

Podcast transcript

COVID-19 and Global Mobility: Protecting your staff and business today

Podcast with Murray Sarelius, Partner, Tax, National Head of People Services, KPMG China; Alex Ma, Senior Associate, SF Lawyers, KPMG in Hong Kong; Jill Hemphill, Partner, Tax, KPMG in the US*.

Musical intro

Announcer:

Hello and welcome to the Future of Mobility, the KPMG podcast series for global mobility leaders. In today's episode, we talk to Murray Sarelius, Partner, Tax, National Head of People Services, KPMG China, Jill Hemphill, Partner at KPMG in the US, and Alex Ma, Senior Associate, SF Lawyers, at KPMG, Hong Kong (SAR), China. Thanks to all of you for joining me over the phone today.

As we're seeing the unprecedented business and economic impacts of COVID-19 have been fast and continue to unfold, so Murray, perhaps we can start with you – what impact has this had on global workforces? What are the immediate questions a business is faced with in a time like this?

Murray:

So, when the outbreak first started, the immediate question was, where are staff, and are they safe? And I think it's a little bit different now because the rest of the world has seen this coming, and it's been more of a gradual build up. When this initially happened, it was over Chinese New Year. And so, over that time, you literally have millions of people traveling to their home cities. People that are working in China, but come from overseas, will often be home for the Chinese New Year. So, this all happened at a time when there was a lot of travel going on. Our ex-patriots that are based in China were all over the world. So, the first focus was very much, where are our people? Are they safe? And other clients that I've been talking to went through the same sort of process. First priority, where are our people?

The second question then was, how do we get back up and running and back to work? A lot of people were stuck in the wrong place as far as travel restrictions and not able to come back to their normal work location. Other people chose to leave and go back to their home jurisdiction because they were concerned about the virus spreading. And so, ex-pats would

often up and leave. We literally had cases where people—and I know clients have had the same situation, where their first reaction was head home, sit down, and then decide what you're doing from there.

And so, the second range of, I guess, questions, that once you've worked out where people are, and are they safe, we needed to look at whether they could work from where they are. Could they work effectively? Could they work legally? And that raises various immigration issues. And also, from a tax point of view, having people sitting in one country, working for the benefit of an entity in another country, obviously, throws up personal and corporate tax issues.

And then, finally, as we started to move through those phases, then the discussions with clients turned to business continuance planning and looking at what might happen if the virus continues to spread. The impact that it will have on the business, a need to manage cash flow, all those types of things that we saw both in China and Hong Kong. We saw it during SARS in 2003, but also more recently, globally, with the Global Financial Crisis. That question about if we have a downturn in economic activity, if we have a reduction in revenue, how do we manage cash flow? How do we manage costs? And looking at, what do we do with excess capacity and head count?

So, that, right then, raises a longer-term question. Looking ahead of what can we do and what we need to do to protect the business. So throughout it's, first of all, protecting the people. Are they safe, and can they work effectively? And secondly, protecting the business to make sure that operations can continue effectively. And then, looking to the future for managing cash flow and the economic issues.

Announcer:

Murray, with these questions in mind, what are some potential issues for cross-border remote workers?

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Murray:

So, the key issues when we've got remote workers cross border—and to give you an example of where this has been coming up, we've had businesses that are based in China employ people in China, but have people commuting from Hong Kong, for example. And one business I can think of has quite a sizeable number of people that are living in Hong Kong with their families, but their normal work habit is to commute across the border into Southern China and work in Shenzhen or Guangzhou.

Similarly, we see movement the other way, people living in Southern China, but commuting into Hong Kong to work. As I've mentioned before, also, as an immediate reaction to the uncertainty of the virus and the risk associated with it, we also saw a number of expatriates look to go overseas and come out of Mainland China and to consider where they could place themselves to continue working. In a lot of cases, that was—the reflex was to go home, to go back to their home jurisdiction, but to continue working for their host entity from there.

