

Taxing Issues: Tax And Social Security Compliance Conundrums

This article examines some of the conundrums faced by international mobility professionals; those issues which do not fit neatly into your company's mobility policies or create friction with your other people policies. There will usually be a tax and/or social security associated cost to the policy issue involved notwithstanding other complications. How do you react?

Some of the scenarios below may resonate with your own experiences, whilst others may be issues that you could face in the future.

Flexible Working

The advent of flexible working and employers' perception of an ever increasing need to provide employees with choice can create unanticipated additional employment costs and compliance obligations.

As an example, Alison has been recognised as 'talent' within your organisation. When discussing issues with her new line manager, you find out that Alison has made a request to work from home on Mondays and Fridays. The line manager has verbally accepted the request as they feared that, if they did not, Alison would leave the business. However, you know that Alison has just moved with her family to France so in effect she will now be working in France for two days a week.

The potential consequences of this are:

- French social security, which at circa 45% for the employer is a significant additional cost
- Increased employer compliance obligations as you now need to work out how you, as a UK based employer, go about paying French social security contributions. French withholding tax implications are also about to commence effective 1 January, 2019 with income tax prepayments required thereafter for non-French employers. You may have to set up a payroll/system in France to facilitate payment even if you do not have a business entity there. This can be a time consuming and frustrating process
- As Alison progresses within the organisation and her role evolves, there could be potential corporate tax implications in France for the business. You need to raise this with your internal tax team
- Will your employee insurance policies, such as life assurance, critical illness et al, cover Alison whilst she is working in France?

- Will Alison now be covered by French, rather than UK, employment law?

Do you ask Alison's line manager to retract their verbal acceptance of the flexible working request – can you?

Housing Issues

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When Jacques first came to the UK your HR predecessor told him he wasn't allowed to buy a UK property in accordance with the assignment policy. Three years later, he's still in the UK and about to localise and you are

discussing his future remuneration package.

He tells you that his housing allowance, which is now about to cease, never covered his rent from the outset and that had the company allowed him to buy a property when he first asked about this then his mortgage costs would be lower than the total rent he's been paying. Additionally, Jacques advises that UK property prices have increased 30% and that the company's housing policy has cost him £200,000. He reminds you that residential property gains aren't taxable in the UK as he doesn't have any other residential property elsewhere.

He then asks for a pay increase to compensate him for his loss. He also mutters something about poor investment advice as your HR predecessor had also told him to keep his money in The Channel Islands. The interest he's been earning on this is minimal and he would have been better off getting a mortgage and buying a UK property.

What do you say? At what point should your policy get involved with issues and investments, which could give rise to a personal tax break, gain or loss. Should your policy seek to be tax neutral in all circumstances?

When you go to discuss Jacques' case with the CFO later that week, the CFO says that paying any form of housing allowance without a contribution is wrong and that individuals would have been incurring housing costs in their home country and must be getting rent if they are letting out their home country properties. She has said that individuals should pay a 'housing norm' or housing contribution to the company, and if they rent their home country property they should give this money to the company to offset additional assignment costs.

Again you're back to wondering whether the company should get involved with housing at all, and whether a decision to rent an individual's property is best left to the individual. How would the rental income be taxed in any event and who would be liable for the tax?

Social Security Issues

Your international assignment policy states that the rule of thumb is for assignees to remain within their "home" country social security system.

Juan, a Spanish national who has been working for you in the UK since he left university, was assigned to Spain for four years. Whilst on assignment, an A1 was obtained and he continued to pay UK NIC. He has now returned to the UK; however, things are not

going well. Juan has levelled certain accusations at your organisation; namely that he was forced to sign the statement confirming that he believed remaining in the UK NIC system, whilst on assignment, was in his best interests. He is maintaining that no discussions were held to explain the consequences of remaining in UK NIC and is now of the view that he should have been provided with the option of contributing to the Spanish system.

How do you reconcile what your policy says with the personal views and interests of the employee? How can you truly compare current cost – employee and employer - with potential future benefits for the employee? How do you ensure that you do not face a situation such as this where your employee may seek compensation from you on the basis that you have not provided them with the information required to make an informed choice? How do you address the possibility of social security rules changing part way through an assignment as the result of Brexit?

Local Employee Versus Expatriate Employee

How do you manage the friction that can arise from peer groups comparing their compensation packages even when working in different jurisdictions?

