

**GLOBAL MOBILITY SERVICES**

# THE EXPAT POST

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IN FOCUS

The Top Five Global  
Mobility Issues  
Likely to Impact  
Employers Assigning  
Staff to **Austria**



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## SPECIAL FEATURE

# Brexit: The Potential Tax & Legal Consequences for International Business

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# Welcome

This issue reflects the many advantages of working with Alliott Group's Global Mobility Services Group, specifically the availability of local experts worldwide who are highly experienced in working with international employers and in providing joined-up solutions which are multidisciplinary in their approach.



**Luc Lamy,**  
EMEA Chair of Alliott Group's  
Global Mobility Services Group

Brexit is now only seven months away – there are many challenges ahead, and not just for the UK. Alliott Group members are working together across countries and across service teams to ensure clients are prepared and can take advantage. To this end, UK members **Sherrards Solicitors** and **Smith Cooper** explain the legal and tax implications presented by Brexit to UK and EU companies and their assignees.

We are also delighted to report that our UK global mobility team has been strengthened by **Sherrards Solicitors'** recent launch of their immigration unit under the leadership of Laura Butcher.

With Austria recently named as the 'world's most liveable city', Vienna accounting member **Rothenbuchner & Partner** explain the key global mobility considerations for global employers sending staff on assignments to Austria. Our final feature from New York and Montreal members **Farkouh Furman & Faccio** and **Hardy Normand & Associés** looks at issues likely to be encountered by employers when their employees cross the border into Canada.

Reflecting the dynamic market we serve, a three month assignment opportunity (*September to November*) has arisen in our Brussels office for a junior tax professional to gain valuable experience working for our international clients. Contact me for more information about this exciting talent development opportunity.

Alliott Group's brand visibility is growing - we recently submitted a RFP for a €400 million multinational engineering company we met at the Amsterdam Global Mobility Conference in March – winning this project could potentially require the involvement of Alliott Group member firms in multiple countries. Sponsorship of the FEM Global Mobility EMEA Summit in London in November (*see back cover*) will ensure that even more international employers become familiar with the Alliott Group brand!

*Luc Lamy*

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# The Top Five Global Mobility Issues Likely to Impact Employers Assigning Staff to **Austria**



This article, authored by **Martin Seidl**, partner at **Rothenbuchner & Partner** in Vienna, provides a quick overview of what needs to be considered by companies within the EU when assigning their staff to Austria.

Rothenbuchner & Partner  
Wirtschaftsprüfung und Steuerberatung

First of all, it is essential to clearly define which activity types are planned, and whether the movement of people across a border involves an assignment (*known as 'active services'*) or a secondment (*known as 'passive services'*). This definition will have a bearing in terms of additional tax and employment law issues.

The Top Five obligations linked to employee assignments or cross-border secondments to Austria are summarized below:

## 1. Notification requirements

In Austria, many businesses are regulated, for example, investment advisory, consultancy and many skilled manual professions. If the foreign company is active in a regulated sector, such activities may be provided temporarily and occasionally. In this scenario, an application must be submitted to the Federal Ministry for Digital and Economic Affairs. If the business sector is not regulated, no application is necessary.

Employees assigned to Austria have to be registered with the Central Co-Ordinating Agency of the Ministry of Finance before the assignment (*secondment*) starts. Exemptions are made for business meetings where no other services are rendered or for intercompany services for employees whose monthly gross salary exceeds Euros 6,412.50 (*as of 2018*).

## 2. Tax and social security related obligations for the company

Active services performed in Austria might trigger an Austrian permanent establishment if they exceed six months duration, or in the case of construction and installation work, 12 months. Passive services (*secondments*) do not trigger a permanent establishment.

Even if no permanent establishment is created in Austria, an establishment for wage tax purposes might be triggered (*activity/services for over one month*). As a result, the employer must pay Austrian wage taxes for its employees.

If employees are subject to Austrian social insurance contributions, the employer will have to register for social security purposes in Austria, though exemptions are possible.

