KPMG

See it differently

Part 2:
Evolving mobility to meet a changing landscape

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Today's mobility leaders are navigating a dynamic world of rapid change and unprecedented complexity — challenging them as never before to redefine mobility's efficiency, responsiveness and audit-readiness.

Welcome to Part 2 of 'See it differently' — a timely three-part series featuring informed insights from KPMG global mobility professionals on the trends, challenges and opportunities that mobility teams are navigating in a hypercompetitive new era.

In Part 2, we explore in four articles the complexities that mobility teams and their organizations are facing — and how to respond — as the 'rules of the game' continue to evolve.

In our first article, 'Cross-border challenges for board members and highly complex employees', KPMG mobility professionals discuss in depth the unique mobility and reporting requirements impacting today's board members and regulated employees — including tax, social security and personal liability issues.

In 'Compliance audits unlocked,' we focus on how global regulators have been active of late regarding tax, payroll and immigration audits — and what businesses should do without delay to help become 'audit ready' in the event that regulators come calling.

'EU authority and social security' explores the EU's efforts on 'e-Declaration' and the posting of workers in member states, as well as social security revisions and the Posted Worker Directive (PWD).

Our final article, 'Has national tax policy distorted the global talent competition?' focuses on the fierce global race for talent, highlighting both the advantages and potential problems posed by today's diverse expatriate tax regimes.

I hope you find the latest insights in our global mobility series informative and thought-provoking as we encourage today's mobility leaders navigating change and complexity to 'See It differently' on the path to growth and success.

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Contents

Article 01

Cross-border challenges for board members and highly complex employees

Executives on the move raise high stakes for mobility compliance

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Today's board directors and corporate officers face unique mobility and reporting requirements that differ from mobile employees in key areas that include immigration, corporate and personal income tax, social security and personal liability.

Board members and senior executives are not just highly compensated individuals; they are prominent leaders. Their decisions, actions and personal circumstances can significantly impact the organization. Tax authorities, regulators, shareholders and the media closely monitor what happens to those in top positions.

To protect the interests of senior leaders — and their organizations — global mobility teams should manage leadership assignments with a sharp focus on meeting the diverse and complex compliance and reporting requirements they face in today's ever-evolving environment.

Unlike mobile employees, directors and corporate officers are appointed to their positions and they can work with or without an employment contract in place. In addition, they represent the company legally regardless of their activity and, depending on their country of assignment, they can be deemed employees or self-employed, while remuneration may be subject to legal constraints.

Other factors can add to the complexity of senior leaders' assignments, including marital and family status, health status, citizenship and immigration status, residency, and personal wealth.

Company circumstances that can play into the complexity picture include: the leader's contractual or statutory status, the nature of activities within the organization, and the legal documentation in place. In this article, we highlight the key factors that differentiate board members and corporate officers from regular employees and examine how organizations need to manage expectations and requirements to help avoid disruptive issues and implications that can arise during leadership mobility assignments.

Legal and immigration

Conditions differ significantly between mobile employees and senior leaders (board directors/corporate officers) around legal and immigration obligations. Employees typically work under employment contracts and, in cases of secondment, may face home-country rules as well as host-country public order rules.

Directors and officers, as noted, are appointed and typically work under a contractual mandate that is accompanied by specific requirements — for example, legally establishing whether the leader is deemed self-employed. Limitations on activities in a host-country can also exist and the scope of these rules need to be clearly identified and understood. Mandates can also provide significantly weaker social coverage and employment legal protection.

To help ensure compliance with legal and immigration requirements, stakeholders such as legal, tax and HR teams within the organization need to be involved.

To help ensure compliance with legal and immigration requirements, stakeholders such as legal, tax and HR teams within the organization need to be involved. For example, what type of visa is required for the assignment, and do visa conditions meet the specific needs of the business and the individual? For example, in some jurisdictions faster/lighter immigration procedure can be available for directors and officers, but these procedures often do not cover accompanying family. It's also important to keep in mind that in some jurisdictions, board members can be deemed independent, self-employed professionals rather than sponsorable employees.

Lastly, corporate mandates generally have to be decided by the shareholders or the board of the company. Even in the case of a fully owned subsidiary, additional time will have to be planned to account for all appointment procedures to be completed prior to the start of the assignment (and the publication of the nomination).

Residence

Determining residency status is generally identical for both employees and senior leaders. A key difference regarding taxation is that a resident is subject to tax on their worldwide income — whereas a non-resident is subject to taxation only on income sourced in that country (variations can exist depending on the country combination and application of the tax treaty).

At the same time, while residency impacts an employee's taxation and social security, it will not always have the same impact on a senior leader's taxation or social security (especially under EU rules).

When it comes to meeting residency requirements, businesses need to identify and understand the impact of home and host jurisdictions' rules and thresholds and compare the desired outcome to the needs of the business.

Social security

For employees, directors and officers, social security will be affected by bilateral treaty clauses or the EU regulation based on the country combination. However, for directors and officers, the applicable clause will generally not be the same and provide for different rules than the one the business is used to with employees.

There can also be a potential mismatch of qualifications under the home and host jurisdictions' domestic laws, or difficulties under EU regulations when combining employment with board membership.

Social security determinations can be complex, and mobility teams ultimately need to know which social security rules apply under the diverse conditions of each assignment. Also, it will be important to monitor the situation and ensure that any change of circumstance (appointment to new board in another territory for example) does not affect the current position.

Income taxation

A broad range of factors can impact income taxation. Employee treaty clauses are based on individual residence; the duration and location of activity; charge of remuneration; and employer 'tax' residence.

For directors and officers, income tax will generally depend on a specific clause of the tax treaty concluded between the two jurisdictions concerned but not always depending on how each country consider these positions. There can also be a mismatch between the clauses of the same tax treaty that the two jurisdictions will apply to the situation. For example, one country may consider that the employment clause applies while the other considers that the officer or the self-employment clause should apply. Of course, these clauses determine the allocation of taxing rights based on different criteria.

Differences also exist regarding withholding positions for directors/officers especially when considered independent contractors. On the complex taxation front, then, mobility teams ultimately need to know and manage:

- The construct of any treaty that applies to taxation and the reading of the situation by the jurisdictions concerned.
- How an employee being named a director will impact taxability.
- The difference between the basis of withholding and the basis of tax.
- Documentation to be completed prior to work.
- Whether board members will be offered assistance with personal-compliance obligations.

