KPMG South Africa and KPMG UK "Work from Anywhere" podcast

September 2021

Introduction

1) **Mel:** Hello to all joining us today. I am Melissa Duffy, a tax partner at KPMG in Johannesburg and I specialise in the cross-border movements of persons and/or their capital from a tax perspective, individuals' tax, employees' tax, exchange control for natural persons, family offices and private clients. Today, I am joined by Carolyn Chambers and Michelle Berners-Price. Michelle and Carolyn, please introduce yourselves to our listeners today.

2) **Michelle:** Hello all, it is lovely to be speaking to you. I am Michelle Berners-Price and I lead KPMG's Work From Anywhere services team for the EMA region, based in London.

3) **Carolyn:** Good Day Everyone. I am Carolyn Chambers and I head up KPMG South Africa's Global Mobility Services team, and co-ordinate the business across our Africa region.

4) **Mel:** Michelle, can you please explain this KPMG Working from Anywhere concept and what risks employers should be aware of?

5) **Michelle:** In 2020, as a result of the pandemic, we saw a shift in working patterns all over the world on a scale not seen in decades. Enabled by on-mass technology adoption, the need to facilitate remote working became imperative for an organisation's survival.

Once only an option for digital nomads – freelancers and start up founders, the sudden embracing of remote work globally has meant that more people, including salaried employees, can work abroad more easily.

Since then, we have seen a shift in employee attitude and there is now a demand from employees to work in a way that suits them and as we have seen, this has meant they are working remotely across borders – both state/provincial and international. We call this Work from Anywhere.

This brings huge benefits and opportunities from a talent attraction and retention perspective. Unfortunately, there are many complexities and risks to the organisation of opening up a policy like this. Even for very short cases of cross border remote working, the company and its employees can be exposed to:

- Corporate Permanent Establishment risks
- Fixed Establishment risks
- Transfer Pricing implications
- Payroll withholding obligations and tax return filings
- Employment law and immigration obligations
- Pension, benefits and equal pay requirements
- Duty of Care obligations, cyber security and data security risks.

There is a minefield of considerations for employers to work through and often across multiple internal stakeholders.

6) **Mel:** that's very interesting Michelle. In recent times, we have found that employees are asking for mobility and flexibility. However, COVID-19 has also stifled the freedom of cross-border movement, particularly for South Africa, and resulted in employees being stuck in the "wrong location". Carolyn, has the South African legislation accommodated people being stuck in the wrong locations?

7) **Carolyn:** Well, good question and the short answer is yes, but to a limited degree. South Africa taxes tax residents on worldwide income and worldwide capital gains. Non-tax residents are taxed on South African sourced income. South African resident taxpayers who are on outbound assignments from South Africa rely on the foreign remuneration exemption to exclude some of their foreign remuneration from the SA tax net. This section of the Income Tax Act is called Section 10(1)(o)(ii). The requirements are that the employee must be rendering services outside of South Africa for more than 183 days in any 12-month period and more than 60 consecutive days in the same 12-month period.

In order to accommodate those who were stuck in South Africa due to COVID-19 in the early periods of the South African lockdown, the foreign remuneration exemption was amended by reducing the days requirements from 183 days to 117 days of absence in relation to the tax years ended 29 February 2020 and 28 February 2021. The 60 consecutive days requirement remains.

In addition, many visa concessions were made, to give extensions to the validity of short-term work permits, when the Department of Home Affairs was not processing applications. We are expecting high activity to regularise the situation now that everything is opening up again.

8) **Mel:** did this amendment really help taxpayers? And were there any concessions for non-tax residents stuck in SA?

9) **Carolyn:** This unfortunately only gave limited relief. No changes were made to provide relief to non-resident taxpayers who were stuck in South Africa. For example, if someone was seconded to South Africa for a period of time but was forced to remain in South Africa for an additional period of time, 100% of the remuneration attributable to those work-days spent in South Africa remains taxable in South Africa even if the employee was working for a non-South African employer and but for the travel restrictions, would have been working in that other country.

