Short Term Business Travelers (STBT)
The Hidden Risk

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Agenda

• Overview of assignment life cycle
• Who are Short Term Business Travellers (STBT)
• Current trends
• Risks and challenges associated with STBT
• Short-term Assignment (STA) vs. STBT
• Inbound STBT
• Outbound STBT
• Summary
• Way forward
Overview of Assignment Life Cycle
International Assignment Life Cycle

- Immigration
- Assignment tax cost projections
- Tax briefings
- Social security certificate applications (where applicable)
- Payroll compliance
- Tax return preparation
- Tax equalisation calculations
- Bonus withholding calculations
- Equity withholding calculations
- Repatriation
- Trailing liabilities
Who are STBTs?
Who are STBTs – in a nutshell

Employees who travel outside their base location for business AND who are not on a formal assignment or transfer.
Some characteristics

- Travelling periods of varying lengths and to multiple countries
- Compensation (including travel expenses) is delivered from the home employer
- Not a traditional assignee tracked by Human Resources, hence frequently fall below the radar
- Not covered under a short-term assignment policy and no cross charge to the overseas business.
- Do not cease their tax residency in home country.
Current Trends
Current Trends

• Traditional time-bound assignments no longer favoured due to:
  ✔ Rapid technological advancements.
  ✔ Rising local talent resource constraints.
  ✔ Ever-increasing focus on cost-cutting measures.
  ✔ Inherent complications associated with managing expatriates and their families abroad for long periods.

• Increasingly, short-term assignees and business travellers are now being viewed as an option of choice.

• Trend especially noticeable in growth economies of Asia – significant shortage of local skilled labour is unable to meet the requirements of rapidly expanding MNCs.

• This phenomenal growth in short-term business travellers has given rise to a number of issues from HR, governance and compliance perspective.

• Ironically, many companies are unaware of these issues and those which are, continue to face huge difficulty in addressing them.
Current Trends (cont’d)

Are you one of them?

Are you prepared?
Risks and Challenges associated with STBT
What are the issues involved

- Immigration Compliance
- Risk of Prosecution
- Budgetary Risk
- Business Reputation Risk
- Individual Tax
- Employer Reporting/Withholding
- Corporate Tax
- Unhappy Employees

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Tax challenges

Each country has its own tax laws and interpretations
  – Both home and host country taxation rules need to be examined.
  – Threshold limits for short-stay exemption tend to vary and are often determined differently (day counting, income level etc).
  – Typically, such an exemption may also be linked to the cost charging policies of the employer (e.g. whether employee costs are borne at host location).

Social security issues
  – Countries often adopt complex treatments and have different methods of calculation.
  – Potential cost and cash flow implications for both the employer and the employee.
  – Domestic exemption or totalisation agreements may also need to be looked at.
Tax Challenges

Misinterpretation of exemption under tax treaties
– Less than “183 days” in host country may not always secure tax exemption for employees in host country!
– Questions to ask:

**Are my business traveller employees eligible for short-stay exemption?**

**What if my employees do not qualify for exemption under both domestic law or treaty? Will they be taxable on country-specific income or worldwide income?**

**What responsibilities do I have as the employer in terms of payroll, reporting, withholding obligations?**
Countries continue to close the revenue gaps

Government spending exceeding revenues

- United Kingdom 20%
- Netherlands 9%
- United States 44%
- Ireland 22%
- Venezuela 51%
- Israel 16%
- Japan 29%
- China 7%
- India 58%
- Australia 9%

1 CIA World Fact Book – 2013
Recent tax authority activity

Canada
- Project Permanent Establishment Concept
- Information sharing between tax and immigration authorities
- Tax withholding reconciliation initiative

United Kingdom
- Short Term Business Visitor program to facilitate tax compliance – recently confirmed as only option to avoid withholding tax at source
- Immigration — new work permit system, with significant consequences for non-compliance; employee bans possible for between 1 and 10 years

