Global Mobility And Executives - Why We Need To Think A Little Differently

Senior Executives and Board level/C-Suite individuals working in high profile, demanding roles in international organisations are often performing roles with an international dimension. The tax exposure of short-term (including frequent business travellers) and long-term assignments is both at an employee level and at corporate level. The tax treatment of the employee in the host country may not be consistent with the treatment available in their home country. It is important that the tax issues are identified early on, suitably in advance of any international move or significant travel, to avoid unnecessary exposure. In recent years, there have been increased cross-border initiatives by global revenue authorities and the ensuing legislation has made corporate and employment taxes more inter-related.

While executives are not fundamentally different to any other employee when we consider the impact of international mobility, there are many potential complexities to their circumstances (both personal and given the nature of their role) that means we need to think a little differently about them.

Here are some of the key issues to consider in ensuring the best outcome in global mobility for executives:

1. They Can Represent And Bind The Company

Permanent Establishment risks for Corporate Tax purposes are an important consideration in global mobility of employees. When considering these risks, we are often talking about a spectrum of risk rather than an absolute answer. With executives who are internationally mobile and regularly travelling for business, the risk of triggering Permanent Establishments in other jurisdictions is far more significant than with individuals in a central functions' role (e.g., HR, IT support) or a junior employee, for example.

Executive team members may well have the right to bind the Company and to sign contracts on its behalf, and routinely participate in the negotiation and conclusion of those contracts. They undoubtedly create some value for their employer. They may have, and make use of, offices available to them in multiple jurisdictions. These are key factors in assessing Permanent Establishment risk. Employers need to be aware of these potential risks and creating Corporate Tax reporting obligations across multiple jurisdictions.

2. They Are Not Always Subject To The Same Oversight

Rightly or wrongly, executives will often have much more freedom in how and when they travel. They don't always follow standard company policy and may not notify HR or global mobility of their travel. They may need to be able to get to a meeting or event on very short notice, they may be working on a confidential project where it isn't appropriate for people in the wider business to have sight of details, or for many other reasons. This means that there may not be as much internal oversight of their activities on a global basis, even though these employees may present the most significant profile of risk with their international travel.

There can also be a lack of understanding around executives' personal circumstances which may impact on their overall tax position, and that of the Company. For example, we have worked with an Executive of a listed financial services business who travelled frequently to the US for business with his employer, but the employer was not aware that his spouse was a US citizen and they also had a home there that they frequently spent time in, with these factors together meaning that he spent enough time to become tax resident in the US and triggered tax and withholding obligations for himself and his employer. Although it would certainly be easier for employers if we could ignore where employees spend their personal time, unfortunately that is not how international tax rules operate, and so more information and background is often required to consider all relevant risks.

3. They Expect Everything To Be Taken Care Of

Company executives are the most senior and responsible individuals within an organisation and have a plethora of demands on their time. They will often be the most vocal. Their absolute priority is the effective running of the business, and they expect a seamless approach to their personal and the corporate entity's tax affairs when working overseas. Therefore, they need the most timely, responsive, clear and practical advice as possible from their employer and all of their employer's service providers. Advisers need to be able to move quickly, convey complex issues in a clear and understandable way, and ensure that multiple relevant areas of tax are considered and linked together so the executive and company's tax affairs are looked at in a holistic way.

4. They Won't Always Fit Into Standard Policies

The issues to consider when executives undertake an international relocation or assignment may be significant, but these will usually be well planned and understood by all parties involved. Matters become more difficult with the 'accidental assignment' or the perpetual business traveller.

The tax risks associated with business travel are more significant with executive employees, as noted above. Their own circumstances are likely to be inherently linked to the Corporate Tax position of their employer, and the Transfer Pricing policy, which will also inform the employee's income tax position. Frequent business travel by executives should not be overlooked and should be carefully monitored to ensure that local risks are assessed and understood.

Another issue that we have seen many times is that an executive decides that they (and/or their family) do not want to live in the country that they have been employed in, and instead they set up home in one country and commute to work elsewhere. The employee may end up being tax resident in both jurisdictions and potentially create social security and withholding obligations for their employer in the country where they and their family are living. They could also

create Permanent Establishment risks for their employer in their country of residence if they regularly work from home or from a local office.

