Global Mobility:

10 employee related topics to think about when expanding internationally

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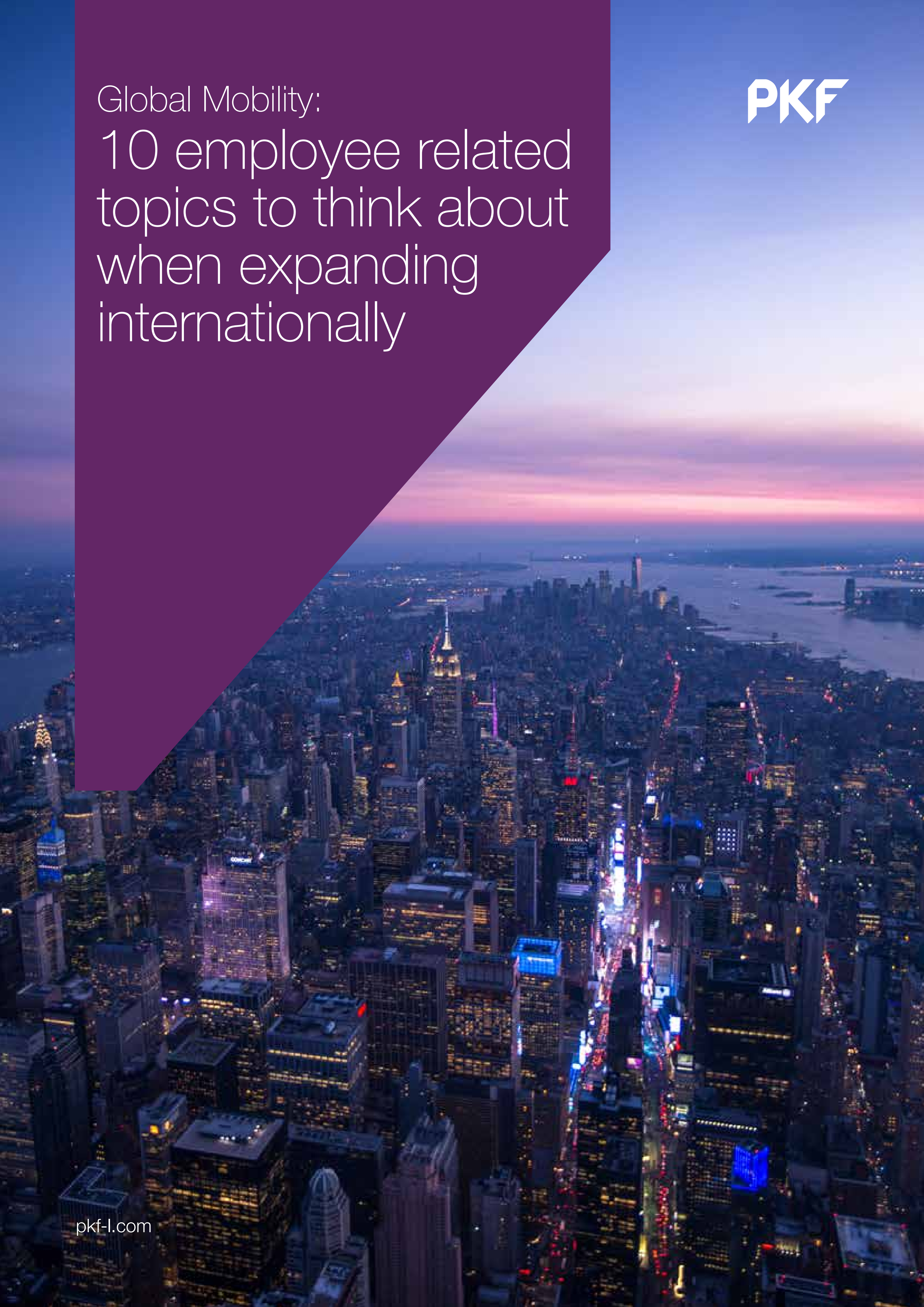

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There is a lot to think about before providing an employee with the opportunity to work overseas, particularly when it is for the first time. Below we highlight 10 things that are important to consider when an individual is going to work internationally.

01 Visa/work permit application

The employer must ensure that the employee is eligible to work in the host country and check on the lead time required to obtain any visas or work permits. This is particularly important now that the UK is no longer part of the EU.

02 Formal assignment or ad hoc international travel?

The decision about whether the individual or team needs to work cross-border is an important one.

It may already be common practice for a company to assign employees overseas for certain projects and/or periods of time. However, standard practice should be regularly reviewed to keep abreast of legislative changes and to stay current. This should include re-evaluating the length of assignments or whether work can be managed through international travel. There is usually reporting to be done in both scenarios, but it may be possible to reduce the administrative burden.

The risk of creating a Permanent Establishment should also be considered.

If you are sending someone overseas for the first time, seek professional advice about the best approach to take.

How long can the assignment be?

Although it is not always possible to know how long an international assignment will last, planning will be much more effective if the expected duration of the assignment can be quantified. There are certain tax reliefs/treatments that will depend specifically on the length of assignment. A good approach is for the assignment letter to include the initial length of the assignment together with a statement that the assignment may be extended if business needs require it.

Timing of the assignment

The timing of an assignment may have a significant impact on the tax position. In the UK, for example, overseas workday relief and/or temporary workplace relief may be available subject to certain criteria. It may be possible to plan an optimum start date, taking the beginning and end of the tax year into account.

