ASSIGNING EMPLOYEES OVERSEAS

WHAT COMPLIANCE MATTERS SHOULD BE ON THE AGENDA?

There are many components to a successful assignment but the greatest risk to the business comes from compliance obligations. Tax is one of the biggest compliance risks but you must first ensure your employee (and companions) are eligible to live and work in the host country. It's also advisable to consult an employment lawyer to understand the legal impact on the employee/employer relationship.

STRUCTURING THE ASSIGNMENT

Your commercial goals will dictate the assignment structure but, if there is flexibility, you may be able to reduce costs and administration by making modifications. The timing and duration of an assignment can have a major impact, as can the decision whether to second the employee temporarily or transfer them permanently to the host country.

REMUNERATION PACKAGE

Providing an employee with expatriate allowances and benefits is expensive but it may not be necessary in all cases. Think about what is appropriate to the specific individual whilst maintaining an awareness of standard practice in your industry and location.

A tax advisor can help structure salary and benefits to take advantage of expatriate tax reliefs, maximising the employee's take-home pay for the minimum cost to the employer. You should summarise all amounts in an assignment letter to avoid disagreements. Finally, don't forget about the potential impact of exchange rates, especially when benchmarking salary.

TAX RESIDENCE

Residence status has a major impact on an employee's tax liability and on your obligations as an employer. For short-term assignments, residence in the host location can often be avoided. For longer periods, residence may be inevitable but careful planning can reduce the impact of becoming resident. In any event, a good understanding of the rules is vital if nasty surprises are to be avoided.

TAXATION OF INCOME AND BENEFITS

The employee will want to know how their income will be taxed during the assignment. The answer differs for each component of pay. Salary, assignment allowances, bonuses, benefits-in-kind and share-related earnings may all be taxed in different ways. Items such as stock options, restricted shares and LTIPs should be looked at carefully because a plan designed in one country may be taxed very differently in another, with a major impact on the employee's net remuneration. An employee may be subject to tax in both the home and host countries during an

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assignment. They will be seriously disadvantaged if the same income is taxed twice. Thankfully, tax relief is available in most cases but the employee will almost certainly need help in order to claim the relevant relief.

PAYROLL, REPORTING AND WITHHOLDING

Regardless of which payroll physically delivers earnings, the employer is likely to have a reporting and/or withholding obligation in both the home and host countries. In some cases, it may be possible to be exempt from home or host country payroll reporting. This requires careful planning and approval from the relevant Revenue authority. In other cases, it may be possible to claim relief via the home/host payroll for payroll taxes paid in the other jurisdiction. This will improve the employee's (and possibly the company's too) cashflow position as it can accelerate the processing of tax relief which would otherwise only be claimed when the tax returns are filed. Again, this requires careful implementation and approval from the relevant Revenue authority.

Preferably, the withholding in each country will match the eventual tax liability, otherwise the employee can face a substantial liability or refund at the end of the year. For this reason, you should ensure that the employee and employer are both receiving the same advice. It is also essential that both payrolls exchange information about the payments and benefits they are each providing to the employee, otherwise taxable income can be overlooked which can result in reporting issues and potential compliance failure penalties for the company.

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SOCIAL SECURITY

It is often possible for assignees to continue paying contributions in their home country, with a corresponding exemption in the host country. You should verify whether this is possible and ensure appropriate documentation is in place. Permanent transferees usually pay contributions to the host location. The employer's liability always follows the employees. The difference between home and host contributions can be significant so planning may be possible in this area.

TAX EQUALISATION OR PROTECTION?

As the employee receives additional allowances and benefits during their assignment, their tax liability is likely to increase. There can also be problems if the employee moves from a low tax to a high tax jurisdiction. Some employers prefer to take tax out of the equation so that the employee's decision to accept an assignment is not unduly influenced. Tax protection and tax equalisation are two different ways of alleviating the tax impact to the employee. However, they can be complex and costly to implement so they are not right for every situation.

PERSONAL TAX MATTERS

The employee's personal tax affairs will become complicated as a result of their assignment and there are many pitfalls for the unwary expatriate. In many cases they will be required to submit tax returns in two or more jurisdictions. Providing tax assistance can reassure the assignee and help keep them focussed on the job. It also ensures they receive the maximum value from your carefully designed remuneration package. If you offer tax equalisation or protection then it is actually you, the company, who stands to benefit from a lower tax bill.

IF YOU OFFER TAX EQUALISATION OR PROTECTION THEN IT IS ACTUALLY YOU, THE COMPANY, WHO STANDS TO BENEFIT FROM A LOWER TAX BILL.

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