

SPECIAL REPORT There and back again: Tax implications of international business

AS RESOURCE PLAYS around the world continue to focus more toward the unconventional—shale gas, Canada’s oil sands, deep water in the Gulf of Mexico—companies are finding it more and more necessary to deploy specialized talent across borders. This is only logical—time is money, and under the volatile economic conditions of late there has tended to be precious little time to spend on training new employees to maximize the value of new categories of assets. Moving people across borders, however, presents various business risks that employers and employees alike must be aware of if these risks are to be addressed appropriately.

Risky business

When businesses have multiple operating units and a presence in numerous countries, they often take a decentralized, autonomous approach to their compensation and benefits programs. This can work very well. Local control allows business units to respond to local country employee resourcing needs while addressing the nuances of their culture and following local business practices. But the situation is very different when employees are not domestic employees but international, temporary (whether for a day or several months) and bound to income tax requirements—personal and corporate—in both their home country and the one in which they are working.

Three key categories of risk associated with employees travelling internationally are clear:

1. Corporate tax and non-compliance risk to the company
2. Personal tax and non-compliance risk to employees
3. Reputational risk

Each risk category carries its own implications, but appropriately designed and implemented policies and procedures can minimize exposure and maximize the value of your travelling employees. Also keep in mind that changes in business and political environments have led to governments becoming more proactive in their ability to enforce laws, to an increased focus on compliance, and to increased audit activities. Taking measures now to ensure you are in compliance with all relevant regulations is a wise move. This article will explore

BY BILL FRIDFINNSON, DELOITTE



some of those measures as they relate to the categories of risk noted above.

Corporate tax and non-compliance risk

The risk here involves failure to withhold and remit employment taxes at their source, resulting in interest and penalties associated with the liability for the unpaid income tax, social security tax, employment insurance and other possible foreign country levies. What's more, non-compliance with foreign laws may result in other corporate tax and other legal issues, including:

- Inadvertent creation of a corporate permanent establishment in the foreign jurisdiction
- Denial of tax deductions for expenses of some employees
- Contravention of employment or

immigration laws

- Missed tax planning opportunities

In order to minimize the corporate exposure, the company should consider developing and implementing a range of policies and procedures specific to frequent international business travel. To be effective, the policies and procedures should, at a minimum, (1) address the employees' immigration status in the foreign country, (2) develop a foreign payroll compliance policy and (3) create a communication program so all employees are fully apprised of their responsibilities as a member of the business traveler program.

Personal tax and non-compliance risk

International business travel has implications for

the employees' personal tax returns and they must be in compliance with immigration laws. The bottom line is that if people are deployed across borders without the proper paperwork, they—and the business—are at risk, especially as governments are generally increasing their monitoring and tracking of these, and related, situations.

At the very least, substantial unpaid taxes and the related penalties and interest charges can be expected for failure to comply and file with foreign tax authorities where required. More severely, employees can be denied foreign work authorizations or visas regardless of their employment status with the company. Harsher still, for repeat offenders, is the possibility of outright denial of travel to the foreign country, or even criminal charges. These are serious issues. It is often the case that employees are unaware of their tax obligations when internationally deployed; in such cases where an employee is later assessed an outstanding foreign tax liability, with related penalties or interest charges, the employee usually seeks compensation or protection directly from the employer. It is important to note that, in the absence of a formalized frequent business traveler process, the economic exposure to the company is often not limited to just one or two employees, but potentially to all employees who might have been working in the foreign country

temporarily on that specific project. For larger foreign projects, the potential costs can become very significant, very quickly.

It is, therefore, of paramount importance that companies communicate with their employees about the risks and responsibilities of foreign business travel and to ensure that employees are compliant with the established policies and procedures. Additionally, companies are well-advised to solicit tax consulting and personal income tax compliance services from professionals experienced with international business travelers. Having a single global provider assist both the employee and the employer will help to ensure the policies and procedures are consistently interpreted and applied. Further, if any employees are subject to additional foreign queries or audit reviews, it is imperative that these are responded to in a consistent manner, so the company can better manage the overall risk exposure.

Reputational risk

The fact is these issues can become matters of public record, potentially resulting in any number of negative implications for the offending company, such as: employees leaving the company due to the bad experiences they had internationally; an employee taking legal action against the company to ensure they are not responsible for

the foreign tax liabilities being assessed; or sanctions in the foreign country for failure to comply with appropriate laws.

The underlying challenge, however, is that the foreign income tax, labor and immigration laws are constantly evolving at the same time that enforcement is becoming stronger. For instance, corporate audits in many countries are becoming increasingly more integrated: gone are the days when the tax authorities would just complete a payroll audit and not review the international aspects or transfer pricing. In the current environment, tax authorities review multiple aspects of a corporate audit—payroll, transfer pricing, related party transactions, corporate filings—increasingly with more focused lines of inquiry. The sharing of tax information between the tax authorities of different countries has also added a different level of risk to international operations.

This risk can also accrue directly to a publicly-traded company's board of directors, who are required to sign-off on financial disclosures. The right questions must be asked at all levels within the organization. Business unit leaders, line managers and project managers also have to understand and buy-in to the seriousness of these issues, because ultimately they are the ones managing cross-border travel decisions to meet the needs of their projects—unless HR and

the company's operations team are on board, the risk is not being managed appropriately.

All's well that ends well

These issues apply equally well to any company sending its employees into foreign countries, but resource companies in particular are prime examples because of the increasingly international nature of their business. As a mine in one country nears depletion and exploration for new reserves in an entirely different country on the other side of the world yields results, that mining company must prepare to understand and comply with a new set of laws and tax regulations. By its very nature, operating internationally presents risks in and of itself, but with well-conceived and implemented procedures, the mining company should be able to prosper without undue tax-related hardship to its employees and the organization. **IRJ**

BILL FRIDFINNISON IS AN ASSOCIATE PARTNER IN DELOITTE CANADA'S CALGARY TAX PRACTICE, FOCUSING ON GLOBAL EMPLOYER SERVICES. HE CAN BE REACHED AT BFRIDFINNISON@DELOITTE.CA.