United States
- Data sharing between tax and immigration authorities increasing
- Increase in IRS and State Revenue audits

China
- Enforcement of immigration laws with detention or imprisonment

Germany
- Application of Economic Employer concept

Singapore & Hong Kong
- Laws introduced to tax equity income for those leaving the country

Australia
Business travellers coming to Australia from countries with which Australia does not have a double tax agreement in place, must now apply for a Tax File Number (TFN) via the Australian Taxation Office and then file an Australian tax return.
Corporate Tax exposure

• Risk of establishing a Permanent Establishment (PE) in the host country
  ✓ Interplay of corporate tax risk vis-à-vis individual tax exposure.
  ✓ Although the individual employees may be within the short-stay or treaty exemption threshold, their cumulative physical presence in an overseas jurisdiction could create a potential PE exposure!

• Withholding tax issue arising from services by non-residents
  ✓ Possible oversight and non-compliance of companies that receive the services
HR Challenges

• Ensuring correct immigration status for employees
  – Common misinterpretation about the scope of business visa.
  – Definitions of “business” vs “work-related activities” differ considerably across the Asia Pacific region.

• Lack of customised short-term mobility policies
  – Customised short-term mobility policies needed in light of the various situational, cultural, geographic and regulatory considerations.
  – E.g. benefits traditionally provided for longer assignments (housing, school fees, spousal assistance, home leave etc.) may not be appropriate for short-term business travellers.
  – Tax protection vs tax equalisation – which works best?

Remember, one size does not fit all!
Mobility Challenges

Tracking

- Recent surveys suggest that many large MNCs continue to struggle to track employees on business travel.
- To shift the administrative burden, companies often place the onus on the employee to keep track of days spent in different countries and inform HR, when a certain threshold is exceeded.

- But what if the employee does not notify HR diligently? What if the country-specific rules are not adhered to?

- More often than not, the tax risk remains with the employer!
Barriers to complete and accurate compliance

Global, Cross-border
- Different reporting laws and tax treaties
- Increased levels of employee tax exposure
- Inefficient tracking of international travel
- Corporate obligations still exist even where tax treaties may apply
- Increased visibility and coordination from immigration
- Corporate exposure
- Scrutiny of local authorities

Malaysia
- Employer obligations include reporting of income, withholding and tax remittance
- Employees must file tax return
- Administrative challenges in achieving full compliance
- Risks arise because business travel is not being tracked
- Increased scrutiny from tax authorities

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Barriers to complete and accurate compliance (cont’d)

Business Demands

• Emerging Markets Requiring Talent for Growth
• Changing Employee Attitudes
• Cost Pressures – Alternative to Traditional Assignments
• Talent, Development & Learning

Regulatory Compliance

• Tax / Payroll
• Immigration
STA vs STBT – a brief comparison
# STBT vs. Short-term Assignments – a brief comparison

<table>
<thead>
<tr>
<th>Types</th>
<th>Short-term assignment (STA)</th>
<th>Business travelers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration</td>
<td>Typically up to 12 months</td>
<td>Not specific</td>
</tr>
<tr>
<td>Characteristics</td>
<td><strong>On secondment basis</strong>&lt;br&gt;• Render services to the Malaysian entity on behalf of home entity</td>
<td><strong>Attending business meetings, discussions, seminars and conferences</strong>&lt;br&gt;• Inspection of factories&lt;br&gt;• Survey on business opportunities / set up of factories</td>
</tr>
<tr>
<td>Payroll</td>
<td>Home or host</td>
<td>Home</td>
</tr>
<tr>
<td>Immigration</td>
<td>• Professional Visit Pass (PVP)&lt;br&gt;• Employment Pass (EP) 2</td>
<td>• Social Visit Pass (SVP) – No employment activities allowed</td>
</tr>
<tr>
<td>Chargeability to tax</td>
<td>Maybe</td>
<td>Maybe</td>
</tr>
<tr>
<td>Tax exemptions?</td>
<td>60-day or Double Tax Agreement (DTA) – if requirements satisfied</td>
<td>60-day or DTA (if requirements satisfied)</td>
</tr>
</tbody>
</table>

**Employer’s obligations**<br>Maybe – depending on:-<br>• Duration<br>• Whether DTA satisfied
Inbound STBT to Malaysia
Appropriate Immigration Passes
All visitors MUST obtain a visa, either before or upon arrival at the Malaysian immigration checkpoints.