Remuneration and equity

Employee compensation can be freely determined under the company's remuneration policy, although in some cases restrictions can apply, for example, in financial services. Relative flexibility exists to allocate costs and employee share schemes.

For corporate officers and board members, specific local legal prescriptions often define what organizations can provide, including 'golden parachutes.' At the same time, in some territories, compensation equality rules can have an impact, as companies are not allowed to discriminate between board members — they must all be paid on the same basis. A corporate officer or board member can also participate in an employee share scheme if shareholders pass a specific resolution.

There is less flexibility to allocate costs, and some jurisdictions restrict or prohibit the granting of equity to directors. There may also be holding constraints and blackout periods that limit the ability to sell shares. Complexities also exist for expat packages. Ultimately, organizations will need to determine:

- If there is specific legislation governing remuneration/equity, for example pay cap or imposed remuneration structure (differed, equity), pay transparency or requirements regarding reporting/proxy disclosures?
- Is there any shareholder activism to consider?
- The application of appropriate expense policies to limit the taxability of travel expenses.
- Unexpected benefits, entitlements or mandates that apply.
- Specific options offered to directors that create complexity.

Governance and reporting

While requirements for employee reporting are typically familiar, specific reporting requirements for board members and officers can exist in the company's country of residence or listing. Beware that reporting demands here can be highly detailed and burdensome.

It is therefore crucial to know what, if any, specific options offered to directors/officers create complexity, for example, a separate country-specific addendum to the share plan. In addition, cases involving a golden parachute and related bonus, severance or benefits payouts can become particularly complex.

Golden parachutes

When a company experiences a change in control, it's worth noting that under the US Internal Revenue Code, two negative consequences can be imposed on 'excess' parachute payments. For the employer, the business can be denied the deduction for the excess payment (Section 280G), while the employee can be subject to a 20 percent excise tax (Section 4999). Key considerations to be aware of for mobility include:

- US residents are taxed on worldwide income and are not exempt from Section 4999. TEQ (Tax Equalization) policies may have provisions requiring the company to pay any applicable taxes, which could include excise tax and result in additional excess parachute payment due to gross-up.
- Coordination is needed between global mobility, tax, rewards and payroll.
- The 20 percent excise tax must be withheld in US payroll.
- US non-residents could be subject to section 280G if they have US sourced income.

Permanent establishment

For employees, board members and corporate officers, permanent establishment determination is based on their activities outside the country in which the employer is located. For board members and officers, permanent establishment is also based on governance/the location of decision-making.

Ultimately, the assessment of a taxable presence in the host location can result not only from the activity of the individual but also from the collective 'behavior' of the directors. Also, a professional presence in a country for an individual can be dictated by corporate tax rules such as substance in the company's registration country.

Protecting your companies and individuals

In today's complex and ever-evolving global mobility environment and taxation landscape, it's critical to understand how best to protect the diverse interests of companies, their leaders and their employees. Start early during assignment planning to anticipate the diverse and often complex implications of legal, tax and social status requirements. Manage expectations by communicating timelines, risks and responsibilities as they apply to the organization, senior leaders and employees. Finally, establish good governance using a strategic process that facilitates compliance and protects the organization.

Key takeaways

1. Immigration, income/social tax and regulatory requirements may differ between mobile board members/officers and mobile employees. While the distinctions are significant, there is a strong argument that a team experienced in mobility should oversee board members to support and ensure appropriate compliance for this high-profile group.

2. Designation as a board member may result in particular — and often unexpected — requirements in certain jurisdictions. This is often the case even for employees who are named directors of a local fully owned entity. It is therefore important for mobility to be notified when the appointment of someone as a local entity director is being contemplated.

3. Understanding the areas for concern and being armed with both general and specific questions to ask about a given scenario is key to a proactive, intentional experience — versus a reactive and potentially rocky one. The visibility and influence of senior leaders create high stakes.

Article 02

Compliance audits unlocked

Global mobility needs to be audit-ready as scrutiny by authorities increases

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Staying one step ahead of authorities is a significant challenge for global mobility teams today amid heightened regulatory scrutiny, an increasingly complex compliance environment, and the growing risk of disruptive tax, payroll and immigration audits.

As today's evolving reality impacts mobility programs, businesses need to remain audit-ready — keeping up to date on governance trends and maintaining consistent dialogue with authorities to avoid financial and reputational risks and costly resource demands.

Authorities are increasing their focus on tax and social security audits at both the corporate and personal levels. In many cases, for example, errors identified in a personal income-tax inquiry can trigger a corporate inquiry, making it crucial for employers to have clear oversight of what is happening with tax returns among mobile employees.

While wage tax and payroll-related audits are currently among the most common types of audits, social security, immigration and labor law audits are also on the rise.

In this article, we examine several real-world audit cases and the latest trends, as increased government scrutiny impacts mobility programs. We also share leading insights on becoming audit-ready in today's dynamic environment.

At a glance — Global audit trends

In the UK, scrutiny is growing on multiple fronts

The UK's HMRC (His Majesty's Revenue and Customs) tax authority continues to increase compliance activity involving globally mobile employees. Many large and mid-sized employers have been receiving opening letters for audits in the last few years, and these reviews have typically been wide-ranging. At the same time, authorities have been challenging some previously accepted norms in determining what is taxable versus non-taxable.

HMRC audits are taking a more top-down approach to compliance as authorities look to better understand the systems, processes and controls employers have in place to support the global mobility compliance process — including a look at the extent to which digital and AI technologies are used. When the UK authorities come calling, audits can last two years or more.

Typically, such reviews begin by focusing on reviewing a broad range of documentation to ascertain whether there are any gaps or anomalies in the employer's processes which would warrant further investigation. HMRC requests copies of the international assignment policy, relocation policy and general expenses policy, as well as details of all incentive plans (cash and/or shares), pension plans and medical insurance plans. Focusing on the payroll, HMRC will often ask for a full list of inbound and outbound assignees, their National Insurance numbers, details of their home and host countries and their assignment start and end dates from the past four tax years, as well as their home and host country payslips and letters of assignment. As ever, the tracking and reporting of Short-Term Business Visitors remains a key focus of compliance activity for HMRC. These reviews are frequently deep-dive exercises which require a considerable degree of preparation and careful management.

