retention</p> <ul style="list-style-type: none"> • Managing the personal exposure to the employees 	

Using the “183 Day Rule” for U.S. business travelers

Myth

- I have spent less than 183 days in a tax jurisdiction and, therefore, I am not subject to tax

Reality

- 183 days of presence in a 12-month period is **one of three** common provisions in many (but not all) tax treaties
- Where an income tax treaty does not exist, the domestic laws of a country will take precedence. Determining whether an individual is subject to tax in a foreign country should be completed on a case-by-case basis
- Note that some countries will require the individual to file a treaty-based tax return, despite the application of the treaty

Egypt



Article 16
90 Days

Article 16, Dependent personal services, states that the individual cannot be present in Egypt for a period or periods **aggregating 90 days or more** in a tax year.

Indonesia



Article 16
120 Days

Article 16, Dependent personal services, states that to apply a treaty exemption, the individual cannot be present in Indonesia for a period or periods **aggregating 120 days or more** in any consecutive 12-month period.

South Korea



Article 19
183 Days and U.S. \$3,000

Article 19, Dependent personal services, states that to apply a treaty exemption, the individual cannot be present in Korea for a period or periods **aggregating 183 days or more** in a tax year **and** such income does not exceed U.S. \$3,000 or its equivalent in Korean won.

Brazil



No Treaty

There is no income tax treaty enacted between the U.S. and Brazil. Therefore, the domestic laws of Brazil will apply and personal income taxation can be based on several factors such as visa type as well as days of presence in Brazil.

Using the “183 Day Rule” for U.S. business travelers (cont.)

Canada



Article 15 183 Days or \$10,000

Article 15, Income from Employment, states that to apply a treaty exemption, the individual must either (i) not receive remuneration in excess of \$10,000 in respect of days worked in Canada, or (ii) not be present in Canada for a period **aggregating more than 183 days** in any consecutive 12-month period or ending in the fiscal year concerned.

Permanent establishment — Article 5(9)(b)

“...if the services are provided in that other State [Canada] for an aggregate of 183 days or more in any 12-month period with respect to the same or connected project for customers who are either residents of that other State [Canada] or who maintain a permanent establishment in that other state [Canada] and the services are provided in respect of that permanent establishment.”

Active enforcement

- Canada actively enforces payroll regulations, which include the required payroll reporting and withholding for business travelers who anticipate being treaty exempt for income tax purposes
- A withholding waiver can be obtained to mitigate double withholding for those anticipating a treaty exemption for income tax purposes, but income reporting is still required
- Withholding waiver must be applied for in advance of travel to Canada and the individual must also obtain a Canadian SIN number

Other common countries: China

China



Regulatory environment for China has been evolving and becoming stricter for both employees and employers. While there is an opportunity to exclude income from Chinese taxation under Article 14 of the China-U.S. income tax treaty, enforcement has picked up against individuals trying to take advantage of the treaty benefits.

China has also instituted mandatory Social Security payments for individuals from countries which do not have a Social Security Agreement in place (United States included). Social Security procedures are dictated by municipal jurisdiction and currently all major Chinese cities have procedures set except for Shanghai.

Chinese income tax laws are generally favorable to individuals on assignments as China will only tax Chinese-sourced income for the first five years of the assignment. After this five-year period, individuals are taxed on worldwide income in China if rules for time away from China are not met.

Employer requirements for reporting have also seen an increase in enforcement in recent years. Companies granting equity to employees are required to report these plans with the Chinese tax authorities. Additionally, visa requirements have increased with new entry and exit laws to more stringently determine the length of time an individual will be permitted in China.

Other common countries: United Kingdom

United Kingdom



Issues — The IRS follows the “legal employer” approach when determining an individual’s employer under the U.S.-UK tax treaty. Therefore, if an individual has a contract of employment in the U.S. and the costs are borne by the U.S. firm, assuming the day test is met, the treaty conditions would appear to be satisfied. However, HMRC (UK Revenue) has changed to the “economic employer” principle, when determining an individual’s employer under the treaty.

