SANTA FE
RELOCATION

What makes business travel compliance essential?

Introduction

For centuries, boundary lines have been used to identify a particular geographic area, city, state, province, or country. These borders not only represent jurisdiction over the area and all things in it, but they symbolise a transition from one set of laws, regulations, traditions, culture, norms, and even time zones to another. Sometimes these transitions are starkly different, and other times they are unnoticeable. But every time a businessperson crosses one of these lines there can be implications for them and their employer which they may or may not know about.

Failure to properly address the risks associated with business travel can have far reaching consequences, both financial and non-financial. It is increasingly important to conduct the compliance checks for immigration, social security and COVID-19 in advance of travel to avoid issues for your business travellers on arrival in the destination country. We set out the key penalties and mitigations for each of these areas.

This short paper shows that it is not a case of whether proper business travel compliance solutions and policies are necessary, instead we ask...

Is it affordable not to take any action until a problem arises?

Business travel is evolving

In recent years governments around the world have sought to make employers more responsible for ensuring their business travellers remain compliant with immigration, social security, and tax laws. They have done this through the introduction of new regulatory measures designed to both encourage compliance and penalise non-compliance.

And at the same time, governments have developed a range of new technical solutions which allow them to capture travel data in advance of travel, analyse large amounts of data in real time, share it between different departments and on occasion between different governments. Consequently, their enforcement of the regulations is far easier and more effective than it has ever been before.

Most recently, the entire world has been impacted by the effects of the COVID-19 pandemic and employers are having to take additional steps to ensure that their business travellers are safe. They need to know where their business travellers are and where they've been during this time. On top of existing immigration, social security, and tax compliance issues most countries have looked at temporary border closures, mandatory quarantine schemes as well as test and vaccination certificates being required for entry.

Meanwhile, the ISO are shortly expected to introduce a new standard (31030) that aims to provide guidance on managing the risk associated with travel faced by organisations. The application of these guidelines will be customisable to any organisation and its context. Employees everywhere can and should expect good standards when it comes to the assessment of risks involved in travel and how that risk is managed. It is no longer sufficient to make sure the destination is safe for people to travel to and some companies that have had a more relaxed attitude to travel may find they now need to increase their oversight and control on some aspects if they are going to align with ISO 31030, retain the confidence of their employees and remain compliant with their obligations in the countries their people visit.

Making the business case for compliance

Immigration

Issues

Increased emphasis has been placed on immigration compliance by initiatives to protect national workforces, along with increased border security, due to the current geopolitical climate.

Penalties and risks

- Refusal of entry for not having the correct visa.

- Fines for entry without the correct visa.

- Ban of future entry for individual and other travellers from the organisation.

- Arrest and detention/removal from the country for overstaying.

- Watch listing of organisation or individual causing visa/entry problems for future travellers from the organisation.

Mitigations

- Review travel activity before it takes place to prevent non-compliance with immigration law.

- Track visa expiry dates and ensure those travellers have returned when they should.

- Consider introducing business travel approval process to ensure above is done.

Tax

Issues

There has been a major shift over the last 10 years in how global corporations pay tax. Several years ago, the OECD created a new series of guidelines for national governments to implement some corporate taxation regulations and we are starting already to see the impacts.

Penalties and risks

- Fines.

- Permanent establishment risks.

- Base erosion and profit shifting (BEPS).

- Withholding tax.

- Shadow payroll.

- Economic Employment.

Mitigations

- Identify employees with personal tax exposure or potential liabilities to maintain your and their tax compliance.

- Review travel activity data in aggregate to determine if there is a risk of creating a permanent establishment.

- Understand your requirements in relation to how each country is implementing the BEPS actions.

- Learn how much impact the overseas travel on your payroll costs.

- Recent developments in the areas of remote working will only exacerbate reliance on the 183-day rule*. If your employees have been working remotely during the COVID-19 pandemic they may already have triggered economic employer liabilities—remember they are *working* not *visiting*.

*For many years, the Global Mobility profession have relied on the so called *183-day rule*. This so-called rule assumes that there are no tax issues for an employee working on a short-term basis in a country other than their home country as long as the employee is not present in a host country for more than 183 days, and that they are paid by their home location. However, the *183-day rule* is not actually a rule but rather an exception to the rule that tax is paid in the location an individual's employment is exercised.

Social security

Issues

The rationale for the EU Posted Worker Directive 2018/957/EU for instance, was primarily to protect employment rights within lower and higher-cost European territories. Although social security obligations can be one of the most significant contributions that employers will pay if they decide to send an employee overseas, social security may also be one of the most overlooked aspects of the compensation package. The major social security issues that concern both employer and the employee going abroad are whether contributions to social security plans will be required in the home country, host country, or both and whether the international travel will result in the employee losing any benefit entitlements.

Penalties and risks

- In Asia, directors who are listed on the organisation register can be banned from taking directorships in new companies.

