

# Are You Walking A Tightrope?

## The balancing act of global growth while maintaining compliance, worldwide.

Organisations continuously adapt to the new norm of competing and remaining agile despite complex shifting global socio-economic variables, crippling cyber-attacks, and geopolitical tensions such as 'America First' policies and the ongoing Brexit negotiations. Plus, adapting to long-term structural implications of artificial intelligence in today's digital world.

For every challenge an opportunity exists and organisations need to take advantage to sustain and grow. This is evidenced by the international deployment of large numbers of talented employees, who possess a wide spectrum of business skills, from business development, technical, to managerial capabilities. How do challenges become opportunities?

International business travellers are front line ambassadors for organisations. For most employees, this is exciting, stimulating and challenging. Before buying currency, finding the passport and packing a suitcase, there are serious risk implications. In this paper,

we explore the application of consistent due diligence and compliance protocols to mitigate risk.

## The pitfalls of international business travel in a complex and regulated world

The following chart illustrates that managing business expansion and delivering international projects are top priorities for business leaders and their global mobility counterparts.

Our research shows 96% of business leaders and 95% of global mobility professionals said, overwhelmingly, that it was important to have an internationally mobile workforce to meet strategic objectives. Almost 40% of both groups responding to the 2017 Santa Fe Global Mobility survey said it was mission critical.

## What defines an international business traveller?

There is no one common definition as it depends on an organisation's global mobility, taxation and business philosophy.

International business travel can range from one day to up to six months. 183 days is often seen as a tax trigger (90 days for immigration), but organisations need to take a broader view of their travellers' circumstances and intended duties. Other considerations include the rules of the home and host locations, the existence of a relevant double tax treaty, recharge of costs, which entity benefits from the business travellers' work, and the frequency (and volume) of travel.

Dependent upon the size and scope of an organisation, the international business traveller population can be from ten to more than a thousand. An existing customer with a total workforce of 150,000, for example, has 20,000 (13%) on international business travel.

Tracking their compliance is more complex than simply asking a corporate travel agent for information on flight bookings (assuming too that all employees adhere to booking protocols). Can you accurately determine the total number of international business travellers in your organisation, and compliance with the tax, immigration and employment laws of the countries that they are visiting?

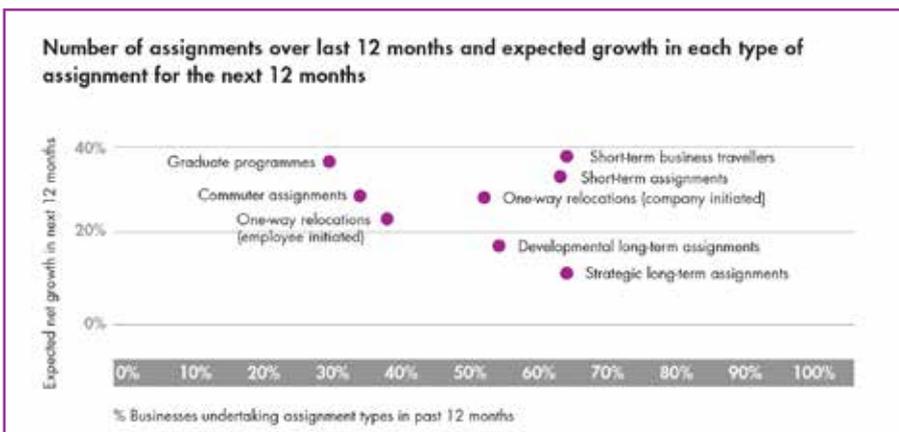
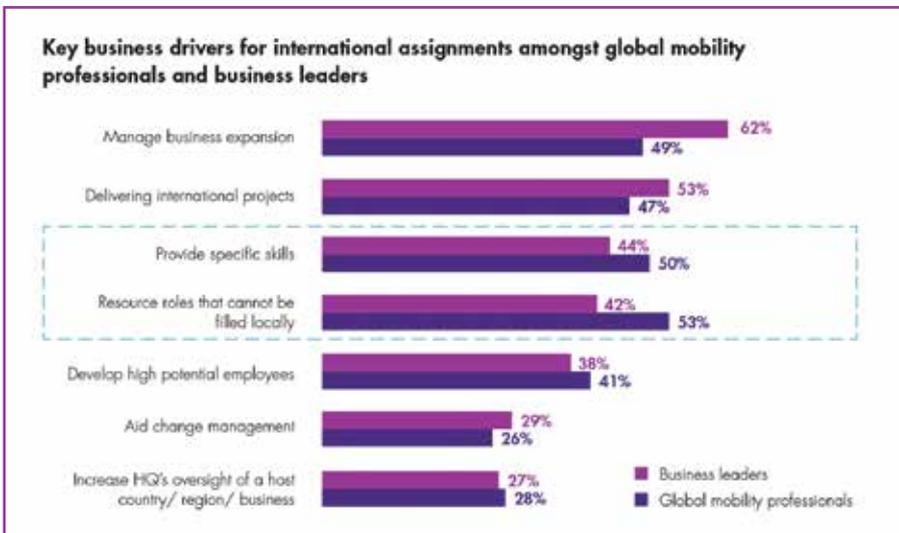
## Growth trends support global expansion

