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Managing Covid-19 disruption in global mobility

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Focus on...

Countries around the world have closed their borders to non-citizens and residents and airlines have suspended operations. With approximately one-fifth of the world's population under a form of *lockdown* our globalized world looks markedly different from just weeks ago.

As employees adjust to their *new normal*, global talent mobility is on hold for most and so employees may find themselves wondering how their current situation impacts their taxes. For businesses, addressing how to effectively manage compliance in new and complex international employment scenarios is just one of many pressing and challenging issues.

Governments are starting to respond to the challenges employers and employees face in managing tax complexity arising. Recognizing that individuals are working across new borders, some tax authorities have announced measures that help both employees and their employers.

From Belgium allowing employees greater flexibility in getting relief from tax under a double tax treaty, to the range of measures Ireland has introduced to support businesses manage compliance for internationally mobile employees, these steps are constructive in managing the unintended consequences of global mobility during the Covid-19 pandemic.

As the OECD has stated, "*Exceptional circumstances call for an exceptional level of coordination between countries to mitigate the compliance and administrative costs for employees and employers associated with involuntary and temporary change of the place where employment is performed.*" While each employee's circumstances are unique, U.S. multinational employers may be facing some or all of five new categories of employees and tackling the tax, social security and payroll challenges they present.

With the global tax landscape evolving daily to address these challenges, proactive and regular review will help businesses most effectively manage these unique challenges.

1. Employees extending beyond the assignment end date

As borders rapidly closed and international airline routes reduced, some employees may not have been able to return home while others may see the end of their planned assignment occur while they are in *lockdown*. Where assignments have to continue due to employees being unable to return home, employers will need to ensure there is a continuation of compliance processes while understanding the potential cost to the business.

Employees being paid through their home payroll and have their employment income reported locally through a *shadow payroll* in the country they are working in will require continuing reporting, calculations of taxes due and remittance of taxes to local tax authorities. Benefits such as expat health coverage, housing and cost of living support may need to be extended proactively. Similarly, where a Certificate of Coverage is in place so that social security contributions are being made only in the employee's home country, it will be important to proactively apply for an extension, recognizing that processing times for approval may be delayed where tax authorities are subject to working restrictions.

Tax costs to employers will be an important consideration. Employees remaining in their host country for longer than anticipated may find that benefits can no longer receive the same tax-efficient treatment due to the extended period of stay. Where the business is paying the associated tax costs, this could result in an increase in tax and overall assignment cost to the business at a time of economic upheaval.

2. Employees who have returned home to the United States

Planning for tackling the Covid-19 pandemic has resulted in many assignees working overseas returning back to the United States earlier than expected or for a period until they can safely return abroad. Individuals who are *tax equalized* while on assignment and have had *hypothetical* tax deductions through payroll should, in many cases, revert to having actual tax withholding deducted. With changes to Form W-4, it would also be advisable they complete a new withholding form to ensure that the amounts deducted are appropriate during this period.

State and local taxes should also be considered. Employees who have been working overseas on a long-term assignment may have anticipated being regarded as non-resident for state tax purposes during this period. This would have the effect of not being subject to state and local taxes on foreign assignment-related income. An early or prolonged return to their home state may result in employees remaining tax resident and an unanticipated state tax liability arising. Payroll withholding may similarly be required and payments due for prior months and years.

3. Employees who have chosen to move to another country

For employees with family overseas, some will have made the decision to return to their home country during the pandemic. The amount of time and the nature of what that employee will do while overseas will be a key driver in determining the priority considerations for the employer.

The immediate issue to address will be whether that employee's presence outside the U.S. could create a corporate taxable presence of the U.S. company – a Permanent Establishment (PE). While the OECD states they view the risk of PE being limited as a result of changing work patters during the Covid-19 pandemic, employers may want to mitigate by limiting what the employee is allowed to do while outside the U.S., the overall time they spend working outside the U.S. and by relief under a double tax treaty. For the employee, relief from tax in the country they are spending time in may be available under a double tax treaty. This is often the case where the total days spent there do not exceed 183, their employment does not transfer to a local entity and their costs are not borne by an entity in the country they move to.

In some cases, it may be appropriate to put in place a short-term assignment to mitigate the corporate and employer tax risks. Doing so may require the employee's remuneration to be reported through a "shadow payroll" and subject to foreign payroll withholding. Where this is the case, steps should be taken to mitigate double withholding and limit U.S. income tax withholding.

Where possible, a Certificate of Coverage should be applied for to avoid an employee and business becoming subject to social security contributions in the foreign country.

Given the ever-developing and changing arrangements from country to country to tackle Covid-19, these arrangements should be reviewed at least monthly to assess any change in risk.

4. Employees working from home in another country

Whether between Canada or Mexico and the United States, or countries in mainland Europe, some employees may normally commute across international borders to work. With the onset of the pandemic, the closing of many borders to non-essential travel and employees mandated to work from home, some employees are finding they are now working outside the country they are employed.

While many of the challenges these scenarios present are outlined in category 3 above, there are unique issues these may present. Employees who previously relied on relief from taxation under a double-tax treaty based on time spent in the United States or a neighboring country may no longer qualify. This would have the potential effect of requiring the employee to be reported and taxed in payrolls in both countries. Currently, there is little communication from tax authorities internationally on how to address such challenges. An exception has been Belgium which announced that days spent working there that would normally be spent working in France or Luxembourg will be disregarded for the purposes of determining whether tax relief is available under a double tax treaty. More may follow this constructive development.

From a social security perspective, the implications are similarly complex. For employees based in Europe, regulations across the European Union determine the country in which an employee and employer should make social security contributions. While this may be the country in which they undertake their work, this may change based the amount of time spent working in other countries. Given the high rate of social security in European countries, employer tax costs could spike unexpectedly.

5. Employees stuck in a third country

As borders close, some employees have found themselves caught in transit, while others have found themselves unexpectedly unable to return home. These distressing situations require sensitive support and management. The tax considerations too need to be considered to avoid additional unforeseen stresses.

In many cases, an employee may benefit from relief from taxation in the country they are in under a double-tax treaty. A limited period of time in a third country where an employee is unable to undertake their normal role may, for this reason, earn income that is not taxable.

Where a U.S. employer provides additional benefits to support the employee through this situation, whether for temporary accommodation, transportation and cost of living support for the employee and possibly their family, the cost of these benefits may be taxable to the employee. Employers should review whether the support they are providing could be taxable to the employee and if so, determine and communicate who is responsible for the taxes arising. If the employer is prepared to meet the cost, taxes will be grossed up resulting in a higher overall cost to the business.

Mobility and changing employer tax obligations

As Grant Thornton International's guide[1] to the global developments in employer tax and payroll obligations demonstrates, legislation is changing daily across the world. In many countries, governments are providing relief to employers through the deferral of payments of income tax and social security withholding. Others are providing financial stimulus packages that include part-payment of wages and financial support for furloughed employees. For employees in any of the scenarios above, it is important for U.S. companies to understand how these changing regulations may apply to these new categories of international employees.

It is ever more important in this rapidly changed environment for mobility and HR professionals to partner closely with the business, as well as colleagues in tax and finance functions. A collaborative approach to addressing new challenges will enable businesses to mitigate unexpected tax costs and risk.

[1] Available at the following link: https://www.grantthornton.global/en/insights/supporting-you-to-navigate-the-impact-of-covid-19/individual-and-employer-tax-considerations-for-coronavirus/

Our experts are available should you need any further information.

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