

# EXPATRIATE PAYROLL CONSIDERATIONS AND SET-UP

PRESENTER:  
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## Introductions - With You Today



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Ronii Rizzo is a Managing Director leading the Global Payroll Services practice in the U.S., and is the Chairperson of BDO's Customized Payroll Solutions team worldwide. Ronii specializes in the taxation and payroll reporting of U.S. nationals working abroad and foreign nationals working in the U.S. Ronii's experience includes comprehensive payroll and employment tax consulting, shadow payroll implementation, transfer and set-up of newly acquired expatriate programs and more, working in conjunction with our expatriate tax services and compensation and benefits teams to ensure the compliance of our clients and their globally mobile employees.

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## Today's Agenda

- Initial considerations for potential payroll reporting obligations and tax/withholding remittance requirements
- Payroll set-up/registration pointers
- Payroll considerations and set-up options for expatriate employees
- Potential noncompliance penalties
- New US tax treatment



You've survived  
**100% of everything**  
in your life so far, so  
there's a pretty  
good chance that  
you'll survive  
whatever is next!

*Timber Hawkeye*

RR1

## Initial Considerations: Multidisciplinary & Holistic Approach

- Labor and Employment Laws/Rules/Regulations
- Contract Laws/Rules/Regulations
- Immigration Laws/Rules/Regulations
- Corporate Tax Laws/Rules/Regulations
- Payroll Laws/Rules/Regulations
- Local Employer Requirements

All disciplinary areas will affect proper payroll set-ups and processing. It is important to have all disciplines in line although they may conflict at times. Addressing these matters up front will support efficient and healthy payroll processes.

Note: In situations of conflicting interests/positions - identify the risk driver

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## Initial Considerations: Understanding Current Scenario

When considering the payroll reporting and tax withholding/remittance obligations in a country, it is important to first understand what you currently have in place in that location.

- Existing subsidiary, affiliate, branch
- Opportunities and/or desires to set-up a local entity
- Staffing agencies such as a PEO (professional employer organization) or employer of record
  - Note: different from a payroll vendor
- Employment policies and benefit plans in place
- Current understanding of local obligations and access to information



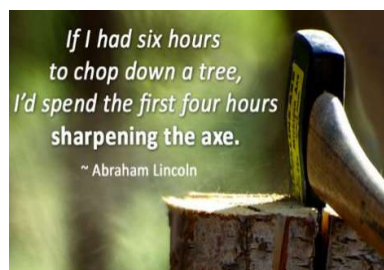
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## Initial Considerations: Making a Plan

- Allow for proper planning time
- Involve all appropriate parties in the planning phase
  - Involve third party specialists as necessary
- Balance standardization and flexibility
- Strive for compliance and understand any potential risks and exposure
- Document processes
- Follow the plan and reset as necessary
  - Make sure to continuously involve all appropriate parties



## Payroll Set-up and Registration Pointers

- In many countries it is necessary to register a new payroll with local chamber of commerce instead of or as well as the central tax authorities
- Typical requirements for new payroll set-up
  - General contact information regarding employer and employee
  - Certificate of company registration
  - Deed of constitution and by-laws translated (and notarized)
  - Copies of minutes confirming the decision to set up representation and nominating local representative
  - Power of attorney in favor of local representative
  - Photocopy of passport / ID card of local representative and directors of the foreign company
  - Proxy of authority for payroll company to complete local tax registrations etc.
  - NACE-code (European classification of business activities)
- It is also likely that you will be required to register separately for the purpose of insurance, pensions, termination protection, etc.
- Many countries (such as Spain and Italy) will require registration as an employer before you can legally employ and pay people!

