

# Outbound secondments -

## Tax and regulatory aspects



# Broad context:



- Increasing globalisation and ever evolving business models are encouraging more and more organisations to venture abroad for growth and expansion
- However, widespread competition is resulting in calibration of costs and resources at the same time. The foray into the newer geographies, products and services poses unforeseen tax and regulatory challenges for such organisations including movement of cross-border/ expatriates' employees
- In the recent years, India has witnessed many organisations deputing their employees to their overseas entities across the globe. Consequently, such organisations and their deputed employees are required to comply with the tax and regulatory regulations in India as well as overseas jurisdictions
- Employers are expected to be cognizant of the tax implications both for employees and themselves in a cross-border secondment arrangement
- Besides the personal tax implications, the presence of employees in an overseas jurisdiction(s) may result in a taxable presence (permanent establishment) of an Indian entity in such jurisdiction(s)
- The complexities in the tax systems (in both home and host locations) may result in higher tax costs, compliance requirements and double taxation of salary income warranting a careful evaluation
- Also, Covid-19 pandemic has disrupted the conventional secondment arrangement(s) and has propelled organizations across the globe to explore new work models like 'Work From Anywhere'. These models have brought with them an arduous task for the employers as well as employees.

# Key factors impacting outbound secondment program

1. Tenure – short-term (three to twelve months), long-term (one to three years) or permanent transfers?

2. Residential Status (under Post COVID-19 scenario in India and host country) - Physical presence alone to be considered?

3. Nature of service rendered - Any service element - Contract of service vs. Contract for service?

4. Delivery of payroll – Modus operandi of salary payment - full payment in host country or partly in India and partly in host country (with or without recharge)?

5. Subsisting employment relationship - work done by secondee in host country in furtherance of business of Indian Company ?

6. Economic versus legal employer:

- Supervision, guidance and control of secondees with Indian Company ('I. Co.') or Foreign Company ('F. Co.')?
- Damages on account of action of secondees - who is responsible?
- Underlying documentation of secondment arrangement (local employment contract and/or secondment contracts)?

7. Income-tax cost:

- Whether secondees are tax equalised or not?
- If yes, administration of hypothetical tax adjustment and tax equalisation settlement?

8. Social Security regime

- Coverage under Indian Provident Fund or host country social security program during period of secondment?
- Whether India has an effective Social Security Agreement with host country?

9. Immigration/ visa

- Appropriate work permit applied for seconded employee? Dependent visa for accompanying family members?
- How to adhere to 'minimum salary threshold' prescribed in the host location?

10. Reporting of overseas assets- Disclosure in relation to income, assets and accounts outside India; Non reporting leading to penal implications/ revenue audit?

# Pertinent tax and regulatory attributes for outbound secondments

## Personal tax (including immigration):

- Impact on residential status and taxation due to Covid-19
- WHT implications for I.Co / F.Co on salary payment
- Claim of treaty relief
- Taxability of trailing income
- Impact under dual employment scenarios
- Social security contributions and immigration requirements
- Impact of new labour codes

## Corporate tax

- Permanent Establishment ('PE') risk for I.Co in host country
- WHT by F.Co on cross charge and availing related Foreign tax credits / deductions in India
- Reporting obligations in host country for I.co
- 'Stranded stay (Covid)' or 'Work from Anywhere' – PE / POEM risk and impact according to OECD guidelines
- Global employment companies – GAAR / MLI considerations

## Transfer Pricing

- Determination of arm's length price for cross charge of salary expenses
- Risk exposure of profits to be attributed towards the services rendered by PE, if any etc.

## Indirect tax

- GST implications on cross charge of salary cost by F.co. to I.co.
- Possibility of I.co. having a fixed establishment in foreign country and corresponding implications; etc.

## FEMA

- Permissibility of remittances to secondees' foreign bank account
- Remittance of funds during secondment /post secondment period
- Maintenance of bank accounts in/outside India

## How KPMG in India can partner with help organisations in this journey

We work with a multi-disciplinary team involving professionals from global mobility services, corporate tax, indirect tax, transfer pricing and foreign exchange regulations to proactively engage in finding an efficient approach, as below:

### Phase I – Diagnostic review to assess tax risk:

- Undertake review of the secondment arrangement(s) and existing documentation;
- Assess risk/exposure on account of the existing secondment arrangement;
- Identifying risk areas and possible approaches aligning to the principles laid down in recent judicial precedents; and
- Sensitize organisation and secondees about tax risks and compliance requirements.

### Phase II – Exploring alternative approaches & implementation of the preferred approach

- Explore and deliberate on various feasible approaches regarding construct of outbound secondments;
- Assist in evaluation of pros and cons of each of the alternatives from tax and regulatory perspective;
- Assistance in relation to the documentation, substantiating the key factors/ attributes of the secondment arrangement;
- Implement the alternative approach selected by the company. Sensitize organisation and secondees about tax risks and compliance requirements.

### Phase III – Assistance in compliances

- Assistance in regulatory approvals, if required.
- Full suite of services on individual tax filings/ compliances and educating secondees about key tax implications of the international assignment at the time of entry/ exit from India
- Assistance in withholding tax compliances on salary payment and related tax filings for the employer
- Full suite of services on company tax filings/ transfer pricing/ indirect compliances.

# Key differentiators: why us?

## Right Team

- In-house experienced and specialised professionals
- Support of ex-regulators from CBDT, RBI and EPFO
- High senior-level resource involvement from planning to delivery

## Thinking different

- Employee webinars, reference documents
- Employee helpdesk at company premises, on need basis
- Contingency planning and management

## Valuing feedback

- Open to change in suggested processes and KPIs
- Regular meetings
- Annual client and employee satisfaction survey

## Technology enabled delivery

- Seamless support from our Integrated Centre of Excellence
- Efficient tax return initiation and preparation software and global assignment management technology tools
- Tracking compliances through in-house technology tool

## Data confidentiality

- Multiple checks on data storage and management
- Data access to authorized professionals only
- Regular trainings on data security, confidentiality, integrity, etc.

## Invested with and for the client

- Single service provider in home and host locations – valuing relationship
- Committed to our KPIs
- Understanding your business and stakeholders requirements and our

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