

International Business Travellers - Recognise The Issues & Deal With It (Best Practices)

The times when international business travellers (IBTs) were able to travel around the globe without having to fulfil numerous regulatory requirements have long gone. Multiple countries are evaluating multi-national companies in general and IBTs specifically, in order to collect taxes that are perceived to be payable due to the work performed in the country or to control and protect the domestic labour market and standards. There is a clear tendency by governments of introducing more stringent, and, or, enforcing existing regulations on tax, social security and labour law compliance as well as to concentrate on respective reporting obligations.

Recent examples on IBT related regulations are:

- Taxation where the work is performed versus taxation in the country of residence:
 - a. Austria BMF-010221/0362-VI/8/2014 (from 12.06.2014)
 - b. Australia: ATO ruling published TR 2013/1
- Labour law and immigration reporting obligations for companies:
 - a. EU: Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
 - b. Austrian Act on Employment regarding contracts and adjustments which prohibits salary dumping and regulates all respective conditions with regard to trans-boundary Assignments and Labour Staffing. ("Arbeitsvertragsrechts-Anpassungsgesetz", hereinafter referred to as "AVRAG").

While the government's intention might be reasonable from a domestic revenue collection and labour protection aspect, it correspondingly restricts international business capabilities. IBTs usually travel on short notice and upon customer demand, which makes planning, tracking and reporting as requested by the regulations administratively burdensome and costly.

Companies that have no existing processes in place to track and control their IBTs, should start to identify existing compliance gaps and implement necessary processes to mitigate them. Failure to comply with existing legislation may result in a variety of sanctions such as fines and penalties for the individual or the corporation, limit the ability to qualify for public tenders, trigger a permanent establishment or reputational damage.

Dealing with a multitude of different topics such as personal income tax, immigration, social security and corporate tax exposure, can be a major challenge for companies trying to control their IBT population.

Furthermore, governments are interlinking different legislative areas which means that risks can no longer be mitigated in isolation, but must be looked at from a holistic view. A very recent example is Singapore, where an active exchange of information is taking place between the immigration and the Inland Revenue Authority of Singapore (IRAS). There are examples of IRAS asking businesses about employees in respect of whom Employment Pass applications were made but no Singapore tax returns filed. In some cases these enquiries have dated back 10 years.

Start Develop Implement And Lead

Successfully implementing a companywide programme to control critical IBT populations, starts with establishing corporate ownership. It is only when corporate ownership has been formally defined and signed off by the executive board, when sound risk decisions can be taken in a joint approach. There are various methods to define this ownership, but best practices have shown that a joint approach between GRC (Governance Risk & Compliance), Finance and HR has proven to be most effective.

The evaluation of historic travel data can be a good basis to analyse how IBT populations "behave" in terms of travel pattern, trip duration, or frequency of

the trips, as well as to prioritise the risk assessment for certain countries, country combinations or individuals within the IBT population.

A detailed legal analysis should be conducted that takes into consideration all aspects which are relevant for IBTs such as immigration, social security, transfer pricing issues, corporate tax exposure and personal income tax. In many countries the economic employer concept can be prevailing and strongly influence the available risk mitigation scenarios. Countries such as Austria, Australia, Denmark, Norway and UK are of relevance here, just to mention a few.

In order to identify the economic employer the IBT population should be defined as such and be segregated into different groups:

Best Practice Examples from an SAP perspective:

Definition:

- International Business Travellers (IBTs) travel into the host country on business from a variety of different home countries
- IBTs are defined as employees working abroad for less than 183 days
- The duration of stay in the host country may be continuous or intermittent, but will not exceed 183 days in any 12-month period. There is no formal assignment agreement in place
- Once an IBT exceeds the 183 days threshold a formal assignment is set up and taxes are remitted
- IBTs remain on home country payroll, there is no active shadow payroll in the host country
- IBTs are split in several groups:

Group 1 a): activities in the host country will include revenue generating activities and/ or implementation of proprietary products on the customer's premises. Customer contract and billing is set up between the host company and the customer in the host country (IBTs are requested by the host company to leverage margin or to get special expertise). Average realised market rates are cross-charged to the host company

for the services performed by the IBTs (indirect cost charge).