Despite a challenging twelve months for globalisation and international business, the new norm for business travel should be reviewed in context of the following latest trends.

The current outlook confirms that compliance, with its many complexities and challenges, continues to be increasingly important. The topic is high on the agenda for many governments who are effectively outsourcing elements of immigration control back to business – by placing increasing penalties for non-compliance on business travellers and their employers.

Managing business travellers represents the biggest change expected in global mobility over the next five years (42%) – a continuation of the trend that our research showed last year. With increasing use of commuter and short-term assignments this trend is unlikely to slow down.

While short-term assignments may not always be the panacea to achieve host country business objectives, they are nevertheless of growing importance to businesses. Particularly as companies seek to manage diverse issues such as costs, dual career families and re-integration of long-term assignees. If these are poorly managed and not established with the host country business teams, they can potentially be more disruptive to those teams than longer-term assignments. While



bringing with them corporate cultural values, fresh ideas and skills, the assignee should be supported through cultural orientation and briefings – to integrate them into the local team and its structures.

The following chart highlights that our research shows short-term assignments and short-term business travellers, and interestingly graduate programmes, are set to continue their growth trajectory next year and beyond.

Ultimately, investment in internationally mobile employees should be valued based on robust evaluation, especially if global mobility is to truly help an organisation achieve its objectives. The value of the expected return on investment that international mobile employees achieve for the business is, for example, a better indicator than the absolute cost to the business.

Furthermore, the increased use of short-term assignments will inevitably lead to ever more risk, so there is a need to increase focus on compliance. Often business travellers are left to make all travel arrangements on their own and immigration requirements can be overlooked. This places both the individual and organisation at significant personal and corporate compliance risk. It's reported that while HR departments expect a significant ongoing increase in business travel, only a third believe that they have the right tools to support them. No surprise then, that risk and compliance are such important factors to be considered when setting a travel policy.

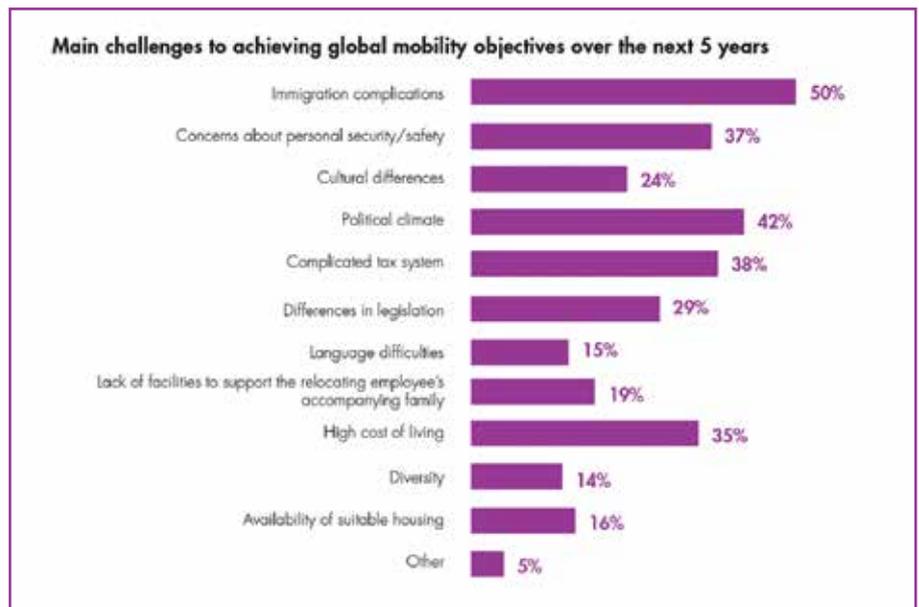
Our research shows that 25% do not have a programme in place to ensure business travel is compliant. Of the 75% who responded that they do have a programme in place, 62% do so through technology.

