

# THE EXPAT POST

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IN FOCUS

The Challenges of  
**CRS** for the Expatriate  
Population and Global  
Mobility Manager



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The Key to International  
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Visit us on stand B2  
at the  
**AMSTERDAM GLOBAL  
MOBILITY CONFERENCE**



22 MARCH 2018

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# Welcome

This special edition of the The Expat Post has been published to coincide with an important milestone in the development of Alliot Group's Global Mobility Services Group: our Lead Sponsorship of the 2018 Amsterdam Global Mobility Conference.



**Luc Lamy**, Chair of Alliot Group's Global Mobility Services Group

Our international team of global mobility experts has been working closely with the Forum for Expatriate Management to help shape the tax and legal content for this conference which brings together 250 global mobility, HR and international tax professionals from 15 countries who work for multinationals including AkzoNobel, Booking.com, E.ON, Heineken, Huawei, IKEA, Lidl, Nike, Otis, Philips, TNT, Unilever and Vistaprint.

The conference (*and this newsletter*) provide us with an opportunity to raise the profile of Alliot Group's Global Mobility Services offering and to demonstrate the high levels of outsourced expertise available to in-house professionals as they face the challenges of optimising their international HR supply chains and maximising growth opportunities in the global marketplace.

Much of our focus in this issue is on short-term assignments and how to avoid the 'banana skins' when managing assignees. Short-term postings are attracting growing interest from tax and immigration authorities around the world – our author experts explain why there is so much more to consider than the 183 day rule. We also explain why the Common Reporting Standard is a gamechanger and why certain measures need to be incorporated into a company's expatriation policy.

Finally, we look at cultural competence and why a global mind-set must be learned if assignment failures are to be avoided and executives are to advance to senior leadership positions.

If you would like to speak about any of these issues, either catch us on stand B2, or if you are reading this after 22nd March, please email me.

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# Avoiding the Banana Skins: The Benefits of an Integrated Approach to Managing the Tax and Legal Risks of Cross Border Assignments



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Short-term assignments are on the rise as global companies try to optimise their international HR supply chain – in this article (*and at the Amsterdam Global Mobility Conference where we will be the Lead Sponsor*), we take a closer look at the social security, tax and employment law/HR issues which can trip up global mobility, tax and legal professionals.

It is easy to become non-compliant when assignees are moving around at short notice and as rules change. Generally speaking, there are fewer issues with short-term assignments, but there can be nasty surprises and the creation of ‘accidental expats’ can occur.

Problems will indeed often be caused by business visa limitations being exceeded, but there is much more to consider than this and 183 day rules.

## **Short-term assignees in the cross hairs**

We are living in a time of unprecedented cooperation and data exchange between national governments and their tax and immigration authorities - short term assignees have started to come onto their radar with national tax bodies wanting their fair share of income tax and social security contributions.

Risks often arise as short-term assignments can be decided upon at short notice by individual specialist departments and might bypass HR teams. And in the case of global business travel, trips can be ad hoc and there will be no formal assignment.

Firstly, **Luc Lamy**, partner at **Tax Consult** in Belgium, takes a look in this article at some of the ‘banana skins’ linked to employment taxes:

## **Employment taxes**

Generally speaking, the method of taxing employment income is the same everywhere – however, the taxation of employment related benefits does vary. All assignments carry a risk that the activities of the individual may also result in taxes in the foreign country. And the longer the assignment, the greater the likelihood that tax filing obligations will switch from the home to the host country.

So what generally do you need to look out for?

The main criterion for tax is usually residence status – residents tend to be taxable on their worldwide income whereas non-residents are generally taxed on income from sources in the country. The source of employment income is generally the place of physical performance of the duties but country rules vary – if an individual is potentially liable to tax in two or more countries under domestic tax rules, then tax treaties need to be reviewed to determine which country has primary taxing rights (*‘tie breaker rules’*) and how that individual will be taxed.





Most treaties follow the OECD model, but rules vary based on type of income, nature/sector of individual activity, the individual's nationality and where the individual's centre of vital interests lies. In the case of most short-term assignments and business travel, the individual will typically meet all the treaty conditions, meaning employment income will be exempt from tax in the host country.

However, if shorter assignments do not meet treaty conditions, the treaty article covering double taxation will usually mean that a tax credit/exemption will be allowed in the home country for taxes due in the host country.

