Issues surrounding business travellers
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What is the issue?
Global business travellers potentially trigger compliance and withholding obligations.

These can be multiple obligations (income tax, social security, immigration, and corporation tax), which can impact at either, or both the individual and the corporate level. Different tests apply to different taxes and places, but broadly all traveling employees making more than just an occasional annual visit increase these exposures. Historically, this has often fallen below the radar of the employer, the employee, and the relevant tax and immigration authorities. While most large groups with mobile workforces have a short-term relocation or assignment policy, these typically don’t take account of business travelers. By exercising control of their business travel, corporates can tap huge inherent value from the aggregated data.

Why is this a hot topic?
Immigration and tax authorities are increasingly sharing information both within countries and between them, raising the likelihood that business travellers and their employers will find themselves in the spotlight. In a corporate context, while immigration requirements have always been taken seriously, awareness of the tax and social security exposures associated with business travellers have been somewhat hazy, unquantified and crucially, unowned within organisations.

Post-travel

Pre-travel
Tax and immigration authorities around the world are turning their attention to business travellers, as they perceive a relatively high level of non-compliance. For business travellers, there is increased risk as a result of:

1. Increased sharing of data between national authorities such as tax and immigration authorities;
2. Improved digital and analytical profiling by various authorities;
3. Improved global data exchange through initiatives such as BEPS and CRS;
4. Evolving legislation and regulation such as OECD economic employer;
5. Local regulatory requirements such as CRDIV; and
6. Complex and fast changing immigration environment.

**Canada**
Provision of relief from payroll withholding obligations for qualifying business travellers is only available once a business is registered in Canada and has obtained Employer Certification, which came into effect 1 January 2016.

**U.S.**
The proposed Mobile Workforce State Income Tax Simplification Act of 2015 (H.R. 2315) creates a 30-day threshold before a state can levy income tax on the employment income of a non-resident.

**Illinois**
HB 675 introduced which will, if passed, permit Illinois to tax non-residents on Illinois-sourced employment income and allow Illinois residents to claim a credit for taxes paid to other states on employment income.

**UK**
HMRC continue to focus on business travellers and as part of any employer review will ask about business travellers as a matter of course.

**China**
Clarity provided regarding documents required to be obtained by business travellers. Enforcement of immigration laws with detention or imprisonment.

**India**
Information sharing between Indian immigration and tax authorities. Limited ability to claim short-stay exemption under the local tax laws, treaties due to increased employer scrutiny.

**Singapore**
Link between immigration and tax authorities (IRAS).
What are the compliance risks?

**Income tax**
Global business travellers can potentially trigger a compliance or withholding obligation at an individual or corporate level. Such employees are potentially exposed to another jurisdiction’s tax regime and can have a tax liability in both the home and destination countries. Tax treaty exemption may not always be available or even where the same is available, there could be filing obligations for claiming the said exemption. In the event the employee is taxable, employer obligations may include reporting of income, withholding and tax remittance. Many countries have not established a de minimis reporting threshold. Standard deductions and/or personal exemptions may only provide a de minimis limit for determining when a tax filing obligation arises.

**Social security**
Countries may have independent social security rules applicable to business travellers, hence it is increasingly difficult for a business traveller or their employer to understand the social security liabilities in the visited countries. Authorities are becoming more interested in collecting the social security contributions due by business travellers. Depending on where the individual is coming from or travelling to, social security exemptions or concessions may be available. These need to be considered as they might lead to significant cost savings and/or simplified administrative procedures.

Unlike income tax, there is no concept of “merely incidental duties” for social security purposes. Social security contributions might become due earlier than tax or even in cases where no tax is due in the visited country. Even in cases where social security is not due, certain supporting documents might need to be obtained as proof (for example, certificates of coverage and exemption applications).

**Permanent establishment**
Corporate income tax can be triggered when a non-resident entity
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creates a taxable presence (permanent establishment or PE) in another jurisdiction. Generally, a taxable presence is created by a non-resident company when it has any of the following:

1. A fixed place of business in the other state through which the trade of that company is carried on.
2. An agent, other than one who is of independent status, who habitually exercises the right to conclude contracts on behalf of the non-resident company.
3. Some treaties also contain a "service PE" clause.

As a result of PE, the non-resident company will be taxed on the profits that are generated through the activities in that tax jurisdiction. The employees of an entity with a PE may not be eligible for tax relief in the host country under the Dependent Personal Services article of the relevant income tax treaty. In addition to compliances to be carried out by the PE, there is a potential exposure to tax audits focused on determining the revenues associated with the activities conducted in that jurisdiction.