## Payroll Set-up and Registration Pointers

Many local tax and insurance authorities will not accept payments from an overseas bank account

- Make sure to plan for the additional time needed to open a local bank account

Pay frequency cannot be taken for granted

- The assumption may be that an annual salary is split into 12 equal monthly payments
- In many countries it is however traditional - or obligatory - to pay a 13<sup>th</sup> and 14<sup>th</sup> month payment to coincide with a holiday period



## Payroll Set-up and Registration Pointers

- All registrations pose the potential risk of penalties for incomplete or late notifications
- Failure to register correctly and on time may also cause loss of entitlement to benefits for employees
- An inefficient and/or incorrect payroll will lead to unhappy employees and water cooler (or coffee machine) discussions
- Reviews/audits are often quite intensive and costly

The challenge is to make sure that the information flows through to all parties concerned (such as HR, Finance & Payroll) so that everyone can be kept aware of local compliance regulations and necessary deadlines

## Payroll Considerations for Expatriate Employees: Visa Type

- In order to be added to payroll, an employee must have the right to work in the applicable country.
- B-1 visa holders are not eligible to work in the US.
- F-1 and J-1 visa holders may be FICA exempt



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## Payroll Considerations for Expatriate Employees:

Be certain to consider the employment classification.

Employee versus Contractor

Employer receives a Form W-2

Contractor receives a Form 1099 or 1042-S



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## Payroll Considerations for Expatriate Employees: Assignment Length

- Short-Term Assignment = 1 year or less
- Income Tax Treaty Eligible Short-Term Assignment < 183 days in a rolling 12 month period or calendar year (dependent upon the treaty)
- Long-Term Assignment = Greater than one year but for a defined number of years
- Indefinite Assignment = Indefinite period



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## Payroll Considerations for Expatriate Employees: Employer

The primary employer is the company that has a signed employment contract, determines compensation, and has the right to terminate employment.

An expatriate employee is often seconded (loaned) to another company, but remains primarily an employee of the home country.



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## Payroll Considerations for Expatriate Employees: Income Tax Treaties

### Income Tax Treaties

- Dependent Personal Services Article
  - Not exceeding 183 days
  - Remuneration paid by employer who is not resident in that state
  - Not borne by a permanent establishment or fixed base



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## Payroll Considerations for Expatriate Employees: Social Tax Treaties

Intended to eliminate dual social taxation and to provide additional benefit protection for workers who have worked in two countries with a totalization agreement (EU Directive) in place.

- Totalization Agreements/EU Directive
- Certificate of Coverage/A1
  - Normally limited to 2 - 5 years with possibility of extension

Note: The income tax treaty and social tax treaty are separate and one, both or neither may apply.

Your employment status	You are subject only to the laws of:
<i>You are working in Australia:</i>	
<i>For a U.S. employer who:</i>	
• Sent you to work in Australia for five years or less	U.S.
• Sent you to work in Australia for more than five years	Australia
• Hired you in Australia	Australia
<i>For a non-U.S. employer</i>	Australia

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## Payroll Considerations for Expatriate Employees: Applying Income and Social Tax Treaties

- When qualifying for an income and/or social tax treaty it is possible that the payroll reporting and tax withholding/remittance obligation may be mitigated.
- In many cases there is a form that will need to be filed in advance of the treaty application to substantiate the position.
- The form may be at the employee level in some countries or at the employer level in some countries.
- A treaty position may be denied if the proper forms are not completed.



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## Payroll Considerations for Expatriate Employees: Residual Sourcing Requirements

- The sourcing of compensation is an important factor for expatriate employees.
- Some compensation components may have complex or extended allocations periods (such as equity, bonus payments, severance, pension payouts, etc.)
- The sourcing period for these compensation components may extend beyond the immediate years of travel and may create residual years of tax filings.
- The company should be prepared to accurately report these earnings and accrue for the liabilities accordingly.



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## Payroll Considerations for Expatriate Employees: Travel Tracking

- Internal tracking system
- Timesheet reporting
- Frequent business visitors keep a calendar of the workdays and presence outside of the home country
- Travel services
- Immigration and relocation vendors
- Cell phone records
- Expense reports
- Internal security cards
- Customized software



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## Payroll Considerations for Expatriate Employees: Tax Policies

- Tax Equalization
  - Tax neutral
  - No better or worse off for taxes due to the assignment
- Tax Protection
  - No worse off for taxes due to the assignment
- Guaranteed Net Salary
- Localized
  - Employee is responsible for all actual taxes
  - May receive some compensation with a tax gross up

