The impact of BEPS on Global Mobility

What is BEPS and how does it impact global mobility?

Today's organizations are growing virtually, digitally, and globally. These changing business models along with increased media attention on international tax matters, have led to a growing perception that existing international tax rules are outdated.

The Organization for Economic Cooperation and Development (OECD), supported by the G20, has developed an action plan to address these issues, known as Base Erosion and Profit Shifting (BEPS). The aim of the action plan is to ensure that profits are taxed where actual business activity is performed and where value is created. It is expected that the OECD's review will result in significant changes to existing international tax standards.

A number of the BEPS actions will impact on how organizations manage and report on their globally mobile workforce . While, the OECD's BEPS review will not be completed until December 2015, businesses are already taking action, and it is important that your organization is ready for these changes.

Permanent Establishment

Increased focus from tax authorities

Scrutiny over permanent establishment (PE) issues is not new, however with BEPS in the spotlight, we expect tax authorities to be more focused on whether companies are creating PEs.

Globally mobile employees can create a significant PE risk. Failure to appropriately manage the PE risks associated with mobile employees may result in additional reporting requirements, corporate tax exposure, penalties for non-compliance, reputational risk and increased scrutiny from tax authorities.

It is important to make the business aware that mobile employees aren't limited to traditional secondees, but include business travellers, project workers, employees with global and/or regional roles, as well as individuals employed by central business models, for example a Global Employment Company.

Dependent Agent PE

Role of senior executives and sales representatives

Changes to the definition of Dependent Agent (DA) PE are being proposed, meaning that the number of cases where individuals create a DAPE are likely to increase. This may have a direct impact on globally mobile senior executives, sales representatives and contractors who may be performing activities in relation to the conclusion of contracts in other tax jurisdictions.

Current rules tend to focus on where a contract is legally signed, and PE cases have been decided on this basis. However, with a wider definition of DAPE, authorities are expected to base PE decisions on where significant activities relating to the conclusion of a contract have been performed. This may include for example, negotiation of material elements of a contract, or engagement with a specific person in a way that results in the conclusion of the contract.

It will therefore be increasingly important to know what activities are being carried out by employees who are mobile, and to educate the business and the employees on what activities they can and cannot perform.

What you need to think about…

PE risk

- Do you have controls and processes in place to manage PE risk arising from mobile employees? If so, have these been reviewed recently to determine whether they are still fit for purpose?
- Do you track individuals, particularly project workers, who are travelling to a particular country ? Is this done on a group-wide basis or at an entity level?
- Do you have individuals working remotely or from a third country location?

Senior executives with global or regional roles

- Are your senior executives travelling frequently to a particular country and are you aware of the activities they are performing?
- Do any of your mobile employees have the right to negotiate and conclude contracts in other tax jurisdictions on behalf of a different entity? If so, do you have a process in place that critically reviews which entity is taking the risk and reward of contracts negotiated/concluded by mobile employees?

What you need to think about…

Business travellers

- Do you have a mechanism in place to track your business travellers, and are changes in their travel patterns reviewed in a timely manner to identify PE and related risks?
- If you have a tracking system in place, does it flag when an individual is reaching the relevant risk thresholds? Are the risk thresholds in place still fit for purpose?

Operating model

- Do you have an existing corporate structure (e.g. a Global/Regional Employment Company) in place? If so, when was this last reviewed and is it still fit for purpose?
- Does your assignment documentation accurately reflect the reality of an individual's role and responsibilities?

Inter-company agreements

- Have you recently reviewed your inter-company agreements in relation to the different types of mobile employees in your organization?
- Do your existing agreements appropriately remunerate each entity for the services provided differentiating between skills level of assignees?
- Do your existing intercompany agreements consider IP that may move when one of your employees goes on assignment, or works on a project overseas? Are cost recharges managed appropriately when it comes to short-term assignees or project workers?
- Do your intercompany agreements accurately reflect the activities performed by mobile employees?

Fixed place of business PE

Expansion into new territories

It is anticipated that there will be changes in relation to what activities are considered to be preparatory and auxiliary when deciding whether a PE has been created.

This may mean that the early stages of expansion into a new territory could now create a PE in that territory much sooner than would previously have been the case.

Operating model

Assignment documentation / use of employment companies

The OECD is reviewing the threshold where tax authorities could re-characterise (i.e. re-write the terms of) inter-company transactions as part of the BEPS action plan.

organizations will need to review whether their existing arrangements have sufficient substance and that these reflect what happens in practice.