The UK's HMRC (His Majesty's Revenue and Customs) tax authority continues to increase compliance activity involving globally mobile employees.

In recent years, HMRC has devoted particular attention to circumstances in which an employer has made overseas pension contributions on behalf of internationally mobile employees. Whilst in some circumstances a tax exemption may apply either via the terms of a tax treaty, or under UK domestic legislation where the contribution is made to a death or retirement benefits scheme, in some cases the strict terms of these exemptions may not have been met, so HMRC is seeking to collect tax on those contributions. In a similar vein, employers who have made ongoing mandatory social security contributions into a UK inbound assignee's home country scheme have found that in certain circumstances HMRC are now treating such contributions as either a taxable benefit or as a form of disguised remuneration, depending on the nature of the contribution. Superannuation schemes, provident fund contributions and medical insurance fund contributions have all been targeted by HMRC as part of this drive. This has been a surprise to many, as until recently there had been no suggestion in HMRC's guidance that such mandatory contributions were considered taxable.

Visa expenses that an employer may cover for mobile employees are also in the spotlight. Whilst in some circumstances tax relief may be available for such costs, in cases where the conditions for relief are not met, then it has long been accepted that the employee's associated costs (e.g. the visa fee and the Healthcare Surcharge) would give rise to a tax charge if they were met by the employer on their behalf. However, in a significant change of track, over the past year HMRC has also been arguing that costs which are purely for the employer's own account (e.g. the Immigration Skills Charge and the Certificate of Sponsorship fee) must also be considered part of the cost of the benefit of obtaining a visa or visa extension. The point remains under debate between HMRC and professional bodies at present and employers are advised to monitor the development of this debate over the coming months.

Another notable change in recent years involves the introduction of HMRC's 'offshore matters' powers, introduced primarily to let authorities tackle particularly challenging instances of offshore non-compliance. But the 2019 legislation on offshore matters time limits also includes a provision for the rules to apply to simple Pay-As-You-Earn (PAYE) situations involving mobile employees receiving income arising from a source outside the UK. And HMRC is now using those powers to extend the regular statute of limitation for tax-related audits from four years to 12 — a very significant change for mobility, which has led to significantly higher tax demands from HMRC in cases where mobility-related tax liabilities have been extrapolated as far back as the 2015/16 tax year.

All things considered, HMRC's approach to global mobility tax compliance is evolving significantly. The UK government is also directing more investment into expanding HMRC staff and compliance reviews. Mobility should be proactive as never before to remain ahead of changes in UK compliance. Do not rely on long-standing processes and approaches amid ongoing change; you should ensure a clear understanding of HMRC's hot topics and technical issues and review technical positions regularly.

In Germany, wage tax audits are on the rise

Companies in Germany are facing frequent wage tax audits. For many large organizations, wage tax auditors may maintain ongoing contact or work on the premises daily throughout the year.

German employers are legally required to withhold and remit employee wage taxes, and failure to comply can lead to criminal charges of tax evasion by omission. As in many other jurisdictions, wage tax audits can also be triggered by individual income tax returns, and audits in Germany can often last three to four years.

The more complicated an employee benefit item is, the more likely it will result in an audit. And in recent years, the audit trend has shown a significant increase in questions regarding flexible benefits such as bonuses and other compensation-related incentives. Mobile employee benefits related to housing, transportation and other items are also in focus today for potential audits.

In cases where a tax audit identifies under-reporting, the findings are typically shared with Germany's social security authorities to ensure compliance.

In today's environment, businesses need to be fully aware of how employee benefits and various incentives are managed to help ensure compliance with wage tax rules and avoid disruptive audits. Under recent changes to Germany's tax code, for example, businesses are obliged, post-audit, to proactively ensure that errors are eliminated going forward to mitigate future risk.

Close collaboration between HR and tax teams is essential, and we see room for improvement in this area in Germany today. In some cases, tax teams may not be aware of the benefits provided to some employees. Companies need to identify cases of under-reporting and take decisive action to help avoid costly, time-consuming audits. This includes communicating with authorities to advise that corrective action has been taken to resolve the wage tax error. At the same time, however, criminal tax evasion charges could ensue.

Timing is also crucial. Businesses are required under German tax law to correct under-reporting cases immediately. In many cases, businesses are failing to act quickly enough, and authorities can take action, saying it is too late for voluntary disclosure. Timely communication with authorities on behalf of the organization — and with employees via Power of Attorney — can help to resolve issues and eliminate the immediate threat of tax-evasion charges.

Ultimately, as mobility programs and regulations continue to evolve, a comprehensive tax management system that fosters close communication and collaboration between HR and tax teams has become indispensable to help avoid audits and mitigate risk for German businesses today.

Key trends emerge in immigration audits

Immigration audits around the world reflect several significant trends: a recalibration of immigration policies, increased audit activity and protection of local workforce.

Governments are increasingly focused on recalibrating immigration policies for a variety of reasons — including political agendas, geopolitical volatility, national security worries and changing demographics. As a result, businesses should be aware of emerging changes and the need to respond proactively to minimize risk.

Globally, the landscape is characterized by development of more protectionist immigration policies. At the same time, we also see some business travel regulations enabling international remote work by making it easier for mobile employees to relocate. Along the way, authorities continue to embrace digital technologies, including AI and e-visas, to manage immigration processes and address potential audit needs.

To depict the evolving landscape of immigration audits and the need for businesses to manage compliance proactively, we will address two scenarios from around the world to give concrete examples on the varied type of immigration audits companies may face.

Singapore: Audits in Singapore may emerge as a result of 'whistle blowers' — individuals flagging authorities of potentially non-compliant or illegal situations, for example, compensation arrangements or work-related travel without work authorization in place. Singapore's immigration authorities have digitalized the compliance process to a large extent, and violations have become increasingly easy to identify as compliance is digitally monitored. Unlike in some jurisdictions, however, businesses in Singapore are encouraged to proactively communicate with authorities — collaboratively resolving compliance issues to avoid audit disruption.