A visa only permits entry and does not allow the holder to perform work activities.

There are two (2) types of work permits:

- Professional Visit Pass (PVP)
- Employment Pass (EP)
Social Visit Pass

Activities permissible under a social visit pass

• Social visit
• Visiting Relatives
• Tourism
• Journalist / Reporter
• Meeting / Conference
• Business Discussion
• Factory Inspection
• Auditing Company's Account
• Signing Agreement
• Doing survey on investment opportunities/setting up factory
• Attending Seminars
• On goodwill mission for students or sitting for examinations in University
• Taking part in sports competitions
• Other activities than above, approved by the Director General of Immigration
## Types of Work Passes

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Employment Pass (EP)</th>
<th>Professional Visit Pass (PVP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purpose</td>
<td>Employment</td>
<td>Short term assignment / secondment</td>
</tr>
<tr>
<td>Tenure</td>
<td>• 1 year to 5 years</td>
<td>• Tenure up to 12 months (maximum) at any given time</td>
</tr>
<tr>
<td></td>
<td>• Renewable up to 10 years</td>
<td></td>
</tr>
<tr>
<td>Accompanying family members</td>
<td>• Immediately family members - Dependant Pass (DP)</td>
<td>• Immediately family members – LTSVP</td>
</tr>
<tr>
<td></td>
<td>• Close family members – Long Term Social Visit Pass (LTSVP)</td>
<td>• Close family members – no pass allowed</td>
</tr>
<tr>
<td>Requirements of candidates</td>
<td>• Minimum monthly salary is RM5,000 (RM2,500 for designated industries)</td>
<td>• No salary requirement</td>
</tr>
<tr>
<td></td>
<td>• Sound mind, no criminal records</td>
<td>• Must remain as an employee of the home company</td>
</tr>
<tr>
<td></td>
<td>• Relevant experience in the position</td>
<td></td>
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<tr>
<td></td>
<td>• Degree qualification by recognizable institution</td>
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</tbody>
</table>
### Types of Work Passes (cont’d)

<table>
<thead>
<tr>
<th>Individual tax implications</th>
<th>Employment Pass (EP)</th>
<th>Professional Visit Pass (PVP)</th>
</tr>
</thead>
</table>
| **• No tax exemptions since it is a long-term local employment.**  
**• Sponsoring entity is the deemed employer and is required to comply to employer’s obligations.** | **• May qualify for tax exemption under 60-day rule or DTA.**  
**• Depending on the duration of the assignment, a notification to the IRB must made for an income tax clearance letter (required by the IRB), where the IRB verifies whether the applicant was previously a taxpayer and/ or had any outstanding tax liability.**  
**• The individual may be issued with an income tax number. Once the income tax number is issued, both the individual and the deemed employer must comply with the tax obligations.** |
Tax exemptions available
Schedule 6 of the Act – 60 days rule

Employment income of a non-resident individual may be exempted from tax if the employment was exercised in Malaysia under one of the following conditions:

**Requirements**

<table>
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<th>Illustration</th>
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<tbody>
<tr>
<td><strong>Do not exceed 60 days in a basis year</strong></td>
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<tr>
<td><img src="image" alt="Diagram" /></td>
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<tr>
<td><strong>Continuous period overlapping 2 basis years must not exceed 60 days</strong></td>
</tr>
<tr>
<td><img src="image" alt="Diagram" /></td>
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<td><strong>Periods together with continuous period overlapping 2 basis year must not exceed 60 days</strong></td>
</tr>
<tr>
<td><img src="image" alt="Diagram" /></td>
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</tbody>
</table>
DTAs - Overview