A review of existing assignment processes and supporting operations may be required to determine whether the documentation in place reflects the commercial reality.

Transfer pricing for international assignments

Cost recharges for employees

Transfer pricing arrangements that have not been reviewed recently and are applied systematically across all mobile employees regardless of the employees' activities may no longer be appropriate under BEPS.

Inter-company service fees will need to appropriately reflect the value of the services performed by globally mobile assignees.

Transparency and disclosure

Employee reporting

Organizations should anticipate the need to report on a country-by-country basis on a number of specific pieces of information including the number of employees in a particular location.

Information on globally mobile employees and short term business travellers will need to be captured under the employee reporting, and so having the ability to track where employees are working, as well as understanding what they are doing will be critical going forward.

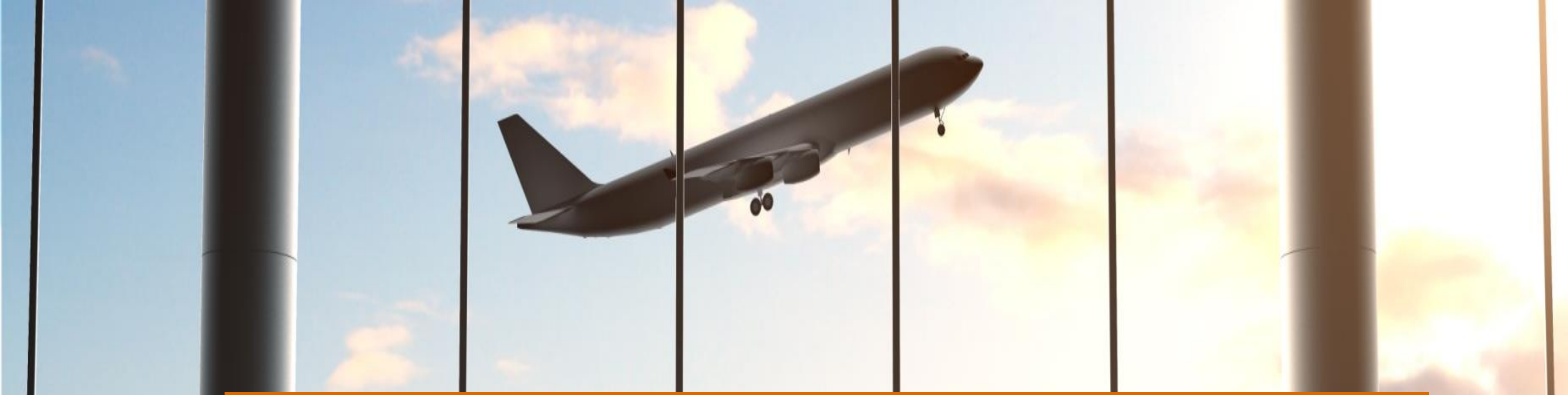
Intellectual Property (IP)

Employees holding IP

Skilled employees with specific knowledge or expertise who move between territories may be considered to be taking IP with them. The BEPS action plan focuses on the transfer pricing (TP) arrangements/ documentation related to transactions involving intangibles.

This will likely mean that challenges around the pricing of secondments become more common in the future. Existing TP agreements should be reviewed to determine whether they appropriately reflect the value of the transfer of any IP under the secondment arrangement.

These changes may impact short-term assignments where costs are not commonly recharged, but may need to be charged in the future, leading to an impact from a personal tax perspective.



How PwC can help

Change in international tax rules following the OECD's review are inevitable. It is important that your organization is prepared for these changes. We would therefore recommend a review of existing arrangements to identify any potential risks so that these can be addressed.

Below are ways that PwC can work with you to carry out the appropriate risk analysis and help you prepare for these changes.

- We will work with you to review your existing operations and processes to identify potential PE risks based on the different categories of mobile employees you have within your organization. We can recommend actions to mitigate the risks identified and assist in putting processes in place to manage the impact of the proposed changes.
- Review your mobile employee populations and assist in identifying high risk individuals and the duties that they can/cannot perform when overseas. Assist in communicating this to your employees.
- Undertake a fit for purpose reviews of any existing inter-company arrangements that may be considered at high risk of scrutiny by revenue authorities.
- Carry out transfer pricing benchmarking, as well as reviewing existing inter-company agreements in relation to your globally mobile population.
- Design and implement appropriate technology tools to assist with tracking assignees and business travellers so that potential risks can be flagged to the business on a timely basis.

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