



A Perspective on U.S. Assignments in Uncertain Economic Times

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Hypothetical

- Troubled U.S. subsidiary
- Foreign parent company from Country X
- Country X executive (Mr. Smith) identified as candidate to work in the U.S.
- Assignment period is unknown but intent is not to exceed one year
- Country X has an income tax treaty with U.S.



Company X - Cash Flow Considerations

- **Housing costs**
- **Relocation costs**
- **Reimbursements related to assignment (tax equalization)**
- **Reimbursement to employee for fringe benefits (school allowance, family travel assistance)**
- **U.S. Social security taxes**
- **U.S. income tax**
- **State income tax**

Mr. Smith – U.S. Individual Tax Considerations

- **Resident versus Nonresident Status**
- **Substantial presence test (SPT)**
- **Green card test**
- **Exceptions to SPT and green card test**
 - Closer connection
 - Income tax treaty
 - Certain visa categories

Taxation of Long Term Assignments

- **Long term = An assignment that is expected to last more than one year.**
- **U.S. taxation on worldwide income likely under the substantial presence test**
- **Mr. Smith's U.S. tax burden increased for**
 - Housing allowance
 - Cost of living adjustments
 - Tax reimbursement payments

Short-term Assignment

- **More employers opting for short term assignments**
- **Short term = assignment is expected to last less than one year (Rev. Rul. 93-86)**
- **Tax home doesn't change for U.S. purposes**
- **Tax saving opportunities associated with short term assignments**

U.S. Tax Benefits Short Term Assignments

The following are generally not taxable with a short term assignment:

- Housing / Lodging
- Transportation
- Auto use
- Meals
- Business calls
- Computer costs
- Dry cleaning and laundry

U.S. Tax Benefits Short Term Assignments

Record keeping requirements

- Expenses must be ordinary, necessary and reasonable
- IRS per diem tables may be used to simplify tracking of certain expenses
- For allowances, U.S. requires an accountable plan to avoid inclusion on employee's wage report



End of S/T Assignment

- **If, after its inception, the assignment exceeds 365 days, or the expectation of the length of the assignment changes, then the assignment is considered "long-term" from that date forward.**

Treaty Benefits – Dependent Personal Service Article

- Often U.S. individual income tax can be avoided by use of dependent personal service article

Three Requirements:

- 183 day rule
- Paid by or on behalf of an employer who is not a resident of the other contracting state; and
- The remuneration paid to the individual is not borne by a permanent establishment or fixed base

Example – Dependent Personal Service Article

- **Example:** X is a Swiss citizen and is employed by Swissco Corporation, which has a wholly owned subsidiary in the U.S. X is required to spend three months working at the subsidiary location assisting with the installation and implementation of a new global networking system. X's salary is paid by Swissco and is not charged back to the U.S. subsidiary. X is not subject to taxation in the U.S. on the income from his personal services performed in U.S. by application of the dependent personal services article (Article 14) of the U.S.-Switzerland Treaty.

183 Day Rule

- The U.S. Model Treaty contains the wording “not exceeding ... 183 days in any twelve-month period commencing or ending in the taxable year concerned.”
- Some older treaties look at the 183-day rule within the context of a calendar year. For an older treaty this presents some planning opportunities if the assignment starts after July 1st of a particular year and ends before June 30th of the following year.

Social Security

- **U.S. has territorial approach – if individual works in the U.S. then subject to U.S. social security tax**
- **U.S. social security system does not provide any long term benefits to executives on short term assignments**
- **Look to totalization agreements to keep executive in home country system and to avoid double taxation.**
- **However, in some cases U.S. social security taxes are much lower and employer may seek to keep in U.S. system for as long as possible.**

Social Security

- **New IRC 3121(z) – looks to impose U.S. social security taxes on U.S. based companies who hire foreigners to work on U.S. government contracts.**

State and Local Taxation

- States have own set of residency rules
- Have to consider if resident or non-resident for state income tax purposes



Mr. Smith

- **Consider short term assignment in connection with dependent personal services article**
- **Consider salary payment from foreign parent to stay in normal payroll cycle**
- **Documentation short term assignment from outset of assignment**
- **Formalize an expense reimbursement plan**
- **Look for a totalization agreement to avoid U.S. social security taxation**
- **Mr. Smith to file a U.S. income tax return to disclose treaty position.**
- **Mr. Smith may be subject to further disclosure of information pertaining to foreign financial accounts and interests if foreign based entities.**

Conclusion

- **This is not intended to be an all-inclusive explanation, but only to provide some general guidelines. Short-term assignments still present many tax challenges.**
- **Short-Term International Assignments are increasingly popular with many companies because they are frequently less complex and less costly than longer-term international assignments.**
- **From a tax perspective, short-term assignments can be very tax cost effective provided they meet specific requirements for U.S. and host country tax purposes.**