Western Africa: Immigration audits have been seen to be triggered by frequent business-travel into the region countries. Authorities may arrive on-site with short notice or without any prior notice and request relevant proof on permit to stay and work. Audits tend to be extended beyond immigration related documentation, to include compensation and social security data. Business travel into the country may be suspended during the audit, and employee specific penalties may be put in place.

Simply put, effective management of immigration programs is imperative in today's ever-evolving compliance reality. Fast-changing immigration regulations require in-depth knowledge of compliance per country. In order to help mitigate risks and address immigration audit requirements timely, it is important to ensure consistent oversight of business travel plans, be up to date on country-specific rules and guidance and proactively strive for accuracy incompliance. Collaborative document management between HR and mobility teams is also indispensable: maintain accurate, up-to-date records to ensure timely responses to authorities. In some cases, businesses are wisely conducting 'mock audits' to identify potential problems and avoid disruptive audits.

Practical insights from a former US auditor

Washington-based KPMG US tax professional Brent Jackson previously spent 18 years with the US Social Security Administration, most recently serving as chief negotiator of totalization agreements for the US federal government. During that time, his team audited certificates of coverage for both inbound and outbound mobility assignments. Here he shares timely and informative insights from his experience as an auditor.

Be aware that auditors are typically examining past business activities, patterns and trends to identify potential red flags in your organization. Being up to date on all mobility program details — and knowing what might trigger an audit or unwanted scrutiny — is critical in today's ever-evolving environment.

For example, certificates of coverage play a pivotal role in international assignments. They determine which country's social security laws apply, prevent dual taxation, and ensure continuity of employee coverage. Because these certificates exempt assignees from paying taxes in the host jurisdiction and could affect potential future benefit rights, there's an obligation for mobility to provide sound stewardship of these programs. Dedicating adequate time to reviewing and confirming mobility documentation trends and patterns that could be questioned is crucial.

Beyond trend spotting, organizations need to maintain very close attention to details. This might sound obvious, but beware — a simple error on a form or application can spark close scrutiny of the entire document by auditors. Know what might be a red flag to auditors regarding mobility policies and programs and explore potential changes to help avoid issues.

Keeping original versions of all documents is also essential in the event that auditors come calling. Originals often include security features that prove their authenticity. Providing them as needed demonstrates good faith in meeting compliance requirements and, in the event of an audit, can go a long way toward ensuring a successful resolution.

Remaining vigilant and proactive in these three key areas — tracking trends, ensuring document accuracy and maintaining original documentation — will greatly reduce the risk of a disruptive audit and position the business to respond effectively if auditors do come calling.

Looking ahead

In today's mobility landscape, the key is to remain current on evolving compliance needs — which is always easier said than done. Mobility leaders should review technical positions regularly and take time to clearly identify potential risks and areas of exposure that need to be closely managed.

Ideally, an initial assessment has been done prior to travel. But in today's environment, it's best to fully understand the rules of doing business in other nations. In some cases, for example, a visa is sufficient for a business-related visit, while other assignments may require a work permit. At the same time, is a senior leader an independent contractor or deemed an employee, and are the right documents and policies in place to remain compliant in either case?

Dedicating the time and resources needed to stay 'ahead of the game' is essential. Be prepared to address potential issues — particularly as audits evolve to become data and AI-driven — to help avoid costly and disruptive audits that can damage reputation.

Consistent, fact-based communication with stakeholders is also crucial. Timely, well-informed responses should be provided when the authorities come calling.

Businesses and global mobility teams are facing a critical challenge amid today's complex compliance environment, increased scrutiny and the growing risk of tax, payroll and immigration audits.

Businesses need to be up to date and 'audit ready' to help avoid financial and reputational risks and costs.

Key takeaways

1. **Understand:** Keep up to date on tax and immigration authority hot topics and emerging technical issues by talking with advisers and fellow tax and mobility professionals, both internally and externally. Review technical positions regularly and maintain a risk register as part of the organization's governance processes.

2. **Communicate:** Maintain a constructive and open dialogue with tax and immigration authorities where possible. Respond to information requests and inquiries in a timely manner and manage both internal and external stakeholders proactively.

3. **Be ready:** Audits of the future are expected to increasingly be data and AI-driven, both in the initial targeting activities by authorities and in the review itself. Consider how your organization can make optimal use of data analytics and AI to manage compliance processes and understand how best to demonstrate the efficacy of these processes to tax and immigration authority auditors to provide reassurance.

Article 03

EU regulators and social security

Initiatives sharpen focus on efficiency, compliance and fair treatment of posted workers