Examples on how organisations often track a business traveller population, include:

- Travel agent or travel authorisation records (most frequent method)
- Expense claims and finance systems
- Global mobility systems (used by internal Global Mobility teams)
- External third party partners

There are significant numbers of Global Mobility teams already resource constrained, and now find themselves the focal point of this new category of international mobility – which was previously managed by business units and functions. Who has accountability for tracking compliance, advising on immigration, visa and work authorisations, employment and corporate PE tax requirements? Global Mobility teams, generalist HR or tax teams, or external providers and partners? Often a mixed approach is used to manage the whole process, rather than being integrated. Surely, a business case for investment cannot wait for a situation of corporate non-compliance.

Irrespective of an industry sector or size of an organisation, the area of compliance



and risk will not disappear. There are companies that understand the potential risks and address them – often on a project management or situational basis – and indeed those who are unaware of the potential risks.

The following chart shows the main challenges to achieving global mobility objectives over the next five years.

## Risk associated with business travel – immigration and taxation

A major issue for employers is that business travel typically falls outside of existing risk monitoring. Global Mobility is responsible for managing compliance of employees within their programmes. If an employee travels outside the programme, monitoring may be non-existent. Inadvertent non-compliance is on the rise for employees who are taking extended business trips, especially when extended to effectively become short-term assignments. In many countries the authorities and enforcement agencies are now using sophisticated technology to monitor all types of travel and take a firm stand on a local compliance breach.

Best practice demands that organisations have a robust policy for all types of business travel, to ensure compliance and demonstrate that best efforts are being made. Authorities do not accept ignorance as a defence. Penalties and fines can be imposed, or even prosecuted in exceptional circumstances. In addition to the risk of prosecution, the possible consequences relevant to all destination countries range from budgetary and business reputation risk, through to employee dissatisfaction.

While typically the process for work and residency permission is well documented and clear, the process of compliance for business travel is not always straightforward. To complicate matters further, there are no

set rules about what tasks and activities each country considers to constitute 'business travel'. Also, some divisions within a company may perform tasks that don't require one, whereas others do. A sales person may sell a machine in a country while on a business trip, whereas the engineer who installs it may be working under local regulations – especially if they stay on for a month to train users. Any review therefore cannot only look at the duration, it must also look at the task being performed. It is critical to understand the specific rules of the destination country to ensure full compliance.

In addition to the immigration risk is the risk of taxation. However, as tax returns are led in arrears, and tax authorities have several years to conduct an audit, a tax risk may therefore not be immediately apparent. How do you know if there is a tax liability?

For example, Short-Term Business Visitors (STBVs) were top of the list in the United Kingdom (UK) when HM Revenue & Customs (HMRC) recently highlighted some of the main risk areas that they saw with PAYE (employer withholding) compliance for UK employers. Most other tax authorities hold a similar view. STBVs and the associated employer tax compliance obligations are an ever-increasing area of focus; especially given the recent and ongoing changes in international taxation being led by the OECD.

The focus is likely to continue. From a UK perspective, this means that managing the UK payroll and tax obligations for visitors to the UK is no longer as simple as "she's only in the UK for four months" or "we won't be recharging salary costs". Instead, HMRC will expect that every individual or group of individuals are considered separately, on their own merits.

To help manage overall employer compliance risk, it can often be helpful to shift the mind-set. First, assume that the business traveller in question is likely to create a tax liability in the location visited.

Then, look for options to exempt from taxation of their salary relating to the business visits. Relying on a minimal number of days before asking these questions is something to be avoided, since what works in one location may well not apply in another location. The views of tax authorities are also constantly and rapidly evolving.

The starting point is to assess whether the host location will ignore certain types of business travel. For example, in the UK a concept of “incidental duties” exists. This covers areas such as training, reporting back to head of ce, arranging meetings and reading generic business emails. Where duties are incidental they will be ignored for UK tax purposes; however, HMRC has significantly tightened up on this concept in recent years.