Activities in Austria might also lead to withholding tax obligations for the Austrian customer.

## 3. Tax and social security related obligations for employees

An assignment/secondment to Austria generally only leads to tax consequences for the employee:

- If the employee is present in Austria for over 183 days
- If there is an Austrian permanent establishment, or
- The employee salary is paid by an Austrian company (*'the economic employer'*); this applies particularly to passive services (*secondments*); tax liability kicks in on the first working day.

### A special situation for Germany

According to the double tax treaty (*DTT*) between Austria and Germany, in the case of passive services (*secondment*) to third parties, employees are only taxable in Austria if they are present in Austria for over 183 days. Employees will only be taxable in Austria from the first working day in Austria where it is a case of intercompany passive services (*secondment*).

However, Germany's financial administration interprets the DTT differently to Austria. Where there is an intercompany secondment, Germany claims tax jurisdiction for the first three months. Hence, double taxation can apply to secondments of short duration from Germany to Austria.

Furthermore, the salaries of executives at Austrian companies are taxable in Austria even if they do not work physically in Austria.

Within the EU, the social security jurisdiction remains the home country if the assignment/secondment is for less than two years.

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# SPECIAL BREXIT FEATURE:

## The Impact on UK and EU Companies and Their Assignees

### LEGAL ISSUES



## The Impact of Brexit on Your Business

International businesses and expatriates in Britain and in EU states face a substantial degree of uncertainty regarding how the economy, trade tariffs and the free movement of people, goods and services will be affected by the exit deal eventually negotiated between the UK and the EU. In this article, **Sherrards Solicitors'** global mobility experts focus on the main risks to business continuity and provide guidance on how to prepare at this stage for the worst.

For many businesses, the main risk areas are as follows:

1. **Cyber-attacks:** Future cooperation between the UK and EU on this issue remains uncertain. No deal will have a knock-on effect on security. Businesses are concerned that we do not know what involvement with the UK organisations such as the European Cyber Crime Centre and the European Network and Information Security Agency will have
2. **Workforce:** The next big risk is the loss of employees (*including key employees*) who are no longer entitled to stay if there is no deal. The UK Government has made various proposals to ensure a long transition period for EU nationals living in the UK, and so far there has also been little progress regarding the situation for UK citizens living in the EU
3. **Legal framework:** The future legal framework relating to free movement, transport, taxation, medicine, the environment and health and safety remains uncertain. Inevitably, EU organisations will cease to apply to businesses working from or with the UK. This is likely to create a string of new regulations that companies will be required to adopt, possibly at short notice
4. **Supply chain:** The supply chain (*with higher tariffs on both sides*) is also likely to be affected with perhaps more issues on the UK side
5. **Duration:** If the period of uncertainty drags on, business, investment and trade will be affected
6. **Other risks:** Exchange volatility, travel restrictions, financial shocks and slow economic growth could also result.

### Employment law

Much employment legislation applicable in the UK originated in Brussels. Following the decision to leave the EU, one concern was whether the Government might repeal some of this legislation. The Government published a white paper which proposes that there will be no regression in employment laws such as the Working Time Regulations, protection of employees' rights on transfer of business undertakings, discrimination laws and the current collective

consultation requirements. This position could change and likewise, once the UK leaves the EU, there may in the longer term be a growing divergence between UK and EU employment law.

### Immigration

Some categories of person with EU free movement rights, and who have been resident in the UK, could be left without a right to reside and work in the UK. A wider concern is that EEA nationals will now be subject in whole or in part to the UK's existing Points Based System which is identical to that for non-EEA nationals who require Sponsorship.

Worryingly, there are currently only 29,211 registered Sponsors in the UK vs. 5 million+ companies. Our advice is to obtain a Sponsorship licence if not in place already. Failure to do so now will increase Home Office scrutiny, cost and processing times.

Despite the uncertainties, Sherrards' immigration practice acts as liaison between the UK Home Office, Migration Advisory Committee and UK companies to address questions on post-Brexit immigration.

