





Terminating mobile employees –
legal and tax considerations
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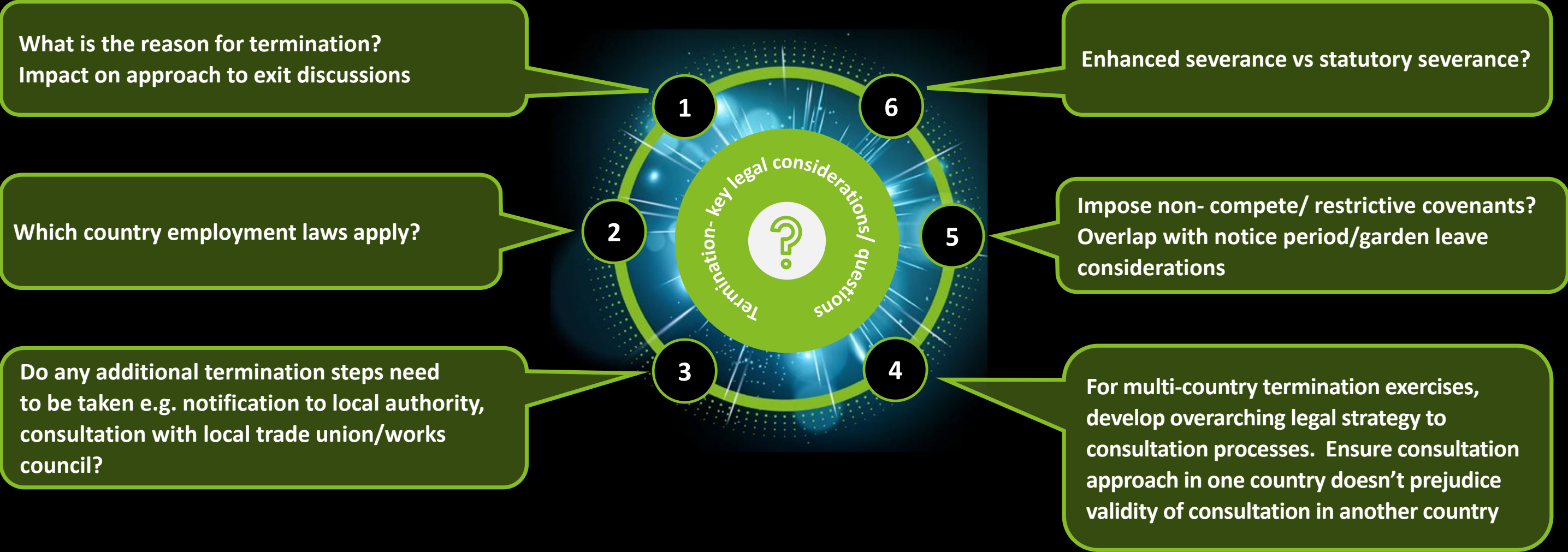


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Key considerations and questions:

Employment legal questions:



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Which of these best represents what your organization offers in a redundancy context?

A

Statutory redundancy only

D

1 month's pay per year of service

B

1 week's pay per year of service

E

Higher

C

2 weeks' pay per year of service

Key considerations and questions:

Tax, social security and payroll questions- part 1:

What is the reason for the employment ending?

- Is the individual resigning, retiring, being made redundant etc?
- Is the termination part of a broader redundancy programme?
- How has the termination been communicated internally/ externally?

What are the components that are being paid?

- Are there any existing entitlements? (e.g. amounts already earned; contracts or executive severance plans; statutory entitlements; incentive plan good leaver terms)
- Are the payments made for specific reasons? (e.g. due to restrictive covenants or retirement)
- Do any specific domestic exemptions apply? (e.g. legal costs, outplacement counselling, retraining, death or disability payments)

What is the individual's residence status?

- Is the individual UK resident 'for' the tax year of termination, and is the tax year split before or after this date?
- Is the individual potentially (also) tax resident elsewhere?
- Can a double tax treaty restrict the amount otherwise taxable in the UK?

Key considerations and questions:

Tax, social security and payroll questions- part 2:

What is the sourcing basis and reference period for any payments?

- For earnings, are these 'for' the tax year or have a different earnings period? (e.g. holiday year; bonus year; incentive vesting periods)
- For 'qualifying' termination payments, what is 'relevant service' if assessing foreign service relief?

Is there a UK PAYE obligation?

- Is the individual 'employed by, paid by or working for' a PAYE employer at the date of termination?
- Are certain payments 'for' an earlier period when a PAYE obligation might have existed?
- Can any limitations to PAYE apply based on s690 directions or foreign service/ treaty relief?

