



Managing through challenging times: tax, mobility and legal impacts

Managing employee and mobility issues through the pandemic and beyond — global perspectives on permanent establishment, employment related taxes, employment law, mobility and immigration

Keeping Connected Global Tax, Legal & Mobility Virtual Meeting Series — Part 5

—
April 2020

Topics for discussion

Agenda



- 1 **Employees away from their usual work location**
- 2 **Accessing government stimulus packages**
- 3 **Adjustments to pay and reward packages**
- 4 **What might immigration look like in a post COVID-19 world**
- 5 **Q&A**

Administration

Polling questions

- Polling questions will appear as we proceed through the presentation.
- As mentioned, in order to receive the certificate of attendance, we require participants to take part in at least five of the six polling questions.
- If you qualify for the certificate of attendance, it will be sent to you following the webcast.



Attendee questions

- You may submit questions in the *Ask a question* button on the left. We will answer as many questions as we can during Q&A. If we are unable to answer your question during the webcast, someone from KPMG may reply via phone or email following the webcast.
- For technical issues, please use the *Question Mark* button in the upper-right hand corner of the media player.



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- When the webcast is over, the webcast player will automatically refresh to display an exit survey. Feel free to complete the survey, as your comments are very valuable to us.



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Employees away from their usual work location



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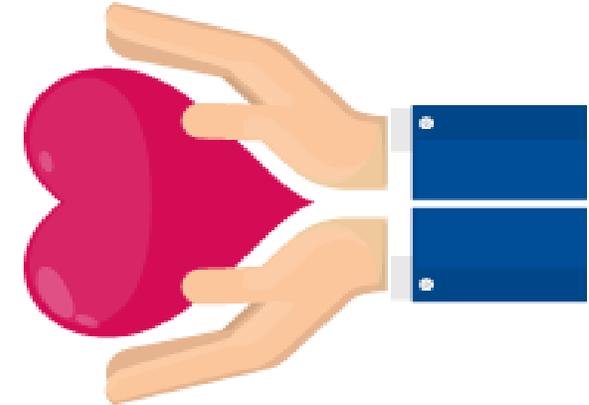


Setting the scene



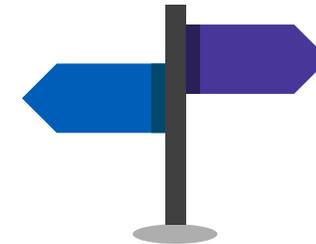
Suspended movement

- Travel halted by company and government mandates
- Some left working outside of their employment country



Where to next?

- There is no global government
- Policy decisions will be different across different countries, even States



Where will that leave us?

- Mismatched reopening of borders and withdrawal of government flexibility
- Compliance considerations quickly come into focus



Potential impact of employee displacement



 <p>Permanent establishment (PE risk)</p> <hr/>	 <p>Individual income tax and payroll positions</p> <hr/>	 <p>Social security withholding obligations and benefits</p> <hr/>
 <p>Place of effective management (tax residency)</p> <hr/>	 <p>Transfer pricing</p> <hr/>	 <p>Individual tax residency status</p> <hr/>



To what extent are the rules relaxed?



“ OECD

Permanent establishment:

“It is unlikely that the COVID-19 situation will create any changes to a PE determination”

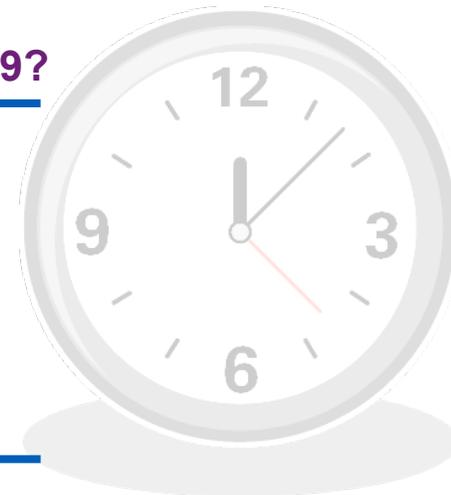
Individual tax residency:

“Despite the complexity of the rules, and their application to a wide range of potentially affected individuals, it is unlikely that the COVID-19 situation will affect the treaty residence position”

But for how long? And what if we had a problem before COVID-19?