Group 1 b): Same as Group 1a, but the customer contract and billing is setup between the home company and the customer in the home country (IBTs are sent to host country to conduct a project onsite at customer's subsidiary). In this case the host company is not involved and there is no cross-charge of costs. This group will typically be at risk in terms of creating a PE for the home company

Group 2: activities will be restricted to non-revenue generating work (attending meetings etc.). No cross-charge of costs

- Home company and host company in host country are related parties, subsidiaries of the headquarter located in country XYZ
- When travel to the host country is required, the employee will work be supported with a third party immigration provider to obtain the necessary visa or work permit.

Companies will also need to decide whether they are willing to implement a one size fits all scenario, e.g. assign all employees in substance and form after 30/60/90 days of presence, or if they are willing to establish a country specific risk profile. Following the latter strategy has proven to be more effective for us since setting up an assignment is not always the solution. In some countries a registration process is sufficient, and in other regions (e.g. MENA) the assignment set up is not recognised and all efforts to mitigate potential risks - such as integrating the employee into the host entity to mitigate PE exposure - are in vain if such an approach is followed. Furthermore, a country specific risk profile can help to optimise the staffing procedure for international projects if high risk country combinations can be excluded upfront. If an assignment set up is chosen to mitigate PE exposure it is also important to implement a global employee exchange policy that sets clear rules and guidelines of how intercompany recharges are operated.

Examples for this are country combinations where no work permit may be required, or corporate tax exposure is limited due to a lack of a service PE clause in the double tax treaty.

The risk decision process will be influenced by the internal risk tolerance, historic audit results and industry trends amongst peers. Once this has been

thoroughly examined a risk decision can be taken on a country combination level which should balance risks, business needs and employee requirements to ensure compliance for the company.

Please note: Some companies apply certain thresholds before compliance processes are triggered and executed with regards to taxes, PE exposure etc. We strongly recommend not to apply a threshold approach for immigration matters, but to ensure compliance as of day one since non-compliance can be considered a criminal offence and might have a severe impact on the company's reputation and the ability to obtain work permits in the future. Companies should evaluate if a pre-travel assessment is required to achieve immigration compliance.

Global Mobility Compliance Calendar:

Monitoring IBTs movements and informing employees about compliance regulations in specific countries is critical to obtain control of the IBT population. This is why SAP has developed the Global Mobility Compliance Calendar (GMCC) which extracts trip data from the travel expense system and informs employees about critical thresholds via email workflow based on the country risk profile. The employee is asked to validate trip data and provide further details such as the revenue classification (revenue enabling / revenue generating), type of activity (work, travel, training etc.) and the state/province if required.

The country specific email alert also contains a short summary about the legal background and why an action is required for the employee including a dedicated contact for follow-up questions.

All trips are pre-filled with a start and end date, as well as the country of destination, to ensure the additional administrative effort for the employee is minimal. Validating a trip typically takes less than one minute. The intuitive SAP Fiori Interface and mobile first experience (same look and feel from any device) has been key to get the employees' buy in to participate in the process.

The data which is captured through GMCC can then be used for follow-up processes, such as automatic tax withholding and remittance through an in-house shadow payroll system. It also serves as a database to identify employees which have become taxable (accidental IBT expats) or that require country

specific compliance services (town-hall registration, tax-id number etc.).

Roll-out Training etc.

Critical to the success of rolling-out a global compliance programme for IBTs is the ability to segment and successfully communicate the right messages at the right time to stakeholders. Taking the programme at SAP as an example:

Employees

The entire compliance programme rests on the ability for us to gather and accurately assess travel information from affected employees, whilst minimising their input and administration. The implementation of our GMCC, being linked also to expense records, means we can accurately identify who needs to provide information and why, and thereby minimise the communications and roll-out training to only this group. Looking at other organisations, there have even been incentive programmes put in place to reward full compliance with the reporting requirements and, conversely, penalties against individual per diem allowance entitlements for non-compliance. This is likely to be a company-specific decision on how the programme is to be rolled out.

