



HONG KONG TAX ALERT

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OECD BEPS initiatives How do HR and Global Mobility need to engage and evolve?

Summary

The issues that arise from the BEPS actions points are, at first glance, technical tax questions. Looking a little more closely, however, they become a question of fact – detailed facts. These questions require data and an understanding of the people aspects, as much as the technical aspects.

If employees create a PE, there are two significant outcomes – the employer is exposed to the country's corporate tax and employer tax obligations, and the employee may be liable for personal tax even for short visits.

For employers and employees based in Hong Kong (and used to low taxes), this can be an expensive exercise - increasing the cost of remuneration, impacting budgets and eroding profit margins on projects.

The OECD BEPS initiatives focus on corporate tax and the fair recognition of taxable income in different locations. While this may appear to be an issue for the finance and tax teams, there are some matters that HR and Global Mobility (GM) professionals need to be aware of.

The location and activities of employees are “people issues”. HR and GM teams are the natural funnel for the necessary data and, therefore, a likely landing place for the responsibility of knowing who is where and what they are doing while operating overseas.

Knowing your mobile workforce

With today's pace of business and the ease of international travel, it is often difficult to pin down the location and activities of mobile employees. Frequent business travels, commuters and remote workers, pressing business needs, mobile technology and unclear role descriptions - these all contribute to the difficulty of knowing exactly who is doing what and where.

Business travelers, in the broader sense of any cross-border workers, have been a recognised challenge for a number of years. But the lack of hard data, solid contracting and good disciplines mean there is still a softness around this group and the tax obligations that come with them. Some organisations have started to address these challenges, and others are still at the early stage of trying to identify who should take responsibility. This raises the question – are business traveler risks owned by Group Tax, HR or the business units?

These questions exist currently – but the OECD BEPS initiatives are bringing them into sharper focus for tax authorities and multinationals alike. This focus means that organisations that have yet to address the tax-related challenges of the modern mobile workforce will come under increasing pressure to do so.

Lowering the threshold for a Permanent Establishment

One of the OECD BEPS action points (BEPS Action 7) aims to prevent a business from operating in a country and deriving substantial revenue there, while avoiding having a taxable presence. Action 7 seeks to broaden the ambit of “permanent establishment” and make companies taxable in a location if, in substance, their activities mean that profits are being derived from that country.

Previously, a company could earn revenue from a country but not have a taxable presence there – mainly because the rules were drafted for a different era of business at a time when a physical location was needed to generate revenue, and when “bricks and mortar” determined the location of a business.

BEPS Action 7 recommends countries to lower the threshold for creating a permanent establishment (PE) by including activities that were previously below the PE threshold, such as:

- an individual who habitually takes the primary role in negotiating contracts, rather than focusing on the execution of those contracts;
- narrowing activities that are preparatory and auxiliary, or accepted as the work of independent agents (and therefore not considered to create a PE); and
- anti-fragmentation rules to aggregate activities spread over related parties, such as different group companies.

How does this impact the HR and GM teams?

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The issues that arise from the BEPS actions points are, at first glance, technical tax questions. Are these the domain of the corporate tax team? Looking a little more closely, however, they become a question of fact – detailed facts. These questions require data and an understanding of the people aspects, as much as the technical aspects.

The interpretations of tax law needed to analyse the organisation’s obligations cannot be made without a detailed understanding of the circumstances surrounding the individuals who create the exposure.

Detailed information about people and their activities will most likely need to come from the HR and GM teams. This involves knowing who is working where and what is the scope of their duties, in practice as well as on paper.

Actions to take, questions to consider

Could your HR/GM team provide information on the location, contractual arrangements and activities of any employee who operates across a border – whether they are on a long term secondment, short term secondment, business trip, staff exchange or loan, commuting arrangement or training programme? What if they commute between their home and work locations in different jurisdictions, or are based in a jurisdiction different from that of the group entity that employs them, bears their costs or benefits from their work?

Questions to consider:

Do you have a record of all employees who operate across borders, and **accurate data** for their location – not only secondees but any mobile employee or cross-border worker?

Is there robust documentation of their **duties and authorities**? Are these kept up-to-date and do they reflect the actual activities of the employee in the role?

Are **responsibilities** within the organisation clear? Is the HR/GM team's sphere of control broad enough to address these broader issues?

Are current **policies flexible enough** to accommodate the range of different cross-border work styles that are emerging?

How are mobile **employees' contracts** being set up? Is all documentation consistent - creating a coherent picture about who is benefiting from their services, who is bearing the cost and how the arrangements are actually implemented?

Is the **GM team's mandate** fit-for-purpose in the current environment? Are they advisors to the business, or just processing transactional requirements?

Is the HR/GM team the **common point of contact** across all mobile employees?

Does the **GM team work with the Tax team** to ensure appropriate policies are maintained and guidance given to mobile employees?

Is the **guidance to mobile employees** adequate? Do policies cover all types of mobile employees and is the guidance sufficient - not just about what mobile employees are entitled to, but what activities they can or cannot undertake?

Related article:

OECD BEPS

Further information on the OECD BEPS initiatives can be found in this [information sheet](#) by KPMG in China.

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