- Under the EU Posted Worker Directive, fines up to €15,000 per employee per incident of non-compliance. These can be increased in size for repeated breaches.

- Companies viewed as *repeat offenders* can be excluded from posting workers and this is not limited to the country of breach.

- Removal from the country for failing to comply.

Mitigations

- If travelling into the EU, pre-travel checks to see if A1 form or posted worker registration needs to be done.

- Are suitable arrangements in place for overseas remote workers?

- Are there reciprocal arrangements/treaties in place between origin and destination country?

COVID-19

Issues

The COVID-19 pandemic that began at the end of 2019 was something that governments around the world were unprepared for. The World Health Organisation declared a public health emergency of international concern regarding COVID-19 on 30 January 2020. Since that time governments have responded by closing borders or at least limiting entry, imposing quarantine regimes and more recently requiring test and vaccine certificates as a condition of entry.

Penalties and risks

- Requirement for test and vaccine certificates.

- Mandatory quarantine—cost of hotel accommodation (pre and post travel).

- Border closures (complete or partial), requirements for special travel permissions.

- Requirements changing daily.

Mitigations

- Review travel activity before it takes place to avoid costly quarantine periods and reduced productivity.

- Make sure your travellers are equipped with the necessary test and vaccine certificates if required.

- Check if your travellers require travel approval before they travel.

Compliance summary

	Immigration	Tax	Social security	COVID-19
Fines	•	•	•	
Refusal of entry	•			•
Removal from country	•		•	•
Arrest	•			
Quarantine				•
PE risk		•		
Future visa refusals	•			

Other consequences of non-compliance that apply to all the above areas

- Brand reputation damaged.
- Duty of care failures.
- Embarrassment in front of clients if your staff are removed from their premises by the authorities.
- Reduced productivity of workforce owing to delays and quarantines.
- Delays caused to in-house and client projects or programmes.
- Damage to government relationships.
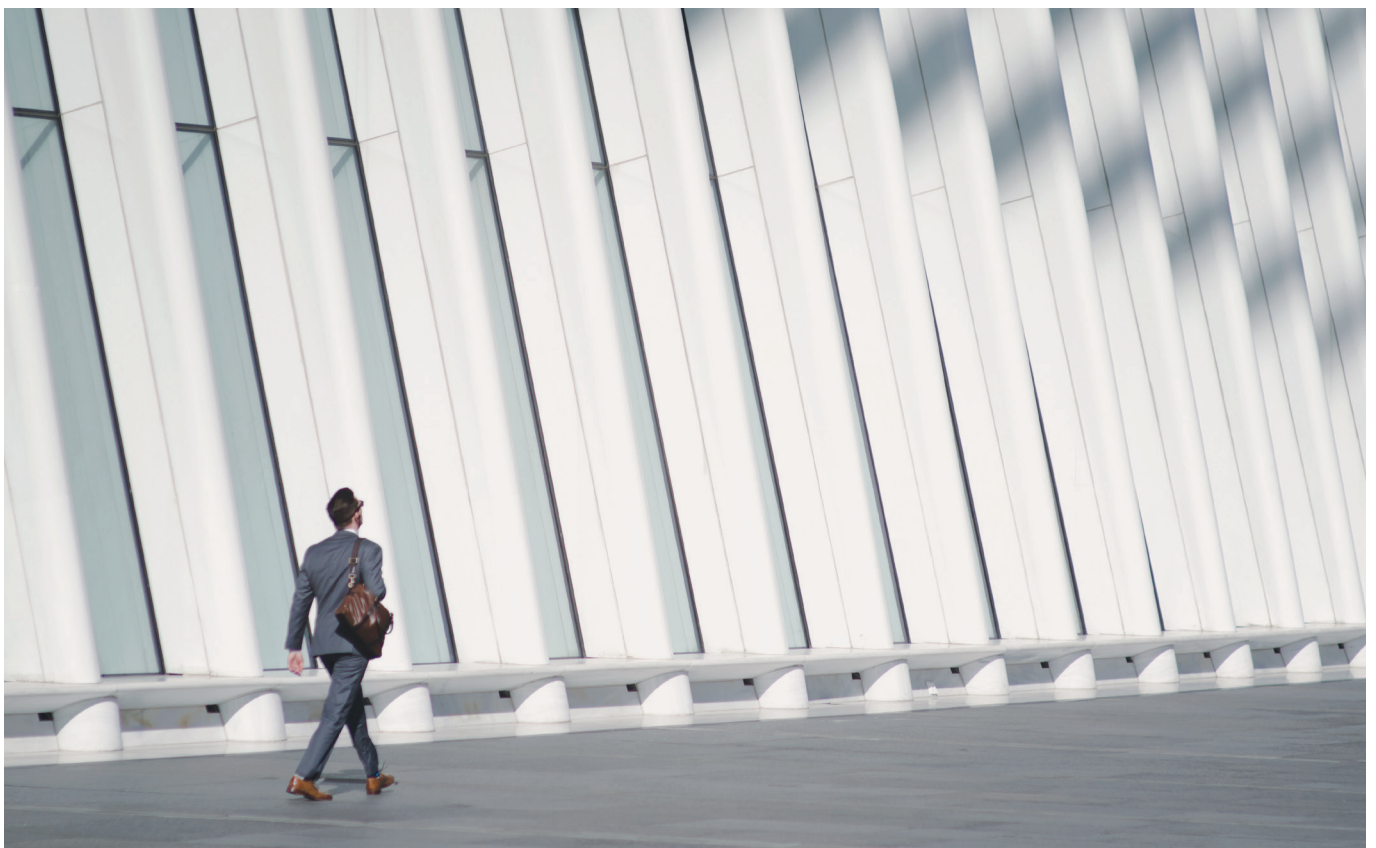
Some examples