There are other circumstances that can also cause global mobility teams to slip up, for example:

**A. Misapplication of tax residency rules** – Some global mobility teams mistakenly only apply the 183 day rule – this should not be considered in isolation as alone it may not determine the right of the country of residence to taxation, especially if the assignee is paid by an employer in the host country or if the employer has (*mistakenly*) created a permanent establishment in the host country. If any of these three is triggered, the employee is liable to income tax. Furthermore, the method of counting the 183 days is unreliable – there are different 12-month periods (*e.g. calendar, fiscal year or any twelve month period starting or ending in the tax year*).

Senior managers such as Managing Directors and Board members are vulnerable to this as some double tax treaties allocate the right of taxation to the country deemed to be the management of the company - this will override the number of days spent by these employees in their country of residence.

**B. Group executives with multiple functions** – those executives who hold, in addition to their primary activities for the company which is their employer from a legal perspective, other functions for one or more group companies in other countries, could become tax liable due to a different interpretation in a jurisdiction of who the employer is from an economic perspective. There is a risk that a group entity outside the home country will qualify as the economic employer, triggering tax liability for the employee and employer. You need to consider how revenue authorities will assess who directs, controls and manages the individual and the impact of any recharges to the home country entity.

**C. Permanent establishment rules** – it is unfortunately quite easy to accidentally create a permanent establishment in a country if foreign employees are involved in carrying out specific activity types. For example, if you have sales staff that have de facto authority to sign contracts on behalf of the company, that could create a permanent establishment as it would constitute substance and activity that creates profit and value. Having a fixed place of business for your staff is another trigger and something you may not actually realise you are creating – this can often occur in the construction sector.

It gets more complex as the period of time that triggers a PE varies from country to country – in the UK for example, it is 12 months. Once PE is triggered, the 183 day rule will now not apply to the assignee and he/she may become liable to income tax from their first day of work in the country. The first place to look is the definition of PE in the double tax treaty between your country and the host country.

The other area that commonly trips up global mobility teams is social security – **Fred Krabbendam**, Managing Director at **Borrie Expatriate Services** in the Netherlands, explains.

### Social security issues

While social security implications tend not to arise in the host country with short-term assignments, if they do, the costs can be significant. As a rule of thumb, for periods of 6 weeks or less, no action is necessary, but it does depend on the countries involved, the employers, length of assignment and social security agreements.

E.U. employers posting employees to another member state must work out which social security system applies. Short-term assignments coupled with continuing employment in the home country typically means liability in the home country only, but certificates of exemption from host country social security need to be obtained in the home country.

In the case of non-EU postings, the specific social security agreement between countries (*if in place*) must be considered in detail. Problems can occur if NO social agreement exists between countries - Dual liability can arise. But – and this could have a major financial impact - gaps in coverage can also occur. As a result, the individual will usually look to the company for compensation.

One of other major areas internal teams need to be aware of is employment law- **António Sérgio Almeida**, lawyer at **ABV Advogados**, explains.

### Employment law

A 2008 EU regulation established the rules for multi-located employment contracts i.e. for those contracts that, from the very beginning, apply to work being carried out in a different EU\* member state.

Although the parties involved have the freedom to choose which country's laws apply, the national law applicable in the contract may not actually result in depriving the employee of the protections afforded to him/her under EU provisions that cannot be ignored and which state that, in the absence of choice, the laws of the country where the employee routinely carries out his/her work should apply. In a nutshell, some rules protecting the employee may be applicable!

So there are important legal issues to consider when it comes to secondments and short-term assignments – yes immigration and visa issues are important, but today we are going to focus on the importance of being well informed about the terms and conditions of employment in countries where your employees are assigned, and specifically being savvy about the 2014 EU Directive on Secondment (*Posting of Workers Directive*). This has now superseded the 1996 directive which was deemed unfit for purpose in a more globalised economy. While the free movement of people and services remains one of the EU driving principles, there are concerns about:

- 1) 'Social dumping' or exploitation of workers from an EU country of lower wages being posted to a higher wage country to complete a service contract. As well as exploiting workers, this was giving foreign companies an unfair advantage in terms of labour costs over local companies in higher wage countries
- 2) The use of foreign 'mailbox' companies that are not engaged in substantial activities and genuine postings in the home country but instead merely recruit workers in the home country with the intention to employ/assign them immediately to another country.

This new directive applies to not only the direct employer, but also the sub-contractor and is strengthening the rights of the sub-contracted employee. Countries have been implementing the directive into their national employment laws.

However, some employers remain unaware of the new registration and information requirements in EU countries and how they affect secondments between EU group companies.

This can also impact the movement of expatriate workers into the EU from non-EU countries – added to the other work permit or immigration requirements, this is creating confusion and the risk of inspections and severe fines.