5. They May Have More Complex Personal Circumstances

While it won't always hold true that the most senior individuals in an organisation have the most complex personal tax affairs, they will tend to have more accumulated wealth and may have investment portfolios, property holdings, business investments, trusts and pension funds (among other things). When they relocate internationally, they will likely need to fully understand and plan to maximise the tax efficiency of such investments, consider the implications of consolidating or transferring pension plans internationally, and looking further ahead potentially the Inheritance Tax regime of the country that they are moving to.

Some tax rules in the UK also require some advance thinking to ensure that opportunities are not missed. For example, non-domiciled executives moving into the UK may be able to benefit from Overseas Workday Relief if they structure their accounts and employment income properly. For high earning individuals they will need to consider limits on tax relief for pension contributions under UK rules or consider alternative benefit or cash allowance provision, as well as lifetime allowance protection (and ensuring that protection is not put at risk) for those who have accumulated substantial pension pots.

There are various relevant income thresholds involved, but, very broadly speaking, for executives coming to the UK who have an adjusted income of more than £240,000 per year, it is likely that they will be impacted by rules that act to reduce the amount they can contribute to a pension scheme whilst obtaining UK tax relief. The standard annual allowance for tax-relieved pension contributions in the UK is £40,000, but this is reduced (by tapering) for high earners. If their adjusted income exceeds £312,000 for the tax year, then their annual allowance for pension contributions (employee and employer) will be reduced to a minimum of £4,000 (for the 2022/23 tax year). If their pension contributions exceed this level, then they will be subject to an annual allowance charge to effectively claw back any tax relief they have obtained in respect of these excess contributions. Some employers (and employees) therefore prefer to replace pension scheme contributions with a cash allowance alternative; this is not necessarily any more tax effective, but it reduces the administration involved and also gives the employee a cash flow benefit with which they can do as they choose (e.g. make investments as opposed to pension scheme funding). Employers should ensure that they give suitable consideration to any ongoing home country pension provisions that could occur during an assignment (e.g. a US to UK assignee remaining in their 401k scheme), which can be impacted by the same annual allowance rules.

High earners in the UK may have also accumulated significant pension savings over the course of their career. In the UK, as well as rules regarding how much can be contributed to a pension each year whilst obtaining tax relief, there is an overall lifetime allowance for pension savings. Pension savings more than the lifetime allowance (currently £1,073,100 for the 2022/23 tax year) are subject to a lifetime allowance charge of at least 25% on a crystallisation event. There have been various opportunities for pension scheme members to apply for lifetime allowance enhancements or protections, which will usually protect rights up to a higher level than the standard allowance. As part of the protection agreement with HMRC, the individual may have been required to agree that they will not start or join a new relevant 'arrangement' for employer provision of death or retirement benefits. Therefore, employees and employers should be particularly cautious of, usually unwittingly, invalidating existing lifetime allowance protection through participating in any relevant overseas schemes following an assignment/transfer overseas.

It is also worth remembering that tax favoured investments in one country will not necessarily have the same status in another. For example, ISA's in the UK are not recognised in the US. Their existence has no tax advantages in the US and can lead to additional and onerous US reporting requirements.

6. Their Remuneration Packages Tend To Be Larger And Individually Negotiated

Executive employees will have the highest levels of remuneration in the organisation and will most likely participate in any bonus and equity plans that the company offers. This will often mean ongoing tax compliance and reporting requirements in both home and host locations both during and after assignment periods.

If they relocate, they often negotiate additional terms and benefits into their agreements, which might range from pet relocation and schooling for children, to flight allowances for their spouse and insurance for their fine art collection to be shipped internationally. Employers should ensure that the tax implications and reporting requirements of all of the different benefits and allowances are fully understood. Some jurisdictions also have special regimes that mean that remuneration packages can be structured in a particular way to maximise the tax efficiency, so advice should be sought in advance of finalising contracts to understand if there may be a better way to do it.

