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GMS Flash Alert

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People's Republic of China - Coronavirus Response: Considerations for Businesses Relocating Employees

The outbreak of the 2019-nCoV epidemic ("coronavirus") in the People's Republic of China is unprecedentedly altering lifestyles and work arrangements.

This GMS *Flash Alert* provides an overview of the critical tax and immigration matters that should be considered when allowing, or requiring, relocation or remote working arrangements in response to the current challenges.

WHY THIS MATTERS

Companies with global presence and individuals operating across borders need to be increasingly aware of relevant risks associated with new work arrangements consequent to the outbreak. Awareness is vital to help minimise disruptions to operations and to manage associated risks and costs.

Context

As a precautionary measure, many multinational organisations are now evaluating whether it is necessary to repatriate expatriates from mainland China and suspending business travel arrangements. These actions follow the Chinese government announcement on extending the Lunar New Year holiday, and other countries implementing new border measures to restrict incoming travellers from the People's Republic of China ("China" or "PRC").

KPMG NOTE

When reviewing repatriation or remote working plans, businesses should take into consideration the potential immigration and tax compliance requirements triggered by such relocations.

Immigration Concerns

The most pressing need is immigration and establishing whether the individual will have the right to work when he arrives at his destination. If this is his home jurisdiction, it should be straightforward; if it is a different location, it may not be simple or quick. In these cases, lack of planning may result in a significant period when the employee cannot work and needs to take leave.

Prior to initiating a move, in order to assess the appropriate visa to be obtained and ongoing compliance requirements for the employee, immigration requirements in the new jurisdiction need to be reviewed in conjunction with the employee's:

- personal status (e.g., nationality, valid visas in possession);
- nature of activities to be carried out in the jurisdiction;
- intended period of stay;
- whether family will accompany.

Furthermore, in view of new border controls which are being implemented – in varying degrees by over 90 countries – to monitor and restrict travelers from China, businesses should also review details of these measures to help ensure employees that have been identified for relocation will be able to enter the respective destination country. (For related coverage, see GMS *Flash Alert* 2020-026, 7 February 2020.)

Tax Concerns

It is not unusual to hear "Many of the tax issues can be worked out later." However, delaying one's compliance obligations and ignoring (for the time being) the need to do one's tax due diligence could create significant costs and risks. There are some critical items that need to be dealt with before a move. Considering those critical issues in advance, and formulating policies and contingency plans, could allow for a quicker response to the needs of the business and the individuals as those needs arise and help reduce risk to the business and the employee.

Businesses that are considering relocating employees from mainland China to work in a different jurisdiction, whether permanently or remotely in the interim period, should consider both the personal and corporate tax implications of each arrangement and quantify the associated costs to employees and the business ahead of initiating the move.

Personal Tax

An individual is likely to trigger a tax liability in the jurisdiction in which she is working, even if it is not her home or primary work location. Exemptions may be available by virtue of domestic concessional rules in that jurisdiction or the application of a double taxation treaty (where applicable). Often these exemptions will depend on matters such as the duration of the stay and where the costs are borne.

If a tax liability is triggered in a jurisdiction, individuals and their employers may be subject to tax reporting and withholding obligations according to local practices in that jurisdiction.

Employers need to consider whether any additional tax cost will be borne by the company or the individual. Also, consideration may need to be given to the reason that the specific location was chosen – was it driven by business needs or personal preference?

Furthermore, ongoing personal tax and employer withholding obligations in China may continue if the move is temporary, and double taxation may arise where the move to the other jurisdiction is extended and the employment arrangement is not updated in a timely manner.

Returning an expatriate to her home jurisdiction may be easiest from an immigration perspective, but could also have implications for her tax residence. For example, if an employee left her home country relatively recently, her return may mean that tax residence is not considered to have been broken, creating tax exposure back to the expatriate's original departure date.

Corporate Tax

An individual carrying out certain activities in a jurisdiction may trigger tax obligations for his employer.

Presence in a location, depending on its duration and the activities undertaken, may trigger a corporate tax liability, business registration requirements, or registration for other taxes, such as VAT/GST. Tax relief may be available if a double taxation treaty applies.

Next Steps

Businesses should consider the above factors as part of their business continuance planning. The KPMG team in the People's Republic of China can assist with:

- preparation of a pre-assessment check-list;
- evaluation of relocation arrangement and assistance with formulating a cost-effective relocation strategy;
- cost projections for the proposed relocation strategy and alternative strategies;
- immigration planning and assistance with applications;
- employee communications and briefings;
- destination tax and immigration compliance services (initial and ongoing).

KPMG is closely monitoring updates from the various authorities, and will endeavour to keep readers of GMS *Flash Alert* informed as significant developments occur.

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Contact us

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