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The tax implications of a post-COVID global workforce

Matt Stringer

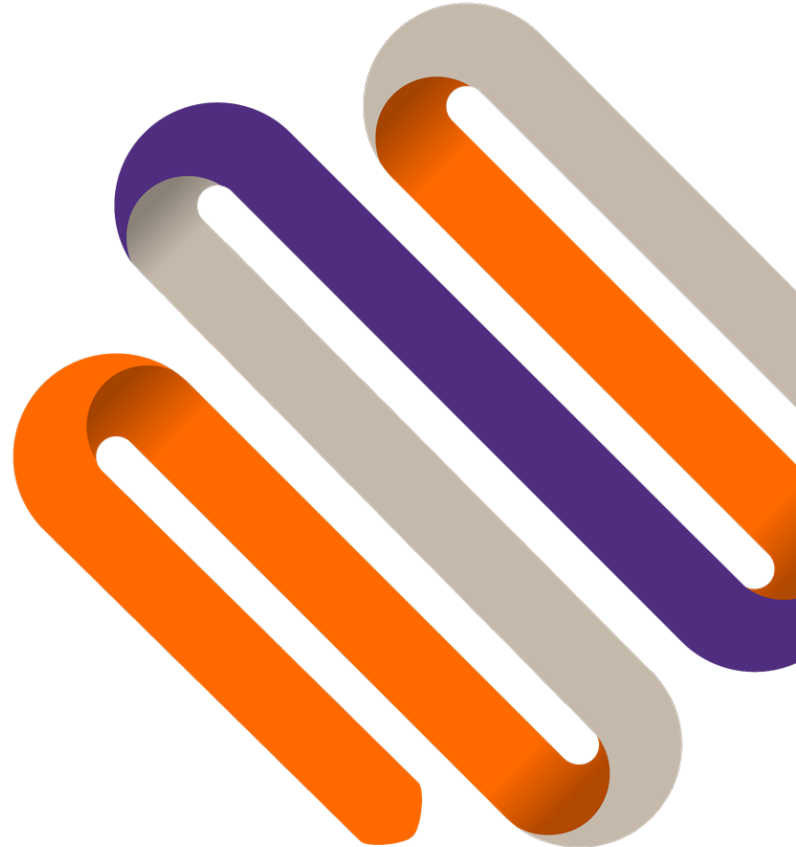
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What's the issue?

COVID-19 pandemic – many employees working in jurisdictions where they are not employed
...and the trend is only increasing!

Tax risks for the employer and employee, inc.:

Corporate residence | Personal residence | Income tax

PEs | Indirect tax | Social security | Payroll withholding

Corporate tax risk

Where to start in assessing the risks?

- OECD Model Tax Treaty
- OECD *“Updated guidance on tax treaties and the impact of the COVID-19 pandemic”*
- Depends on domestic laws / treaties – non-OECD / non-treaty jurisdictions can vary wildly

Permanent Establishment (PE) risk

Fixed place of business

- “Degree of permanence”
- Place of business – **home offices?**
- Preparatory or auxiliary activities exemption



Permanent Establishment (PE) risk

What about home offices?

- OECD guidance & COVID-19 comments – is it “*at the disposal of*” the enterprise?
- But what about longer-term arrangements?
- Interpretation differs by jurisdiction



Permanent Establishment (PE) risk

Agency PE

- A person who has, and habitually exercises, the authority to conclude contracts in the name of the company

OECD COVID-19 guidance

- The temporary conclusion of contracts due to COVID-19 should not create PEs
- Unlikely to be habitual if due to extraordinary event

Issues for the sector

- Treatment depends on tax status of entity
- If e.g. a not for profit in the UK, tax exposure depends on overseas domestic rules
- Does **not** automatically mean no tax exposure – depends on local rules
- May still be reporting requirements

Personal Residence

- Basic principle: Tax position driven by residence
- No consistent approach internationally, but usually based on either (or both):
 - days of presence
 - ties
- COVID related relaxations
- Treaty residence
 - permanent home
 - centre of vital interests
 - habitual residence

Tax on employment income

- Treaty protection where:
 - <183 days
 - Remuneration paid by NR employer
 - Remuneration not borne by a PE in the “host”
- Non-treaty countries case by case
- Reporting obligations / tax filing obligations may arise

Social security

- Social Security obligations not necessarily aligned to tax residence position
- “Agreement” (and EU) vs “non-agreement” countries
- Multi-state worker / habitual residence
- Employer and employee obligations / cost