- DTA is an agreement between two countries with respect to taxes on income and capital, seeking to avoid double taxation by defining the taxing rights of each country.
  - spirit of give and take between the countries
  - compromise between principles and self interest

- As at 31 July 2015, there are 73 effective Malaysian DTAs

- Largely adopted the Organisation for Economic Cooperation and Development (OECD) model, in form and intention, in concluding DTAs with other countries.
DTA – employment income

• Salaries, wages and other similar remuneration taxable in resident State, unless employment is exercised in the other State

• If employment is so exercised, remuneration derived also taxable in that other State unless:
  ✓ Employee is tax resident in the resident state; AND
  ✓ Employee is present in the other State for ≤ 183 days in any 12 month period commencing or ending in the calendar / fiscal year concerned; AND
  ✓ Remuneration is paid by, or on behalf of an employer not resident in the other State; AND
  ✓ Remuneration is not borne by a PE which the employer has in the other State.
Summary of tax implications

- **≤60 days**
  - Tax exempt

- **60 to 181 days**
  - Treaty exemption or Tax as non-resident

- **≥ 182 days**
  - Tax as resident
Employer’s tax reporting obligations
Employer’s Tax Reporting Obligation

- Notification of Commencement of an Employment (Form CP22)
- Return Form of an Employer (Form E)
- Statement of Remuneration (Form EA)
- Monthly tax deduction (MTD)
- Notification of Departure from Malaysia for Period Exceeding Three (3) Months (Form CP21) / Notification of Cessation of An Employment (Form CP22A).
- Withholding Monies (i.e. last month’s remuneration) from individuals who are ceasing Malaysian employment and leaving Malaysia for more than 3 months.
Penalties and Offences

Monthly Tax Deduction (MTD)

• Prosecution under Rule 17, Income Tax (Deduction from Remuneration) Rules 1994 [“The Rules”]

• Fine of not less than RM200 not more than RM 2,000 or to imprisonment for a term not exceeding 6 months or to both

• Type of offences:-
  - Failure to remit by the 15th of the following month
  - Failure to deduct or deduct less
  - Failure to remit or remit less
  - Failure to give complete and accurate information
Penalties and Offences (cont’d)

• Non compliance with Section 83(1),(1A),(2),(3),(4),(5)
  – i.e. Forms E, EA, CP21, CP22, CP22A
• Section 120
• Upon conviction
  – Fine of not less than RM200 and not more than RM20,000*

Or
  – Imprisonment not exceeding 6 months

or both

*Effective year 1 January 2015 (gazetted 30 December 2014)
Employer’s challenges

• Tracking of employees – whose responsibilities?

• Who is responsible in briefing the employees to ensure they understand the compliance matters in Malaysia?

• If the employee’s income is taxable in Malaysia, who is responsible to ensure various employer’s obligations are fulfilled? Who will bear the tax?

• For employees who can qualify for tax exemptions, do we need to file tax returns and comply with MTD?
Employee’s tax reporting and payment obligations
Employee’s responsibilities

1. Report all perquisites and BIKs received from having or exercising employment, as well as other personal income, in the annual tax return (due for filing by 30 April of the following year).

2. Settle any balance of tax payable by 30 April of the following year.

3. Keep records and documents pertaining to the above receipts from employer or third parties for 7 years from end of the year of assessment in which the Income Tax form is furnished for verification during a tax audit.
Employee’s challenges

• Should I be tracking my travel to Malaysia? How many days can I be present in Malaysia before I trigger any tax filing obligations?

• If I pass the threshold, should I file or not file annual tax return?

• Any there any tax exemptions that I can claim in Malaysia, since my income will also be taxed in my home country?

• If I am taxable in Malaysia, how do I file the tax return? Will my employer pay for the tax?