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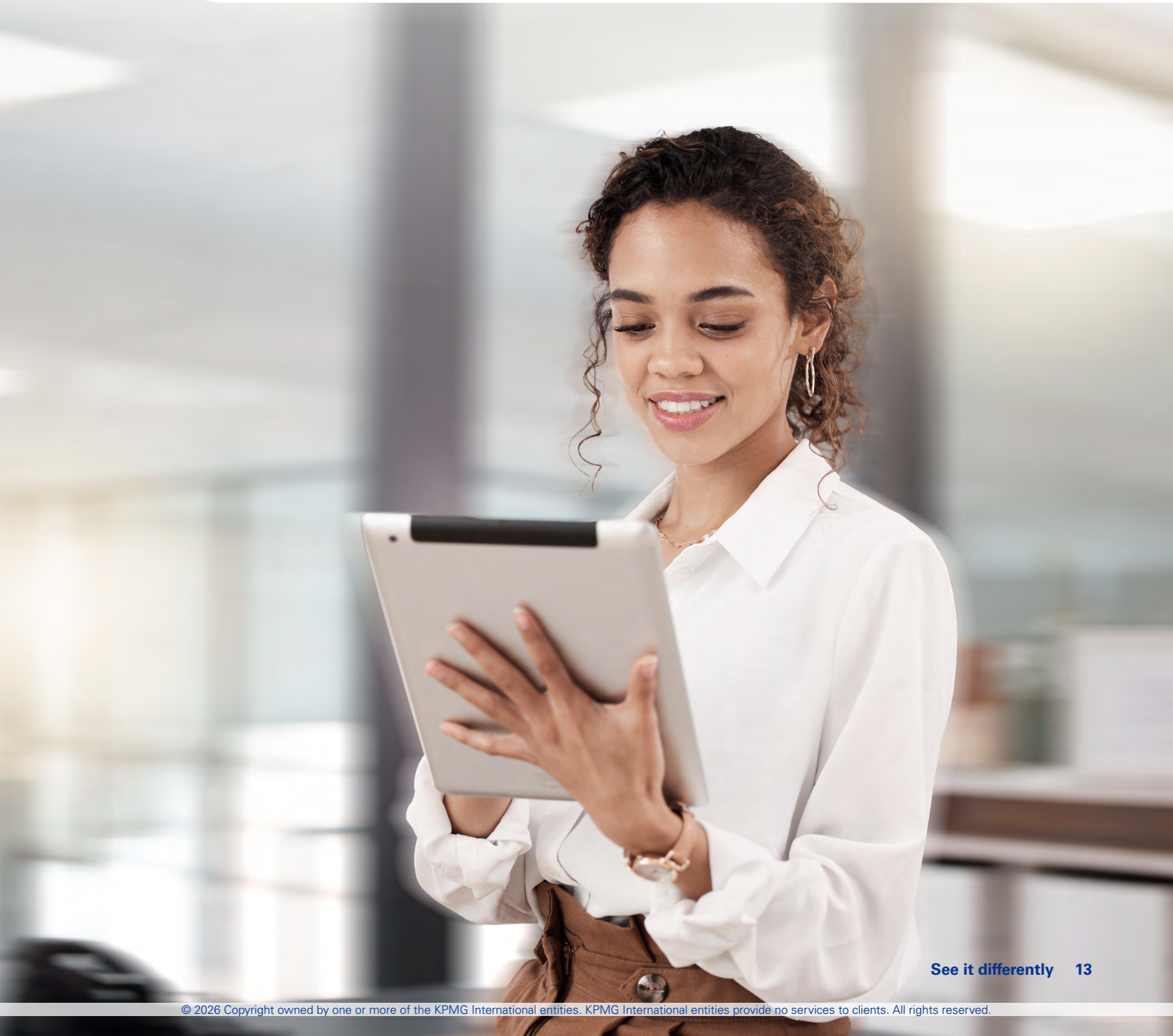

The social security landscape for posted workers in the European Union (EU) is evolving amid digital modernization, clarification of rule interpretations and heightened enforcement activity by authorities, who are increasingly centralizing inspection efforts and sharing knowledge to make enforcement more effective and consistent. These developments aim to enhance compliance and streamline cross-border operations for both employers and posted employees.

Significant initiatives affecting posted workers and social security today include the EU's central e-Declaration initiative for posting of workers, the European Social Security Pass (ESSPASS), the European Digital Identity, pending revision of the European social security regulations, and the Fair Labour Mobility Package.

While the posting of workers is one of the main channels of temporary cross-border labour mobility in the EU, businesses can struggle with compliance requirements regarding social security and posted workers. In this article, we look at the current environment, including a spotlight on posted worker registration, the issuing of A1 certificates for social security and improved collection of mobility data.

At a glance — the EU Posted Workers Directive

The requirements for posted workers include determining which country's working conditions, such as working time and remuneration, apply during a posting, as well as mandatory prior registration of posted workers in the host country. The obligation to register applies not only to employers within the EU, but also to those based outside of the EU that send employees to work temporarily in EU member states.

The Posted Workers Directive (PWD) serves as a legislative framework that fosters fair treatment of employees — posted workers — who are temporarily providing services in another EU member state. The principle governing the status of posted workers is "equal pay for the same work in the same place" — essentially granting posted workers rights comparable to those of local workers, such as remuneration, working hours, and health and safety standards.

The Directive aims to create a level playing field, protecting posted workers from jurisdictions that provide lower levels of protection and benefits than the host country. However, when a posted worker comes from a country with higher levels of protection than the host country — remuneration, work hours, benefits — the PWD does not require adjustments to working conditions.

The EU subsequently adopted the Enforcement Directive in 2014, strengthening the practical application of the original PWD to: prevent companies from circumventing the rules; set joint liability standards for subcontractors; and introduce measures for inspection, monitoring and exchange of information about posted workers.

The Posted Workers Directive (PWD) serves as a legislative framework that fosters fair treatment of employees — posted workers — who are temporarily providing services in another EU member state.

A key aspect of enforcement is the mandatory prior notification requirement for postings, which most EU countries also require of employers established outside the EU. Before work begins, employers must submit a notification to the host country, detailing employment terms, the duration of the posting, a contact person and more.

Defining the 'posted worker' — a legal imbroglio

It's crucial to note that, regarding coordination of European social security systems, mobile employees might be 'posted' under Article 12 (1) of EU Regulation 883/2004 — allowing workers sent temporarily to another country to remain covered by their home country's social security system for up to 24 months under certain conditions, but not posted under the PWD.

At the same time, employees might be posted under the PWD but not under Article 12 (1) of Regulation 883/2004:

- Workers who pursue an activity in two or more member states (Article 13 of Regulation 883/2004) may fall under the terms and conditions of the PWD;
- Workers who have an individual agreement according to Article 16 of Regulation 883/2004 may fall under the terms and conditions of the PWD;

The Portable Document (PD) A1 for social security serves as proof that the employee and employer are exempt from social security liabilities in the host country, with coverage continuing in the home country. It ensures that social security contributions are paid only in the country that issued the certificate, thereby avoiding double contributions.

Evolution of the number of PDs A1 issued by type — 2007–2023

According to the European Commission (EC), The number of PD A1 certificates issued has seen significant increase, approaching 5 million in 2019 and nearing 6 million in 2023. This growth includes a notable rise in PD A1 documents issued under Article 13 (multi-state activities) as well as under Article 12 (posting). While the global pandemic temporarily slowed activity, the increase in 2023 has surpassed the levels seen in 2019.

There are diverse reasons for this upward trend in PD A1, including the impact of significant activity by Germany. In 2019, Germany, Austria and France introduced significant sanctions for not holding a PD A1. This policy was also communicated by the German authority, BMAS, resulting in increased compliance among German companies. A second factor contributing to the increase in Germany, and beyond in the EU, was the introduction of a digital application process of the PD A1, which became mandatory in 2019 for all German employers, regardless of the duration of the posting period.