If the duties are not “incidental”, the next step would be to examine the employment income article of the relevant double tax treaty to explore whether it is still possible to claim exemption from tax in the host location. Exemption from host country taxation will be available where certain conditions are met. However, these conditions are often the cause of many misconceptions. Interpretation of the conditions can differ between tax authorities too.

Here is a reminder of these often used but commonly misunderstood conditions (wording can differ from treaty to treaty):

- The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- The remuneration is not borne by a permanent establishment which the employer has in the other State.

It is easy to see where the ‘183 day rule’ combined with ‘no recharge of salary costs’ misconceptions arise. Taking these conditions at face value is fraught with risk, since the interpretation of these conditions is not as straightforward as would first appear. An individual, or HR, are not always aware what has been recharged, or how. The employment income article must also be read in the wider context of the treaty and in particular with the residence article.

The second condition requires more scrutiny as the definition of “employer” is not clear. Historically, many countries looked at the legal employer - the entity with whom the employee has their contract. In recent years, more countries have started to look beyond the employment contract, and assess which entity is the “economic” employer – the one who bears the risks or benefits from the work of the employee. If these factors suggest that the host entity effectively employs the individual (i.e. is

considered their economic employer), then no exemption is available even if the 183 day limit has not been exceeded.

There is also a question of recharge of salary costs. With increased attention on Transfer Pricing and the introduction of the Base Erosion and Profit Shifting (BEPS) provisions, costs are likely to be recharged for corporate tax purposes. Avoiding making a recharge solely to secure tax exemption may no longer be possible.

A recharge of costs may not always result in exemption under the treaty being denied. In certain circumstances, exemption from tax in the host location will still be available even where there is a recharge of costs. Of course, if no double taxation treaty exists between the home and host country, then it is likely that no exemption would be available in the host country.

A treaty exemption also requires there to be no permanent establishment in the host location i.e. a tax presence in the host country for the home country employer. Again, a simple review could conclude whether this is the case.

An individual who is not working for the host country entity, is not directed by that host country entity, and does not have salary costs recharged to the host country entity, and remains below the relevant day limits, can still create a PE for their home country employer by virtue of the fact that they are carrying out activities in the host location for the overseas employer. This has corporate tax implications and consequently employment tax obligations.

Often, this applies where one division of a multinational executes on a project in a country completely independently – with no knowledge of their local subsidiary. The rules around what activities create a PE are evolving and do vary by country. Do not rely

on a historic practice, especially if reviewed prior to the BEPS legislation.

The following scenarios show how rules can vary from country to country and their possible implications: (see below).

## Conclusions

Organisations need to address the compliance and risk associated with business travellers and short-term assignments. With countries adopting an increasingly nationalistic position on organisations’ activities within their borders, the opportunity for national authorities to generate revenue through substantial fines for noncompliance for fiscal, immigration and employment transgressions, is becoming a reality. Waiting for a situation to occur, to be audited, before addressing the non-compliance, is walking a tightrope. Many global organisations are actively assessing their risk and compliance profile in this area.

Important points to consider in such an assessment, include:

- Ownership – who in the organisation is to be accountable?
- Enhanced real-time tracking
- Education and communication – proactively communicating with the internal Tax and Finance teams to ensure they understand the circumstances of business traveller and short-term assignees – do key decision makers understand the risk?
- Systems – will one system provide the solution?

There is no one size fits all solution. While there are travel management and employee security systems that can provide a cross-border employee mobility footprint that can be combined with data sheets, these typically provide historical data. Our paper highlights the need for organisations to embed and normalise a different due diligence – even if there is an

### Scenario 1

#### A New Zealand Company with New Zealand employees working for one week in the Netherlands

The company has a permanent establishment in the Netherlands and there is a bilateral social security agreement in place between the Netherlands and New Zealand.

What does this company need to think about?

- Permanent Establishment in NL
- Cost of employees sent to NL to be borne by NL Permanent Establishment
- Employees are taxable in NL from day 1?
- Withholding obligation for NZ company in NL from day 1
- Social security obligations in NL/NZ?
- What does the bilateral social security agreement say? One-way only
- Work permit less than 90 days (“Kennismigrantenregeling/Highly Skilled Migrant Rule”)

### Scenario 2

#### A UK Construction company with a project in the Netherlands

The UK company has Irish employees on the payroll who are sent to the Netherlands for 3 months.

What does this company need to think about?