• Who is responsible to brief me on the above? Am I well taken care of by my employer so that I don’t break any law in Malaysia?
Outbound STBT
Appropriate Immigration Passes

- Employer has to ensure that its employees have the appropriate immigration passes to carry out the specific activities in the host countries.
- Timing of the pass application / processing vs business needs, which often means that the employee may be working in the host country before passes are approved. Implications?
- Certain country does not allow the applicant to hold an active work permit from other countries. In this case, how to handle employees who are required to travel to multiple countries?
- If holding work permits, when is the tax trigger point?
- If holding business visa, when is the tax trigger point?
- Should frequency of travel to the particular country be monitored?
Tax exemptions available

- Tax exemptions under host country’s domestic law differ for each country.
- DTA between Malaysia and host country may or may not exist.
- Who is responsible for understanding all these tax rules especially when the employees travel to multiple countries.
Employer’s issues

• Incidental vs Foreign – what are the tax implications?
• Declare or not to declare income derived while on business travel in home and host country?
• If taxable in host country, who will be responsible to ensure employer’s obligations are fulfilled?
• Consequence of double taxation - who will bear the tax?
Employee’s issues

- I travel to multiple countries – should I be tracking my travel?
- Given that each country has different tax law, do I need to know all to understand my tax obligations? Who is going to brief me on this?
- If incidental to Malaysia employment – income will be taxed in both Malaysia and host country?
- How do I claim for foreign tax credits? Also, timing of filing between home and host country and/or differing tax year make it difficult to claim, is there a time bar?
- If I am taxable in the host country, will my employer pay for the tax?
- Would my employer takes care of all the above since I am required to travel for business purposes?
Summary
Summary

• Tracking of employees and knowing when the threshold is reached.
• Employees should hold the appropriate work permit / business visa to carry out their activities in the respective countries
• Employer’s and employee’s tax obligations should be complied with in multiple countries
• Employees should be well-briefed on their obligations in each country
• Handling of double taxation and claiming of the appropriate tax exemptions
• Handling of employees’ increased tax burden by virtue of their frequent business travels.
Way Forward
A successful and consistent compliance framework can support your company’s future global growth through mitigating exposure to unnecessary tax costs and compliance failure risks, and improving internal controls for global compliance reporting.

Understand your compliance environment?

Focus on four core elements to determine if your operations demonstrate the behaviours which are most likely to be found in a robust tax compliance environment.
How to tackle this issue?

A holistic framework that defines roles, identifies travelers and initiates subsequent compliance activities

1. Build the Case: Quantify potential exposure and garner internal support to address

2. Set the Foundation: Develop guidelines and thresholds for acceptable risk and identify available data sources

3. Embed Processes: Establish the systems and controls and facilitating ensuring effective communications

4. Review and Refine: Monitor results and revise guidelines and processes

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Deloitte’s business traveler process

Data flow and core processes

1. Data
   - Travel records
   - Expense reports
   - HRIS Files
   - Alternative data sources

2. Analysis
   - Mapping & data transformation
   - Client Business Rules
   - Deloitte Tax Rules Engine

3. Data warehouse

4. Client user interface
   - Deloitte
   - Business travel dashboards
   - Client user

5. Service initiation
   - Deloitte
   - Service initiation
   - Payroll

Client database

Portal and security
Business Traveler Process - Identification and Analysis

Please note: Images are illustrative of our standard offering. Visualizations and data outputs are configurable and subject to the availability and usage of corporate data sources.
Conclusion

Non-compliance comes at a significant cost and the financial and reputational risk for companies and individuals is very real.

Although the HR function is critical to the people management aspect of the assignment, it is important for all internal teams (HR, finance, tax etc) and external tax consultants to work together when managing companies’ STBT.

This partnership is critical for companies if they are to identify, assess and address the risks and exposures created by business travellers.

*Immigration, tax, and regulatory watch dogs are stepping up audit checks and imposing stiffer penalties. Compliance risks are complicated and very real…*
Q&A
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