And so, the sorts of issues that they had to, obviously, pose up were all the things that we have with business travelers, generally. But the difference in this case was that there wasn't a lot of time to plan it. And so, we've been dealing with cases where people have decided to go and sit in Vietnam, for example, because it's out of China. It's moving them away from the virus area, but keeping them in the same time zone. And so, the immediate questions there are, do they have the right to work there? Do they need work permits?

Then, also looking at the—they need to look at the personal and employer obligations. Are they withholding obligations in the location that the people are based? Are they triggering a personal tax liability? And then, finally, the corporate tax issues. Could the presence of the people in another jurisdiction create a permanent establishment? So, a taxable presence in that country for their employing entity. Does the business need to register in that location? Could it be triggering indirect taxes? So, VAT, GST, those type of things.

Announcer:

And Murray as businesses aim to keep their workforce safe and still working, what rules should they be following?

Murray:

When I talk about these issues with clients, the critical thing is, what's important and what's not? Are these things that have to be dealt with straightaway, or can we move people and then think about it later? In my mind, the immigration issue is the immediate issue, whether somebody actually has the right to work in that location or not. And generally, most of the cases we saw where people moved quickly, they were going back to their home jurisdiction. So, naturally, being a citizen, they have the right to work there, so no big problem. You can move on to the next thing.

We've also had clients looking at what locations are good to go to where they can move a group of people that need to continue working, but can go to a jurisdiction where work permits can be processed quickly.

Then, moving on to the personal tax considerations. Again, it's that question of, how do we triage those quickly? And one of the things I strongly recommend is be very clear about, where are people going to move away from, and what jurisdictions have double tax agreements with that jurisdiction? And so, looking at people moving out of China, China has a pretty good range of double tax agreements. And so, there's some protection there that if you just come out, and you're going somewhere for a short period of time, they shouldn't be triggering a tax liability. And you, then, buy yourself the time to start considering the issues that arise from that.

People are moving out of Hong Kong. And we have quite a few that worked on a theory that if China's a problem, it could very easily spread to Hong Kong. There's a number of countries where we have a lot of ex-pats coming from where we don't have a double tax agreement. Places like US, Singapore, Australia, we don't have a double tax agreement with them. So, you need to be doing that triage of, can this move happen quickly or not? How long are we buying ourselves? Based on the domestic threshold, how long can somebody be in those countries and not trigger a tax liability?

And then, finally, from a corporate tax point of view, I tend to put these as a slower consideration that can be dealt with later. Because generally, you're not going to be triggering a corporate tax liability if you're sitting in a country for a week or two. So, at least you've got some time. And if it's a country with a double tax agreement, you're probably going to be okay for six months or so. But there are still some watch points in there, particularly if you have people that are signing contracts, or they're revenue generating roles. Because although the risk may be a bit low with corporate tax issues, in the short term at least, the potential dollar impact could be much, much bigger. And so, it's having those sorts of things weighed up to be able to work out, okay, if we move people now, which things do we have to deal with immediately? Which things do we have to—can we deal with over the next week or two, or month or two?

Announcer:

Alex, coming to you, what are some of the broader HR issues businesses are facing during this time?

Alex:

So, they fall neatly into three large categories. One is on remote work arrangements, one on unpaid or part-paid leave, and the last one is on ex-pats who are currently on assignment.

For the unpaid and part-paid leave, obviously, as Murray was saying earlier, there are some economic impacts. And if business is slowing down, especially in the tourism side of things—Hong Kong is way down on tourism, and the restaurants there, the business is down. So, the question is, well, can we put them on unpaid or part-paid leave? And more recently, there are questions in regards to this quote-unquote quarantine. So, when workers get back from a different country, they're recommended or they're required to go into quarantine. And in that case, can the person be put on unpaid or part-paid leave?

Now, lastly, on the ex-pats who are currently on assignments. The ones who are outside wanted to just stay put. And the ones who were in China wanted to get out. So, the question was,

then, well, I'm getting a lot of requests. In one case, a client, out of the four or five management-level executives, they all wanted to get out. So, the question was, what can we do? And was it safe if we kept them there? So, these are some of the questions.

