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Critical information to provide to your tax preparer

Matt Yadamiec, Senior Manager

GTN Atlantic
phone: +1.484.615.7107 | email: myadamiec@gtn.com

The rapid globalization of business and rising activity in developing markets has increased the need for companies to move people and source talent around the world. At the same time, it is almost impossible to turn on a news program without hearing about another jurisdiction that is in a debt crisis or on the brink of financial ruin. These jurisdictions are increasingly turning their attention to cross-border workers and financial accounts for sources of stability.

As you know, failure to meet the growing reporting and filing requirements can lead to financial and legal penalties and unwanted public attention for the employee and their employer. This perfect storm of increased company demand for cross-border activity, increased government scrutiny, and increased risk has resulted in the need for companies and employees to provide an abundance of clear, detailed information to their vendors that assist in managing global costs, tax risks, and other areas of their global mobility program.

Three critical components key to maintaining these costs and risks are:

- Detailed travel and workday calendars
- Extensive tax organizers
- Comprehensive compensation detail

For more information or to gain access to the GTN tools, reach out to me at myadamiec@gtn.com or +1.484.615.7107.

Frequently Asked Questions:

Why is a travel and workday calendar important?

For a company and tax preparer, a detailed journal of travel and workdays is one of the most basic and important requirements for managing a global mobility program.

The number of days a taxpayer is physically present and/or working outside of their home taxing jurisdiction can have a direct impact in multiple functions of the company. There are potential obligations for payroll, tax, and reporting and withholding, as well as authorizations for immigration, visas, and work and residence permits, both in the home taxing jurisdiction as well as other taxing jurisdictions in which the taxpayer has been or may potentially be working and/or physically present. The information regarding taxpayer's work and non-work days may be critical in determining, for example, the "source" of income, or whether the taxpayer might be subject to (or exempt from) tax in a host taxing jurisdiction (e.g., based on days presence, whether an income tax treaty or reciprocal agreement is in place, or the income earned in the host jurisdiction). A taxpayer's actual or anticipated days of presence in a host location may impact for example, residency, or whether a work permit is required for the host jurisdiction.

What if I am on a long-term foreign assignment? Do I still need to track travel and workdays?

An assignment is typically considered "long term" if the length of the assignment is beyond one year. Although taxpayers from most countries can often break home country tax residence while on long-term assignments, U.S. citizens and green card holders are subject to worldwide taxation regardless of where they are working or the location of the payroll. As host country taxation may also apply, there is the possibility of taxation in multiple locations for U.S. long-term mobile employees.

U.S. taxpayers on long-term assignment can mitigate double taxation through application of the Foreign Earned Income Exclusion (IRC Section 911) and/or foreign tax credits. The qualification for the Section 911 exclusion directly depends upon your travel and workdays. In addition, in order to obtain proper foreign tax credit your tax preparer will need to source your income based on U.S. versus foreign workdays. Therefore, it is imperative that you keep a detailed record of your travel and workdays throughout your assignment years and even after repatriation.

As noted previously, it is important for both U.S. and non-U.S. mobile employees to track travel for considerations such as the sourcing of income between work locations and the determination of residency status. Companies need this information to identify potential reporting, withholding, and immigration requirements.

What if I am just a business traveler or on a shorter-term assignment? Do I still need to track travel and workdays?

Business needs and the often high costs associated with traditional long-term expatriate assignments have led to a rapid increase in the use of short-term, commuter, and "business traveler" scenarios. Countries have long recognized these types of scenarios and have concluded treaties and other agreements to address temporary cross-border scenarios. Many of these treaties have a so-called "183 day" rule that limits taxation in the host location for individuals spending fewer than 183 days in a defined period. It is a common misconception that host country taxation will not apply for assignments of less than this duration. A treaty may not exist or apply in all scenarios. A given treaty may also have different limitations and/or other conditions that need to be met to apply any host country tax exemption. As a general rule, individuals on shorter-term travel may not meet host country tax residency criteria, but may still be subject to taxation on income relating to services performed in the location. This "sourcing" of the income is most commonly linked to the percentage of an employee's workdays in that location.

