



# International Assignment Express

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## Short term business travelers – boon or bane?

A growing global trend is the increased number of employees being sent on cross-border short-term business trips instead of the traditional time-bound expatriate assignments.

However, this trend has created a number of issues from an HR, governance and compliance perspective which need close and ongoing attention. The irony of the matter is that a number of companies are not aware of the issues, whilst those who are, face huge difficulties addressing them.

So what are these issues and why are they so important in the current global scenario? Some of the issues that arise from cross-border movement of employees include:

- Individual tax exposure: what is the time limit beyond which an individual will become taxable in a particular jurisdiction?
- Employer reporting/withholding: what reporting (tax as well as payroll) obligations does the employer have vis-à-vis such employees?
- Immigration: what is the correct immigration status for a short-term visiting employee – should he have a business visa or an employment/work permit?
- Corporate tax exposure: when does a corporate permanent establishment get created due to visiting short-term employees? What are the implications?

Make no mistake about it, the tax and compliance risks associated with short-term business travelers are complicated. Regulators are today more vigilant than before and are tightening the tax rules and initiating audit checks and enforcements to weed out non-compliance.

So what are the challenges?

### Lack of customised short-term mobility policies

Though the number of companies sending employees on short-term business assignments is on the rise, not many realise the need to have customised short-term mobility policies and mistakenly believe in a one-size-fits-all approach.

### Each country has its own tax laws and interpretations

It is true that most countries have a threshold limit on the number of days an employee can work in a country without triggering a tax exposure. However, the problem lies in the fact that every country has a different threshold limit, the manner in which days are counted differs from country to country and most countries link the short stay exemption for employees to whether the employee costs are borne in that host country.

### Exemption under tax treaties is often misinterpreted

In addition to the time thresholds under the domestic tax law, another time threshold used for staking a tax exemption claim is what is popularly known as the '183 days rule'.

Simply put, the general perception is that if an employee spends less than 183 days in a foreign country, the employee's remuneration is not taxable in that foreign country under the double tax avoidance agreement (tax treaty) which the home country has with the foreign country.

Needless to say, taking a general position on this matter without examining the specific facts of each individual case is fraught with risks.

In many cases, the 183 days exemption is claimed in countries where the home country does not have a tax treaty with the host country at all. A striking example here is that of US employees on short-term business visits into Singapore. These employees are not entitled to any tax treaty protection, simply because Singapore does not have one with the US.

In addition, there could also be a corporate tax exposure for the employer depending on the number of employees and the aggregate length of their stay as well as other factors. Hence, in their haste to get the employees out of the overseas tax net, a number of companies may be exposing themselves to a permanent establishment risk in the foreign country and a corporate tax exposure which could far exceed the employees' tax exposure.

### Ensuring correct immigration status for employees

It is a common misconception that a 'business visa' will entitle an employee to conduct work-related activities abroad for a short period of time. However, countries, particularly in the Asia Pacific region, vary considerably in their interpretation of the division between 'business' (which may or may not require a specific visa) and activities which are considered to be 'work', for which a more formal work permit would be required.

### Tracking

Recent studies seem to suggest that the tracking of business travelers presents the biggest challenge to corporates with a sizeable number of such employees.

In most cases, companies do not seek to track employees' overseas travel days. Some companies place the onus on the employee to track his/her travel days in various countries and notify the human resources department when it appears that he/she will exceed a pre-determined number of days in any single country. This approach transfers the administrative burden to the employee, but he/she may not be diligent with such tracking and the tax risk very often remains with

the employer. In addition, the tracking approach may not be customised to take into consideration country-specific rules and the notification to HR may not be timely.

### Conclusion

The solution to address these challenges, at least in part, is for companies to engage several internal departments, especially human resources and tax, to identify, assess and address the risks and exposures that short-term business travelers could bring to bear. While human resources is critical in managing the people aspect of these assignments, the involvement of internal tax teams or even external tax consultants will help understand and address the exposures relating to their short-term business traveler population. This will go a long way in ensuring that these challenges are at least managed and thus will ease the pain and costs of resolving potentially significant non-compliance issues in the future.

After all, prevention is better than cure.

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## Managing a mobile workforce is an integral part of the HR function – is HR up to the challenge?

Despite volatile global economic conditions caused by fears of a US recession, PricewaterhouseCoopers (PWC)'s 11th Annual Global CEO Survey revealed strong confidence amongst CEOs in the surging economies of Asia Pacific, especially CEOs in China and India. The same survey however revealed that nearly 80% of CEOs in Asia are most concerned about the availability of key skills to support their growing business needs.

Supply of skilled resources in Asia is not keeping pace with demand. As organisations in Asia compete for the best talent, they are increasingly extending their search to the global talent market, from both within and outside their organisations. This results in the talent pool of most multinational corporations (MNCs) in Asia today being made up of local and foreign nationals at every rung of the corporate ladder.

Whilst cross-border mobility of human capital (in the form of long-term and short-term assignments or permanent transfers) is key in enabling organisations to address the talent crunch they face in the region, HR is now faced with the challenge of managing a multi-national mobile workforce with different skill sets, expectations, motivational factors and cultures.

### Managing diversity

The profile of mobile talent in Asia is becoming increasingly diverse with assignees originating from both the West and Asia at various stages of their careers. There is also an increasing trend of Asian nationals who have studied and worked abroad returning to the region. With such a diverse pool of foreign talent, the expectations and motivational factors of each individual can be very different. It is important for HR to recognise and understand these differences in order to be able to attract and retain foreign talent within their organisations. In determining the right package for a cross-border move for

example, HR should consider competitive market practices, home versus host country salary benchmarks, gross versus net compensation as well as the appropriate one-time and recurring benefits (e.g. housing, schooling, relocation, tax services etc).