Announcer:

And Alex, what should businesses be taking into consideration with regards to their workforce currently on assignment?

Alex:

Number one, the first issue is, well, if they all leave, who's going to run the business? So, there are business continuity considerations. If nobody is there to sign a contract, and if nobody is there to run the place, then what's going to happen to the business? So, that is a non-starter.

Number two is employee relations because, if your entire senior executive leaves the country, that says a lot to the employees underneath, right? So, we have to manage both the legal side and the employee-relations side quite effectively to ensure that it works.

Now, the next thing is when employers operate an assignment, they usually make a lot of expense to ensure that this person is going to this country. They're well catered for. They can do their job. They have X, Y benefits. The benefits actually give rise to some sort of legal responsibility. So, what happens is an employee decides to say, "Well, I'm just going to get out of here, and I have no intention of coming back until this is all over." We don't actually know when this is going to be all over. The predictions have been changing. Cases in China are said to be lower now. And some of the ex-pats are still kind of not too comfortable with going back immediately.

So, aside from the immigration concerns that Murray was saying earlier, just basically looking at all the contracts and all of the agreements that were entered into for facilitating that ex-pat and also the business continuity considerations. If you put that together, you have a good picture of whether that person can actually leave the country.

Now, in terms of a bunch of them leaving together, as I said, business continuity considerations come to mind. But more importantly is if you're choosing a couple, who do you choose?

As to the question to remain overseas, I actually think Murray covered this already. So, basically, if a Chinese national is outside on an assignment, their visas might run out. Or if they're there for a meeting, and no more than a meeting, it just so happens they got caught, then what happens?

So, immigration issues are a big problem. If they can't actually work in that overseas location, then what do they do? Do you put them back? If they refuse, then what do you do? So, basically, there's a lot of negotiation going on here as well because, on the one hand, you want to—you want the person to be able to work and to fulfill the obligations. On the other, there's the workplace safety. If you require the person to go back and he or she gets Coronavirus, then what? That becomes a whole new ballgame. So, there's a lot of factors in consideration, and we can't—we don't really have an answer, per se, so it's case by case.

Announcer:

And what about making employment decisions during this time - what potential steps should businesses consider taking?

Alex:

So, number one, always consider whether the measure is legal and palatable to the staff population. Number two is have a contingency plan. Just always ask the question, if it doesn't work, then what do I do? The third is engage in negotiations. And lastly, document all agreements made in all the communications. There can be all sorts of complaints, especially when there's an economic downturn from the employees. So, make sure you document the process, not only the agreements, that's the final product, but all the communications, everything that's written.

Announcer:

Jill, as we conclude, what are some of the key takeaways and themes businesses should be keeping top of mind over the next few weeks?

Jill:

In terms of the common themes that I think we heard through both Murray's comments as well as Alex's, there's a whole host of kind of cross-functional issues that will need to be considered, from safety, tax, immigration, finance and cost implications, confidentiality. You will need a cross-functional team to address these challenges.

We also heard themes around clear communication. You may be dealing with a lot of new questions that are not wholly addressed in existing policies and making sure that you are communicating clearly with your teams, as well as documenting outcomes and ensuring fairness.

And lastly, I'd say just know your jurisdictions. We do see some common threads in the regulatory environments from country to country, but certainly a lot of nuances. Things that work in Hong Kong may not work in the US. And things that work in Italy may not work in China. So, you really do need to take the time to focus in on some of the country's specifics.

Announcer:

Jill, Murray and Alex, thanks for taking the time to speak with me today. You've given our listeners a lot to think about. Please let us know what you think of this episode and if you have any ideas for future episodes, please email us at tax@kpmg.com. And remember, you can find our latest publications, articles and other material that address the issues discussed in this ongoing podcast series at kpmg.com/futureofmobility.

Thanks for listening.

Musical exit