Also in play is a shift from Article 12, regarding posting, to Article 13, regarding multi-state activities. In Slovenia in 2021, for example, 99 percent of PDs A1 applicable to the construction sector were issued under Article 12.[1] At that time, the issuance of PDs A1 under Article 13 for cross-border activities in the construction sector was non-existent. Today, however, the situation has changed significantly. In 2023, Slovenia issued almost 45 percent of all PD A1 certificates under Article 13.[2] Another interesting country to mention in the context of this development is Poland where the share of PDs A1 issued under Article 13 for cross-border activities in the construction sector has grown steadily to 60 percent in 2023, versus just 41 percent in 2019.[3]

What are the possible underlying reasons for this shift? For one, we see changes in business practices, from performing work abroad under temporary assignments in line with posting in Article 12 to activities commonly pursued in two or more member states. Also having an impact is the assumed avoidance of Article 12 by applying for a PD A1 under Article 13.

This avoidance can occur because posting under Article 12 is considered a temporary situation, and meeting its conditions is generally significantly more difficult. In contrast, Article 13 applies to permanent arrangements, provided the criteria for multi-state activities are met, and its conditions are generally less stringent compared to posting.

On the other hand, an explanation could be that situations under Article 13 may have flown under the radar of authorities, which could further explain the growing preference for this approach and the notable rise in PD A1 certificates for activities in two or more jurisdictions.

Direct versus indirect posting of third-country nationals (TCNs)

There is a growing focus in the EU on mobile non-EU nationals, or so-called third country nationals (TCNs). In 2023, on average, 20 percent of posted workers within the EU were TCNs.[4]

An important distinction exists between direct and indirect posting of third-country nationals. Direct posting refers to situations where a company established in a non-EU country, such as the US, UK or India, sends employees directly from their home country to provide services in an EU country. In many cases, a bilateral social security agreement is in place that impacts social security protection measures for these workers.

Indirect posting of TCNs, on the other hand, involves employees who originate from non-EU countries, such as Ukraine, Belarus, Bosnia-Herzegovina or Brazil, but who are first employed in an EU country, often Poland, Lithuania, Slovenia, Portugal or Spain, before being posted to work in another EU country.

In this situation, some of the important questions arise regarding whether these workers habitually work in their home EU country, which would qualify them for protection under that country's legislation, or whether their employment should instead be subject to the legislation of the host country.

This distinction is significant, as the legal, administrative, and social security requirements can differ depending on whether the posting is direct or indirect. Additionally, in the context of European social security, affiliation to the social security system prior to working abroad is also treated differently, depending on whether the situation is dealt with under the posting provision in Article 12 (1) of the EU regulation for social security or under Article 13, which covers activities in two or more jurisdictions.

[1] Vah Jevšnik, M., Cukut Krilić, S., Toplak, K. (2022). Posted workers from Slovenia. Facts and Figures. POSTING.STAT project.

[2] De Wispelaere, Frederic Simon O; De Smedt, Lynn; Pacolet, Jozef; 2025. Posting of workers Report on A1 Portable Documents issued in 2023. Publisher: Publications Office of the European Union

[3] Ibid

[4] De Wispelaere, Frederic; De Smedt, Lynn; Pacolet, Jozef; 2025. Posting of workers — Collection of data from the prior declaration tools — Reference year 2023. Publisher: Publications Office of the European Union

Amid the growing importance of bilateral and multilateral agreements in shaping the landscape of mobile workers, significant legal uncertainty persists, while administrative burdens also require solutions. Reaching consensus on the approach and interpretation of European court ruling is increasingly important to ensure consistent application of the rules across the EU. For example, there is a rising challenge of obtaining a 'Van der Elst' visa that facilitates temporary work in one EU country for non-EU employees already legally employed in another.

The 'Van der Elst' visa is based on a ruling by the European court addressing the right to work of TCNs in the EU. It refers to a permit that allows non-EU employees who are legally employed by a company in one EU country to be temporarily posted to work in another EU country without needing a separate work permit for the host country under certain conditions.

Enforcement and compliance challenges are also impacting the situation, as there is growing emphasis on enforcing regulations on the posting of third-country nationals in receiving EU member states, both by labour inspectorates and 'clients.'

Meanwhile, having a PD A1 and submitting a prior notification of posting do not necessarily mean that all rules are being complied with, including those relating to terms and conditions of employment and the payment of social security contributions.

Transforming data collection and compliance: The EU's central; e-Declaration initiative

Timely, accurate data collection remains a major challenge for businesses providing mandatory employee posting notifications. According to the EC, the EU single market contains an estimated five million posted workers, and one of the main administrative barriers faced by employers is managing multiple and diverse documentation across member states. Employers often lack key information, and gathering relevant employee data can be delayed due to a lack of responsiveness.

The European Commission's (EC) proposed e-Declaration initiative offers a digital 'one-stop' data platform that can simplify administrative procedures for companies providing cross-border services, while strengthening enforcement and protection for posted workers. The e-Declaration portal is proposed to be a central, multilingual tool designed to significantly streamline business filings.

For member states that adopt this voluntary initiative, the EC says it will "reduce administrative costs for businesses when posting their workers abroad." This will add to the Commission's objective of reducing the administrative burden by 25 percent.

The e-Declaration portal enables service providers to use a single digital form, rather than currently managing 27 different national forms. The standardized form is expected to improve not only data collection, but also the cross-referencing and comparability of relevant data across EU member states. Amid these changes, businesses should be proactive to:

- Familiarize themselves with the proposed framework for the e-Declaration.
- Review how their data collection and compliance processes align with requirements.
- Make strategic decisions or necessary changes to achieve compliance with the mandatory declaration for posted workers.

The Fair Labour Mobility Package

Among initiatives aimed at streamlining and modernizing procedures and rules is the EU's Fair Labour Mobility Package. There is a consensus that considerable room for improvement exists when it comes to the recognition of skills and qualifications within the EU regarding both 'regulated' and 'unregulated' professions. Expected to be finalized in late 2026, the Fair Labour Mobility Package aims to make worker mobility fairer, simpler and more efficient by improving social security coordination, strengthening the European Labour Authority (ELA), digitizing procedures, and ensuring equal rights for mobile workers.

