All roles flex across borders
Making it work – Employer and employee taxes

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The future of work will see greater levels of flexibility, both formal and informal. There are wide-spread benefits for organisations that adopt a flexible approach to work. To stay competitive and continue to attract and retain talent, organisations will need to adapt and implement more flexible arrangements for their employees.

Mobility is a key enabler for 'All roles flex' but as organisations move towards making all roles 'flexible' within their workforce, there are a range of tax obligations that need to be considered to ensure compliance (both for the employer and the employee) to avoid financial and/or reputational loss.

Permanent Establishment

An employee working flexibly from another location outside their home country can create a corporate presence for the employer in that location. Failure to appropriately manage the Permanent Establishment (PE) risks associated with flexible employees may result in additional reporting requirements, corporate tax exposure, penalties for non-compliance, reputational risk and increased scrutiny from tax authorities.

As more employees begin to work flexibly, often across borders, the priority for organisations should be to:

- look to track the nature of work performed outside Australia, particularly where senior employees could be concluding contracts or making sales; and
- review whether flexible employees should be included in country by country reporting disclosures, whether corporate recharges are in place, and how transfer pricing requirements can be fulfilled.

Personal tax liabilities and tax filing obligations

Employers should consider whether cross-border flexible working arrangements could create personal tax liabilities for the employees concerned and, if so, ensure their employees fulfil any tax obligations. Employees may need to file tax returns in another country and protocols should be established as to whether the organisation will support the employee in respect of their compliance obligations or tax liabilities.

Key highlights

- Flexible working across borders can create unintended tax consequences for both employers and employees.
- Employers should ensure their employees are aware of this and the possible tax implications associated with their working arrangements.
- Areas for consideration include PE, superannuation, FBT, payroll tax/withholding, social security and personal tax filing obligations.
- Best practice has seen companies establishing policies and guidelines for employees to follow to minimise potential tax costs and risks for both the employee and employer.

Payroll withholding

The personal tax liabilities that may be generated by international flexible workers can also create local payroll obligations for the employer. There may be opportunities to sign agreements with revenue authorities in locations where flexible workers are present to vary these obligations, but a proactive approach is essential to avoid penalties for non-compliance.

Superannuation, Fringe Benefits Tax (FBT), Payroll tax and Workers Compensation

An employee working flexibly outside their home country is very likely to create new or different obligations with respect to:

- Superannuation;
- FBT;
- Payroll tax; and/or
- Workers compensation.

Due diligence should be performed in both the home and host country to establish what employee and employer obligations are triggered, and how these should be managed.

Social security

Social security compliance is an increasing focus for revenue authorities and some jurisdictions have legislation which deals specifically with multi-state workers. Care should be taken to ensure that all documentation is in place for multi-state working flexible employees to avoid any double charges for employer and employee social security. To the extent that social security liabilities arise, employer withholding is likely to apply. For certain locations, certificates of coverage can usually be obtained in order to remove double withholding or payment obligations.

Employer registrations

Employers should ensure that they have filed all applicable local employer tax registrations to allow employees to work whilst in country (for example ABN/ASIC equivalent, GST/VAT compliance).

Governance

Tax managers should consider the impact which mobile flexible workers could have within the tax governance framework. This will assist to ensure that any reputational risks associated with compliance failure are minimised.

Tracking employees whereabouts and transparency with local tax authorities (in respect of international working arrangements) is increasingly becoming an essential activity.

What's next?

- Determine how your organisation is going to track flexible workers on both a qualitative and quantitative basis, taking into account the various taxes which could be impacted.
- Determine if any of your existing policies or processes need to be updated to ensure that you minimise risk exposure.
- Proactively engage with key stakeholders across your organisation, as well as tax authorities, in respect of managing the tax impact flexible workers can have.

Case study – large Australian telecommunications company

Following the implementation of an 'All roles flex' policy last year, the company's Global Mobility team together with their Talent Team identified the need to ensure that 'All roles flex' could be implemented from a global mobility perspective. This resulted in the development and implementation of a robust 'All roles flex' Mobility policy, with specific detail outlining when and how the Policy should be utilised. This has allowed the organisation to effectively roll out 'All roles flex' not only domestically, but internationally. This approach manages compliance risk, and ensures transparency for managers and employees around the compliance considerations required when looking to work flexibly outside Australia.

To discuss further how we can help your organisation navigate through the complexities of implementing 'All roles flex' to ensure success, please reach out to Helen, Jonathan, Lisa, Anna, Maria or your usual PwC contact.

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