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## Payroll Considerations for Expatriate Employees: Home Country Payroll Only

- All salary and benefits are paid from the home country payroll only
- No payroll reporting is processed in the host country
- A viable option if the host country does not have a payroll reporting and tax withholding/remittance obligation
- Employee will need to transfer funds to obtain host country currency



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## Payroll Considerations for Expatriate Employees: Host Country Payroll Only

- All salary and benefits are paid from the host country payroll only
- No payroll reporting is processed in the home country
- A viable option if the employee is able to break tax residency in the home country and if home country payroll reporting and tax withholding/remittance are not required
  - Consider pension, social tax, and benefit plans
- Employee will need to transfer funds to home country for savings and ongoing home expenses



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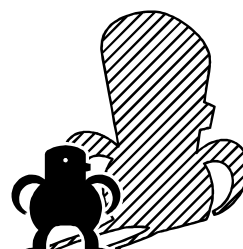


## What is shadow payroll? (Mirror Payroll, Ghost Payroll)

### Shadow Payroll:

A key component of maintaining compliance for an expatriate employee inbound or working abroad.

- 1.) Employee is paid from home country payroll and shadowed through the host country for proper payroll compliance.
- 2.) Employee is paid from the host country and shadowed through the home country, likely for pension contributions and home country benefit participation.



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## Payroll Considerations for Expatriate Employees: Home Country Shadow Payroll

- The home country will “shadow” or “mirror” the host country payroll in order to report compensation and withhold/remit any necessary taxes in the home location.
- No cash will be disbursed to the employee from the home country payroll as it is only processed to properly report compensation and withhold/remit applicable taxes.
- The host country payroll will report compensation, withhold/remit tax, and disburse all cash through the host country payroll.
- A viable option if the employee prefers to receive all cash in their host country currency but there is a continued reporting and tax withholding/remittance requirement in the home country.
- Discussions with the home and host entities on corporate general ledger entries may be necessary.
- Although the same compensation is reported in two locations, the compensation will not be doubled on the individual’s home and host income tax filings (for worldwide reporting). However, full compensation reporting to each country may be required.

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## Payroll Considerations for Expatriate Employees: Host Country Shadow Payroll

- The home country continues to report and disburse all cash through the home country payroll.
- The host country will “shadow” or “mirror” the home country payroll in order to report compensation and withhold/remit taxes in the host location.
- No cash will be disbursed to the employee from the host country payroll as it is only processed to properly report compensation and withhold/remit taxes (likely through a tax gross up).
- A viable option if the employee prefers to receive all cash in their home country currency but there is a reporting and tax withholding/remittance requirement in the host country.
- Discussions with the home and host entities on corporate general ledger entries may be necessary.
- Although the same compensation is reported in two locations, the compensation will not be doubled on the individual’s home and host income tax filings (for worldwide reporting). However, full compensation reporting to each country may be required.

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## What is split payroll?

### Split Payroll:

A key component of maintaining compliance for an expatriate employee inbound or working abroad while delivering cash through both payrolls.

### Benefits:

- Reduce currency fluctuation
- Delivers cash in both host and home country
- Compliance with tax withholding requirements
- Allow employee to maintain eligibility for home country benefits



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## Payroll Considerations for Expatriate Employees: Split Payroll (continued)

- The employer and employee will agree on a desired and or necessary split of the payroll.
- A portion of the payroll will be reported and paid from the host location and the other portion will be reported and paid from the host location.
- A “shadow” or “mirror” of the other portion may be required in order to report worldwide compensation appropriately.
- A viable option if the employee prefers to receive some cash in their host country currency and some cash in their home country currency.
- A viable option if the employee will continue to pay personally into their home country benefits schemes and social tax schemes but desires disbursement of the remainder of his cash in the host country.

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## Potential Noncompliance Penalties

As a Paychex report (Mastering Payroll Compliance) observes, “Businesses pay government agencies millions of dollars each year in labor and tax compliance penalties. And, in this economy, agencies are more vigilant than ever about enforcing regulations”.

