GLOBAL MOBILITY ALERT
October 2013

INTRODUCTION

Welcome to the second issue of our Global Mobility Alert. We are very grateful for the positive feedback and suggestions received about the first edition from our colleagues and clients, and look forward to working together to continue to provide you with an informative and thought provoking publication.

This month you can read about how we can help manage the immigration status and the significant penalties that can apply to people who work without the appropriate permission. We also discuss the Canadian perspective on the planning needed to avoid unwelcome audits and unexpected tax costs for the growing issues related to short-term international assignments. Finally, we bring you news from Luxembourg of a relaxation of the conditions applying to the new expatriate regime that is intended to encourage the hiring of highly qualified and specialised employees from abroad.

We hope you enjoy reading this edition of our Global Mobility Alert and welcome any feedback, ideas and remarks.

Steve Asher,
Head of Mazars Global Mobility Services

About Mazars

Mazars is an international, integrated and independent organisation, specialising in audit, accounting, and tax, legal and advisory services. We rely on the skills of more than 13,500 professionals in the 71 countries that make up our integrated partnership.

Mazars Global Mobility Services have a long history. For many years we have been building a worldwide group of international advisors, specialising in advising employers on the international mobility of their employees. Our services include global tax compliance and optimisation, international payroll services, social security administration, shares schemes planning, immigration services etc., including global mobility policy advice and the management of global mobility.
IMMIGRATION RISK FOR BUSINESS TRAVELLERS

You have to attend an audit in two weeks’ time in Russia. Being there on time is critical. Your colleague was there last year and tells you visas take about one week to come through. Who would assess whether that’s the correct visa for you?

It is easy to conceive of the immigration risk of employing people without the correct immigration status, but this is something often not considered at all regarding business travellers. In fact, the risks are often considerable. Many countries apply significant penalties to people who work without permission. No one tends to ‘own’ the issue of business travel within many organisations; it genuinely is the individual traveller who would make the assessment outlined above. Travelling without the correct permission can lead to serious operational issues and wider problems regarding assignments.

A traveller being refused entry to a country is the most obvious immediate immigration risk. Immigration officials tend to have wide discretion as to whether they admit visitors or not and their judgments as to the distinction between ‘work’ and ‘business’ can often appear arbitrary. Such difficulties may also have an impact on future immigration applications; the Netherlands, for example, will generally not admit a passenger who has stayed in breach of conditions of entry for two years and the UK bans anyone considered to have used deception in an immigration application form re-entry for up to ten years. In many countries, visa application forms require disclosure of previous immigration difficulties anywhere; this can lead to delay in considering future such applications.

Significant fines are often available to the immigration authorities to penalise those who ‘employ’ people without the correct permission to work. The German authorities are able to fine employers up to €500,000, for example, in respect of non-compliance with immigration requirements and similar penalties exist in many countries. Employers in those countries which have some elements of self-certificatory process to sponsor workers, such as the UK, may find that immigration problems can lead to compliance audit by the authorities and potential revocation of permission.

A risk in travelling without suitable immigration permission is that the project may not be serviced appropriately and will therefore face operational disruption.

There are significant practical measures which companies can take to try to mitigate such risks. Organisations which transfer staff globally generally appreciate that those relocating to other countries require support, but it is often the case that short-term travellers can be classified as outside the scope of this and their immigration requirements are therefore not assessed. Introducing internal business traveller policies is an important step in trying to achieve immigration compliance. Such policies can establish who within the company determines whether travel is permitted, the circumstances in which further referral is made and how the travel may align with other objectives of the company’s global mobility policies. Identifying potential risk and ensuring that business travellers themselves make informed decisions using a risk-averse attitude to travel is also a key aspect of this.

The Immigration Departments of Mazars assist clients in developing appropriate business traveller policies and system. A regular part of our work is to make assessments of the potential legal risk of travel to a particular country, assess whether permission to work is required or not and any factors which may be of assistance to the traveller. Aside from making immigration and visa applications for clients, we assist in audits of immigration compliance and regularly liaise with immigration authorities throughout the world in making such assessments.

If you feel you may benefit from an assessment of immigration risk associated with business travel, please contact:
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CANADIAN EMPLOYEE TAX ISSUES RESULTING FROM SHORT-TERM ASSIGNMENTS

Over the past few years, the use of short-term international transfers has become increasingly popular. Companies sending employees on such assignments to Canada should consider certain corporate and employee tax issues. The mere transfer of employees to Canada could result in corporate tax issues. Even if corporate tax issues are as important as employee tax issues, this article focuses on the latter.