In the end, each country/jurisdiction will have its own mechanisms for determining when an international mobile employee becomes subject to taxation. The travel calendar is critical for tracking days of presence for residency determination / treaty application purposes and for assisting in sourcing income if the employee is subject to host country taxation and for properly calculating available credits / exclusions that may apply under domestic law.

What if I am a foreign national working in the U.S.? Do I still need to track travel and workdays?

Absolutely, and especially in the transfer year. Your tax preparer will need to determine an appropriate filing status, i.e., full year resident, non-resident, or dual status, based upon a number of factors, including your presence days in and outside the U.S. Also, if you have any foreign tax credit carryovers from your home country (foreign country), your tax preparer will need to review your work and travel days to properly source your income to enable you to take

What if I am on a domestic assignment (within the U.S.)? Do I still need to track travel and workdays?

Each state has its own guidelines regarding de minimus presence that triggers reporting and tax withholding requirements. Again, it is important to track your travel and workdays so the appropriate tax reporting and withholding can be considered for both the company and employee.

What is a Tax Organizer?

With the possible exception of tax preparers, the majority of the population does not look forward to completing their tax returns and filings and in gathering the information needed to complete the filings. Unfortunately, the failure to properly report income and other requested financial information can come with steep penalties and may even have legal implications. Tax preparers, themselves, are under increasing scrutiny and can also be subject to financial and legal penalties for failing to exercise due care in preparing tax returns.

For these reasons, most tax preparers will request that taxpayers complete tax organizers. The organizer is designed to ask the questions necessary to assist taxpayers in accumulating and providing the information necessary for the tax preparer to appropriately complete necessary tax filings. By appropriately considering the questions, the taxpayer may even be able to identify ways to minimize their tax burden through identification of previously untaken deductions or credits. Providing appropriate details to the tax preparer will also assist in preventing tax notices that may be generated for failing to properly report items already provided to the government from such sources as employers or financial institutions.

Why is Compensation Detail Important?

The accumulation and reporting of compensation information for mobile employees can be a daunting task, even for the largest and most established international assignment programs. Taxpayers on foreign assignment often receive compensation and reimbursements from a variety of sources and locations. There may be differences in the fiscal years between the home and host location, leading to differences in reporting periods. Each jurisdiction may have different rules on what is considered taxable and / or reportable and on how to calculate the taxable income inclusion for non-cash benefits.

It is important to note that companies can face significant risks / financial penalties for failing to appropriately report and withhold for their employees. In addition, taxpayers on international assignment often receive uplifts to their “usual” base compensation to address incremental assignment expenses relating to items such as relocation and tax costs, differences in home and host country housing and cost of living, and incentives for international travel. The actual compensation and benefits provided under typical policies can often be two to three times the cost of the employee’s stay-at-home compensation. The company compensation is typically the largest item on the individual’s personal income tax return and therefore often has the biggest impact on the overall tax cost of the assignment.

What makes a detailed compensation breakout so critical?

- Proper allocation of income between jurisdictions based on timing of payments and/or type of compensation as appropriate for home / host jurisdiction purposes;
- Assisting the Company in properly reporting, withholding and / or payroll requirements for both home and host jurisdictional purposes (possibly with different fiscal years);
- Proper application of company tax reimbursement policies (as the taxpayer may only be subject to taxation on certain income elements and often would not receive the benefit for company-paid tax gross-ups).
- Proper application of taxation for home / host country purposes (e.g., a housing allowance may be taxable in a given location where a direct rental payment to a landlord by the company may be nontaxable).
- Proper set-up of processes and use of technology can assist companies in meeting this important requirement.

A tax provider's goal is to assist the company and mobile employee in mitigating the risks and costs associated with international assignments. It is important for the company, taxpayer, and tax provider to communicate and work together effectively to meet these common goals.

If you would like further information, please contact me at myadamiec@gtn.com or +1.484.615.7107. I am here to help!