- Building project in NL – Permanent Establishment
- Cost of employees sent to NL – borne by NL Permanent Establishment
- Employees are taxable in NL from day 1 – how to optimise this?
- Withholding obligation for UK company in NL from day 1
- Social security obligations in IRL/UK? Where were the employees active before?
- A1 Social Security Certificate of Coverage to be requested in either IRL or UK Plus European Health Insurance Card

urgent need to take a flight to address a crisis. Simply doing nothing and taking a chance is not an option. A clearly defined process for managing business travellers, across multiple functions (Sales, HR, Finance, etc.), so that there are clear lines of communication and responsibilities is an imperative.

Tracking your business travellers is the start of the compliance process. Understand who your business travellers are, and where they are travelling. Possible solutions include tracking the use of access cards, computers access to networks, or using the corporate travel bookings process. None of these are usually enough.

Typically, the tracking and managing of compliance and tax risk of the business traveller employee population is completed in-house or via an external pre-built solution and provider(s). Employees enter details of their business travel to review and compare data (about the individual and country) and identify risks that may arise.

Then, you will need to assess how to effectively use the data to manage the compliance risks that arise from your business traveller population.

Take time to evaluate the best way forward, for you and your company, to ensure compliance is proactively managed. Mitigate your risk around the business traveller population with a robust policy and programme.



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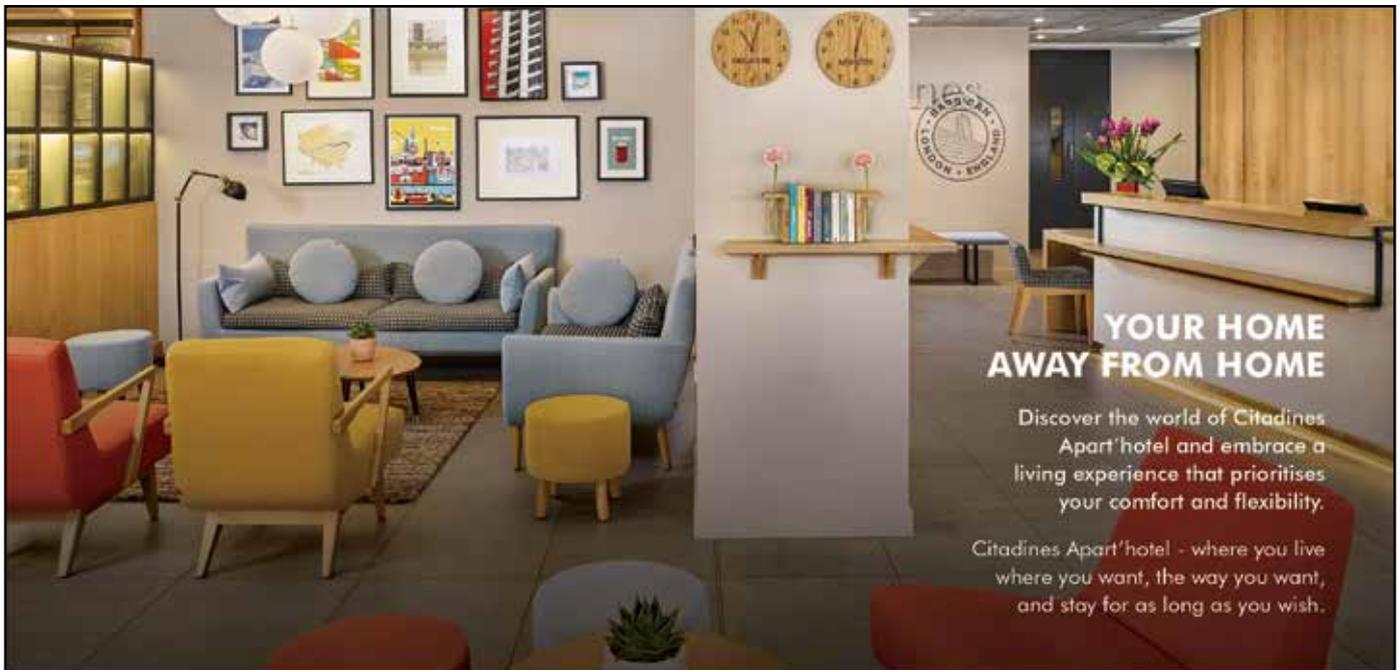
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