



## Tips for executives moving overseas...

These tips are tailored towards the situation where an individual is sent by his current employer from one country ('the home country') to work in another country ('the destination country'). However, the principles are of relevance to all overseas work placements (temporary or permanent).

### Immigration

Have you (or, more usually, your employer) secured the necessary permit to work in the destination country for:

- you;
- (if they wish to work) your spouse / partner and other dependants; and
- any staff (eg nannies) moving with you?

### Assignment terms

#### The job

- If you will be undertaking a trouble-shooting role, what will be the limits of your authority and responsibilities, and what budget and resources will be available to you?
- How long will the assignment last and/or what notice is required of its termination? The intended duration of stay could have a significant effect on any tax planning opportunities (see 'UK tax issues' below). Are there any special circumstances that would entitle you or the employer to end the assignment on short notice (eg local political instability or health risks)?

#### The move

- If not dealt with already, who will address (and pay for) the immigration formalities for you and your family?
- Will the employer pay for relocation expenses to the destination country? If yes, what will these cover, eg:
  1. transportation of your family and possessions (and associated insurance);
  2. rental costs (and related costs, such as service charges, utility charges, occupancy taxes and housekeeping costs);
  3. home sale/purchase costs (including legal fees, agents' fees, stamp duty) etc?
- Will the employer pay for you to obtain legal and tax advice on the assignment?

#### Pay and benefits

- Where and in what currency will you be paid? (The location of payment might be critical for tax purposes – see 'UK tax issues' below). Who will bear the brunt of currency fluctuations?
- Will you be given tax equalisation (see 'UK tax issues' below)?
- Will there be a supplement if the cost of living in the destination country is higher than in the home country / town?
- Will you continue to be pay social security contributions, and participate in a pension scheme, in the home country? Will the employer make contributions to the pension scheme on your behalf?

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- Does the employer intend to enhance and/or amend your restrictive covenants as a result of the change in your role and/or location? Restrictions drafted in one country might not be enforceable in another country.

### **Family life**

- Will the employer pay for flights to the home country (annually or more frequently) for you and your family and, if so, in what class? Will you receive additional holiday entitlement to cover an annual trip home, or will you at least be allowed to take a large chunk of your holiday entitlement in one block for this purpose? Will you receive local public holidays, in addition to your personal holiday entitlement?
- If your spouse/partner has to give up a job in your home country, will they be given a disturbance allowance?
- Will you and your family have private medical cover in the destination country? If you / they wish to be treated for serious illness back in the home country, how will this be covered?
- Will the employer pay for school fees to educate your children privately (in the home country or in the destination country)?
- Will you be provided with ancillary benefits, such as use of a car and access to local clubs / resources?

### **The end of the road**

- On termination of the assignment, will you be guaranteed your old job, or an equivalent position, back in the home country or a pre-agreed severance package if these are not available? The tax implications of such a package should be considered.
- Also, will termination of employment be effected in the destination country or will you be returned to the home country before termination occurs? This could affect where you have claims arising from dismissal (see 'Employment Rights' below).
- Will the employer cover relocation expenses (see 'The move' above) back to the home country on termination of the assignment, whatever the reason for termination (resignation, redundancy, gross misconduct etc)?

### **Contractual documents**

- There are several ways to structure an overseas assignment. The choice between these structures will depend upon the basic assignment terms (see above), as well as tax and social security considerations (see below). The basic structures are:
  - Local employment: You surrender your employment contract in the home country favour of a contract with the company based in the destination country (governed by the law of the destination country).
  - Secondment: You retain your employment contract in the home country but have a secondment agreement (governed by the law of the destination country) setting out the overriding terms of the overseas assignment. The home country contract is dormant for most purposes during the period of secondment.
  - Dual contract: Where your duties will be split between the home country and the destination country, you might have a local contract with the destination country employer and a home contract with the home country employer. The main purpose of the dual contract is to enable you to be taxed separately under the tax regimes of the two countries – see 'UK tax issues' below. However, note that the UK authorities have clamped down on the use of dual contracts, and they get scrutinised closely. Ensure you are disciplined and can show two functionally separate roles and that you perform them separately.
- Wherever there is more than one agreement (as with both secondment and dual contracts), they must sit comfortably with each other and, between them, cover all the terms and conditions without conflict. Each agreement should state its governing law and where any disputes will be dealt with. It should also be consistent with its purpose. For example, the purpose of a secondment agreement is to avoid the company based in the destination country becoming your employer. This will be undermined if the

written agreement fails to ensure that the home country employer retains control over you (eg in respect of reporting lines, grievances, disciplinary matters, appraisals and pay decisions). Similarly, if it intended that you will not become, or remain, ordinarily resident in the UK for tax purposes, the written agreement must be careful to state the correct duration of the assignment etc (see 'UK tax issues' below).

- An added complication of the secondment arrangement is that the home country employer will usually continue to pay your salary in the destination country. If this is the case, careful thought needs to be given to placing requirements on the home country employer to make deductions from your salary in respect of income tax liability in the destination country.

## UK tax issues

- With one exception (termination payments), the UK's income tax regime generally depends on:
  - where your duties are performed;
  - whether your earnings are remitted to the UK;
  - where you are resident, ordinarily resident and domiciled (your 'residence status'); and
  - the residence of the employer.
- Your residence status, in turn, depends on a variety of factors including, importantly:
  - how long you intend to remain in the destination country;
  - how long you are physically present in the UK during each tax year;
  - where you purchase (or take a long lease on) property;
  - where you regard as your permanent home; and
  - when (during the course of a tax year) you move between countries;
- You should never assume that by moving away from the UK, you immediately lose your residence status here.
- If you perform *some or all* duties outside the UK, residence status will be critical to determining your UK income tax liability.
- If you perform *all* duties *in* the UK, you will be liable to UK income tax in full on all your earnings, whatever your residence status. However, you might be able to stay out of the UK social security system (on a 'contributions holiday'), and stay within a foreign social security system, in some circumstances (in particular, provided you are only on secondment in the UK for a limited duration, and therefore do not have a UK employer). This arrangement often benefits employers significantly (because of the different rates of social security contributions for employers). However, there are implications for your right to UK state benefits.
- If you will suffer significant detrimental tax / social security consequences by moving overseas, you might ask the employer for 'tax equalisation', so it bears the brunt of this additional cost. Tax equalisation will not help if you are moving from a home country / town where the income tax rates exceed the rates in the destination country / town (eg from London to Hong Kong). Tax equalisation policies are used by many international organisations but can be complex to operate and so are not generally available to everyone.
- Don't forget to take advice on non-income tax liabilities (including on capital gains, such as property value increases).

## Employment rights

- Contractual rights are generally governed by the law chosen by the parties or, if no law is chosen, by the law of the country with which there is the closest connection (usually where you habitually work). However, some mandatory laws override a choice of law, eg an employee on a US 'at will' contract in the UK may nevertheless be entitled to UK statutory minimum notice.
- The applicability of a country's individual statutory rights is a complex matter that depends on a variety of factors. Suffice it to say, however, that simply because you work in one country does not necessarily mean you have statutory rights in that country, or indeed that you do not have statutory rights in other countries. For example, a US citizen working overseas for a US employer (or for a company controlled by a US employer) will usually be protected by US federal anti-discrimination laws wherever he or she is. Similarly, Britain's anti-discrimination laws generally protect individuals unless they 'work wholly outside Great Britain'. Only those whose presence in Great Britain is minimal are likely to be excluded by this test.

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