7. They Are More Likely To Be Subject To Non-Audit Service Restrictions

Some executives will be classified as having a 'Financial Reporting Oversight Role' (such individuals often known as "FRORs"), meaning that they have a role in which they are able to exercise influence over the contents of the financial statements or anyone who prepares them. This might therefore include members of the board of directors, CEO, CFO, COO, Legal team, Director of Internal Audit or Financial Reporting etc., (non-exhaustive list). US audit independence rules prohibit an SEC-regulated Company's audit firm from providing non-audit services to FRORs. This means that your auditor cannot provide tax advice to your FROR executive employees, even if they are your global mobility services tax provider. This can present issues, especially given increasing pressures for companies to regularly rotate audit provider to ensure independence. Executives are often particularly averse to needing to switch advisers part way through their assignment or explain their circumstances to a new team.

8. They Present The Highest Cost Of Getting It Wrong

As the remuneration levels of executives are typically the highest in your organisation, the risk of not properly reporting in any given jurisdiction is more significant as you will be dealing with larger numbers. In many countries penalties and interest for failure to properly report will be tax-geared and proportionate to the lost tax revenues. For that reason, there may also be increased scrutiny of high earning employees by tax authorities.

Aside from tax, social security and payroll issues, an employer must also consider immigration requirements for executives travelling to different countries on business, which can be difficult to do without full oversight of travel plans. No HR team wants to receive a call from their CEO saying they've been stopped at a border because they don't have the right visa (which we have seen happen!).

The reputational risks may also be more substantial, particularly for public companies.

9 They May Wear Many 'Hats'

We regularly see that executives will possess multiple roles, whether within or outside their main employing group.

Executives may have global roles with their employing group where they have

responsibilities over multiple entities and jurisdictions. It should be considered from a Transfer Pricing policy perspective how such a global role should be treated, including which entity or entities should ultimately bear the cost of an employee's remuneration. Such analysis may impact the tax position of the executive, as in many cases an employee's individual income tax position will be informed by the international cost re-charging arrangements in place for their remuneration. The company and employees' tax positions must be considered in tandem. The executives may also have roles as statutory directors of different entities within the group; in many countries (including the UK) there are special tax and reporting rules for directors and so these specific rules must be considered. One day they may be wearing their 'Global CEO hat' and the next day their 'UK board director hat'. The question of which 'hat' the individual is wearing on any given day may not be straightforward, but for tax purposes it is important for them to keep track of their activities in this way as far as possible.

As well as roles within the group, executives may have external directorship roles. Employers should be aware of any such external roles, particularly where individuals are internationally mobile, as the interaction of tax and social security rules for multiple roles across multiple jurisdictions can produce some odd and counter-intuitive outcomes.

Summary

There are always many different strands to international employee mobility, including potential areas of risk for consideration. For executives these common risk areas will often be exacerbated due to the responsibilities involved in their roles and the level of their remuneration. There may also be additional specific risks to be considered, such as the complexities caused by directorship roles, Financial Reporting Oversight Roles and more significant personal investment profiles that could be impacted by international mobility. Despite the risks involved, mobility at these levels in the organisation will often be business critical, whether in terms of the activities to be undertaken in a particular jurisdiction, or for the ongoing development and retention of key senior talent. Therefore, the key point will always be to plan ahead as far as possible, be aware of where potential issues could arise and then take steps to proactively manage and mitigate these risks.

STEPH CARR
Steph Carr is a Director in Global Employer Services at BDO LLP. She has 10 years' experience in the field of expatriate taxation and also specialises in matters of global equity. BDO can provide global assistance for employment related issues and matters arising from international assignments. If you would like to discuss any of the issues raised in this article or any other expatriate tax matters, please do not hesitate to contact Steph Carr on +44 (0) 20 7893 3538, email steph.carr@bdo.co.uk or Andrew Bailey on +44 (0) 20 7893 2946, email Andrew.bailey@bdo.co.uk

BSB Primary School has the warm, cosy atmosphere of a small school, yet benefits from the resources of a large school.

Where we care about each other

Lara aged 5, Chunyi aged 11, Thami aged 5 & Alfie aged 7

BSB FOR EVER
THE BRITISH SCHOOL OF BRUSSELS

Visit us
Britishschool.be