03 Remuneration

Who is paying for the employee during the assignment? Perhaps it's not as simple a question as it first appears, particularly with the BEPS rules to consider from a corporate perspective.

Tax Treaties also need to be consulted to determine the tax treatment in both home and host countries where cross charges are made.

Managing reporting obligations is important, particularly if the individual will be working in one country but will be paid from another. It is worthwhile considering how the information will be communicated to make sure the payroll is completed in a timely manner.

Pension considerations

If the employee is to remain in their home country's pension plan, the employer should seek advice on how the employee and employer contributions will be treated in the host country for tax purposes. It may be possible to exempt employer contributions and take a tax deduction for employee contributions by virtue of a double tax treaty, subject to the conditions in the treaty being met. If the relevant treaty does not allow for this, there may be other options available such as migrant member relief.

04 Will additional assignment related payments be required?

It is common practice to give the individual an assignment allowance. Additional assignment compensation is usually determined by the following factors:

- The host country's cost of living
- The work/living conditions of the host country – for example, a higher payment may be required to encourage employees to take on the assignment if they need to work in a difficult environment.

Employers also need to consider what benefits should be provided to the employees. Common benefits include:

- Visa and travel to the host country
- Accommodation and utilities
- Travel and company car/car allowance
- Home visits
- Medical insurance
- Tax support.

Pre-assignment trips to host country

For longer term assignments, it is common for employers to offer the employee and family one or more trips to the country they will be moving to in order to arrange housing and schooling. Pre-assignment visits can be important in helping the family settle in.

05 Tax implications and reporting requirements

Home and host country tax advice should be taken by both the company and the individual to determine the potential tax implications. If the assignment is for a short period only, host country tax relief may be available under the Tax Treaty. The employer may need to register for country specific reporting, such as business visitors reporting in the UK. Individuals may need to complete tax returns to report their assignment earnings.

06 Payroll arrangements

It is not necessarily straightforward as to which type of payroll or indeed which country's payroll the employee should be on - home country, host country or a combination of both, known as a 'split payroll'.

This may be particularly important if financial obligations or social security contributions remain in the home country. One other thing to consider is the currency the individual will be paid in. If it remains as home country, then who will bear the exchange rate risk and how it will be dealt with should be documented.

Withholding requirements in both home and host countries should be checked and managed. If the individual is liable to withholding in both countries at once under domestic law, this will have severe cash flow implications. There are often agreements that can be entered into with the tax authorities to limit the withholding, but this has to be agreed in advance.

07 Social security implications and reporting requirements

Social security treatment is independent of tax and should be determined separately. If individuals qualify to remain in their home country's social security system, a certificate of coverage should be applied for (see below).

It is necessary for the employer to determine where the social security obligation lies. The first thing to consider is whether there is a social security agreement between the home and host countries. Whether the employee has a local contract or remains on his home country contract is also important, together with the amount of time the overseas employment will continue.

Social security is not just limited to contributions. Countries provide very different benefit entitlements and levels of benefit payments and so the impact of changing contributions from one country to another should be thoroughly investigated.

A certificate of coverage or an A1 certificate should be applied for in the home country if an individual is to remain in their home country social security scheme. The certificate confirms to the authorities that contributions are due in the home country only. A copy of the certificate should be held on the employee's HR file as well as retained by the employee.

If there is no bilateral agreement in place, Class 1 NICs may not be payable for the first 52 weeks in the host country but may continue to be due in the home country.

08 Who is going to be responsible for the tax and social security liabilities?

If an employee's gross pay stays the same, individuals going to a higher tax country would be much worse off compared with someone going to a lower or zero tax rate country.

In order to avoid this, some companies operate tax equalisation. Gross income is adjusted such that the individual's net pay stays the same, apart from assignment specific allowances and benefits. Under such an arrangement, the company is responsible for the actual home and host country taxes, and individuals are responsible for a 'hypothetical' liability equivalent to the taxes they would have paid if they remained working in their home country. This can be expensive for an employer as the authorities view the fact that the company is picking up the tax as a taxable benefit in itself.

Consideration should be given to the impact of the assignment on pension relief and long-term incentive plans as there is specific tax and social security rules in place for internationally mobile employees.

09 What about an assignment policy?

It is highly recommended that there is a detailed internal assignment policy document for HR use and a separate (less detailed) one to give to the individual assignee.

An assignment policy should record the company's position on the employer and employee responsibilities. An agreement should be signed prior to the start of the assignment to make sure the employee understands their responsibilities and to avoid potential disputes.

The policy document contains information on things such as holiday entitlement, end of assignment processes, contact details, responsibilities for reporting personal income for tax purposes, amount of support to be provided to enable the individual to be compliant from a tax perspective, who is responsible for late filing penalties etc.

If tax equalisation is operated, there is usually a separate policy document setting out the processes and expectations.

10 Who will be responsible for organising the assignment?

When a company's employees start to travel internationally, the arrangements are often handled by a local HR/Tax contact of the home or host country. This is not ideal as international working can be a complex area and is often outside the expertise of a person who does not normally deal with such things.

If working internationally is going to become (or perhaps already is) a regular opportunity for employees, it is beneficial to have a specific individual or team to manage the elements relating to the mobile population - keeping central records, knowing when they need to consult professional advisors and coordinate all the moving parts of such an arrangement.

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- Tax equalisation
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