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Managing Global Assignment Risk

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Today's global challenges have raised the stakes for both companies and countries. While companies are increasing global relocations, attempting to balance both cost control and growth, countries are responding in kind by tightening regulatory compliance for cross-border assignments and business travelers. The increase in global relocation in the face of increased scrutiny has resulted in heightened risk for those managing mobility programs.

How do you manage global assignment risk? Below we outline key risks as well as four steps to consider in helping your organization effectively manage global assignment risk.

Key Global Risks
A well-managed mobility program is critical to many companies growth and talent management. It is essential to understand and manage the key risks for both your employees and the organization.

Regulatory and Compliance Risk
There are a number of regulatory and compliance related risks for your employees and company, which could result from cross-border employment. From an employee perspective, work permits or other immigration considerations may apply and tax registration and tax filings may be required. Similarly, an employee working in another location may result in payroll obligations, corporate tax filings, and labor law considerations for the employer.

It is important for organizations to recognize these compliance requirements even for short-term and business travel scenarios. For example, under UK tax law, an employer has an obligation to withhold UK PAYE (tax withholdings) for all employees. This obligation would extend to any overseas employees visiting the UK as short-term business travelers, unless an exemption based on income tax treaty relief is available and has been applied for and agreed with the UK tax authorities (under a Short Term Business Visitors (STBV) arrangement). If no agreement is in place, then full withholding is required.

What does this mean? It means an employee traveling to the UK to work for any length of time would be subject to these rules and the UK entity would be liable to penalties if either full withholding was not applied or an STBV arrangement was not in place.

Identification of regulatory and compliance requirements in advance of sending an employee to a new location is critical. Cross-functional teams, including members of the human resources, tax, legal, payroll, relocation, and finance departments, can assist in the creation of processes to identify and manage risks relating to your cross-border employees. Outside firms can assist in handling specific complexities or areas where your organization needs additional resources.

Financial and Budgetary Risk
As illustrated above, failure to comply can lead to compliance costs and potentially significant penalties and interest. Equally important, however, is the need to understand the costs of proposed scenarios in advance.

For example, tax cost projections should be prepared to compare costs between assignment types or lengths, evaluate the cost/benefit of tax planning opportunities, and budget for costs over the duration of the assignment. Through proper review, planning may be possible to lower costs, allowing business units to properly bid on new work and appropriately accrue assignment costs.

Prosecution
The risk of prosecution is not just a scare tactic. From a tax perspective, there have been numerous cases where individuals have been convicted of federal tax charges for failure to appropriately report bank accounts maintained outside the United States. In some countries, tax evasion is considered a capital offense. Representatives of the company can be held accountable for failure to meet regulatory and reporting requirements. Understanding and meeting regulatory requirements is critical.

Legal and Employment Law
Failure to properly comply with immigration laws can lead to unexpected costs, project delays, legal challenges, or deportation for the employee. Failure to consider local employment law can also be very costly, potentially opening the company up to lawsuits, delays in client deliverables, and unhappy employees.

Reputational Risk
Companies who fail to understand and comply with local requirements risk being portrayed as bad corporate citizens in the local media. Imagine if a top executive ended up on the cover of a local paper due to a failure to file individual income tax returns or have proper immigration clearance; the person in your organization responsible for mobility would not enjoy the call from that executive! These types of negative publicity can be extremely damaging to your company's brand, especially when entering new markets.

Employee Satisfaction and Retention
The global mobility program can be extremely important to your company's talent management and development strategy. While it is obvious that prosecution or negative publicity will lead to issues with employee satisfaction and retention, other more mundane factors such as ineffective policies, lack of repatriation strategy, and poor communication can be just as damaging. International assignments are often a large investment for a company, making it even more important to retain the employee and effectively utilize the skills and experience they gained while on assignment.

Permanent Establishment
The interaction between the mobility program and the company's corporate tax position is an area that is often overlooked. Employees working outside of their Home country can result in their Home country employer having a permanent establishment (PE) in the Host country. An employer with a PE may have additional corporate administration and tax costs.

In the context of global mobility, this means that even the short-term activities of an employee, or a group of employees, can have the effect of creating a PE in the Host country. Once that happens, the income generated by the employer that is connected with the activities of the employee(s) may be subject to corporate income tax in the Host country.

The PE may also prevent the company from utilizing an income tax treaty to shield business travelers from Host country taxation. It is important to note that factors such as employee duties and project duration can result in a deemed PE for a company.

Steps You Can Take to Minimize Global Assignment Risk
Although daunting, there are basic steps that can be taken to help companies manage risk for their mobility programs.

1. Communicate and Coordinate
   As reflected in the risk areas above, the mobility program likely touches a number of functions within the company. Because decisions made by one functional group can influence the requirements for another group, it is critical to establish a coordinated, cross-functional process to share information.

   To assist in this process, companies should consider a centralized database to aid in program management and day-to-day regulatory and compliance requirements. Processes should be set up to track and manage both international assignments and business travelers. Employee and business unit education can be very important to allow for upfront planning and ongoing compliance.

   Pre-departure planning, careful monitoring of project completion timelines, and open lines of communication between the employer and the employee on travel dates and assignment-related expectations can result in considerable savings of time and resources for all parties involved.

2. Consider the Corporate Tax Position
   The corporate tax position can impact the employee, and the employee can impact the corporate tax position. For this reason, it is very important to have good communication between the tax and mobility departments. Some questions that may need consideration (especially for a new location):
   - Will a new entity be required to meet local legal, immigration, or tax requirements?
   - Does the Home employer already have a PE in the Host location or is there a danger that the employee will create a PE by their presence or duties?
   - Which entity should bear the costs for the employee's remuneration and other expenses?

3. Documentation is Critical
   Proper documentation is very important in mitigating risk. For example, a properly executed secondment agreement between the Home and Host entity can assist in reducing PE risk by effectively restricting employee activities in the Host location and clearly identifying Home and Host entity responsibilities and limitations.

   Other critical documentation to consider includes:
   - Forms to reduce or eliminate withholding requirements, as applicable.
   - Assignment and tax equalization policies that are appropriate from legal, market, and company risk perspectives.
   - Assignment letters that reflect the agreement between the company and employee.
   - Certificates of coverage as applicable and obtained from the pertinent social security administration.
   - Employment contracts, as required, under local employment law to support available planning.

- Written procedures concerning compensation accumulation and reporting should be discussed with, confirmed by, and distributed to Home and Host country payroll, human resources, accounts receivable departments, and the company's tax service provider.
- A privacy policy that is supported by senior leadership and is reviewed on (at least) a semi-annual basis.

4. Consider a Program Risk Review
   A program risk review can be an effective way for companies to identify gaps and risks for high impact areas of the mobility program. Companies can review their internal processes and ability to meet regulatory or other program requirements. Both process (e.g., compensation accumulation, talent management, vendor management) and compliance (e.g., tax, immigration, equity) focused areas may be considered in a risk review.

The current economic, regulatory, and legal environment has increased the scrutiny and diligence needed when managing global relocations. However, through communication, coordination, and documentation, your organization can manage global assignment risk.

If you have questions about your company’s global assignment risk, contact me at sabadin@gtn.com or +1.708.887.0275, or visit our Mobility Tax Services page to see what assistance we can provide.

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