Project And Line Managers

Regardless of the chosen roll-out method and programme, it is key to obtain the buy in and support of project managers and line managers. Ultimately, the tax costs of any compliance programmes will hit their project codes or cost centres, whilst any risk of non-compliance will fall similarly. Educating and communicating with this group can help to improve employee compliance with reporting requirements later on.

Payroll Leaders

Downstream reporting of IBT taxation falls largely upon the payroll department. At SAP, we have a global payroll governance structure which allows us to distribute reporting and allocated income for taxability down to the local payroll level, but there is still a level of local reporting, registrations and some external tax adviser assistance required. Roles and responsibilities for taxable and non-taxable IBTs should be established up front in line with the legal/tax review process and clearly communicated during the roll-out phase. Periodic checks and audits should be made to ensure the programme is working as intended.

Staying On-Top And Ahead Of The Game

Actively monitoring the IBT population through reporting and analytics enables the company to monitor and mitigate known risks as well as to develop policies with respect to internal risk tolerance.

Developing an internal database which summarises country specific compliance requirements in an easy to consume format, enables project managers to stay on top of rules and regulations and plan mobility costs in advance.

Having access to the data running through such a compliance programme can also enable project managers to add much more value to the business. In relation to effective workforce deployment, being able to cross reference all tax and immigration rules (together with, for example, typical immigration processing lead times) could enable a faster deployment of staffing to a project. For example, if a project requires 10 engineers to travel to the US at short notice, it is very valuable to be able to select not only the engineers with the right skills set and willingness to work overseas, but also the amount of time it will take to clear their US visa processes and/or take into account the likely tax outcome of a particular engineer's move (for example based on home/host country combination). Adding this kind of foresight is only possible based on a robust data collection and compliance programme but can transform the economics and commercial side of a project. This truly enables a business traveller compliance programme to add value back to the business.

Deloitte Commentary On Minimum Wage Application

How "international" is the German Statutory Minimum Wage?

Business travellers and seconded employees are subject to the German Minimum Wage Act.

Employees seconded from abroad, temporary overseas project workers and business visitors from overseas group companies – German groups are certainly asking this question already: Do we have to ensure these categories of employees are paid the German statutory minimum wage?

Basically, the answer is yes. According to the German Minimum Wage Act (Mindestlohnengesetz, Mi-LoG), every employer having its business seat in Germany or abroad, is obliged to pay the statutory minimum wage to all employees

being employed in Germany, i.e. on German territory. In this context, the German Minimum Wage Act does not provide for any exceptions for employers having their business seat abroad which assign employees to Germany. Likewise, the German Minimum Wage Act does not make any difference in terms of the assignment period. Hence, the minimum wage requirements even apply for business travellers who visit Germany only for a relatively short-term (e.g. in terms of a one-day business trip). Correspondingly, the German Federal Ministry of Labour and Social Affairs has confirmed upon request that the German Minimum Wage Act has to be applied to employees who work only short-term in Germany, provided that the employment takes place in German territory.

Even in cases where business travellers enter Germany only for the purpose of attending a seminar or training, the applicability of the German Minimum Wage Act seems to be inevitable. Although there is an opinion in legal literature – referring to the concept of working time according to the German Working Time Act (Arbeitszeitgesetz, ArbZG) – which expresses a different opinion, the competent German authorities (Ministry of Labour and Social Affairs, Customs Office) have confirmed that seminars as well as trainings are to be considered as working time and have to be remunerated based on the minimum wage.

It goes without saying that this does not only lead to the financial implications of the minimum wage (currently EUR 8.50 per hour), but also makes relevant other provisions of the German Minimum Wage Act, such as liability rules and various reporting and documentation obligations.



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