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Brexit and Coronavirus: the End for International Commuting?

Not that long ago the world of employee international mobility generally revolved around secondments and international relocations. Larger businesses operated expansive global mobility programs, with detailed and specific policies backed up with in-house HR and tax specialists and supported by a host of providers (assisting with the various immigration, relocation, and tax requirements).

Smaller businesses often acted in a more ad-hoc or bespoke way, but with similar outcomes. For the majority of businesses this meant:

- long term secondments (often 2 or 3 years) to help meet business needs;
- short term secondments (often 6 to 12 months) to plug gaps and backfill requirements or to provide developmental opportunities; and
- permanent transfers for employees who wanted to move to another country.

All of these arrangements had specific tax and social security considerations (together with many others!), but the similarity of the arrangements within each type of secondment meant that situations could often be grouped together in categories and dealt with in a very automated and prescribed manner, with some extra thought needed for infrequent specific complexities or exceptions.

Then came the international commuters.

Prior to the onset of the pandemic there had been year-on-year growth in international commuter arrangements which showed no signs of slowing[1]. International commuter arrangements often appeared attractive to both employees and employers. Employees were able to gain international experiences, step into new roles, and even "try out" a new country, without the need to uproot their families or sever ties (albeit temporarily) with their home country. Employers often saw these arrangements as quicker to implement compared to secondments.

But it wasn't all plain sailing. Not only do commuter arrangements almost guarantee complexity from a tax and social security perspective, the diverse nature of the way in which they are undertaken means they are nowhere near as standardised as traditional secondment

1 For example, an ECA International (a global mobility consultancy) survey in 2019 found that 69% of companies expected their commuter numbers to rise "further in the next three years" (https://www.eca-international.com/insights/blog/june-2019/international-commuter-assignments)

arrangements – meaning that policies have to be longer and more flexible, and the costs of professional advice are often higher (and needed more often).

Some of the key considerations requiring thought (and which greatly increase administrative burden) for commuter arrangements include:

- the strong likelihood of the employee being tax resident in two countries concurrently, and the need to analyse double taxation agreements (where available) together with details about the employee's personal and family life;
- the high potential for double payroll reporting and withholding requirements to arise, together with potential mechanisms to help improve cashflow;
- the complexities around social security arrangements (such as the EU's multi-state worker rules) and the potential need for an employer to register as a social security payer in another member state;
- the need to fund extra living costs for the employee (such as travel between "home" and "host" locations, accommodation in the host country, and assistance with subsistence) and any associated tax and social security costs of these;
- the posted workers directive for employees working within the EU;
- immigration requirements (although for intra-EU travel before Brexit this was often relatively straightforward); and
- employment law considerations.

With the arrival of the pandemic many international commuter arrangements came to a crashing halt. It was no longer possible for employees to travel freely between countries. Even where travel was possible, many employees may have been more reluctant to do so given the possibility of being stranded away from their home or family for indefinite periods due to fast-paced changes to entry restrictions across the board.

With the rapid switch to working at home, employers and employees got used to a world of remote working and, surely, many will be questioning how necessary some of their travel was now that the ability to get things done effectively from afar has been proven.

That change to working at home brought its own tax challenges. Often for the first time, employers experienced the implications of their employees working from "home" in different locations, often where the employer had no presence. Together with many other concerns, this brought with it the need to consider payroll reporting and social security obligations, together with the risk of new permanent establishments for corporate tax purposes. Employees may often have been surprised not only at the impact these arrangements would have for their employer, but also for themselves – especially when it came time to report income and pay taxes in a new location.

Even as pandemic restrictions lift there is bound to remain a strong threat of countries' entry restrictions changing with little or no notice, and a potential lack of willingness by employees to travel to "risky" countries. Factors like these are unlikely to encourage the re-starting of commuting arrangements.

After Brexit there is now a further fundamental barrier – immigration. The impact of the changes to immigration rules will not yet have been experienced by many employees or their employers. Once the UK's current lockdown ends many business travellers, and international commuters, will find the world a very different place:

- entry into the EU has generally not been possible (other than for essential purposes) for non-EU/EEA nationals or residents since early in the pandemic and the UK now finds itself on this "excluded" list (albeit it with talk of certain countries putting the UK back on the "allowed" list earlier than other third countries);
- even once entry restrictions are relaxed and UK nationals are allowed to enter the Schengen zone for up to 90 days in any 180 day period, there will be fewer permitted activities compared to pre-Brexit freedom of movement. Whilst business visits will be allowed, this is a term which is often much narrower than people hope – generally doing productive work (e.g. an employee's day-to-day job) will not be allowed without a work permit.

With this level of uncertainty and risk, do "traditional" secondments start to look more attractive again? At first glance they certainly appear to offer stability and simplicity (and the likelihood of any lockdowns or travel restrictions resulting in employees remaining with their families). Is flexibility as key as it once was? At the very least, it is likely that the majority of mobility policies may now be out of date and will need re-working for the "new normal", whatever that may be.

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