What social security is due?

- Is the individual liable to UK National Insurance at the date the relevant employment ends?
- Should any sourcing apply for UK National Insurance purposes?
- Do any domestic exemptions from UK National Insurance apply?

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What does your organization offer beyond severance?

A

A retention payment

D

Retraining

B

Termination legal costs

E

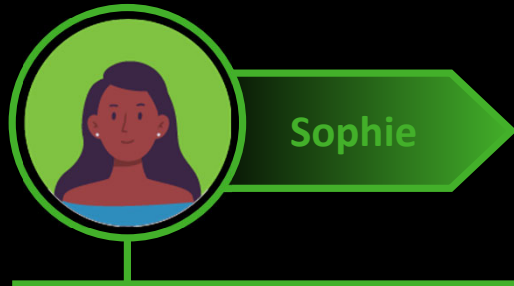
Other

C

Outplacement counselling

Case study – outbound

UK Employee Moving Overseas



Sophie, aged 54, is a finance manager who has worked for ABC plc for several years.

Although locally employed in the UK and historically a UK-based employee solely working on the finances of the UK business, Sophie is a French national and, given the increase in remote work in her organization since COVID, has largely worked remotely from her home in Lille, allowing her to care for her elderly parents.

Since early 2021, Sophie's work pattern has consisted for remote work from Lille and travel to the UK for meetings/ office events, as necessary- typically amounting to three two-day trips to London each month.

The business is now pushing to mandate three days per week in the London office and is not comfortable with her working arrangements and the potential employer implications. They are looking therefore looking to negotiate her exit from the business.

What are the key legal, tax, social security and payroll considerations connected to Sophie's employment termination?

Case study – outbound

UK Employee Moving Overseas

1 What are the legal considerations in connection with the termination?

- Did ABC plc agree to the remote working arrangement?
- Is the remote working arrangement contractual? if so, what impact does this have on negotiating leverage?
- Does the fact that Sophie is caring for elderly parents have any discrimination consequences?
- Which severance/termination rules apply – UK and/or France?
- Is severance pay higher in one or other of the countries and what impact does this have on negotiating leverage?
- How to deal with notice period:
 - Pay in lieu of notice / garden leave / worked notice/ handover period
 - Combination of the above?
- What documents need to be signed:
 - settlement agreement: waiving French and/or UK claims?
 - resignation from any directorships/offices?
- Any special arrangements:
 - return of company property
 - post-termination restrictive covenants – different considerations under UK and France rules, overlap with approach to notice period

Case study – outbound

UK Employee Moving Overseas

2 What are the tax, social security and payroll considerations in connection with the termination?

- Sophie is not being made redundant, so any payments she is due or entitled to are likely to be classed as earnings;
- On the basis that she is not UK resident for the tax year of termination, she would be taxable in the UK on amounts attributable to UK workdays, based on the relevant earnings periods;
- Sophie is also likely resident in France, and potentially the amount the UK is entitled to tax could be further reduced under the treaty;
- Sophie is legally employed by a UK entity, so PAYE would be due- post P45, any applicable tax code would lapse and PAYE should be withheld on a OT Month 1 basis;
- However, assuming a s690 direction had previously been obtained to limit UK withholding to estimated UK workdays (say, operating PAYE on 25% of earnings), this s690 agreement would still apply to any payments (including termination payments or those delivered post P45) made in the tax year;

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What social security would we expect to be due in respect of any payments made on Sophie's termination?

A

UK employee and employer
NIC

D

French employee social
security only

B

UK, but only Class 1A NIC on
amounts over £30k

E

French employee and
employer social security

C

UK employer but French
employee

Case study – outbound

UK Employee Moving Overseas

2 What are the tax, social security and payroll considerations in connection with the termination?

- Sophie is not being made redundant, so any payments she is due or entitled to are likely to be classed as earnings;
- On the basis that she is not UK resident for the tax year of termination, she would be taxable in the UK on amounts attributable to UK workdays, based on the relevant earnings periods;
- Sophie is also likely resident in France, and potentially the amount the UK is entitled to tax could be further reduced under the treaty;
- Sophie is legally employed by a UK entity, so PAYE would be due- post P45, any applicable tax code would lapse and PAYE should be withheld on a OT Month 1 basis;
- However, assuming a s690 direction had previously been obtained to limit UK withholding to estimated UK workdays (say, operating PAYE on 25% of earnings), this s690 agreement would still apply to any payments (including termination payments or those delivered post P45) made in the tax year;
- Sophie's social security position would be tested at the date of termination, and employee and employer contributions are likely to be due in France- i.e. an additional cost and administrative burden for the UK company.
- An A1 certificate could only be obtained for a posted worker or one who is temporarily remote working with the agreement of the employer.