Specific country examples:

- Ireland
- Australia
- United Kingdom
- Germany
- Singapore



Frontier workers



EU Commission



Freedom of movement:

Member States should allow frontier and posted workers to continue crossing their borders to their workplace if work in the sector concerned is still allowed in the host Member State.



Social security:

Employer and worker are liable for social security contributions in the country where the work is performed.

When a worker resides in one country, the worker is covered by social security in the country of residence if a substantial part of work is performed there.

Relevant situation in light of COVID-19:

1

Frontier workers, who normally work exclusively in the host country

2

Frontier workers, who normally don't work substantially in the home country

3

New hires who reside in another country (cannot relocate)

Posted Worker Directive and Payroll



Posted Worker Directive



Posting of Workers within the European Union brings administrative obligations and one of them is that posted workers are duly registered with the administration in the host country, and before the commencement of work.

Being sent home before the expiry of posting?



Stay longer in the host country?

Generally, changes need to be reported. However, if/when posted workers return a need for modification or a new notification can be assessed then.

Even though a posting notification entails that work must be done at a given location, generally the authorities are lenient if the posted worker works from a hotel or other accommodation.

Payroll



Increased and/or new complexities in payroll:

- state subsidies
- sick pay
- leave entitlements
- changes in salary and/or allowances
- etc.



What can be done to prepare now?



Perform risk analysis



Individual case assessments



Consider global policy approach



Stakeholder working groups



Review long term cost of working practices



Utilize technology





Accessing government stimulus packages



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Accessing government stimulus packages



Not really a stimulus in the usual sense as most of the packages are NOT focused on increasing consumption/demand (at least in the short term)



Policy focus is on waiting out the lockdown period with as little damage to the economy as possible — in hopes that economy can bounce back



Many of the schemes across the world involve economic support to individuals — we will focus on these today



The details of these schemes clearly vary widely — but some common features:

- Implemented very quickly — weeks rather than several months
- Lack of detailed rules
- Don't interact well with the existing tax regime, in all its complexity
- More questions than answers
- Best endeavours approach and following the spirit of the law — difficult for jurisdictions with detailed prescriptive tax law
- Tax authorities having to operate in a completely different mode — uncomfortable for them
- Accordingly, adopting a trust and pay, check later approach

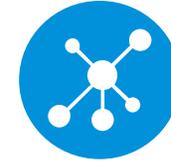


Two aspects of making a claim



Document the claim

- Produce the documentation contemporaneously
- Ensure that you have read and followed any guidance produced by your tax authority
- Explicitly note any areas of uncertainty, the position taken and why
- Seek advice on these areas of uncertainty if appropriate



Can we vs should we

- In some European countries there has been a debate about whether businesses can but also whether businesses should take the employee support payments
- Generally, if the counterfactual is that the employee would have been made redundant but for the employee support package — then a claim can be made (this overview is clearly subject to the detailed rules in each country)
- However, in the UK and also in France — there has been an additional discussion about whether certain businesses should make claims
- Highly fact specific, complex and subjective — but also a link to how much the schemes cost

Mobile employees



As stated, the employee support schemes do not interact very well with the existing tax regime

Based on our discussion with the UK authorities, very little further clarification on these detailed points will be given

So when considering what the impact is on a mobile employee, it is likely that you will need to apply the best endeavours approach

If you are equalizing an employee to their home tax regime — then this may be problematic if the home tax regime makes a helicopter payment i.e. a benefit paid to all; should you include this in the equalization calculation, or not?

Qualification is likely to be a legal point in the first instance (as many employment support payments may not be tax things in a legal sense) however a policy decision will need to be made as to how such payments are treated in the hypothetical stay at home and actual tax calculations

