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Relocating staff after Covid - the tax side

What measures should companies be taking to ensure that employees in Irish tax- resident companies that may have relocated outside of the jurisdiction due to pandemic rules will be in a tax compliant position when the restrictions end?

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Many companies have already learned the hard lesson that the relocation of staff during the pandemic, both of Irish companies to other jurisdictions and of non-Irish companies to Ireland, has the ability to cause tax headaches. In certain cases, employer companies were not aware that staff had relocated and were left trying to navigate the complicated rules around payroll taxes and permanent establishment creation retrospectively. Helpfully, during the course of 2020, various jurisdictions allowed for a level of flexibility in terms of income and payroll tax treatment of employment income, residence rules and the threshold for creation of permanent establishments in light of the impact of the pandemic and travel restrictions. That may have eased the compliance and tax burden for many for 2020, although there are still nuances to rules in different jurisdictions which require consideration.

However, in many cases (including Ireland) that flexibility and concessionary treatment may not be applicable for 2021, although the OECD has issued updated guidance in 2021 which recommends that countries continue to adopt concessionary relief measures. As such, it is very important that employers review their position and policies to ensure that they and their employees are in a position to comply with any tax obligations arising from relocation. It is worth setting out the principal tax points that arise with respect to an employee relocating to a foreign tax jurisdiction:

Whether a taxable permanent establishment is created;
The impact on the tax residence and filing obligations of the individual;
Whether foreign payroll taxes and reporting obligations arise; and
Considerations in relation to social or national insurance contributions.

In terms of measures that can be taken by employer companies now, it is worth noting that there is no silver bullet to ensure no adverse tax implications arise.

The best recommendation is to take a systematic approach and implement proper procedures.

The first step that employer companies should take is to audit or survey their employees and confirm where each is currently located and how many days the individual has spent in a foreign jurisdiction in 2020 and 2021.

It is also important that companies develop and maintain a consistent policy with respect to the ability

of employees to relocate and the circumstances in which the employer can require those employees to return to the employer's jurisdiction of establishment. Any such policy should be communicated to staff and should be kept under review as the situation develops.

If it is discovered that certain employees have spent significant periods of times in another jurisdiction during the preceding 18 months, the company should take advice in the jurisdiction of the employee to determine what, if any, tax obligations may arise for the employer company. Employees should also be advised to take independent advice as to their personal residence and income tax positions.

Where residence and other thresholds have been breached, it may be possible to open a dialogue with the relevant Tax Authority to discuss concessionary treatment where the relocation arose as a result of the pandemic.