Case study – inbound

US assignee to UK



Vijay is a US national, aged 58, who has worked for XYZ Inc in the US since 1994, most recently as a marketing director.

In June 2022, he starts a 2-year tax equalized assignment to work for the UK subsidiary, XYZ Ltd, and oversee some transitional changes in the UK and EMEA marketing teams.

Vijay relocates with his wife to the UK during the assignment period.

On completion of the assignment in June 2024, he leaves the UK and returns to the US, but there is no role to return to and he is made redundant from the business.

What are the key legal, tax, social security and payroll considerations connected to Vijay's employment termination?

Would it make a difference if, instead of terminating immediately on conclusion of his assignment, he returned to the US and understood a few weeks' work in the US before his termination took place?

Case study – inbound

US assignee to UK

1 What are the legal considerations in connection with the termination?

- Which severance/termination rules apply – UK and/or US?
- Is severance pay higher in one or other of the countries?
- How to deal with notice period:
 - Pay in lieu of notice / garden leave / worked notice/ handover period
 - Combination of the above?
- Settlement agreement or not?

2 What about if the termination instead happened after returning to work in the US for a few weeks?

- Which severance/termination rules apply – UK and/or US?
- Consider when notice of termination is served – whilst still in UK or following return to the US
- Practical mitigating factors against UK law claims?

Case study – inbound

US assignee to UK

3 What are the tax, social security and payroll considerations in connection with the termination?

- There is the question of whether the termination payments would be covered by tax equalization- this would ideally be covered in the policy, and it could be hard to enforce liabilities otherwise post termination;
- Vijay is apparently being made redundant and payments made ‘by reason of redundancy’ should be regarded as ‘qualifying’ termination payments;
- However, this would not apply to any payments of earnings/ incentives under his contract or if amounts were due automatically on termination in broader circumstances (e.g. as a result of an executive severance plan);
- It would be important to understand Vijay’s residence status for 2024/25 (the tax year of termination) and if and when the tax year was ‘split’;
- If UK resident, ‘qualifying’ termination payments in excess of £30k would be UK taxable domestically, whereas payments of earnings would be ‘for’ tax year (or any specific earnings period) and potentially eligible for overseas workday relief;
- In terms of the treaty, it would be necessary to consider the country of treaty residence at the date of payment:
- If UK treaty resident, the UK would tax as above, but consider a foreign tax credit for US tax;
- If US treaty resident, we’d compare the amount domestically taxable to the amount the UK could tax under the treaty;
- On the basis that Vijay was ‘working for’ a UK employer at the date of termination, PAYE would be due, presumably under a Modified PAYE scheme;
- Assuming Vijay was covered by a Certificate of Coverage and remained within US social security during the UK assignment, UK National Insurance would not apply.

Case study – inbound

US assignee to UK

4 What about if the termination instead happened after returning to work in the US for a few weeks?

- For any s401 payments, the residence status ‘for’ the tax year is still relevant, so foreign service relief would still not apply, even if the tax year was split;
- For any contractual termination payments (that weren’t payable by reference to a specific earnings period), it might be possible to view these as ‘for’ the overseas part of a tax year, if the UK tax year was split (although this could be challenged depending of the length of the period and extent of work post departure);
- If paid in these circumstances, Vijay would likely be resident in the US, and we would typically consider the extent of UK workdays in the last 12 months of active employment, if restricting UK taxable amounts under the treaty;
- Technically, other than payments ‘for’ an earlier period, there wouldn’t be a PAYE obligation if Vijay is no longer ‘working for’ a UK employer at the date of termination. However, as the Modified PAYE scheme provides for a best estimate of the UK liability, if the termination payments would be tax equalised, in practice the tax would normally be settled under this;
- For social security purposes, Vijay was never liable to UK National Insurance anyway. However, if he had come from a non-agreement country, the liability to UK National Insurance could cease to apply in these circumstances- i.e. as soon as the UK assignment ceased and he actually undertook gainful employment overseas.

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For individuals on assignment, where it's clear there won't be a further role, do you repatriate them before making them redundant?

A

No, and align with the assignment end

B

Yes, but terminate immediately

C

Yes, and typically terminate a few weeks / months later

Termination payments – common challenges and complexities

66

Money owed by employees

99

66

Regulatory-notification obligations

99

66

Immigration-loss of right to live in relevant country

99

66

Statutory Payment under Foreign Employment Law

99

66

Compromise Agreement but existing good leaver/contractual entitlements

99

66

Executive Severance Plans

99

Questions



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