International Assignments – Get It Right, You Have Everything To Gain!

As little as twenty years ago, a phone call from the Netherlands to Belgium, two neighbouring countries, cost a small fortune and had to be limited to keep costs down. A trip to a faraway country meant leaving a forwarding address behind to keep in touch, where mail could be sent to for you to pick up when you arrived, providing it arrived before you did.

Today with the internet at our disposal, VOIP, Skype, social media etc., the world has become a smaller place for individuals and businesses.

Businesses are increasingly expanding across the globe, making use of the opportunities and assets each location has to offer them and with that expansion comes the challenge of moving people. The increased ease and speed of communication is however not only available to individuals and companies. The authorities also have these options at their disposal and they are sure to make use of them and talk with one another.

When you move employees across the globe, don't forget that the authorities generally know at all times who is where and to what end they are there. For example, the Australian tax and immigration authorities have recently agreed to share data. You therefore have every incentive to get it right when moving your people in order to avoid any unwanted setbacks, both for your assignees and for your company.

So what are the key concepts you need to think about when moving employees around the world?

1. Immigration

Entrepreneurs want to get on with business. You often hear people saying 'It should have been done yesterday' or that a person 'should have been here yesterday'. Although reaching your goals as quickly as possible is a good ambition to have, when it comes to immigration, it pays to pause, think and get it right first time.

Several years ago, a company had won a large contract to provide its services in an African country. It meant an equally large amount of revenue for the company and it would permanently put that company 'on the map' for years to come in their field of expertise. The champagne was already flowing when the news came in that the contract had fell through, why? The company had not done its homework or sought advice. They had gone ahead and put people on the ground only to be found to be non-compliant with local immigration regulations. Employees were arrested and deported and the company itself was banned from operating ever again in that country. The contract which could have been their greatest success had they gotten it right, had become their greatest downfall because they didn't.

Each individual also needs to be looked at carefully. Europe generally (and currently) has open borders for its inhabitants, but only as long as these individuals are also nationals of another European country or are married to an EU national. For example, moving an employee from France to Belgium does not guarantee that you do not need to consider immigration formalities such as work permits or other immigration documents. When this person is not a European Union national (e.g. an Indian or Australian national), the paperwork has to be right or your employee will not be able to live in Belgium, much less perform the duties you are expecting them to perform for you and why you sent them over there in the first place.

2. Labour Law

Labour law requirements both international and domestic, are often forgotten when organising an international move. It is often assumed that you can pick and choose which labour law rules you can apply to your employment relationship and that all others can be ignored, when in fact, your employee will generally always be able to call on the strongest protection available to them in home and host location as well as the choice of applicable legislation included in their contract.

For example, an American company has sent an employee to Belgium. The employment contract stipulates that Canadian labour law applies. A dispute arises between employer and employee. The employee will be able to bring their employer before a Belgian labour court and call on the stronger protection that Belgian domestic labour law provides for employees. As an employer you may find yourself in the position where you have to defend yourself in an overseas country before an overseas court in light of legislation you are not at all familiar with.

Individual countries may also have specific labour law requirements and formalities which employers have to fulfil when putting their personnel on the ground in those countries. For example, a foreign employer who wants to put members of their personnel on the ground in Belgium to perform specific duties there will need to submit what is known as a 'Limosa-notification' to the Belgian labour law authorities. When an overseas company wins a service contract for a Norwegian client and wishes to send people to Norway to perform duties there, the contract will have to be registered in Norway, and each time an employee is sent to Norway they will have to be registered and linked to that contract. Each, and every country has their own particularities which, when not complied with, can lead to nasty surprises, which can be at best financial penalties, and at worst a ban on performing further services.

3. Social Security

An equally important concept to consider is social security, often described as the 'forgotten tax'. As a cost for both employer and employee, it is (or can be) a significant cost-element which you cannot afford to ignore.

As a rule of thumb, countries will claim the right to apply their domestic social security legislation to all individuals who perform their services within their territory. For an individual who lives and works in the same country, that makes perfect sense. But for someone who does not live and work in the same country, or who works in multiple countries at the same time, maybe not so much.

Depending on the facts and circumstances, different rules will apply to determine the claims staked by different countries.

Within Europe, EU-Directives will mostly govern these discussions, based on the principle that although the basic rule should be that an individual's income should be subject to social security where they work, people also prefer to contribute to the social security scheme where they live. As such, extremely simplified and exceptions notwithstanding, as soon as an individual performs more than 25% of their duties in their country of residence, that is where they will typically contribute. If they do not perform at least 25% of their duties in their home country, it is possible that the right to levy social security contributions will revert to the country where their employer is located.

When other non-EU countries are involved, each case needs to be analysed individually. Which countries are involved, have these countries entered into bilateral agreements or not, and if so, what do these agreements cover (contributions, benefits, or both)? Sometimes there may be no such agreements, resulting in there being no referee to stop one country from claiming contributions and as an employer you may have to pay contributions in both or more than two locations.