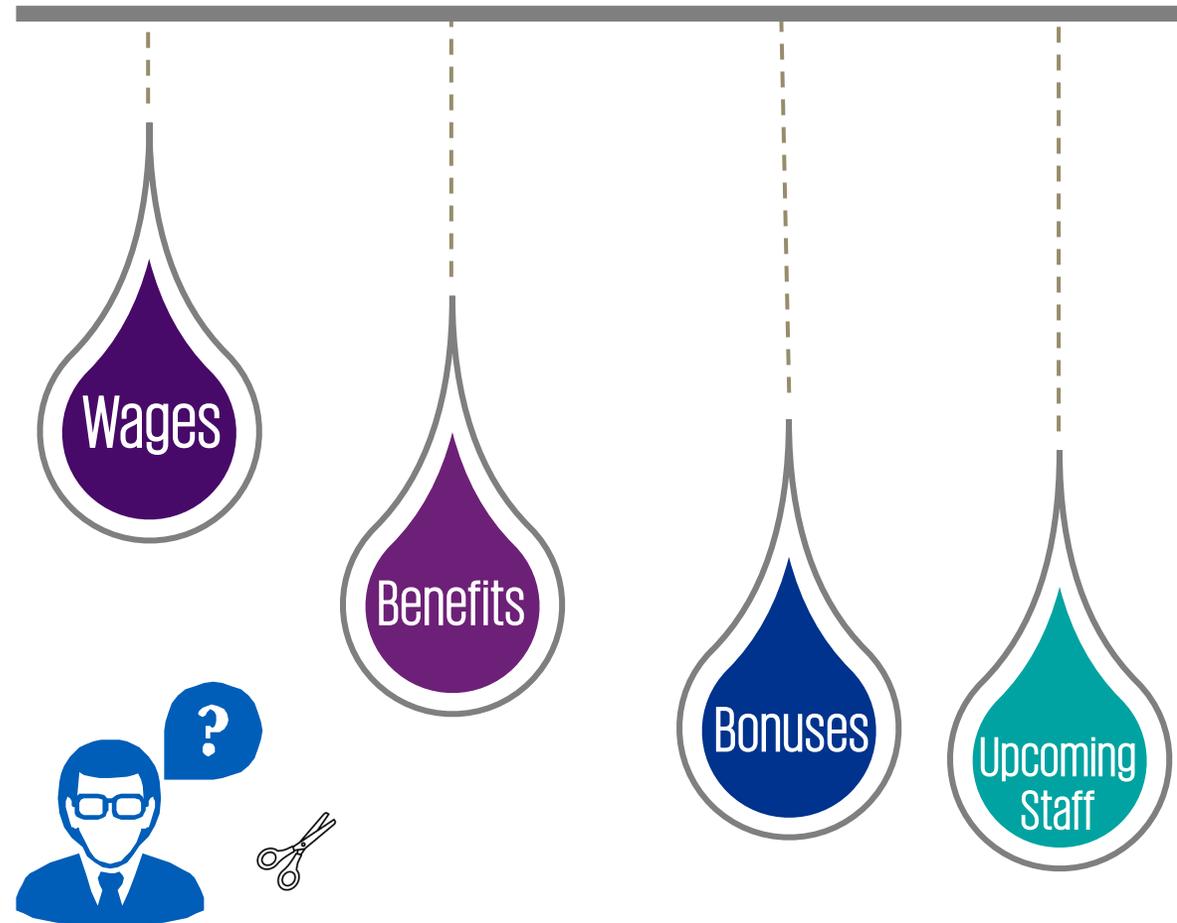
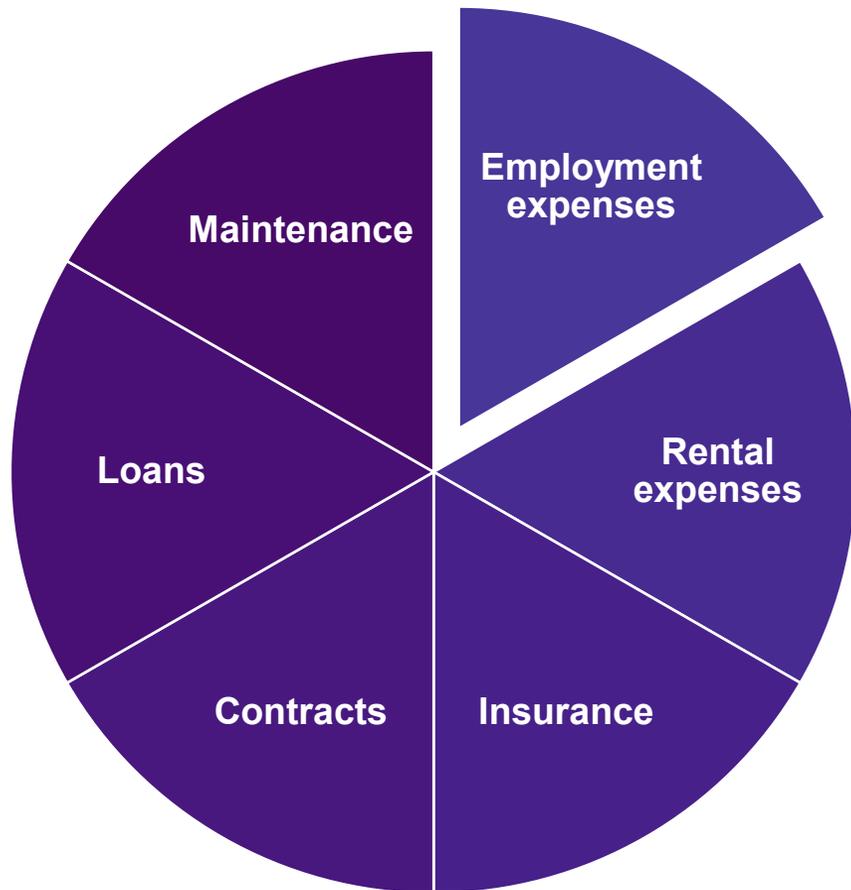
If you need to furlough an employee using an employee support scheme — who is also on an equalization package — this may well be highly complex from tax and company policy perspectives