Under this method, HMRC would determine the individual’s employer by using more qualitative tests, such as: is the individual involved in the core business of the UK, who has control and responsibility for the individual on a day-to-day basis, who bears the risks and rewards for the individual’s employment, etc.

90 day rule — HMRC has indicated that an individual would not likely be considered economically employed in the UK if they worked in the UK for a period of less than 90 days. The 90 days is measured over a “reasonable period”, so several small trips in a short time frame would need to be considered together. Also, HMRC has indicated that this rule is less likely to apply for senior executives, since any work they perform is likely to have an impact on the UK business. However, HMRC is looking more strictly at residence tests and issued legislation with complicated statutory tests.

Next steps

- Actively manage the level of compliance (payroll, individual and corporate tax, as well as immigration) to align with acceptable risk tolerance.
- Develop a solution that is consistent and sustainable globally.
- Utilize data analytics to derive value, above and beyond compliance activities.
- Confidence that you have a broad-based process, framework and policy in place to respond to inquiries from regulatory authorities and auditors.

Illustration of the current state of business traveler programs at many multinationals



Individual taxation: Long-term assignments and permanent transfers

- Assignment length of one year or more
- Foreign earned income exclusion (currently \$97,600 for 2013)
- Foreign housing exclusion and/or deduction
 - Qualifications for foreign exclusions
 - Tax home in foreign country
 - Physical presence test (PPT)
 - Bona fide foreign residence test (BFR)
- Foreign tax
 - Deduction
 - Credit



Individual taxation: Long-term assignments and permanent transfers (cont.)

- Common planning techniques to reduce global income tax liabilities:
 - Use of income tax treaties
 - Timing of assignments/transfers
 - Application for special tax regimes, where applicable
 - Certain benefits may be taxed efficiently when paid/reimbursed by the employer (example: housing)
 - Cash vs. benefit-in-kind
- Keep abreast of tax law updates



Individual taxation: State taxation

- Residence vs. non-residence
- Reducing state taxes
 - Sever state domicile/residency
 - Timing of payments
 - U.S. business days

Individual taxation: Social security

- May be subject to host country social tax while on assignment
- Totalization Agreements eliminate duplicate social security coverage and avoid host country social security liability in most situations
 - Typically for up to five years
 - 24 agreements currently in force
 - Need to request Certificate of Coverage from the U.S. Social Security Administration (www.ssa.gov)

Australia

Austria

Belgium

Canada

Chile

Czech Republic

Denmark

Finland

France

Germany

Greece

Ireland

Italy

Japan

S. Korea

Luxembourg

Netherlands

Norway

Poland

Portugal

Spain

Sweden

Switzerland

UK

Payroll

Payroll requirements

Payroll considerations for all types of employment alternatives

- Does the local office have capacity to administer payroll?
- If not, identify an outside vendor available to administer payroll
- What are the local requirements for:
 - Tax withholding and remittance
 - Process and timing
 - Funding of amounts
 - Compensation reporting
 - Employee and employer contributions
 - Consequences of non-compliance
 - Reputation
 - Penalties assessed on employer

International assignee payroll requirements: Logistics

- Home country payroll or host country payroll?
 - Is the host country office set-up for payroll processing?
 - Payroll vendor
 - Split payroll
 - Shadow payroll
- Employee access to funds in host country currency
 - Split pay delivery
 - Reimbursement of monthly wire transfer fees