Imagine a situation where you have two senior individuals, both of whom are tasked with growing the business. One is based in the UK and is a local hire, and the second is sent to the UAE and is on a Local Plus package. Both are responsible for their own tax liabilities.

The expat's salary is lower but they are provided with a housing allowance and school fees. The amounts paid increase as their family size grows. The UK based employee is unhappy as they cannot afford to send their children to private school whilst their colleague, who is also their direct peer, can. How do you deal with this perception of inequitable treatment?

Several years later, the expat based in the UAE has performed really well and you would like them to move back to the UK. However, they know that if they do they will lose their Local Plus benefits and are therefore reluctant to do so. When initially sending them to the UAE there was no limit to the duration all expected the individual to be there, and there was no cap or tail off of the additional benefits.

It's all very well moving individuals onto a local plus package, but how do you move them on from that location at the behest of the company? Many employers are now finding that moving the individual onto a local contract at the outset, whilst good for that particular assignment, merely created a problem for the next assignment or move home. Individuals typically want to maintain their net take home. Current tax at low rates (e.g. in Hong Kong, Singapore and UAE) gives a higher net. Do you gross up the net? Will they move if you don't? How do you

persuade this employee to change role whilst maintaining the integrity of your policies?

You have two employees sitting next to each other in your Reading office. Their roles are very similar, requiring them to work overseas for 25% of their time, but one is a UK local hire and the other is a newly arrived Danish assignee. You operate tax protection.

The assignee is eligible for overseas workday relief and, as they have been talking to fellow expatriates, has asked you to make a request to HMRC to adjust her PAYE code and to pay her salary into an offshore account. Should you accede to her request? If you advise that you cannot get involved and refuse this request, what would you do if the assignee refuses to open up a UK bank account and only provides you with bank account details in Jersey? They could get the UK tax relief irrespective of the extent of your cooperation.

Tax Protection Versus Tax Equalisation Versus 'On Your Own'

Tax equalisation removes tax as a barrier to mobility for the individual. The individual is no better or worse off as a result of any move and the decision should be tax neutral for them. By contrast tax protection means that the individual cannot be worse off from a tax perspective as a result of a move but can be better off if the tax cost at the new location is lower than what it would have been had they remained at home. If the individual is responsible for their own taxes they could be better or worse off depending on the circumstances.

For important business reasons you really need an individual with certain specific skills to be in a new location at a set time. How do you react when the specific individual wants to defer or accelerate the proposed move because they will benefit personally from a tax perspective as you operate tax protection or leave all taxes to the individual? Do you offer them a further monetary incentive to move at your behest?

Your approach to taxes and mobility can affect the timing of moves and cooperation of individuals.

How Flexible Is Your Tax Policy?

Your tax policy in relation to international assignees has always been tax equalisation. Over the years, you have had a number of lively discussions with employees/line managers on this but have been able to ensure the consistent application of this policy.

Your COO is going on assignment to Singapore and is adamant that tax equalisation is not going to apply to her. This has been agreed at a higher level so you have had to agree to this, albeit reluctantly.

How do you deal with the COO's number two, who is now also going to be assigned to Singapore and has requested that tax equalisation is not implemented for him too?

Your company has won a large contract in

Qatar. To service this contract, you will need to send UK employees to Qatar. Some of the skills required for the contract are in high demand and difficult to source. The assignment durations will vary dependent on the role undertaken in Qatar. Due to the sheer size of the project, another UK company has been appointed to work with you as part of a joint venture.

Your policy is to operate tax equalisation so all the assignees to Qatar have been sent out on tax equalised assignment terms. You get a call from the director, who won the contract, asking you why his key, highly skilled employee has threatened to resign?

You establish that the other UK company working on the project does not operate tax equalisation so all their assignees are on gross packages. The assignees have clearly been discussing the relative merits of their assignment packages. Do you change your policy? If so, do you change your policy for the highly skilled assignee only, or do you change it for all assignees?

Do you make further concessions and extend the duration of all of the assignments so that the assignees can achieve non-UK residence? The director is pressuring you to concede to all assignee requests as this project is the biggest win of his career and he wants the job to run smoothly. What would you do?

Summary

All of these are real life cases. Policy and tax/social security interact, sometimes in unforeseen circumstances. Hindsight is great, but unfortunately we rarely possess foresight when we need it most! We would welcome hearing about your views and experiences.



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