No easy answers here — be consistent, take a reasonable view, look at the contracts and the relevant law, and communicate

Taking the bite out of employment expenses – Wage subsidies



Taking a piece out of expenses



Wage subsidy in Singapore



01

3 tranches of wage subsidies:

1st tranche: 75% to all employers

2nd and 3rd tranche:

25% to general employers

50% to food services

75% to aviation and tourism

(wage cap at SGD4,600)

02

Payable in April, July and October 2020

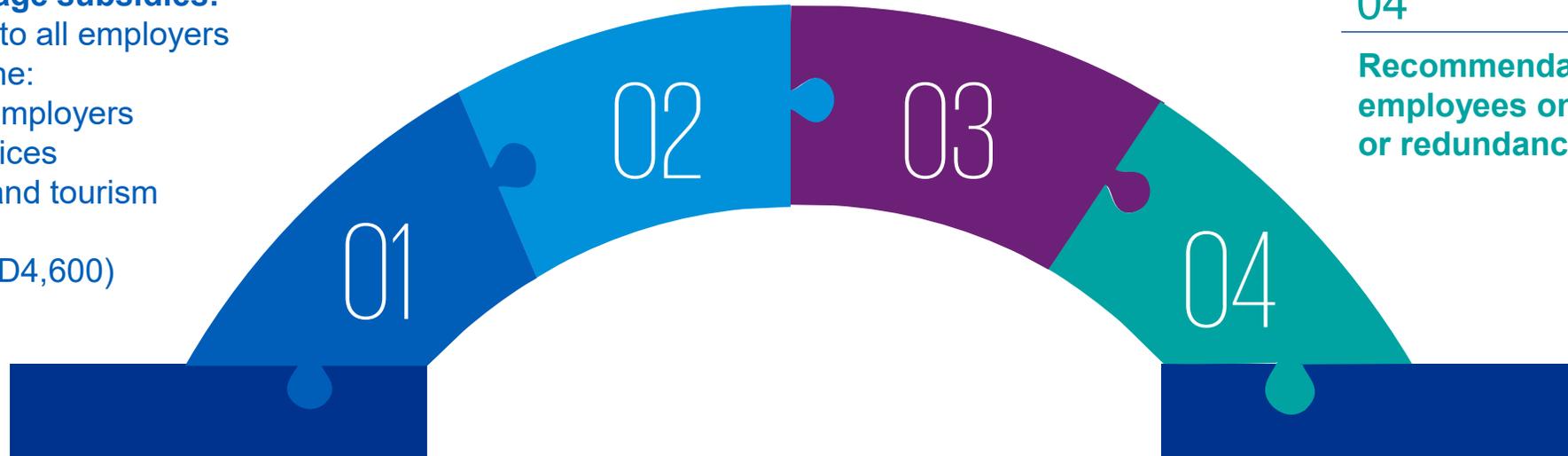


03

Administered by Inland Revenue Authority of Singapore Automatically

04

Recommendation not to put employees on no pay leave or redundancy



Wage subsidy in Hong Kong



Key features



Reputational
Issues

Potential claw
back and
penalty

Static headcount
implications

Potential shift in
bargaining power

Expats

potentially
excluded

Acting in the best
interest of the
Company



Adjustments to pay and reward packages



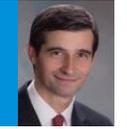
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Adjustments to pay and reward packages

