REMOTE WORKING ABROAD – KEY TAX ISSUES

The pandemic has accelerated our ability to work remotely resulting in a shift to flexible working including ***international remote working***. Post-pandemic, employees want this flexibility to continue. Davyd Fisher, Grant Thornton, summarises below the key tax issues he discussed with Clive Wratten (CEO, the BTA) and Ami Naru (Partner, Travlaw) of which employers must be aware.

What are the challenges and risks with international remote working?

An individual's tax position is often dependent on where they are living and working, and this often feeds into their employer's obligations for payroll and social security. Employees who therefore work in a different jurisdiction to their employer risk generating new obligations abroad for themselves and their employer. Due to the big differences between rules, rates, and administration, this can lead to additional obligations for HR, finance, tax and payroll teams.

Social security rules and agreements differ to tax, adding a separate dimension to the compliance work required. Existing social security agreements (such as with the EU and some other countries) can allow employees who are assigned abroad by their employers to remain within their home scheme but there is a debate over whether this would extend to an employee-led period of remote working. Not all agreements cover the case of 'multi-state workers', who are not formal assignees but instead regularly work in more than one jurisdiction (such as frequent business travellers).

Similarly for companies, the activities of their people can affect where they have corporate reporting and tax payment obligation. Employees working abroad risk creating a 'permanent establishment' leading to corporate tax becoming payable.

These concerns spread outside of the world of tax, with other complications being raised, such as:

- immigration requirements
- employment law - different statutory entitlements and labour laws
- data protection and cyber security - rules such as GDPR regulate transfers of data in and out of certain jurisdictions
- employment benefits - are existing medical and insurance schemes still valid? Will the pension allow contributions from someone based overseas?
- software licensing and regulatory obligations - do these extend abroad?

How are businesses responding to international remote working?

During the latter part of 2022, the Office for Tax Simplification (OTS) asked for feedback on how businesses were dealing with the new working landscape. On 20 December, they published their hybrid and distance working report, summarising the experiences and suggestions of 425 people and businesses.

It was reported that all the large businesses the OTS spoke to had introduced policies with respect to allowing their staff to work for a short period in another country from their usual place of work. This was driven by employee demand.

While the amount of time permitted to work overseas varied, employers typically permitted overseas stays of 10-30 days per year, with a small number being prepared to consider longer periods of up to 90 days. The most common pattern the OTS observed was up to 20 overseas working days in a year. A year was often a rolling 12 months, but sometimes a calendar or financial year. Many also required that the 20 days be split into not more than two occasions to limit the administrative burden of the policy.

Most employers with longer term overseas workers established a local subsidiary to employ individuals or asked an existing subsidiary to employ them. A small number utilised global employment companies and/or an 'employer of record' to hire the individual on their behalf. While some respondents felt these intermediaries provide a useful service, others cautioned that risks would remain with the ultimate engager.

Although it can seem daunting, businesses do not need to wait for fully formed policies, or plans which completely eliminate risk. Great progress can be made just with careful tracking of people working cross border, and a requirement that people seek permission from a central team before working internationally. Different levels of risk can be applied to different groups, based on risk factors such as seniority, income level, duties performed and existing connections to the host country. As experience grows you may get a better sense of your key risk areas or jurisdictions and can then undertake specific detailed review, targeting your advisory spend where it is most needed.

International hybrid working – the tax and social security risks?

The three main direct tax risks and social security risks are:

1. Permanent Establishment trigger: a corporate tax presence of the employer is inadvertently created in the overseas territory by virtue of the employee working remotely
2. Employment Tax withholding: the employee creates an obligation on the employer to withhold employment taxes in the host location
3. Social Security Withholding: the employee creates an obligation on the employer to withhold social security in the host location

Depending on the territory, each of the above obligations often has their own set of complex rules and considerations to follow, which then may interact. Specific advice is therefore needed based on the country in which the employee is remote working and it is common for employers to have a "green" or "red" list of territories where advice has been sought and the obligations (if any) have been clarified.

As a result of the areas outlined above, companies must take time to increase their awareness of the risks which may arise and develop an approach that works for them and their employees. Having an international hybrid working policy is a great first step, and developing a quick process to risk assess new requests enables firms to focus their attention on key risk areas or key employees.

The Grant Thornton Global Mobility team has spoken to many companies trying to balance the great benefits of flexibility with efficient processes to mitigate the common risks posed by employees working cross border. This could be companies dealing with their first few requests, aware of the precedents these will create, or they can be proactively creating a remote working policy to enhance their employee offering.

Grant Thornton can help you develop policies and processes for your organisation that reduces the risk of remote hybrid working to acceptable levels.

If you're interested in discussing how your business approaches remote working requests, or a demonstration on Grant Thornton's technology solution for managing these complexities, get in touch with Davyd Fisher.

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