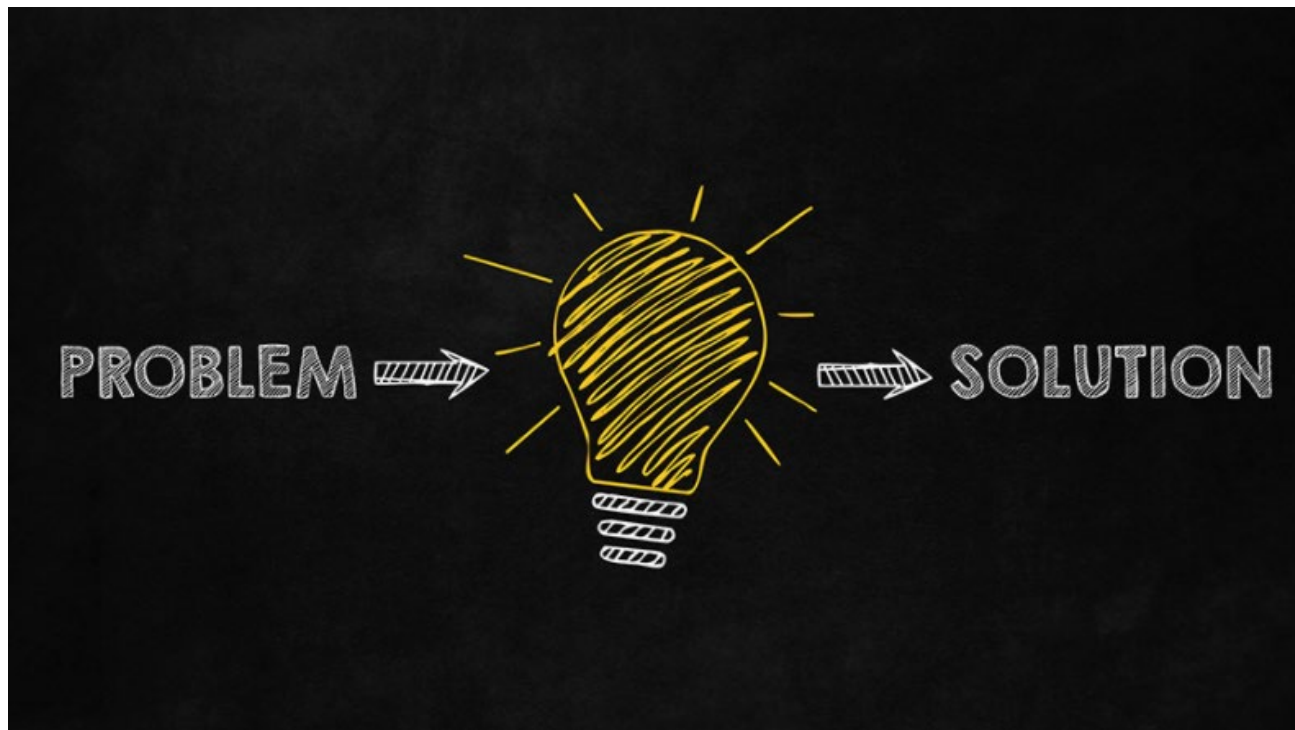
Payroll/registration

- Employees working remotely can trigger employer obligations to report and withhold taxes (irrespective of residence position)
- Different requirements depending on tax / SS position and whether PE exists or not
- Country by country rules & obligations
- Certificate of coverage & posted worker obligations

Other key points

- Employment Law / Posted Worker Directive & contractual considerations
- Immigration
- Expenses / Home working tax reliefs
- Policy & Process

Finding the solutions



Current / past risks

Challenges

- Volume of people overseas
- Multiple countries with different domestic rules
- Not for profit technical review
- Various fact patterns
- Not all COVID-related
- Need to work with HR colleagues to collate data

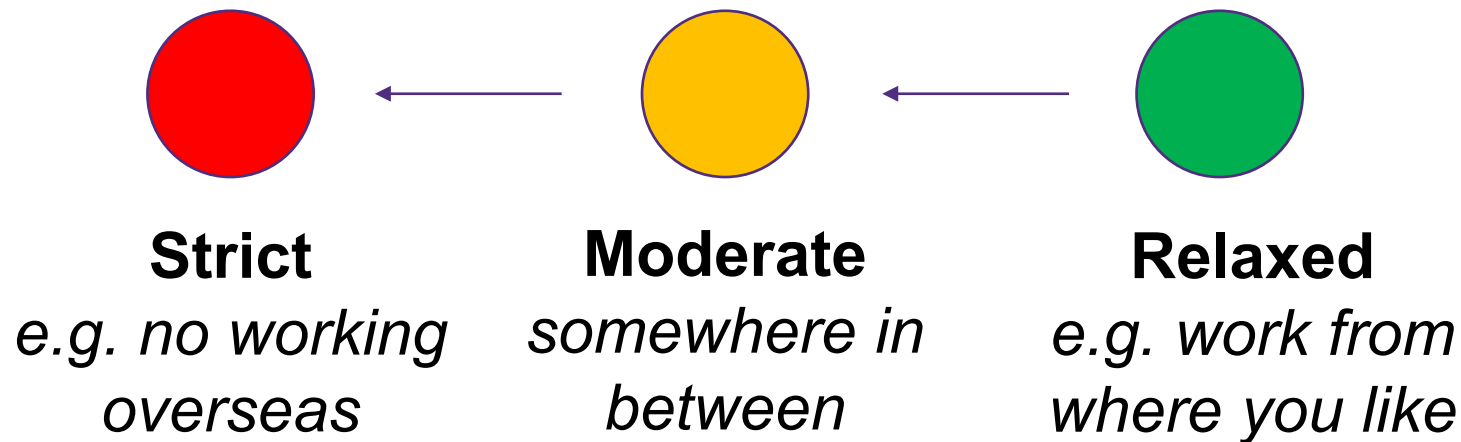
Potential approaches

- Global assessment based on key jurisdictions
- OECD as a framework
- Narrow-down areas of focus by risk assessing
- Drilling-down into detail
- Informing policy decisions

Future risks

- Implementing policies now = less tax risk in future
- Limits expense on prof fees and compliance
- Areas to consider: permitted length of stay overseas; activities permitted overseas; seniority of staff; permitted/limited jurisdictions; balance with wider HR policies; etc.
- Opportunity to use IT systems?

Sliding scale of policy measures



Low tax risk → *Medium tax risk* → *High tax risk*

Ultimately – a business decision and tax isn't the only aspect

Concluding thoughts

- Address any existing / past tax exposures
- Consider strategies to focus on the key areas of tax risk, as may be overwhelming
- The ultimate risks depend on the jurisdictions involved
- Think about future policy decisions to mitigate risks and work required going forwards

Any questions?



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