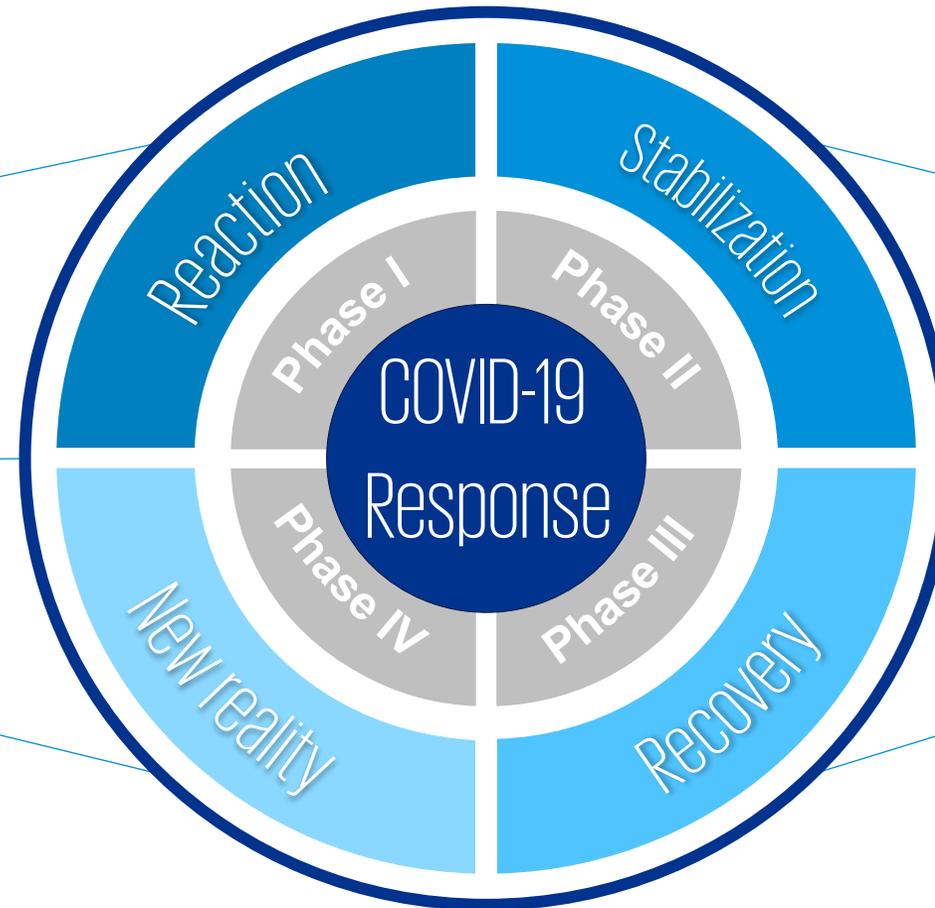


Macro

Business implications

Government actions

Capital market response & Central Bank actions



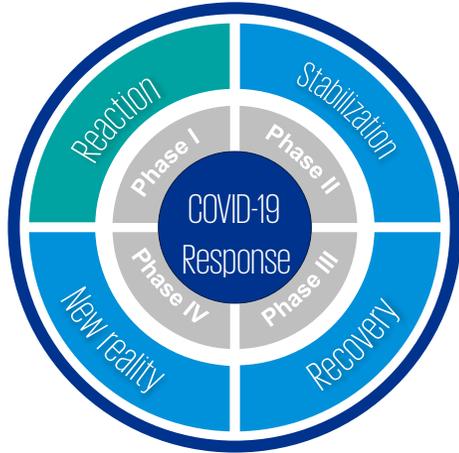
Company

Employee implications

Pay & reward implications

Items to consider

Adjustments to pay and reward packages: Reaction phase



<ul style="list-style-type: none"> — Nearly all businesses around the world shut down — operations cease — Global supply chain shock 	<ul style="list-style-type: none"> — Stay-in-place & lockdown measures — Immigration & travel restrictions — Unprepared for pandemic — medical response is woefully inadequate — new COVID-19 cases at exponential rate — Introduce economic stimulus, business support, & employee relief measures 	<ul style="list-style-type: none"> — Global markets sell off with unprecedented volatility — Central Bank intervention
<p>Business implications</p>	<p>Government actions</p>	<p>Capital market response & Central Bank actions</p>

Employee and pay implications

Employee implications

- Professional & personal lives simultaneously disrupted
- Relocation to safe zones
- Transition to work from home (WFH) & alternative work arrangements
- Shift to part-time status
- Furloughs & layoffs
- Employees being stranded in certain locations. May not have appropriate work permits to carry out his/her duties.

