Dislocated employee tax issues around the globe: OECD to the rescue?

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In brief

The OECD Secretariat’s recent announcement and initial analyses provide guidance on interpreting the tax implications of the COVID-19 crisis relating to dislocated cross-border workers. Many businesses have been watching for signs of global cooperation and the OECD has made a significant step towards this goal, calling on countries to “mitigate the potentially significant compliance and administrative costs for employees and employers” as well as “alleviate the unplanned tax implications.”

The OECD references certain countries that have provided relief so far under domestic law – the UK, Australia, and Ireland. In the absence of country-specific guidance, the OECD suggests how an individual’s tax residency should be evaluated and which country should have the primary right to tax government subsidy payments. The OECD generally appears to favor the avoidance of tax complications triggered by a worker’s unplanned physical presence, but only for specific scenarios and within existing international principles under double tax treaties. As a result, mobility professionals should continue to analyze the circumstances to fully ascertain employee/employer tax obligations under existing laws and regulations.

This Insight provides a very high-level overview of these recommendations.

In detail

What is the guidance regarding tax residency for stranded employees?

OECD guidance: The tax residency of an individual present in a country in which the employee is stranded due to COVID-19 generally should not be triggered, as long as there is an income tax treaty in place between the countries and tax residence in the ‘home’ country continues. Examples may include not only employees working abroad, but also stranded business travelers and employee vacationers, as well as permanent transfers who find themselves stranded back in their country of origin.

Without specific country relief, the OECD explains that such individuals typically can avoid triggering tax residency in the place where they are staying temporarily on the basis of residency tie-breaker clauses included in most double tax treaties. These provisions require that tax residence in the country prior to temporary displacement continues, and are based on a series of ‘tests’ (e.g., relating to the person’s
permanent home, center of vital interests, place of habitual abode, and nationality). Thus, no specific additional relief may be required to avoid residence in the country of temporary displacement.

The OECD states that a few countries already have implemented separate (non-treaty related) guidance and administrative relief. The OECD references new guidance from the UK whereby certain days spent in the UK can be disregarded when determining UK residency for an individual. The OECD cites guidance from Australia providing that a person in Australia for weeks or months due to COVID-19 will not become a resident for tax purposes. Similar dispensations have been provided by Ireland.

What’s not covered: The OECD does not suggest additional relief for individual tax and employment tax obligations that may exist for such employees as nonresidents of the country in which they are stranded (i.e., their temporary host country). The OECD recommends that countries of temporary stays “apply their domestic rules accordingly.” As nonresidents, employees could be taxable depending on the laws and treaty network of the country concerned. To limit tax, nonresident employees and their employers would rely on:

- **domestic/local law thresholds**, or potentially any unilateral COVID-19 relief, which so far has been limited
- **the ‘income from employment’** (or similar, e.g., *dependent personal services*) article of any applicable double tax treaty the country of residence might have, which usually limits presence to less than 183 days in a 12-month period or taxable year (assuming no host country entity or permanent establishment bears the remuneration).

It is important to note that the exception provided by the *income from employment* (or similar) article may not apply if the remuneration is related to a PE the entity employing the individual stays in that jurisdiction. Currently, there are business concerns that workers may be present in a jurisdiction long enough to trigger a corporate-level PE due to travel restrictions imposed by national governments and quarantine requirements. The OECD Secretariat also provided recommendations regarding this issue. For more information, please see PwC’s recent Tax Policy Alert (April 7, 2020).