International assignee payroll requirements: Set-up issues

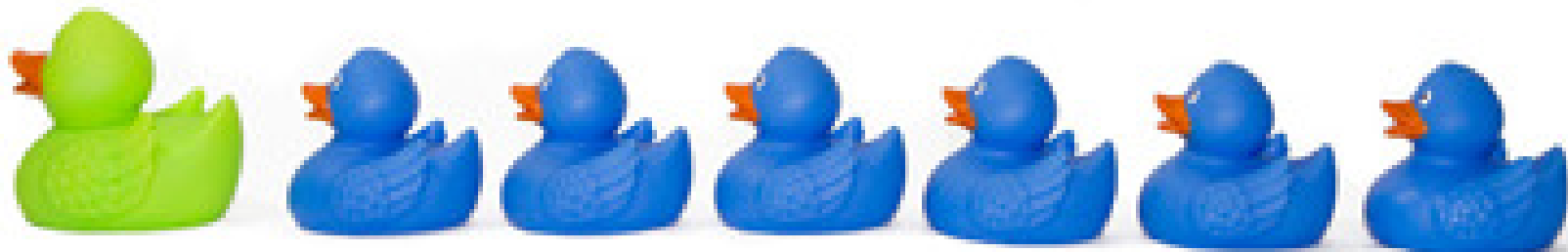
U.S. Payroll

- Reporting and withholding requirements
 - Form 673
 - Proper Form W-4
- Social taxes
 - Totalization agreement
 - Certificate of Coverage
 - Continued participation in U.S. Social Security and Medicare
- State issues
 - Disability/unemployment
 - Reporting/withholding



International assignee payroll requirements: Common issues

- Common U.S. payroll mistakes
 - Incorrect reporting and withholding on items paid by host (non-U.S.) company or by third party relocation vendor
 - Not reducing reported income for negative allowances (i.e., housing norm, hypothetical tax)
 - Results in over-reported income for income tax and FICA purposes
 - Not stopping state and local reporting and withholding, when applicable



Final thoughts

Assignment lifecycle: Tax

5 Repatriation post-assignment services

- Conduct home/host exit and reentrance interviews
- Year-end compensation and tax return preparation as needed
- Track foreign tax credit carryovers
- Post Tax Calendars to make certain of compliance

4 Year-end compensation and tax preparation consulting

- Home/host country data collection
- Compensation summaries and tax reporting reconciliations
- Collect Web organizers
- Upload flat file from company for compensation import
- Apply program tax positions and sourcing
- Prepare tax returns and tax equalizations
- Return complete returns and equalization to assignees
- Deliver equalizations to company
- Respond to any global tax notices/assessments
- Track tax refunds



3 Ongoing assignment administration

- Distribute Web Organizer and Travel Calendar
- Annual hypothetical tax calculations
- Ongoing tax planning
- Continuous connectivity and ideas sharing with company
- Ongoing communication with assignee
- Respond to global tax notices/assessments

1 Assignment planning

- Cost projections
- Initiate contact with assignee
- Tax planning/consulting
- Coordinate with Corporate Tax to discuss permanent establishment issues

2 Pre-departure services

- Conduct tax consultation
 - Review hypothetical tax calculation
 - Review tax equalization policy
 - Review tax return process
- Process social security waiver application, as necessary
- Conduct host country tax orientation
- Prepare and sign secondment agreement, if required

Summary of Key Tax Considerations

Tax Planning

- Home/host tax planning (income and/or social tax)
- State residency while on assignment
- Cost projection
- Assignment letter preparation
- 409A review of applicable documents
- Home and host country orientations
- Secondment agreement
- Equity plan registration (host country)

Tax Compliance

- Social Security Certificate of Coverage, if applicable
- Home tax return preparation – Federal, state, local
- Host tax return preparation
- Foreign bank account filings
- Extensions/estimated payments
- Track tax equalization settlements

Payroll

- Federal income tax withholding
- Form 673, if applicable
- State income tax withholding
- Form W-4, if applicable (Federal and/or state)
- SUTA/FUTA
- Hypothetical Federal and/or state income tax withholding (initial and updates)
- Social taxes
- Host country payroll requirements
- Year-end compensation gathering
- Tracking of equity transactions

Post-Assignment Planning

- Repatriation orientation
- Payroll changes upon repatriation
- Tracking of post-assignment payments
- Tracking of foreign tax credits

Final thoughts

- Actively managing the risks associated with a mobile population requires:
 - Defined ownership of the program
 - A cross-functional team operating with documented roles, responsibilities, processes and policies
 - Implement in manageable pieces

Tax	HR	Travel	Business units	Payroll	Finance	Accounts payable
Travel data						
Employee perception			Active regulatory enforcement			
Tax treaties	Economic employer concept		Budgets/Profits			
Individual income tax reimbursement programs			Policy adherence		Social taxes	
			Corporate tax filings		Payroll tax filings	
Individual income tax filing				Immigration		
International				Domestic		
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Enhance the Investment

Questions?

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