European Labour Authority (ELA): The ELA aims to ensure that EU rules on labour mobility and social security coordination are enforced fairly and effectively. It also provides ongoing information campaigns to help ensure that anyone participating in labor mobility at the EU level is fully informed about the rights and obligations applicable to them. One of the essential tasks that ELA manages is the organization of so-called joint and concerted labour inspections. This means they can coordinate onsite inspections carried out by labour inspectors from multiple EU countries, often executed in several jurisdictions. In relation to the e-Declaration initiative, there is an intention to grant ELA access to the data provided in the declarations, enabling the agency to use this information to strengthen and improve enforcement efforts.

Skills Portability Initiative: In addition to the ELA, a second important element of the Fair Labour Mobility Package is the EC's launch of a public consultation on its upcoming Skills Portability Initiative, which aims to improve and simplify the movement of skilled workers throughout Europe. The goal includes better recognition of qualifications obtained in non-EU jurisdictions and the elimination of existing obstacles to employee movement within the EU. The Skills Portability Initiative will explore ways to:

- Digitize learning credentials.
- Improve the transparency of skills and qualifications.
- Modernize recognition processes for regulated professions.
- Simplify procedures for recognizing the qualifications and skills of non-EU nationals.

The European Social Security Pass: This program is part of the EC's efforts to digitize social security coordination processes and procedures. Ongoing implementation of modern digital capabilities can improve coordination of diverse mobility systems to help ensure that employees moving within the EU always maintain social security coverage. The pass can make it easier for individuals and companies to provide proof of social security coverage and make the exchange of skills within the European labor market faster and more efficient.

It is expected that the pass will become part of the EU Digital Identity Wallet, which aims to provide a safe, reliable and private means of digital identification for everyone in Europe. During 2026, every member state is to provide at least one wallet to citizens, residents and businesses — allowing them to prove their identity via securely stored digital documents.

The EC has also implemented its Electronic Exchange of Social Security Information — a digital system connecting EU/EEA countries, Switzerland and the UK — that allows national social security institutions to securely and rapidly exchange data electronically, including benefits for mobile citizens in areas such as pensions, sickness and unemployment.

Responding to the changing environment

The EU is taking a more vigilant stance on social security and the posting of workers in member states to ensure fair treatment of employees on the move. Amid the emergence of innovative initiatives highlighted in this article, businesses and mobility teams should be proactive in understanding and responding to the changing environment. Doing so will likely enhance cross-border movement and help to ensure compliance.

Key takeaways

1. The EU is taking significant measures to address and enhance conditions regarding posted workers and social security. The latest significant initiatives include a central e-Declaration system for posted workers, the European Social Security Pass, and a strengthening of the European Labour Authority's mandate.
2. Among recent and expected developments in the EU social security landscape are changes and clarifications in rule interpretations and enforcement activities by authorities, all aimed at ensuring compliance and smoother cross-border operations for employers and employees.
3. EU regulators, supported by timely data and analysis, are increasingly focused on compliance expectations and best practices for posted workers and social security, including audit procedures, authority cooperation, and empirical insights into mobility and trends.

Article 04

Has national tax policy distorted the global talent competition?

Amid fierce competition for valuable skills, striking the right balance poses challenges

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In today's global race for scarce talent and critical new skills, national tax regimes governing expatriates are in sharp focus — both for their positive impact on talent attraction and competitiveness, and their potential to create unfair labor-market conditions.

Expatriates typically view tax regimes differently from other employees for their potential compensation advantages. Tax regimes deemed favorable to mobile employees — and businesses seeking talent — are influencing host-nation choices and mobility strategies. But despite the advantages gained, there is also a clear risk of labor market distortions and negative perceptions regarding the unequal treatment of domestic workers.

In this article, we examine — with a revealing focus on the US, Spain and France — the potential benefits and drawbacks of national expat tax regimes as businesses pursue the valuable talent they need to maintain an edge in today's hypercompetitive global environment.

A diverse world of tax regimes impacting mobility

Mobile employees face a diverse array of tax regimes that vary by country of assignment and the specifics of their compensation packages. In the US, for example, it is necessary to consider federal, state, and local income taxes. For example, an employee residing in New York City with a top-tier compensation package may have income subject to a combined marginal rate of 51 percent (highest marginal federal rate is 37 percent, the highest marginal New York State rate is 10.9 percent, and the highest marginal New York City rate is 3.876 percent). In France, meanwhile, the marginal tax rate is 49 percent (45 percent income tax, plus a 4 percent sur-tax on high incomes), while in Spain it is 45 percent (in Madrid).

View KPMG's Taxation of International Executives summaries for relevant income tax and social security rates, as well as key aspects of the tax and immigration legislation relating to expatriate employees working in these jurisdictions.

Taking a closer look at Spain, the nation has a special tax regime defined by the country's so-called 'Beckham Law', under which employees earning up to €600,000 (US$700,000) are taxed at a flat rate of 24 percent on Spanish-sourced earnings for up to six years. Compensation exceeding €600,000 is taxed at a flat rate of 47 percent. The Beckham Law (strictly: Article 93 of the Spanish Income Tax Lax) takes its name from the footballer David Beckham who popularized the regime with his move from Manchester United to Real Madrid in 2003.

Mobile employees face a diverse array of tax regimes that vary by country of assignment and the specifics of their compensation packages. In the US, for example, it is necessary to consider federal, state, and local income taxes.

The Beckham Law represents a significant fiscal opportunity for expatriates working in Spain. Initially established to attract top talent and investment, the 24 percent rate offers a substantial tax reduction on Spanish taxable income for eligible individuals amid general tax rates that can soar as high as 54 percent in Valencia, 50 percent in Catalonia and 45 percent in Madrid.

One key condition in Spain is that a mobile employee cannot be a resident in Spain during the five years before their secondment, and they must apply for status within six months of arrival in Spain. A notable limitation of the Beckham Law is that by claiming the regime, the individual taxpayer is considered, as a general rule, a tax non-resident for the purposes of using Spain's network of international tax treaties. The consequence being that an individual cannot rely on any exemption typically provided for in one of those treaties when undertaking business travel outside of Spain.