Comprehensive pension and medical coverage as well as continuation in home social security plans are often key concerns for most European and North American assignees with families. On the other hand, younger expatriates with no family commitments or most Asian expatriates who have different expectations with regards to pension, social security and medical coverage tend to prefer a more cash-rich package.

Flexibility in approach may facilitate the deployment of talent but it may potentially give rise to internal inequity issues. Mobilising resources is also a costly affair and could prove an unsustainable cost for the organisation in the long-run.

### Effective assignment management

Compared to a local employee, managing an international assignee is often said to take more than double the effort. Assignment benefits administration, tracking assignment start and end dates, employment pass applications and renewals and tracking of assignment costs, are just some of the key areas HR need to manage. Outsourcing certain activities to vendors and engaging specialists to give advice on more technical issues are some options HR can consider in helping them to manage their mobile workforce.

Cross-border deployment of human capital inevitably increases an organisation's exposure to tax and immigration non-compliance. The ability to effectively track and manage compliance issues is key in being "whiter than white" in today's increasingly regulated world. Robust processes, effective use of external specialists to ensure compliance in the various locations and a strong technology platform are highly recommended.

### Talent management and retention

Talent management and career development are key in retaining an organisation's mobile workforce. Employees who take up international assignments have subjected themselves to "risks" such as uprooting themselves and their families, having to adapt to a foreign environment and to a certain extent, compromising on job security. Their expectations of career progression and financial reward can therefore be quite different from that of non-mobile employees.

With this in mind, coupled with the fact that investments in international assignments from a cost and time perspective are very high, companies do face pressure to ensure that their "investments" careers are well managed during their assignment and that reintegration back to the home country or onward redeployment is actively managed.

Autonomy, creativity and flexibility are important in enabling HR to effectively manage and retain its mobile workforce. HR need to take a concerted effort in understanding and prioritising the key challenges highlighted above and design appropriate policies and processes to manage these challenges.

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## The perennial war for talent – the Singapore Budget 2008 antidote

In spite of a global slowdown, reflected by a revised lower forecast of 4-6% for the Singapore economy, there is still a rising demand for talent in Singapore, especially foreign talent. Staff recruitment and retention remain key issues for Singapore employers and are expected to linger around for some time. Employers are therefore faced with a dilemma – on one hand is the need to control business costs, in light of a global slowdown; on the other hand is the contrasting need to attract and retain key talent which can be a costly affair. Employers are therefore exploring alternative strategies to create attractive remuneration packages by incorporating available tax-saving opportunities. This will help to increase the take home pay of employees while retaining the overall employment costs to an employer and create a win-win situation.

Similarly, given that the Central Provident Scheme savings are unlikely to provide for a stable long term retirement nest, employers are also exploring the use of private long-term pension schemes with built-in tax efficiencies to aid and drive employee retention.

The Singapore Budget 2008 seeks to address some of these issues with the introduction of the following tax policies:

### Changes to the Not Ordinarily Resident (NOR) Scheme

In a welcome move directed at retaining foreign talent, changes to the Not Ordinarily Resident (NOR) Scheme have fulfilled a few items on the HR Director's wish list. Firstly, benefits-in-kind provided by the employer now rank for the time-apportionment concession under the scheme. Next is the removal of the cumbersome 10% effective tax rate eligibility criteria, which is now replaced by an employment income threshold limit of employment income of \$160,000. These two changes could help reduce tax liability considerably and relieve the administrative burden on the employer and employee alike.

### Employee Remuneration Incentive Scheme (ERIS Start-Ups)

As part of the government's objective to attract and retain more talent, the Budget also introduced a new Employee Remuneration Incentive Scheme (ERIS Start-Ups) which grants employees in qualifying companies, tax relief of up to 75% of the qualifying gains from stock options and share awards capped at \$10 million over 10 years.

The existing Company Employee Equity-based Remuneration Scheme (CEEBR) was also fine-tuned, enabling more individuals to enjoy tax savings for qualifying grants made after 15 February 2008. Though more details are to be released, we believe that while the scheme benefits would now be broad-based, the quantum of benefits is not going to be substantially different than its predecessor, i.e. CEEBR.

The Inland Revenue Authority of Singapore (IRAS) will shortly issue circulars on this matter, following which companies may wish to undertake a review of current and future remuneration packages to assess the potential tax savings for both employees and themselves.

### Supplementary Retirement Scheme

The recent Budget also focused on the issue of 'retirement provision', and the scope of the employee-funded

Supplementary Retirement Scheme plan was broadened to allow employers to contribute to the scheme on behalf of employees.

### What more could have been done

Despite the Budget 2008 announcements, the following NOR scheme wish list items remained unfulfilled:

- the elimination of the five-year sunset clause;
- removal/reduction of the minimum 90 business travel days criteria; and
- removal of the threshold final effective tax rate of 10% on pre-apportioned employment income.

Other items on the wish-list include relaxation of the stringent qualifying conditions for the tracking option applicable to equity-based schemes, which does away with the onerous deemed exercise/vesting rule for equity related gains.

But most importantly, the following sought-after enhancements to privately set up pension schemes, popularly referred to as Section 5 schemes were not introduced:

- To allow employees to make self contributions to Section 5 plans (presently, such schemes have to be entirely employer-funded)
- To allow authorised withdrawals from the Section 5 plan to be at least partially exempt (in line with the Supplementary Retirement Scheme).

While tax reliefs and concessions cannot be a cure-all panacea to address the "War for Talent" related issues, employers need all the help and assistance the government can provide, both from a tax and regulatory perspective to make employees consider Singapore a "country of choice to work and live in the long term". The changes in the Budget 2008 are a step in the right direction, but the battle continues.

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