The requirements vary by country, but if you post workers to a different EU country, you may need to:

- Inform the authorities of the receiving EU country about the secondment beforehand (*applies to Belgium ['Limosa' declaration], France and Luxembourg*) – the employee number, anticipated posting duration, workplace address and the nature of the services justifying the posting.
- Provide copies of contracts of employment together with payslips, time-sheets and proof of payment of wages (*translated into the host language if required*)
- Appoint a liaison person who has the responsibility to provide all documentation on a seconded worker as requested by the authorities in the receiving country. Countries have different rules on where this person must be physically located e.g. in Belgium this person can be in any EU country, but in France, he/she must be in France.

In each country, you need to have respect for:

- Minimum rates of pay
- Maximum work periods
- Minimum rest periods
- Annual paid leave
- Health and safety at work

Workers' rights have also been strengthened in that, should there be an infringement, they are able to bring legal action in the home or host jurisdiction.

\*Also applies to EEA member countries.



## The Challenges of **CRS** for the Expatriate Population and Global Mobility Manager

In the spring 2017 issue of The Expat Post, we explained the complexities of the Common Reporting Standard (CRS). This new framework is an internationally coordinated initiative designed to stamp out tax evasion, with financial institutions around the world committed to automatically exchanging account information. This is a real 'game changer' for expatriates (*and for those who are responsible for looking after their affairs*). In this article, [Luc Lamy](#) of [Tax Consult](#) in Belgium reviews the scope of information addressed under CRS and the tax issues faced by the expatriate population.

### **Summary – Why global mobility and tax directors need to know about CRS!**

- The days of banking secrecy are over – 101 governments worldwide are signed up to CRS and will be exchanging information automatically about the assets and accounts held in their jurisdictions by foreign individuals/expatriates – some assignees will get tangled up
- The expatriate's tax residence is critical to the workings of CRS. However, the laws determining tax residency are complex- it is not just about tracking the days
- Misunderstanding the implications of CRS and the steps that need to be incorporated into a company's expatriation policy could have negative financial and reputational impact.



## The background to CRS

The automatic exchange of information has been taking place within the EU since 2005 and enables interest payments made in one EU member state to residents of another member state to be taxed in accordance with the laws of the individual's country of residence.

A major step in implementing the CRS was taken in October 2014 with the signing of the CRS Multilateral Competent Authority Agreement ('CRS MCAA') which provides the mechanism for the automatic exchange of information under the CRS. 101 jurisdictions have signed the CRS MCAA and committed to exchange information. Over 2,600 bilateral exchange relationships have already been activated by the jurisdictions committed to the CRS.

Following this, the EU adopted Directive 2014/107/EU ('DAC2') which implements the 2014 OECD Global Standard on the automatic exchange of financial account information within the EU. The scope of this is not only interest income, but also dividends and other types of capital income, and the annual balance of the accounts that create such income.

## Determining tax residency

CRS has been designed to ensure that taxpayers pay the right amount of tax to the right jurisdiction. If you are resident in a particular country, you are usually taxable in that country on your worldwide income. Therefore, the information which is exchanged automatically needs to go from the source country to the country of residence.

In terms of reporting obligations, financial institutions must identify the country of residence. Tax residency is a complex tax issue and the OECD model convention does not provide a definition of tax residence. The model convention and the bilateral tax treaties adopting the model refer to the domestic laws of the contracting states.

In the event of conflict between an individual's two residences, the OECD model convention contains special rules with alternative criteria (*a tie-breaker rule*) to determine which country is to be given preference. The first criterion is the individual's permanent home: the individual is deemed to be a resident only of the state in which he/she has a permanent home. In those cases where the individual has a permanent home in both states or in neither state, the other criteria may need to be applied i.e. the centre of that individual's vital interests, abode and/or nationality.

To assist taxpayers and financial institutions to comply with their obligations under the CRS, jurisdictions have also made available information related to their Tax Identification Numbers (*TINs*) and their tax residency rules.

## Information to be exchanged across jurisdictions

The information to be exchanged relates to the individual's personal (*e.g. name, address, account number and the name and identifying number of the reporting financial institution*) and financial information. The latter includes the account balance or value at the end of the relevant calendar year, the total interest and dividends, other income generated from assets held in the account as well as proceeds from the sale or redemption of financial assets paid or credited to the account.

Once again, most bilateral tax treaties contain rules regarding the taxation of interest, dividends and capital gains. In most cases, the beneficiary's state of residence will tax the interest and dividends. However, this type of income usually also attracts tax in the source state, i.e. where the individual's income is paid. The rate of tax that is paid will be limited to a certain percentage (*e.g. 10-15%*) by the tax treaty that is in place.