The first question that a corporation sending employees to Canada should consider whether the employee will be subject to Canadian income taxes. The Canadian tax system is based on the residency of the employee which is a question of facts and circumstances. In a nutshell, Canadian residency can result if an individual establishes strong residential ties with Canada. Generally, employees on short term assignments do not establish residential ties in Canada. However, if they are physically in Canada for a total of 183 days or more in a given year, they will be deemed Canadian residents under the domestic law.

Where employees that are factual or deemed residents of Canada are subject to Canadian tax on their worldwide income, non-resident employees are only subject to Canadian tax on income from employment earned in Canada (and some other types of Canadian – source income). However, if the short term employee is resident in a taxing jurisdiction that has entered into a bilateral income tax treaty with Canada, the employee’s employment income may be exempt from Canadian taxation if certain conditions are met.

An employer (whether Canadian or non-resident) sending employees to Canada for any period of time is required to withhold Canadian income taxes from the remuneration paid to the non-resident even if the employee’s remuneration is exempt from Canadian income tax under a tax treaty. However, where a treaty exemption applies, application may be made to the Canadian tax authorities for a waiver from the withholding income taxes. Until a waiver has been granted, the employer must withhold income taxes.

A waiver from withholding income taxes will not relieve an employer from the obligation to withhold and remit Canadian social security taxes. Hence, depending on the facts (including the existence of social security agreements), an employer may also be required to withhold and remit Canadian social security taxes.

Non-resident employees performing services in Canada are required to file a Canadian income tax return to report their Canadian source employment income, unless the income is exempt from income taxes under a treaty (and the non-resident have no other Canadian reportable income). However, where the employer has withheld income taxes on the employment income which is otherwise treaty exempt, the employees will be required to file an income tax return in order to claim a refund of the over withheld income taxes.

In all cases, an employer must prepare information returns reporting the remuneration and income as well as social security taxes withheld and file such returns with the tax authorities.

Failure to withhold and remit income and social security taxes will cause the employer to be assessed for the taxes which should have been withheld, plus interest and penalties. Penalties and interest may also be assessed for failing to issue and file information returns.

In order to minimise the risk of potential Canadian audits and unexpected tax costs, advice should be sought and appropriate planning done prior to sending an employee on a short-term transfer to Canada.

If you wish to have more information how to minimise risks and costs, please contact:
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1 Typically, short-term assignments last up to one year, but, it could also go beyond the year for some corporations
2 Provincial income and social security taxes should be taken into account independent of federal Canadian rules
TAX REGIME OF HIGHLY SKILLED EXPATRIATES IMPROVED IN LUXEMBOURG

On 31 December 2010, the Luxembourg tax authorities published a circular putting in place fiscal measures to promote the hiring of ‘highly qualified and specialised employees’ from abroad.

Luxembourg has not had a favourable regime for expatriates since the early 90s but still, the circular was rapidly criticised, notably because it only concerned ‘highly skilled’ expatriates. The notion was not clearly defined but the remuneration of the employee was to exceed € 105,453.60 (€ 8,787.80 per month), which can be considered as a restriction.

Some thought it was too high and the fact that a company must employ at least 20 persons in Luxembourg and be present in at least two other countries was discriminatory. Others said that it was difficult to promote a fiscal measure that was subject to the approval of the tax office, which the tax office refused to be bound by a time limit to make their decision.

It looks like the Government heard the criticisms as a new circular was put in place on 21 May 2013, replacing the circular dated 31 December 2010 and relaxing the conditions to benefit from the expatriate regime.

For example, although the 20 employees limit remains, the presence of the Luxembourg company in at least two other countries is no longer required.

Furthermore, the remuneration of the employee (who is now called ‘inpatriate’ instead of ‘highly qualified and specialised employee’) must exceed € 50,000 and not € 105,453.60 anymore.

Finally, the main change of the circular is that the employer is no longer required to file a specific request with the relevant tax office to highlight the professional skills needed by the company and to justify hiring an employee from a foreign country.

Concerning the tax regime itself, no changes have been made. As a reminder, it consists of a list of financial charges that can be exempted in the expatriate’s salary package and deductible in the hands of the employer:

- Moving costs
- Travel costs
- Rental costs
- Tax equalisation
- Cost of living allowance
- School fees

For more information on this topic, please contact: Aude-Marie Thouvenin aude-marie.thouvenin@mazars.lu +352 (0) 271141
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