Mobile Workforce - Tax and Transfer Pricing Challenges

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Agenda

1. Mobile Workforce – What trends are converging?
2. Practical Examples – Tax and Transfer Pricing Implications
3. Costs of Non Compliance
4. Employee Mobility in a BEPS environment: PE Challenge
5. Disclosure and Transparency
6. Actions to Consider and Key Takeaway
Mobile workforces – what trends are converging?

- Traditional seconders versus non traditional mobile employees
- Non-traditional mobility: business travelers, project workers, employees with global and/or regional roles
- Gig economy arrangements arise (temporary or remote workers, contractors)
**Background**

- IL Co develops a platform and owns the IP with respect to the platform
- IL Co markets and sells the platform via its affiliate, US Co in the US
- US Co acts as a Limited Risk Distributor
- In order to develop the business in the US
  - The CEO and / or Business Development Manager of the IL Co move to the US
  - The CTO moves to the US as well
TP Implications

- Does this imply that a change in the business model occurred?
- Alternative TP models: routine returns vs profit split analyses
  - Start-up phase
  - More established phase
**Mobile Workforce in the US Tax environment**

**Background**
- US Co acquired an IL Co
- As a part of business restructuring plan: CTO and other executive employees of IL Co relocate to the US

**Alternative TP models**

- **Model 1**
  - Transfer of IP
  - IL Co will provide R&D services

- **Model 2**
  - Royalty Arrangement

- **Model 3**
  - IL Co keeps owning its IP

**Tax and TP Implications**

- **Exit tax**
- **Business restructure**
- **Impact on GILTI, FDII, BEAT and Subpart F**
**Mobile Workforce – Tax and Transfer Pricing Implications**

**Background**
- IL Co is performing a consulting project for an Israeli client
- Employees from US Co are coming to assist and overview the performance of the project

**Tax and TP Implications**
- Alternative TP models: Cost plus mechanism versus Hourly rates
  - What is the “correct chargeable time”?  
  - Discount component vs fixed fees
- Individual tax liabilities for US Co’s employees
  - Different company policies with respect to mobile workforce
- Exposure to a PE Risk
- Visas
In order to be in compliance, it is necessary to consider certain actions:

- Individual tax liability and corporate tax liability
- Interest, penalty and other sanctions
- PE risk and potential need to file local tax returns
- Reputational risk
Employee Mobility in a BEPS environment: PE challenge

Background

- CEO that travels for limited periods to different locations and is engaged in negotiating and in making decisions

Tax Implications

- Exposure to PE risk
- How to mitigate the risk?
  - Educate employees on Dos and Don’ts while travelling internationally
• Under the BEPS initiatives it is expected an increasing focus of tax authorities on whether employees’ presence are creating dependent agent (“DA”) permanent establishment (“PE”)

• 2017 changes

1. PE – “A fixed place of business through which the business of an enterprise is wholly or partly carried on”. The home office may be considered to be at the disposal of the enterprise (see next example)

2. DA : “plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification”

Shift from where a contract is legally signed, to where significant activities relating to the conclusion of a contract have been performed
Employee Mobility: PE challenge – ITA Ruling

Background
- US Co provides financial services to clients outside of Israel
- US Co engages an Israeli employee who manages an investment portfolio from her home in Israel

Tax Implications
- US Co activities created a PE in Israel for the US Co
- ITA ruling 253/12: home office creates PE
Employee Mobility in a BEPS environment: PE challenge (Cont.)

Background
• CEO relocates to the US and keeps acting as the CEO of both IL Co and US Co

Tax Implications
• Exposure to PE risk
• How to mitigate the risk?
  – Limit the services provided by the CEO to IL Co to high value services
  – IL Co employs a General Manager who is responsible for the day-to-day operation
Disclosure and transparency

1. CbC reporting allows sharing of information between tax authorities

2. There is a greater access to taxpayers’ data (e.g. LinkedIn, email correspondence and calendars)

3. Leveraging immigration data

4. Frequent questions during audit are about:
   - policies and procedures to ensure tax compliance for mobile employees
   - whether certain employment structures and policies in place are being followed
Actions to consider and Key takeaways

- Tracking mobility and understand the nature of the activities
- Define the responsibilities – what the mobile employees can do and what they cannot
- Ensure that the business substance is maintained
- Monitor key employees who move between countries – is there business restructuring as well?
- Intercompany service agreements for internationally mobile employees
- Due Diligence post deal restructuring
Thank You!

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