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Assessing the United Nations' Global Mobility Tax Proposals

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The UN's proposed update to their model tax treaty has a potentially major change for how globally mobile employees are taxed with wider-reaching implications than may be intended, says Richard Tonge of Grant Thornton.

Over the past few years, the United Nations (UN) has taken a more assertive role in the world of international tax regulations and cooperation, looking to both influence and determine how countries manage the taxation of international business. The October 2024 Tax Committee meeting put forward draft regulations and commentary to address taxation of remote working arrangements, though the proposals could have wider-reaching implications than intended.

With the UN Tax Committee comprised predominantly of members from developing economies, it has set itself apart from the Organisation for Economic Cooperation and Development (OECD), an international institution of 38 developed economies that has led the development of international tax rules over the past 60 years. The UN Tax Committee's differing tax agenda is informed by global development objectives set by the UN with an emphasis on creating a sustainable global financial landscape, including giving "special attention to developing countries and countries with economies in transition" (UN Tax Committee Mandate).

In this context, the UN Tax Committee, like the OECD, agreed in 2022 to establish a workstream focused on the review and possible change of how tax treaties and the associated commentary address tax issues related to globally mobile employees.

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Though only in draft and subject to further rounds of review, the 2024 UN proposals pose potential future tax issues for international companies. As the UN continues to gain traction in the development of global tax rules, the proposals provide insight into the direction of regulatory development that would see an increase in complexity and administration in global mobility. Though not addressing corporate tax issues, employers may face new cross-border complexities, particularly where final changes and commentary may be incorporated into future tax treaties between developing economies.

Tackling Remote Working Head on…Sort of

Unlike the OECD which has chosen to address corporate tax risks associated with global mobility, the UN has focused on addressing individual taxation in global mobility, considering where an employee should be taxable when they have chosen a remote working arrangement across borders. To that end, the UN has proposed adding new, optional clauses to its model double tax treaty that is intended to specifically address remote working arrangements where an employee has chosen to work in a country other than where they are employed (Full text and commentary is included in the *Taxation issues related to the digitalized and globalized economy*, Co-Coordinator's Report of UN Committee of Experts on International Cooperation in Tax Matters (29th Sess.), (Oct. 15-18, 2024)). The draft puts forward two scenarios:

1. **Tax asymmetry**: An employee has chosen to work overseas in Country A but the authorities in the employing country, Country B, want to retain their right to tax the income earned working abroad. The company takes a corporate tax deduction for the wages paid from Country A, so it loses out on both corporate tax and personal tax on the employment income.

2. **Tax avoidance**: An employee has chosen to work in Country A due to its preferential tax treatment (e.g., low or no taxation on employment income). Country B sees this as avoiding tax and so wants to disincentivize remote working by taxing employees working in Country A but employed in Country B, therefore removing the tax benefit.

Both scenarios are addressed by the draft clause, an addition to Article 15 on "Taxation of Employment Income," which states:

"4. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a resident of a Contracting State [Country A] in respect of an employment exercised in that State or in a third State may be taxed in the other Contracting State [Country B] to the extent that the remuneration is paid by, or on behalf of, an employer who is a resident of that other State."

Combined with additional language proposed for Article 23, "Methods for Elimination of Double Taxation," the above language addresses how employees could be taxed. In the first scenario, an employee resident and working in Country A is first taxed in Country B, which retains the right to collect tax from the employee. A corporate tax deduction for wages is still allowed in Country B. In the first scenario, an employee resident and working in Country A is first taxed in Country B, which retains the right to collect tax from the employee. A corporate tax deduction for wages is still allowed in Country B. The net tax outcome that applies for Country B's authorities is the same as if the employee was not working overseas. The commentary further suggests that countries could agree bilaterally that the Country B tax rate could be capped, as is the case for other income sources, such as dividends and interest. With Country B having the first right to tax the income, the individual would not suffer double taxation as a credit would reduce the tax burden they incur in Country A.

By contrast in the second scenario, Country A would have the first right to tax employment income as the work is physically performed there.However, if the tax rate in Country B is higher than in Country A, a residual amount of tax would be assessed on the individual there. So not to double tax the employee, Country B would allow a credit for the tax paid in Country A therefore holding the employee to a tax burden that is equivalent to the higher of Country A or B and removing any tax benefit of working in Country A.

Could the Solution Create More Problems Than It Solves?

Whether protecting a country's tax take or preventing employees from deriving any tax benefit from working overseas, the draft clause creates some significant practical and potential issues that will need to be resolved as this is taken forward.

1. **Applicability**: There is little evidence that remote work is being used widespread as a tax avoidance approach by employees. Scenario 2 could have limited applicability to real world situations but has a much wider impact as noted in the below. Similarly, many employers have policies in place limiting remote working to fixed periods, often up to 2 weeks, or 30 or 60 days. Such long-term arrangements as put forward here may be limited, in particular, due to corporate tax risks they pose as well as non-tax issues that prompt employers to limit periods of remote working.

2. **International assignments**: Employees who relocate on international assignment and remain employed in their home country may become tax non-resident and so are only subject to tax in the country they work. With remote work not defined, the draft clause could also apply to assignments where an employer may be responsible for paying the taxes under a "tax equalization" policy. Moving from a high-tax country could therefore cost businesses more if an employee remains subject to the high rate of home country tax

3. **Transferring employees instead of assignments**: To mitigate continuing taxation in the country of employment, individuals could have their employment transferred to an entity in the country they work. This would remove a continued tax in the home country but could disrupt access and contributions to retirement plans, social security benefits, and other employee personal financial priorities.

4. **Worldwide taxation**: The proposed scope of taxation puts forward a move beyond a territorial basis of taxation to worldwide taxation of employment income. This result could be a major change in how a country may tax non-residents.In targeting only employees, individuals who transfer their employment, work as a subcontractor, or via a service company would not be impacted by the draft regulations. Note for countries that tax citizens and residents on their worldwide income (such as the U.S.), this should have more limited relevance.

5. **Mismatches (1):** The draft addresses only income taxes and not social security. The average rates in OECD countries was 23.7% for income tax and 25.6% for social security, meaning any loss of "tax revenue" would likely still include a potentially higher social security. Additionally with the average corporate tax rate only 10.2%, a higher tax burden would be applied to the employee and not the company when trying to offset tax loss through the use of the new clause.

6. **Mismatches (2):** Taxable income will be calculated differently from country to country. Employees who are benefiting from tax efficient planning on employment income, such as for retirement plan contributions, could lose the benefit if it is not recognized in the country where they are employed, resulting in a punitively higher overall tax burden.

7. **Payroll complexity:** These rules could change payroll tax obligations and increase complexity and administration.

8. **Corporate tax risks**: Having employees working long-term in another country poses a risk of creating a corporate taxable presence, a Permanent Establishment. Though intentional, the UN draft omits the key issue employers want to address for employees working remotely.

What Does It Mean for Companies?

As with developments at the OECD, monitoring remains key to understanding the changing landscape of global mobility taxation and emerging future developments. In prioritizing country tax revenues, future changes could be adopted into tax treaties between developing economies rather than with OECD countries. International businesses should be considering how changes in the taxation of cross-border working arrangements could impact employee global mobility in different regions and based on the future demographics of the company’s formal mobility program and remote working arrangements.