The changing global mobility landscape

Changing international laws and a transforming political landscape are challenging U.S. companies to be increasingly strategic in deploying a globally mobile workforce.

From managing risk and compliance to understanding the potential increases in assignment tax costs, U.S. businesses need to be proactive in addressing international trends and their impact on global mobility.

Companies and their employees doing business internationally are faced with a complex web of regulations and laws. While tax law changes almost daily, wider political agendas and large-scale reforms have the potential to create new complexities and to increase costs of mobility. Businesses need to address a number of considerations over the coming months to ensure they are well placed to adapt to a changing legislative world.

Looking back at FATCA

Before looking forward, it's prudent to look back at recent changes that have affected businesses with internationally mobile employees

In 2010, Congress passed the Foreign Account Tax Compliance Act (FATCA), partly in an effort to tackle tax avoidance and the issue of money hidden offshore. FATCA has required U.S. residents to file yearly reports of their overseas accounts and financial assets, creating greater transparency. With more than 100 countries complying with the extensive reach of the FATCA regulations, sharing of information on individuals' bank accounts and other financial assets has been part of multilateral efforts to crack down on tax avoidance.

For U.S. expats, FATCA required a renewed and clearer focus on ensuring their tax affairs were being compliantly managed. Increased compliance monitoring for the reporting of foreign bank accounts to the U.S. Department of the Treasury and new requirements to report specified foreign financial assets on Form 8938 — forming part of an individual's federal tax return — have meant increased administrative burdens for expats. The stricter banking rules can make it tricky for employees to set up a bank account in a foreign country and in relation to gaining signature authority on an overseas company bank account. For U.S. businesses bringing executives into the United States or sending them overseas, these obligations have added layers of complexity to managing U.S. tax affairs. The potentially significant penalties for noncompliance and inaccurate reporting also expose assignees to greater personal financial risk.

Similarly, onerous overseas reporting obligations make financial life more challenging for expatriates who live in certain places. For example, Japan's foreign asset and transaction reporting requirements can apply both to U.S. executives and nonworking spouses, while reporting changes in India and those proposed in China mean expats are or will be spending more time on their tax affairs and potentially less time on their roles. While these burdens are now a part of a U.S. expat's life, international assignments bring greater financial risk, complexity and of course, cost. For U.S. employers, managing expectations around levels of tax support is a continuing challenge for HR, mobility and tax teams.

A future with significant change

Three issues are critical to ensuring international mobility programs and global workforces are effective in delivering growth in the future.

'Brexit' uncertainty

The United Kingdom's withdrawal from the European Union, set for March 2019, will create significant changes for how U.S. companies with European operations manage international mobility throughout the continent.

Consider social security. Current EU regulations allow workers posted to work in another member state to remain in their home country's social security system for up to five years. The system ensures that international assignees don't experience a pause and shortfall in social security contributions and retirement benefits of their home country, while also maintaining access to government benefits.

Following Brexit, it's unlikely the UK will continue to adhere to or be able to participate in EU social security regulations. In the absence of current regulations, the UK may fall back on bilateral agreements put into force in the 1950s with some, but not all, EU countries. These agreements may come into effect again for a very different globalized world nearly 70 years after they were originally written.

Providing single-country coverage from six months to two years, HR and mobility teams would need to come to grips with differing applications and extension requirements, track agreements and ensure payments are being made in the right places, both in the UK and in Europe. Coverage may also be limited to nationals only, meaning third-country nationals traveling between the UK and EU could see double social security tax costs. For some longer-term assignments, businesses will need to review the potential impact of increased or duplicate social security tax costs.

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U.S. businesses need to plan ahead of time and, think strategically about assignments and business travel to mitigate risk and cost exposure.

Companies should examine their employees on international assignments to identify:

- Which assignments could result in immediate social security tax increases
- Which assignment destination countries will result in higher social tax costs in the future?
- What is the cost to the business of meeting increased employee social tax burdens on their behalf?
- Can assignments be restructured to benefit from the U.S. network of bilateral social totalization agreements?
- How should assignments to the UK and EU be structured and business travel managed to avoid major cost issues?

U.S. tax reform and employee mobility

On December 22, 2017 President Trump signed tax reform into law, the most significant overhaul of the tax code since 1986. The enacted changes will affect how businesses view and manage international mobility and impact the costs of deploying an international workforce. U.S. companies should be concerned with how their remuneration costs will change for U.S. employees working overseas and for those moving to the U.S. U.S. businesses pursuing an international growth strategy must consider how and where talent is deployed to ensure the return on investment is balanced.