Pay & reward implications

- Costs incurred by companies for WFH, temporary relocation of employees/family, & employee assistance programs
- Supplement lost pay through:
 - Company funding
 - Gov't economic stimulus, business assistance & relief measures
 - Social programs & unemployment insurance
- Implementation of no-pay leave or wage reduction

Items to consider

- Preservation of company's liquidity
- Requirements & constraints to receive stimulus funds
- Employee wellbeing & support — balancing WFH & family commitments under stay-in-place/lockdown mandates
- Employee perception
- Legality of proposed measure and palatability

Adjustments to pay and reward packages: Stabilization phase



<ul style="list-style-type: none"> — Consumer demand constraints due to lost jobs, investment losses and recessionary fears — Global supply chains stabilize & slowly come back on line 	<ul style="list-style-type: none"> — Stay-in-place & lockdown measures remain — Immigration & travel restrictions remain — Coordinated medical response flattens pandemic curve — new COVID-19 cases at slower rate — Economic stimulus, etc. — Round 2, 3, 4? Including wage subsidies and delay in tax payments — Defer eviction orders for tenants who cannot pay rent. 	<ul style="list-style-type: none"> — Global markets seek bottom — bullish bias builds slowly in anticipation of recovery — Central Bank monitoring & additional intervention, as needed — Global markets are awash in liquidity
<p>Business implications</p>	<p>Government actions</p>	<p>Capital market response & Central Bank actions</p>

Employee and pay implications

Employee implications

- Employees adapt to virtual WFH arrangements
- Part-time status, furloughs and unemployment remain for many
- Early stage workforce alignment & transition considerations to support recovery phase

Pay & reward implications

- Continued costs to companies for WFH & employee assistance programs
- Supplemental pay through company, stimulus & relief measures continue
- LTIP/Equity Award implications:
 - Re-pricing of stock options and/or cancellation/replacement of outstanding options
 - Additional grants to replace lost wages
 - Retention grants
 - Short-term cash bonuses
- Extension of pay reduction/no-pay leave period or pool. Deferring of wage payments. Reduction of benefits.
- Employee requests for loans or hardship withdrawals from pension & other qualified plans

Items to consider

- Institutional shareholder resistance
- Insufficient authorized shares
- Dilution
- Expiration of gov't stimulus & relief measures
- Compliance requirements on stimulus package continue to be a factor, risk of claw back for failure to comply

Adjustments to pay and reward packages: Recovery phase



<ul style="list-style-type: none"> — Capital projects & consumer demand fuel job creation & hiring — Global supply chains realigned to post-COVID-19 business needs & future COVID-19 contingencies 	<ul style="list-style-type: none"> — Stay-in-place & lockdown measures restrictions relaxed — Immigration & travel restrictions relaxed — New COVID-19 cases recede — Preventive measures imposed to mitigate country/regional COVID-19 outbreaks 	<ul style="list-style-type: none"> — Global markets in recovery/bullish mode — Companies with COVID-19 adaptive strategies emerge — Companies that don't adapt are left behind — Central Bank intervention recedes
<p>Business implications</p>	<p>Government actions</p>	<p>Capital market response & Central Bank actions</p>

Employee and pay implications

Employee implications

- Employees brought back online under new reality conditions
- New jobs/roles created to support post-COVID-19 strategies
- Early stage transition from safe zones to former work locations
- Easing of border controls, however employees may still be blocked from either entering or leaving certain countries