The amount and nature of payments applicable to a reportable account will be determined in accordance with the tax laws of the jurisdiction which is exchanging the information.

## Compliance requires good advice and changes to company policies

It is really important that banks have the correct information. Sending information to the wrong jurisdiction will provoke questions from the tax authorities in these locations, even if there is no tax liability.

Expats moving to different countries around the world need to ensure they receive the right advice which enables them to correctly determine their tax residency and receive the right tax treatment. Those assignees earning interest and dividends in their home country will need to provide a certificate of tax residency to the state of source in order to obtain the reduced tax treaty rate. Meetings with tax professionals in the home and the host countries will help to ensure compliance with CRS.

Global mobility managers need to be aware of CRS. The company's expatriation policies should include provisions that relate to tax residency, personal income (*i.e. tax equalization*) and the impact of bank accounts. Actions such as failing to close a bank account at the end of an assignment could lead to a bank exchanging information with the wrong country.

CRS must start with the efficient and correct exchange of information between the expat, the global mobility manager and the tax adviser.



### For more information

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Alliot Group's Global Mobility Services Group.



# The Key to International Business Success: Cultural Skills for Business in the Global Mobility Arena

With the rise of the Global Manager and the importance of the adaptation of strategy for understanding and communicating from one culture to another, there has never been a more important time for global mobility specialists to appreciate the importance of the contribution that cultural awareness makes on the pathway to senior leadership roles. It is critical to creating an agile talent pool and maximising the impact and efficiency required in every assignment. **Geraldine Lupton** of **Farnham Castle Intercultural Training** explains.



## Staggering statistics indicate one in four assignments fail

The reasons given for failure usually relate to cultural challenges, family issues, homesickness and the inability to adapt to the local business culture. While the latter might seem insignificant or trivial, it can jeopardise working relationships and immediately affect business success.

Awareness of cultural differences and sensitivities, i.e. having a 'global mind-set', will minimise costly misunderstandings, promote better communication and manage expectations ahead of the assignment.

## But it's not quite as simple as that

What are the elements that impact on business relationships across borders? What are the critical elements for different cultures? How can assignees recognise these critical elements and 'learn' how to adapt their own approach to work more effectively with foreign clients, colleagues, partners, suppliers or customers?

## A recent study reported that 91% of companies view a global mind-set as 'mission' critical

But do assignees really understand the cultural rules of engagement? Do companies understand the scale and importance of cultural issues? And are they aware that most issues are country specific and unique to each country or culture?

Every assignee will already have their own cultural mindset (*the one developed from birth and through exposure to the culture in which they have grown up*); and every assignee will have their own preconceptions of other cultures. If assignees need a global mind-set for 'mission' success, they need the cultural intelligence to recognise differences. They also need country specific knowledge and an awareness of business and social etiquette to be properly prepared for their 'mission'.

This global mind-set must be learnt, and it is unsurprising therefore that the relevant training and support can make the crucial difference between failure and success. Focus on those elements that increase an assignee's effectiveness in the target country is therefore vital because it:

- Transforms the assignee experience

- Provides tools and strategies to expedite adaptation
- Reduces the risk of frustration and culture shock by managing expectations within the cultural setting, and
- Eases the burden of the Global Mobility Manager.

With the expertise that global mobility training delivers, the benefits are financially tangible from recruitment and selection to project support and repatriation. In fact, the benefits are tangible throughout the entire assignment cycle, providing a positive impact on relationships and productivity. A recent study of 1,362 business professionals\*, showed that professionals with a global mind-set:

- Were **three times** more perceptive, adaptable and productive
- Felt **twice** as valued as other assignees, and
- Were **four times** more likely to be promoted.

The challenge for any organisation doing business internationally is therefore not only to appreciate the importance of understanding cultural diversity, but also to enable its integration within the business strategy in the context of its business goals.

If a business needs to:

- Recruit or develop a global workforce
- Employ frequent cross border travellers
- Relocate people on temporary or longer term assignments
- Work with culturally diverse, remote or virtual teams, and
- Develop international business

...then to stay relevant and competitive, the correct global competency framework is required.

The right strategy is needed for the right people in the right international market. Success will follow!

## About Farnham Castle Intercultural Training (FCIT)

FCIT is a Strategic Partner to Alliot Group and a Global Business Training Consultancy. For more information, go to [www.farnhamcastletraining.com](http://www.farnhamcastletraining.com) or email Geraldine Lupton ([glupton@farnhamcastle.com](mailto:glupton@farnhamcastle.com)).

\* The Global Mindset Index Study (December 2017)