Many U.S. companies assign employees to roles in foreign countries where the company is responsible for paying the overseas tax liabilities. The individual remains responsible for paying a hypothetical amount of U.S. tax broadly equivalent to the amount he or she would have paid at home. This arrangement is commonly known as “tax equalization.”

Tax reform has reduced the seven income tax brackets for individuals, from the highest of 39.6% to 37% alongside an increase in the income within each income tax bracket. For businesses, the fall in tax rates and overall tax burden on an employee would see hypothetical tax reduce for some assignees. This means that while an employee’s assignment tax burden remains in line with what it would have if the employee had stayed at home, the business may suffer a spike in tax costs due to higher amounts of taxable income subject to high overseas tax rates. Employees working on assignment in countries like Australia, Germany and the UK, which have comparably higher individual tax rates will therefore have more income subject to tax overseas. An increase in the spread between U.S. and foreign tax rates will ultimately mean higher tax costs that companies have to bear.

For assignees with ties to higher tax US states such as California, New York and New Jersey, the limitation of state and local income and property tax deductions to $10,000, will also have a mixed impact. Outbound assignees from states may see their hypothetical tax burden rise at a cost benefit to the company, while those inbound to the U.S could well see tax costs rise.

One of the most costly changes is for employer-paid moving costs. The repeal of the current code will see employer-paid or reimbursed qualifying relocation costs included in employee’s taxable income. With tax due likely to be settled on a ‘grossed up’ basis by the employer, this will increase the costs of relocating employees significantly.

For U.S. businesses grappling with the impact of tax reform across their operations, when looking at employee mobility, they should be addressing the following:

- The potential impact on tax cost across an assignee population
- Which destinations and offices offer more balanced tax cost and still achieve strategic objectives
- Whether the right level of return on investment is still achieved where costs are increasing

International business travel and the BEPS

The Organization for Economic Co-operation and Development's Base Erosion and Profit Shifting (BEPS) Action Plan has been on the radar of multinational companies for a number of years, but the new level of potential tax consequences are still only coming into view for internationally mobile employees.

The BEPS initiative is intended to bring corporate profits more closely in line with the substance of where and how value is created by a business. For internationally mobile employees, what they are doing overseas matters more than ever and for U.S. companies, understanding how different countries approach BEPS is critical. For senior executives undertaking work on behalf of U.S. companies, growing the business and working towards securing lucrative international contracts, new guidelines mean that employees may inadvertently create a taxable "permanent establishment" in an overseas country. Corporate tax liabilities could therefore arise in countries where employees carry out work, rather than just where they are actually employed or on the payroll.

The exposure runs from tax registration, calculation of deemed taxable corporate income and tax, to new reporting requirements. Large and mid-sized U.S. businesses need to carefully oversee who is being deployed where and how. Whether a business is entering fast-growth markets, using a mobile salesforce or has executives working across multiple territories, proactive monitoring is crucial to manage tax risk and exposure. Steps may include reviewing travel booking systems, requiring employees to sign in when visiting international offices and implementing more sophisticated tracking technology.

In planning for the impact of BEPS, U.S. companies should ask themselves the following:

- Do they track the movement of an internationally mobile workforce?
- Do they know what specific work their employees are doing overseas?
- Do they have employees working in countries where they don't have an entity established?

Conclusion:
Effective mobility planning for the future

Several forces continue to shape employee mobility. Globalization will keep moving forward, and internationally mobile workers will continue to drive growth. At the same time, countries are enacting new laws and regulations to deal with tax, and shifting political agendas may create uncertainty and change that affects all areas of business and mobility.

Forward-thinking companies need to not only keep abreast of the changing international rules but have a proactive strategy to ensure they are deploying their people effectively and cost efficiently.

Contacts

Richard Tonge
Managing Director
T +1 212 542 9750
E richard.tonge@us.gt.com

Linette Barclay
Managing Director
T +1 404 475 0204
E linette.barclay@us.gt.com

Bob Langham
Director
T +1 949 505 4320
E bob.langham@us.gt.com

Josh Jagust
Senior Manager
T +1 312 602 8331
E josh.jagust@us.gt.com

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