Immigration

With border controls globally becoming more stringent, the risk of non-compliance as an organisation, or of an employee being held at the border, warrants a more pro-active approach by organisations to immigration compliance management for business travellers.

Immigration Authorities are becoming more stringent in the way they handle immigration abuse. Now more than ever, it is essential for travellers to have the necessary and correct permission before travelling overseas, regardless of the length of the visit. Often the activities permitted for business travellers are very limited and will vary from country to country. The amount of time a person can visit a country as a business traveller varies according to the traveller's nationality and the country they are visiting. Often organisations are not aware of the permitted visit lengths and the risk of overstaying by a traveller is high in absence of prior assessment and/or tracking of previous trips.
How are the authorities approaching the issue?

The approach varies from one tax authority to another. For example, the State of New York has been requesting many financial services companies present in multiple countries for the expense reports and travel records for the highest paid employees. Having identified unpaid State Taxes in relation to business travellers, the authorities may try to extrapolate the liabilities to tax, interest, and penalties across the broader employee population resulting in significant demands on the employer.

By contrast, the Canadian tax authority can request for details of business travellers when a company seeks a refund of withholding tax levied on payments to non-residents of Canada. This query is made on the grounds that if a payment is made to non-Canadian entity and taxes were withheld under a particular regulation, then that entity must have had individuals travel to Canada.

For many immigration authorities, the data is more immediately available from passport swipes on entry and exit allowing them to quickly identify business travellers who have breached immigration rules. Action may be taken the next time the same travellers attempt to cross the relevant country’s border.

What are the external challenges to being compliant?

The below challenges also make it very difficult to comply with business traveller obligations:

• lack of ownership or awareness within the organisation;
• internal and third party systems, which are not designed to address the business traveller challenge; and
• the systems and rules applied by the tax authorities in individual countries. The rules usually assume the physical presence of an employer in the country concerned. However, if neither the employer nor the employee have a local presence, it may not be easy to withhold income tax or make social security payments into the system.
Designing a policy

Several decisions are to be made while designing a policy. Companies should start with defining business travelers to determine what norms for travel (e.g., purpose, duration, nature of entities in the host locations) are within policy guidelines and what is an acceptable level of risk for the organisation. Successful implementation of the policy demands a robust process and effective communication between all stakeholders, e.g., HR, Tax, Finance, Business Units, Employees, etc.

- Consider compliance actions based on highest volumes of travel
- Determine who is bearing the incremental tax cost
- Consider a threshold for administration—e.g., managing trips at > 15 work days in one location
- Prioritise non-treaty country combination travel or travel to known permanent establishments
- Consider prioritising states that are at higher risk and aggressive in pursuing employer business traveller compliance
- Segment employees by grade level and concentrate actions to account for highest earners
- Customise the de minimus rules for various groups of employees: days/location/executives
- Discuss tax support and preparation for employees
What opportunities beyond compliance does business travel analytics bring?

One of the reasons that companies haven’t focused on business travel compliance in the past is because it cuts across multiple functions (tax, legal, finance, operations, procurement, HR, payroll, and internal audit) so it hasn’t been the exclusive responsibility of one department. However, once a company decides (or is forced) to tackle the tax and immigration issues of its business traveller population, this very multiplicity of stakeholders offers a wide range of opportunities for potential usage of the data. From a corporate perspective the most interesting area is PE and the attention paid to the same by tax authorities will inevitably increase as companies start to submit Country by Country Reporting under the OECD’s Base Erosion and Profit Shifting (BEPS) initiative. BEPS increases pressure on global organisations to demonstrate and implement a robust process to identify where they have established a corporate PE for tax purposes. The outputs of Business Travel Analytics can be used to identify those countries in which the company has a PE risk so that this can be pro-actively managed (example consideration given to who goes where and when before trips are undertaken). Similarly, an individual business traveller can be provided with instructions on activities that can and cannot be conducted while travelling.

In relation to VAT, data mined from the travel and expenses systems can help VAT specialists identify the potential for VAT refund claims. Given the volumes of business travel in some organisations, this has the potential for being a significant tax saving.

What does the future hold?

The good news is that modern analytics capabilities mean that business traveller compliance can also make a positive contribution to cost and opportunity management. No doubt the future holds even greater challenges as tax authorities will potentially move on to the “virtual business traveller” ie people using technology to work remotely.
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