The following are examples of common situations that may continue to generate unexpected compliance obligations for dislocated employees and their employers:

- Business travelers, employee vacationers, and others stranded in another country and now teleworking for a few months still may be exposed to individual tax and employment tax in the host location as nonresidents.
- Stranded employees who exceed the 183-day (or similar) limit for exemption under the dependent personal services clause of many income tax treaties may not be offered any special COVID-19 concessions. Such persons and their employers may attract individual and employer tax obligations under local laws when they exceed such 183-day threshold (retroactively to periods that may have started prior to being ‘stranded’).
- New hires who were supposed to start in a new country, but whose transfers are delayed and are temporarily working from their home country, typically will continue to be taxed in the home country and exposure to tax in the new country often will be delayed (for the individual and employer alike). The employer may not be ‘set up’ to handle payroll tax obligations they now may have in the country from which the individual remains in unexpectedly, and inadvertently may start withholding in the new country prior to relocation of the employee (where work is performed in the home country prior to relocation).
- Employees temporarily doing their job from a separate location may receive no relief with respect to primary or temporary country taxation and employers may not be set up to handle obligations in the temporary location or to suspend withholding obligations in the primary location. The employer may need to find a way to refund excess withholding tax to the employee.
- Even where treaty or COVID-19 concessions may apply, they may not cover all relevant tax obligations (e.g., state, provincial, city, social security, etc.).

The OECD is working with countries to mitigate the unplanned tax implications and potential new burdens arising due to effects of the COVID-19 crisis.
Should tax residency change for workers who come back home?

**OECD guidance:** The OECD describes what happens in the potentially more common situation where an employee is a resident of their current work country, but they temporarily return to their previous home country because of COVID-19. The OECD lends their support to the argument that a temporary dislocation should not trigger a change in residency under an applicable double tax treaty so long as tax authorities, in applying the treaty tie-breaker provisions (e.g., the center of vital interests or habitual abode tests), look at individuals’ settled routines over a long enough period of time—longer, that is, than the temporary COVID-19 crisis.

How should government subsidies be taxed?

**OECD guidance:** If a double tax treaty applies, government wage/stimulus subsidies paid to employees who are forced to return home from their assignment abroad and temporarily not work should be taxable in their assignment country where they previously worked (i.e., where the employment had been exercised). For example, if an employee used to work and be liable to tax in a host country but is now sheltering in place back in their home country without working, their government subsidy should continue to be taxed in the host location where they used to work, similar to their former salary.

The OECD bases this view on their interpretation that such government subsidies are akin in character to termination payments and hence were earned where the employee used to work. As a result, the location where work otherwise would have occurred should continue to tax these amounts.

**The takeaway**

The OECD is encouraging countries to work together and provide tax relief to displaced employees and their employers. While the OECD guidance as to interpretation of existing treaty rules is welcomed, it does not modify existing laws. Mobility professionals should continue to review their specific mobility populations to ascertain their tax compliance requirements under current laws and obligations. They also should track regulatory developments in those countries in which they have mobile workers, as others may follow the lead of the UK, Australia, and Ireland.

The OECD noted it is urgently working on other related concerns, suggesting that other guidance may be forthcoming.

To explore the latest COVID-19 tax, legal, and economic responses by territory, please see PwC’s on-line tracker. Select multiple countries/regions and topics to compare.
Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

Global Mobility Services – United Kingdom

Leo Palazzuoli, Global Leader
+44 7738 310312
leopalazzuoli@pwc.com

Iain McCluskey, UK Leader
+44 7725 707187
ianmccluskey@pwc.com

John White
+44 77802 901263
john.white@pwc.com

Global Mobility Services – Australia

Jonathan Dunlea, Australia Leader
+61 (3) 8603 5424
jonathanb.dunlea@pwc.com

Global Mobility Services – Ireland

Keith Connaughton
+353 (0) 1 792 6645
keith.connaughton@pwc.com

Global Mobility Services – United States

John Shea, US Leader
+1 (310) 809-9234
john.w.shea@pwc.com

Al Giardina
+1 (914) 420-2631
alfred.giardina@pwc.com

Julie Baron
+1 (571) 419-4742
julie.m.baron@pwc.com

Derek Nash
+1 (203) 249-3695
derek.m.nash@pwc.com

Clarissa Cole
+1 (617) 359-7639
clarissa.cole@pwc.com