GTN Newsletter – May 2018

Tax Risks of Business Travelers

Julie Chung, Director
GTN Pacific – phone: +1.408.606.4827 | email: jchung@gtn.com

In today's workforce, it is common to have employees working on multiple projects across multiple states or countries. It is surprising to many that working outside of their resident home state for as little as one day may create tax reporting, withholding, and filing requirements. Unfortunately, states and countries do not currently follow a consistent set of rules in determining when non-residents become subject to tax and at which point company reporting and withholding obligations begin.

Achieving compliance involves administrative costs and practical challenges for organizations, but failure to address the requirements can generate financial and other risks for both the organization and their business travelers.

We understand there are many questions our clients face when thinking about sending someone on a business trip. We have compiled some of the most frequently asked questions and answers that we hear regarding the tax risks of business travelers.

I have heard that an individual on a short-term international assignment of no more than 183 days will be exempt from tax in the Host location. How does this work?

There is vast network of income tax treaties globally. For example, the UK has income tax treaties currently in force with over 100 countries. The US has income tax treaties currently in force with over 50 countries. An income tax treaty typically includes an article, often referred to as the "183 day rule," which addresses the taxation of employees working temporarily in another country. If an employee and employer meet the requirements of this article, the employee will not be subject to income tax in the Host location.

Under the Organization for Economic Co-operation and Development (OECD) Model Income Tax Treaty, an employee will not be subject to income tax in the Host location if:

- The employee is present in the Host location for no more than 183 days in a twelve month period commencing or ending in the taxable year concerned; and
- The compensation is not paid by, or on behalf of, an employer resident in the Host location; and
- The compensation is not borne by a permanent establishment or fixed base, which the employer has in the Host location.

Note that certain countries are now considering the “economic employer” of the employee. The treaty would not apply if the Host location entity were deemed to be the economic employer. As a result, the employee would be taxable in the Host location. These rules should be reviewed on a country-by-country basis.

Given that each treaty is unique, we recommend the applicable (specific) treaty be reviewed to avoid potential traps. These traps can include, but are not limited to:

- Verifying that there is in fact, an income tax treaty between the Home and Host locations. Without a treaty, local tax laws will apply. For example, the US does not have an income tax treaty with Singapore. Thus, under Singapore tax law, a US employee will be taxable in Singapore if present more than 60 days in a calendar year.
- The number of days allowed in the Host location can be based either upon a "rolling" twelve-month period or on a tax year basis. In addition, the number of days allowed per the treaty may be less than the 183 days noted in the model treaty.
- Countries may differ on how the “days present” are counted. For example, Sweden includes both the day of arrival and the day of departure as a day present in Sweden for determining the 183 days for income tax treaty purposes.
- The treaty may not apply to local income taxes. For example, a number of US states, including California and New Jersey, do not follow the US federal individual income tax treaties. Thus, even though the employee is exempt from US federal tax, they still may be required to pay state income tax and file a state income tax return.

If our employee is exempt from tax in the Host location under the treaty, are any tax filings required?

Even though the employee may be exempt from income tax under the "183 day rule," the Host location may still require the filing of an income tax return or other form to document the treaty exemption. For example:

- The US requires a nonresident to file an income tax return if the US source income is greater than one personal exemption, even if they are exempt under the treaty.
- A German national working in Singapore, but exempt from Singapore tax under the German/Singapore income tax treaty, must obtain a signed statement from the German tax authorities and submit this with a letter to the Singapore tax authorities to support the treaty exemption.
- The UK has various reporting requirements for payroll and tax purposes depending upon the number of days the individual spends in the UK in a tax year.

Certain countries also require reporting of a treaty exemption even though no income tax is due. Countries are actively conducting audits of companies' compliance with these reporting requirements.

As you can see, the treaty exemptions and tax reporting requirements vary widely and are dependent on the Home and Host location. We recommend each assignment be reviewed to maximize the treaty benefits available on a worldwide basis and to ensure proper income tax reporting in both the Home and Host locations.

If our employees remain in the Host location for less than the number of days identified in our company policy (e.g., less than 30 days), are there any concerns?

Many companies define “business travel” versus “short-term assignment” based on the number of days the employee is expected to travel to a certain location. Although this may be a practical approach, these internal company policy thresholds may not address the technical considerations of the Host location in regards to tax obligations or reporting requirements. For example:

- One working day in Canada triggers a payroll reporting and withholding requirement. Waivers are available to exempt the company from withholding requirements, although these waivers must be filed for all business travelers.
- Many US states have an income threshold for non-residents based on the state sourced income attributed to their workdays in the state. Certain high-level employees may exceed the state's income threshold due to the income they earn in just one workday in the state. Certain states do not have any income or day thresholds for non-residents to file in the state, which means that if the employee works even one workday in the state, (regardless of the amount of income sourced to the state), the employee technically has an obligation to file in the state.

What are the risks for the company, and individual, if we do not address our business travelers' compliance?

Over the years, the awareness and enforcement of business travelers' compliance has grown. With technology advancements and departments sharing more information, the ability for authorities to track business travelers is an issue that was not a reality years ago. Some risks for noncompliance include:

- In addition to the tax that may be due, additional fines and penalties may be assessed to the company and individual.
- The individual may be stopped at the airport if an unpaid tax liability exists or the agent questions the individual on their activities in the Host location and no filings are on record and/or tax payments have been funded.
- The Host location may exclude the company from doing business in the Host location.
- Bad press for the company throughout the media outlets.

Some of these risks can be mitigated if the company makes a good faith effort to be compliant. If audited, and the company can prove they have policies in place to address their business travelers, the auditor may be more lenient on the company rather than if nothing has been done to-date.

How can we move forward with being compliant for our business travelers?

Addressing business travelers requires the collaboration from various departments within the company, such as Payroll, Tax, Finance, HR, and the Mobility teams. No one department generally "owns" or can administer the entire business traveler compliance process.

For starters, a policy should be in place for business travelers. Items that should be addressed within the policy include how and when are tax gross-ups funded and is a reconciliation prepared comparing actual tax liabilities with gross-ups funded by the company, and how are fees for tax services handled? Having a policy in place helps promote fairness and consistency throughout the business traveler population as well as the willingness of the employees to continue to travel on business for the company.

Currently forty-three US states assess an income tax on individuals and seven states do not have an individual income tax. If you are sending an employee to a state that assesses an individual income tax, you may be required to implement a payroll in that state; your company could also be subject to other business registration or corporate tax requirements.

The ability to provide travel reports for analysis is one obstacle many companies face.

- How do you obtain the travel for the individuals?
- Did they travel to the Host location for personal reasons?
- Did they book a business trip outside of the company's travel department?
- Did they actually travel on all the days that are reported on the report received?
- Is the employee listed on the report the one who traveled, or did another employee travel in his or her place?

Travel and workday calendars, smartphone tracking apps, relocation travel reports, etc. are options utilized to track business travelers and analyze the data for risks and next steps.

In 2017, GTN conducted a business traveler survey, which asked companies to identify current practices and challenges faced when managing both domestic and international business travelers. Click the download button below to see the findings.

GTN specializes in mobility tax services. To learn how we can help you better understand the tax risks of business travelers, or if you have additional questions, please contact me at jchung@gtn.com or +1.408.606.4827.

The information provided in this article is for general guidance only and should not be utilized in lieu of obtaining professional tax and/or legal advice.