India

€5m penalty and opening of a full 3 year investigation —European multinational failed to report home paid amounts. Professional fees exceeding €1m to date.

France

€8m assessment of back social security tax and penalties—Increasingly aggressive social security authorities led a raid and criminal investigation on a multinational organisation even though the company had an agreement with another EU country to protect its position in France.

United States

All US government work terminated immediately + $20m penalties—Running a consulting project in one US state whilst the project team resided in the neighbouring state. State taxes were not remitted.

12 public cases of non-compliance with US immigration law resulting in $275,000 to $34m dependent on severity of non-compliance and Imprisonment (probation and actual).

Fine of $34m and employees now face difficulty gaining entry to the US—organisation used temporary visas as opposed to work visas which were more costly to obtain.

United Kingdom

In 2014 HMRC instructed a multinational organisation to pay £40m in back taxes and penalties for failing to report home paid income.

Of 407 immigration investigations in the UK, 72% resulted in prosecution and criminal sanctions, of which 46% included jail sentences of 7-12 months.

Germany

€100m restatement of published financials to correctly report employer paid tax expense - stemmed from the Securities and Exchange Commission (SEC) enquiry into related matter and discovery of internal control breakdowns.

€100m

£40m

$34m

€8m

€5m

Cost control benefits of a dedicated business travel compliance solution

	Process standardisation	A consistent, global process will encourage compliance and can create economies of scale.
	Process automation	Appropriate removal of the human element can alleviate resourcing pressures and improve availability, accuracy and response times.
	Reduced risk exposure	A compliant programme reduces the risk of paying fines or penalties. Even if there is an incident of non-compliance officials may be more understanding if a proper programme is in place.
	Travel policy enforcement	Monitoring and enforcing adherence to your travel policy can reduce costs e.g. through the earlier booking of flights or selecting the correct class of travel, ensuring travel is properly approved.

Insights available from a technical compliance solution

Legislative developments

Access to information about changes to legislation and their implications is critical not least as something is changing somewhere every day.

Travel patterns and trends

Understanding how your people are travelling can help you to identify additional savings opportunities and evaluate the risk of employee burnout. Are some projects more heavily reliant on business travel and is this understood and factored into the cost of the project?

Confidence in your data

Access to data that you can trust allows you to make informed business decisions. Are all parts of your business using the same source for business travel data? While responsibility for corporate income taxes sits squarely on the shoulders of the organisation's finance and tax teams, compliance with employee taxes generally falls upon those in human resources to advise—communication is key here. Business travellers create risks that are not restricted to a single business function. To work together, these teams must coordinate with one another. This is fundamental to the success of the management of any organisation's business travel policy.

KPIs and metrics

Measure the success of your programme using appropriate performance indicators.

Conclusion

Considering how unpredictable the nature of business travel can be, often spontaneous and based on need, organisations find it challenging to manage varying levels of exposures brought on by immigration, tax and social security compliance requirements. COVID-19 has added another layer of complexity to the challenge of mobilising your business travellers. While doing nothing may seem like the easiest path to take, it may no longer be acceptable, due to the association of immigration, social security, COVID-19 and tax risks that we have highlighted above. In fact, it will be far more cost effective to ensure a proper business travel compliance solution is put in place and at the same time allow organisations to provide a greater level of safety and security to their business travellers.

About the author

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Now in his 31st year working in the field of Immigration, Peter's career spans both government and private sector work. Peter spent 17 years at the UK Home Office working in both national and international immigration policy and strategy where he had the opportunity to work in every stage of the Immigration lifecycle. Peter joined Santa Fe in March 2017 after having spent the previous 10 years leading IBM's Global Border and Immigration business. A recognised thought leader and regular speaker on Border and Immigration matters, Peter included among his clients the World Economic Forum, Interpol, Department of Homeland Security, Australia Customs, the Irish Medicines Board and the UK Home Office.

We help people to work, live and thrive in new places around the world.

For further details search **Santa Fe Immigration**
or email **gi@santaferelo.com** and we'll get back to you.
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