The contribution rates in different countries can vary from 45% employer contributions on an uncapped base to no contributions at all. To benefit from available 'referee-rules', the right paperwork will need to be in place. When planning to send an employee overseas, you need to consider what the rules are and what you need to do to be compliant with those rules. For example, when sending an employee from the UK (13.8% employer contributions) to France (45% employer contributions), you do not want to find yourself in the position where you assumed you would only have to pay 13.8% and then get presented with an additional social security cost up to 45% and penalties because you did not apply for a Form A1 or because the intended secondment scenario which you had in mind, turns out to in fact, be a multi-state worker resulting in the application of a different social security scheme.

4. Tax

The tax implications of an international assignment are many, not just for the individual but for the company as well.

a) Individual Perspective

Countries tax in different ways, mostly they either tax an individual because they are resident or because they have earned income which has its source within the domestic territory. Some countries also tax all individuals who are nationals of that country (e.g. the USA) regardless of where in the world these individuals are located.

When two countries or more claim the right to tax the same income, your first reaction should be to consider whether the countries involved have signed a Double Tax Agreement (DTA).

When this is the case, the DTA will act as a referee forcing one of the countries to give up their right to tax that income. For employees, the typical rule will be that the country where the duties are performed is entitled to tax the income, unless:

- The individual spends less than 183 days in that country AND
- The cost of the individual's employment is not borne by an employer in that country AND
- The cost of the individual's employment is not borne by a permanent establishment the employer has in that country.

However, the wording of each treaty may vary, so the relevant treaty always needs to be consulted.

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Please note the AND after each of the first two bullet points above. There is a myth that circulates which states that when an individual is present in a country for less than 183 days, their presence there has no tax implications. This is a dangerous assumption and almost always not true!

Some countries have also added specific agreements in their bilateral agreements with regards to individuals regularly crossing the border between the two nations.

For example, at the beginning of 2015 Belgium and Luxembourg agreed to add a Protocol to their DTA stating that where an individual resident of Belgium, who has a contract with a Luxembourg employer and who normally works full time in Luxembourg (i.e. subject to income tax in Luxembourg for duties performed in Luxembourg) will not be subject to tax in Belgium on income relating to duties performed in Belgium instead of in Luxembourg for up to 24 days (and vice versa for Luxembourg residents with a contract with Belgian employers). As long as the individual performs a maximum of 24 days in Belgium, the two countries have agreed to pretend that the individual worked in Luxembourg full-time.

When there is no DTA available, the individual will have to depend on the domestic legislation of each country to provide for relief for double taxation of (a part of) their income. This will not always be available.

Once it is determined which country is entitled to tax the income of the individual, you may also wish to consider optimising the salary package. For example, providing a benefit in kind instead of a cash allowance may be more advantageous from a tax perspective, and some countries (e.g. Belgium, France, the Netherlands & Luxembourg) have special 'expat regimes' which provide for a more advantageous taxation of income in comparison to the ordinary rules of taxation. Some of these regimes have to be applied for within a certain term, so you do not want to miss this deadline!

b) Corporate Perspective

Payroll

It is often assumed that keeping assignees on the payroll in their home countries means there are no withholding obligations in the host country. Unfortunately this is often a dangerous assumption.

More often than not there will be local obligations to report and account for local taxes from day one and on a regular basis, even though ultimately the individual may not be (fully) taxable in that location. When there is a dual withholding obligation, this causes a cash flow disadvantage. Local rules should therefore always be analysed, and potential options for optimisation/relaxation explored.

Corporate Residence & Permanent Establishments

Although your company is located in and is a resident of a certain country, sending people to another country may create a local presence to such an extent that the company also will be subject to local corporate taxation. Whether or not this is the case will depend on their purpose of being there, as well as their authority to act on behalf of the company, does it or does it not create a 'fixed place of business' is usually the criterion to analyse. This whole area is currently under particular scrutiny by the OECD and tax authorities so do look out for future changes.

Recharge Of Cost

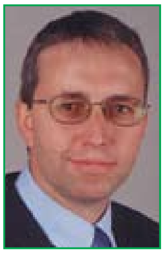
From a business perspective, cost and benefit go together and should be located in the same place. However, this relatively simple business rule can have far reaching consequences. As mentioned above it can jeopardise potential treaty exemption for the individual.

In certain circumstances it can also trigger a non-recoverable VAT-liability and you will have to ensure that you are compliant with both international and domestic transfer pricing regulations.

International assignments have to be approached holistically and are surrounded by far more points to consider than those only from an HR perspective. All department teams (HR, Tax, Finance, etc.) need to keep in touch at all times with one another and work together.

When operating in an international environment, you need to get things right. When you don't it could prove quite costly, not just financially but also commercially, both internally and externally.

Please do your homework and seek advice before you start, you have everything to gain!



Andrew Bailey
Andrew Bailey is National Head Of Human Capital at BDO LLP. He has over 30 years' experience in the field of expatriate taxation. He is indebted to Alexandra Martin for her assistance with this article. BDO has offices in 154 countries and is able to provide global assistance for all your international assignments. If you would like to discuss any of the issues raised in this article or any other expatriate matters, please visit our website at www.bdo.co.uk/services/tax/human-capital/expatriate-tax-advice or contact Andrew Bailey on +44 (0) 20 7893 2946, e: Andrew.bailey@bdo.co.uk