



# Navigating Global Mobility

SPENCER WEST



# Introduction

Evaluating global mobility considerations can seem abstract when arranging an international relocation. Cost assessments, business expansion prospects, employee preferences and, of course, a good business case all need to contribute to this consideration.

For lawyers and accountants, global mobility considerations mean assessing specific legal risks of international assignments. These do need to be addressed before the assignment starts. Those risks include:

- \* Deciding if the individual needs permission to work in that country legally and, if so, do they have it? There can be serious ramifications for getting it wrong, including severe penalties.
- \* Could a taxable presence be created in the new country by virtue of the assignment?
- \* Will income tax, social security and pension liabilities be triggered?
- \* Are cross-border legal issues such as the Posted Workers Directive and General Data Protection Regulation being addressed?
- \* Do any domestic legal matters such as data protection, wages councils and collective bargaining arise?

Why is this important? If you get immigration wrong, there are significant consequences for the individual. In some countries it means fines, prosecution, other staff being obliged to leave the country for the company.

If a company falls foul of European Directives, the penalties can be huge. Data sharing among Government departments is more prevalent, meaning individuals' movements are increasingly transparent to both the tax and immigration authorities.

British citizens generally now need permission to work in the European Economic Area, which causes challenges regarding those with roles requiring cross-border work. Pre-clearance for travel between the UK and European Economic Area is likely to be necessary within the next year.

We help organisations identify where the risks are in employing people based overseas.



# What to think about - Immigration

The UK immigration system has many potential applications available which allow employment involving sponsorship by an employer including the Skilled Worker and Global Business Mobility visas.

The requirements for sponsorship within the Skilled Worker category seem, at first review, straightforward. The job needs to be at a skill level of Regulated Qualification Framework Level 3 or above (equivalent to A level). The role must meet the salary threshold; generally, the “going rate” for the specific job, whichever is higher. Those receiving slightly lower salaries may still be able to qualify in some circumstances. There is no assessment needed of the availability of local employees to do the job. Self-sponsorship, subject to certain additional criteria, is possible.

There is a requirement to register with UK Visas and Immigration as a sponsor of such applications. Approval is discretionary but tends to be granted on application if documents can be shown to indicate the organisation is trading in the UK. There are a series of sponsor duties with which those registered must comply with. These include ensuring that records are kept properly and that reports are made in respect of sponsored workers whose roles change or who leave the business.

What are the key considerations to bear in mind if considering sponsorship? We suggest five considerations regarding this:

- ★ Could the activity be done with a different immigration status? Visitors are allowed to undertake many activities in the UK for periods of up to six months. Consider whether this is possible – it is a quicker and simpler process than sponsorship.
- ★ Would the individual be able to obtain an alternative visa which allows employment? The Graduate Route and Youth Mobility Scheme can be suitable alternative options.
- ★ Would the individual qualify for sponsorship? The skill level of the role and the salary to be paid are important in assessing this.
- ★ Is sponsorship justified by the importance of the role? Sponsorship is expensive and imposes a regulatory burden on the employer and
- ★ Has it been determined how the relevant sponsor duties can be met? If it will not be possible to monitor the employee’s attendance or progression in the role, sponsorship will not work.

We have seen significant confusion regarding the process to sponsor workers and recommend that organisations have access to appropriate training for the key personnel administering the immigration compliance process.



# What to think about - Tax

For companies with international assignments, effectively navigating the tax and social implications of employment is crucial for ensuring compliance and effective management of risk and costs.

Non-compliance can result in paying double taxes or social security contributions in both the employee's home country and the foreign country. In addition, failure to comply with withholding rules may trigger penalties and interest both for the employer and the employee. Furthermore, it may not always be possible to unravel double taxes by claiming tax relief. This is due to the fact that countries apply different time limits, potentially escalating expenses which the company may ultimately bear.

We recommend that, prior to any international assignment, employers should at least consider the following:

- \* Determine the residency status of the employee, as this will dictate the liability for tax and any associated employer obligations.
- \* Assess whether the employee's activities could create a corporate tax presence for the employer in another country.
- \* Verify if a Double Taxation Treaty applies in the given scenario to prevent double taxation.
- \* What actions should be taken by the employer and employees to ensure employees are not liable to pay tax in both their country of residence and another country.
- \* Will the employer need to register in another country and how can this practically be accomplished.
- \* Review the social security agreements between the UK and other countries to determine which country's social security system applies to employees working abroad as this can differ from tax liability.
- \* Ensure compliance with relevant pension regulations, as employees working abroad may fall into different pension regulations.

Given the complexities involved, seeking professional advice from tax advisors, employment lawyers, or international HR specialists is highly recommended to ensure compliance and effective management of employment arrangements involving staff working abroad.

By understanding and addressing these complexities, UK-based companies with employees abroad or foreign entities with UK-based staff can effectively manage their tax and social obligations while ensuring compliance with relevant regulations and laws.



## How we can help

Bina Gayadien and Simon Kenny are very experienced practitioners in respect of cross-border tax and immigration issues. Both have over 20 years' experience in advising of this and have worked for the largest specialist firms in the UK, including three of the Big 4 professional services, firms bringing a wealth of knowledge.

Bina is a personal tax and social security specialist who helps employers and their internationally mobile employees, cross-border workers and commuters deal with international tax and social security legislation. She specializes in helping clients manage multi-jurisdictional compliance obligations for employers and employees. With a focus on international assignment planning both inbound and outbound, she also provides clients support in establishing and reviewing assignment policies and processes. One area where she helps her clients is managing the significant risk of remote workers and how to navigate the complexities of tax and legal in today's evolving work landscape.

Simon is an immigration lawyer who helps with individual immigration applications, permission to work, illegal working penalties and sponsor licence suspension. He specialises in Skilled Worker and sponsor licence applications, right-to-work processes, and defences to civil penalties. As an ex-immigration officer, his experience has provided him with a focus on achieving the best outcomes for clients, having reference to wider global mobility issues and being creative in finding solutions that work. Simon is a very regular corporate trainer, has been listed as one of the UK's leading practitioners in the Legal 500 since 2015 and appears as a recommended expert in the Who's Who Legal Guide . He was individually commended in the Financial Times Innovative Lawyers Europe Awards in 2019.

Bina and Simon work together to try to ensure our clients receive the best holistic advice regarding both tax and immigration. Both have noted that each consideration is vital when considering cross-border work and the frustrations which companies feel when working with different organisations to resolve an issue which impacts both tax and immigration. Together with colleagues at Spencer West, who can offer a full range of corporate services, Simon and Bina are confident that they offer a highly responsive and effective global mobility solution.

## Contact us



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## SPENCER WEST

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Our firm is based on three core values. Expertise (our lawyers have typically 20,000 hours' experience in their chosen fields), business experience ("seeing with the business owner's eye") and collaboration, which means that we can draw on the expertise of our entire firm, across sectors, practice areas and geographies, for the benefit of each of our clients.

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