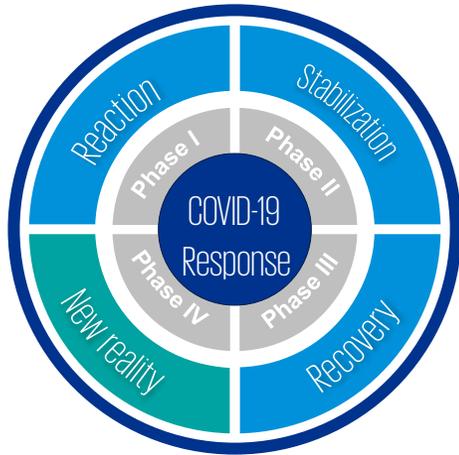
Pay & reward implications

- New incentive programs & award types to attract & retain necessary talent to enable companies to compete in the new reality
- Modified/new performance measures & targets to align with post-COVID-19 business imperatives
- Employee choice programs to select LTIP awards commensurate with risk tolerance & outlook
- Policies and employee support frameworks evolve for WFH arrangements & new workplace requirements

Items to consider

- Shareholder approval of new LTIPs & modifications to existing LTIPs
- Renewal interest in ESG imperatives
- Possible limitations on new LTIPs & share repurchases due to requirements under gov't stimulus programs
- Quantify cost implications to company and identify mitigation opportunities

Adjustments to pay and reward packages: New reality phase



<ul style="list-style-type: none"> — New reality is established through behaviors learned and technology developed during COVID-19 — Change in consumer behavior with potential emphasis on essential spending shapes business priorities 	<ul style="list-style-type: none"> — Continued relaxation of stay-in-place & lockdown measures — Continued relaxation of immigration & travel restrictions — Continued evolution of COVID-19 outbreak mitigation measures and workplace requirements 	<ul style="list-style-type: none"> — Global markets continue in bullish mode — Companies with COVID-19 adaptive strategies are rewarded by the market — Laggard companies are acquired or become obsolete — Central Bank intervention turns toward managing inflationary pressures
<p>Business implications</p>	<p>Government actions</p>	<p>Capital market response & Central Bank actions</p>

Employee and pay implications

Employee implications

- Employees fully adapted to new reality working conditions
- WFH and virtual work arrangements are significantly higher proportion of workforce than pre-COVID-19
- War for talent develops
- Transition from safe zones to former work locations is limited to essential onsite jobs; remainder transition to WFH

Pay & reward implications

- Incentive programs & award types continue to evolve to:
 - Attract & retain talent — what will be the priorities of the next Gen?
 - Align with company's post-COVID-19 business imperatives & renewed interest in ESG measures
- Continued evolution of policies & employee support frameworks
- Many factors at play when considering pay, bonuses, and LTI, including market factors and employee relations

Items to consider

- Ongoing alignment of company's Total Reward framework to support talent & business imperatives, balanced against new tax legislation, regulatory requirements, & cost pressures
- Impact on businesses may affect the company's ability to restore rewards/benefits back to pre-COVID-19 levels



What might immigration look like in a post COVID-19 world



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What might immigration look like in a post COVID-19 world



Interview with **Ray Rackham** Global Head of Immigration at HSBC

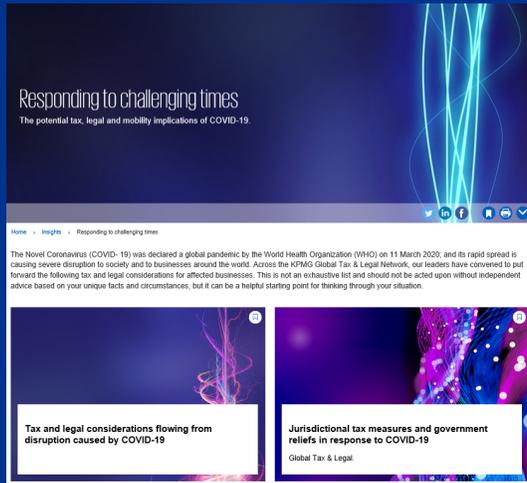




Questions?



Resources



Responding to challenging times

KPMG site dedicated to business implications of COVID-19 on a global scale — tax, legal and mobility focus

<https://home.kpmg/xx/en/home/insights/2020/03/responding-in-a-crisis.html>



Tax News Flash — COVID-19

KPMG's ongoing roundup of COVID-19 measures taken around the world in response to the situation

<https://home.kpmg/us/en/home/insights/2020/04/taxnewsflash-coronavirus-covid-19-developments.html>



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