Foreign nationals typically trigger tax residence after 5 years of presence is South Africa, 90 days into the 6th tax year. Due to the hard lockdown from March to May in 2020 and the limitation of movement, some taxpayers who were non-tax resident became tax resident and this has further implications for them like having to pay an exit tax when breaking South African tax residence, and being subject to worldwide tax on their income.

If people who were working in South Africa on a very short-term basis and not seconded here, were unable to leave, and remained for longer than 183 days, there is also a risk that they triggered tax consequences for the foreign employer in South Africa.

10) **Mel:** Thanks Carolyn. Michelle, what have other countries done in relation to providing tax relief?

11) **Michelle:** During the middle period of 2020 we saw a number of countries provide concessions for employees who were somewhat stranded as a result of border closures and travel restrictions.

Generally, these concessions provided tax relief where an individual resident of one country became stranded in another.

That being said, with the re-opening of borders in the latter part 2020, the majority of these concessions were withdrawn or defined by a time period. As a result, there has been a strong importance on ensuring individuals who did spend time in another country are aware of what their presence may mean for them or their employers. And even more important that organisations are focused on the flexibility they are offering in the future and what this will mean for their tax and legal risk exposure.

12) **Mel:** xxx. Tracking employees and trying to manage all the related risks from employees who work from anywhere and displaced employees, what technology does KPMG have on offer to help employers manage these risks.

13) **Michelle:** Since the pandemic first hit last year, we've been hearing from our clients that the current approach to managing approvals and the ongoing monitoring of cross border remote work cases is unsustainable. Many companies are using Excel spreadsheets to track hundreds or even thousands of cases – and requiring multiple levels of compliance and line manager approvals via e-mail.

With this in mind, we prioritised the development of our technology solution, LINK Go Remote Workforce, to provide companies with the automation to drive efficiency in this process and allow them to facilitate cross border working where it supports their broader talent strategy.

Whilst it is a new solution, this technology utilises other solutions that clients have been using for many years – the tax and legal engine behind our Business Traveller tool and cost estimates from KPMG's Cost Projector solution.

The technology is designed to provide complete control and informed decision making. It delivers compliance risk assessments with accompanying cost estimates for each remote work request. It facilitates intelligent workflows, meaning an organisations policy and decision tree can be configured with the system.

It also provides instant pre-trip actions to be undertaken, like applying for a visa or work permit, as well as remedial, such as payroll and tax withholding. Power BI reports are given to demonstrate the overall status of remote work requests and provide powerful information about the policy – such as whether it appears to be favouring certain demographics of employee, the impact on diversity and inclusion and even CO_2 emissions.

We've seen a huge increase in interest in using this solution and those which integrate with it, by companies who are looking for ways to allow more flexibility to their employees.

14) **Mel:** Any closing comments Carolyn and Michelle?

15) **Michelle:** What we've seen over the past few months is that this is a fast evolving topic, both in terms of the legislative positions applied by the authorities and the policies put in place by companies.

Most companies acknowledge that the policies of 2021 are temporary and it is highly likely they will need to change over the coming years in reaction to the actions of their competitors and the expectations of their employees. So I'd recommend continuing to keep an eye on your market and the needs of your employees, and ensuring you are continuing to consider whether your approach is fit for purpose or needs adjustment over time.

16) **Carolyn:** As South Africa's borders become more open again, we are likely to see an increase in requests or desires for working from countries other than the one in which people worked historically. Companies will need to be flexible in their approach and those who have not seen it yet, should prepare themselves to see more movement, as vaccinations across the continent increase and people are more able to move around.

Understanding what your current position is, is a good start for everyone, and will enable them to better manage your future reactions and preparation for an increased demand in working from countries other than the one they are currently employed in, as a result of personal choice rather than business need. Each employer will need to have a policy in this regard, to avoid having to deal with requests on an ad hoc basis without guidance, and ensure consistent treatment, while managing the potential immigration, legal, corporate and individual tax risks.

17) **Mel:** Thanks to our two fantastic guests today and to you, our listeners for your time and attention. Should you have any queries, please do not hesitate to contact Intl SOS or KPMG. We would also love to hear from you as relates to topics of interest for future podcasts– please email : melissa.duffy@kpmg.co.za. Stay safe and take good care.