Examples:

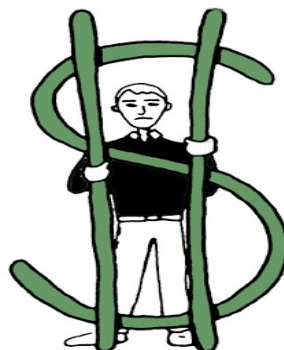
- US
  - Fair Labor Standards Act, Federal Insurance Contributions Act, Federal Unemployment Act, Properly and Timely Payroll Reporting and Tax Remittance
- European Union
  - Working Time Directive, Data Protection Directive, Acquired Rights Directive
- Asia Pacific
  - Labor Law of the People’s Republic of China
- Latin America
  - Employment Contract Law No. 20,744
- Middle East Region
  - The United Arab Emirates’ Wage Protection System

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## Potential Noncompliance Penalties

- Monetary Penalties
- Reputational Penalties
- Loss of Trust
- Criminal Penalties
- And many more...



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## Potential Noncompliance Penalties

Companies should be cognizant that understanding the compliance landscape goes far beyond simply implementing general/typical processes. Indeed, truly effective management of global payroll regulations means developing awareness that:

- Each country has a unique labor law and payroll reporting and withholding/remittance obligations
- The specific details of key payroll issues will vary by country and locality and must be understood accordingly.
- The key is not knowing everything, but asking the right questions and striving to achieve a balance of efficiency and accuracy.



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## Tax Reform - Relocation Expenses

### Tax Relief for Moving Expense Payments and Reimbursements in 2018 for 2017 Moves

The Internal Revenue Service (IRS) has released guidance clarifying the tax treatment of certain moving expenses incurred in 2018 for moves that occurred in the prior calendar year. IRS Notice 2018-75 states that moving expenses previously excluded by employers from taxable income associated with shipment of household goods, storage expenses and final move travel expenses would remain nontaxable if paid in 2018 for an employee move that occurred in 2017.

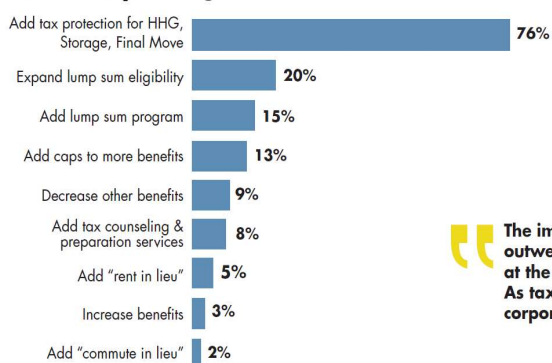
## Tax Reform - Relocation Expenses

### State Taxation Considerations

The vast majority of states follow the IRS' guidance on the taxability of moving expenses and we anticipate that most states will follow suit and consider these moving expenses from 2017 moves as nontaxable for 2018 state tax purposes. But it is noteworthy to point out that currently there are several states that have not conformed to the taxable treatment of moving expenses for 2018 and beyond as set out in the tax reform. It will be prudent to monitor this closely and consider which states will require wage reporting and applicable gross-ups in 2018.

## Tax Reform - Relocation Expenses

### 2018 Policy Changes



“The importance of our relocations outweigh the cost, plus we look at the additional tax cost holistically. As tax costs increase within relocation, corporate tax will decrease.”

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## US Tax Gross Up Calculation

Compensation		
Housing Allowance	3,000.00	
US Tax Gross Up	1,850.44	
Total Compensation		4,850.44
Tax Withholding		
Federal Tax	(1,212.61)	
Social Security Tax	(300.73)	
Medicare Tax	(70.33)	
Ohio Tax	(169.77)	
Local Tax	(72.76)	
School District Tax	(24.25)	
Total Tax Withholding		(1,850.44)
US Net Cash Disbursement		3,000.00

**Gross Up Formula: Benefits/(1-tax rates)-Benefits = Tax Gross Up**  
**Calculation: \$3,000/(1-0.25-0.0145-0.062-0.035-0.015-0.005)-3,000 = \$1,850.44**

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Thank you for your time!

Any Questions?



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