Turning to France's tax environment, that nation's tax code allows eligible foreign workers, under certain conditions, to be exempt from income tax on up to 50 percent of their total remuneration for eight years. The exemption is the combination of both a tax-free impatriation premium and an exemption from French tax for workdays performed outside of France. Eligible individuals can also benefit

from a 50 percent reduction on the amount of their foreign income taxable in France throughout the period of regime. France's system is designed to attract international talent, and it has been seen as a game-changer in attracting significant new skills from the UK to major cities like Paris following the UK's 2020 withdrawal from the European Union, especially in the competition to attract talent in higher salary industries such as Financial Services.

Qualifying for tax-free status on up to 50 percent of earnings can be relatively simple but requires documentation. The key test is that the amount of impatriation premium that can be paid tax free, must be above what another local worker for that role would be paid in France. To qualify, a mobile worker must be a non-French tax resident during the five years preceding their assignment and, as a French resident, must be working for a France-based company — either as a secondee or as a direct recruit. Therefore, you cannot simply work in France as a remote employee. However, an individual claiming the regime is considered a French resident and as such can both claim a deduction for their non-French workdays and also benefit from France's treaty network for the typical conditions that exempt those days from tax outside of France.

For mobile workers in the US, where over a third of the top 50 multinational organizations are based, the marginal tax rate can reach as high as 51 percent for residents of New York City, when considering federal, state, and local tax on top-tier compensation. However, if you lived in a no tax state, the maximum federal rate is 37 percent. Notably, there is no expatriate tax regime offering incentives to attract talent, and in fact mobile workers in the US may find they are subject to punitive tax regimes affecting their non-US investments or pension income.

From the US perspective, the economy continues to maintain a sufficient pool of essential talent, despite a backlog of visa and immigration requests. However, there are concerns that the current immigration system may be exploited by companies looking to hire lower-cost labor.

Social security in focus

Turning to the social security picture among the three nations in focus, while mobile workers in Spain face a marginal tax rate of 24 percent, as noted, the country's marginal social security tax rate of 6.35 percent applies when earning up to €61,214 (US$70,000). For salaries exceeding this amount, the rate falls to 1.46 percent percent, which is considered attractive amid that nation's relatively generous social security benefits regarding pensions, unemployment and healthcare.

In France, meanwhile, social security rates are often headline grabbingly high, with employee rates as high as 22 percent often publicized. However, hidden in the figures is the fact that France collects the supplementary pension contributions (in addition to the state pension contributions) and healthcare contributions within this amount. This makes comparison initially harder, as most countries don't count such costs in such a way.

The French social security costs are tax deductible and as such, after deduction the effective the marginal social security rates are often closer to 14 or 15 percent for the average expatriate.

In the US, the social security rate is 6.2 percent on up to US$184,500 in compensation in 2026, versus 7.65 percent on amounts above that. To qualify for benefits, an employee generally needs to work in the US for 10 years (although it may be possible to qualify for a partial benefit under a totalization agreement with as few as 6 quarters of covered work under the U.S. Social Security program). And while the US healthcare system and related health insurance programs are relatively expensive, particularly for those lacking employer-based coverage, retirees may be eligible for government-funded Medicare.

It is also worth noting that social security benefits are separate from employee pensions in the US, where pension benefits paid vary based on retirement age. But beware — Social Security benefits being paid today could be scaled back by about 20 percent within the next decade unless the US Congress takes decisive action to avoid the US Social Security Trust Fund from becoming insolvent.

Are today's tax regimes distorting the labor market?

In today's dynamic and hypercompetitive business environment, employers need to provide salaries, benefits and incentives that will help them attract and retain the talent and skills that are pivotal to maintaining workforces and remaining competitive wherever they operate. Governments are also looking for ways to attract talent and the much-needed new skills in the fast-evolving digital economy.

At the same time, there is a significant need to manage the risk of creating distortions and perceptions of unequal treatment among expatriates and local employees when mobile workers are paid more for similar positions or taxed less for similar pay. In cases of unequal compensation between mobile and domestic workers, global organizations can be seen as undercutting local businesses.

Spain, for example, recently amended its Beckham Law to reduce the time a mobile worker must reside outside Spain before working there and to include family members. And in France, as we have seen, the tax system has been pivotal in luring valuable talent and new skills from the UK following the UK's 2020 withdrawal from the European Union.

US workers, meanwhile, might be attracted to countries such as France or Spain for factors that include advantageous healthcare benefits and lower costs. Conversely, US workers moving to positions in Spain or France can face higher US-based employment taxes than local workers, and their salary expectations can make them more costly to employ. The US is one of the few countries that taxes its citizens on their worldwide income, regardless of their physical location or where the income was earned. At the same time, these expatriates can escape taxation entirely by their host European nation.

Striking an appropriate balance between competitiveness and equal compensation is indeed a challenge for today's employers and governments amid the potential for negative perceptions in the labor market, and it remains to be seen how discrepancies might be treated to level the playing field. Notably, one group of workers who cannot rely on the Beckham Law any longer in Spain are indeed footballers to prevent distortion in the football salary market.

National expatriate tax regimes that offer compensation advantages to mobile employees can significantly impact the movement of global workers today. But as mobility programs and employees look for an edge on taxation, there is also a need to manage perceptions of unfair treatment between mobile and domestic workers.

Key takeaways

1. Expatriates often see tax regimes for the advantages they can offer regarding compensation and benefits. National expatriate tax regimes, such as those in France, Spain and the US, have a direct impact on global talent mobility. Employees and employers may view countries as a marketplace from which to choose favorable tax regimes.

2. Multinational employers face strategic choices when relocating employees. Tax regimes influence competitiveness, workforce planning and retention decisions. Businesses should balance cost and compliance considerations while securing the right people in the right places to achieve business goals.

3. Expat tax regimes can create unintended consequences — including potential distortions in local labor markets and perceptions of unfairness between expatriates and domestic employees. Mobile employee compensation and incentives can create unequal salaries, resentment among domestic workers and policy backlash. Governments should remain aware of the need to maintain fairness in the race to attract and retain key talent.

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