### Getting prepared

With less than eight months until the exit, businesses (*big or small*) who work with the UK or operate from the UK should now have a detailed or final contingency plan. Below are tips on how to get prepared:

1. Manage and communicate with your workforce to tackle diversity issues. For example, consider using the staff's natural turnover to recruit who you need now rather than post Brexit. Manage your employees' questions on their own uncertainties (*right to work, benefits, pension*)
2. Action the plans you may have to set up in the UK or in the EU if it makes sense for your business to operate on both sides of the Channel. It may be more logical to implement them now rather than post Brexit whether through acquisition or joint venture or participation in a company or by setting up a branch or company
3. Understand how the EU GDPR works when the UK ceases to be a member state
4. Collect, clean and consolidate data and people programmes. Review planned technology implementations to determine which should be postponed or accelerated and if they could help support Brexit activity e.g. workforce planning
5. Keep an eye on migration policies the EU and British

- Government are likely to implement. Seek legal advice and anticipate the potential changes and delays in your recruitment process
6. Review and monitor the terms of your relationship with suppliers, clients and partners. Consider diversification to maximise processes and reduce the risk of escalating costs. Review your warehousing needs
  7. Keep an eye on other legal and regulatory aspects such as cybersecurity, employment law and competition law
  8. Review EU regulations that apply to your cross-border services

9. Review your internal employment policies for termination of employment, recruitment and travel within and outside the EU
10. Make a cross-border tax contingency plan to reduce your exposure to any changes at short notice.

**Contact Sherrards Solicitors**

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## TAX ISSUES The Potential Tax Implications for EU Employees Living and Working in the UK



With D-Day for Brexit looming, and with no deal currently agreed between the UK and EU, **Jackie Hendley** of UK (Midlands) accounting firm **Smith Cooper** outlines the key tax issues HR and Tax Directors need to plan for in the event of a 'No Deal' scenario in March 2019.

Many companies and individuals from the EU are asking the global mobility experts at Smith Cooper what the impact will be for foreign assignees coming to the UK.

Under a transition arrangement, EU law will continue to apply until 31 December 2020. Although the precise details are not yet known, it is not currently anticipated that there will be any planned changes to the tax status of EU nationals. It is expected that any future treatment will be determined based on the status of the EU national i.e. Settled status, Pre-settled status or neither.

When looking at the impact, it is necessary to look at where negotiations currently stand. Right now, the precise details are unknown – indeed, there is talk about a potential 'No Deal' if the UK and EU fail to reach agreement on the terms of the UK's departure negotiated under Article 50 of the Lisbon Treaty.

The two year period outlined in Article 50 ends on 29 March 2019 and unless all 29 EU countries agree to extend that period, the withdrawal agreement will have to be tied up before then. If there is no withdrawal agreement, this would mean no transition period after Brexit.

**What would happen in the event of a 'No Deal'?**

In a 'No Deal' scenario, there would be no transition period and, as such, there would be no specific agreement on the future rights of EU citizens in the UK and border checks would be re-imposed.

Social security arrangements with EU countries will need to be renegotiated. Currently, employees moving within the EU are only subject to social security contributions from one of those countries. This would need to be renegotiated.

When overseas employees come to the UK to work, they need to adhere to the legislation which covers short-term business visitors. Unless they are able to obtain exemption under this legislation, PAYE tax and National Insurance contributions (NIC) will be due in the UK from day 1 and the individual will have to negotiate any relief for the double tax/social security in their home country of tax. Strict PAYE requirements for employees on short-term business visits to the UK can only be relaxed in certain circumstances and, of relevance here, where there is a Double Tax Treaty under which the Dependent Personal Services / Income from Employment article exists.

Without EU membership, individual tax treaties and social security agreements will have to be agreed. Despite previous arrangements, it cannot be guaranteed that there will be any automatic relief or exemptions.

If the individual is on a permanent contract rather than a secondment, any travel and accommodation expenses met or provided in the UK at or near to their place of work will also be taxable as benefits in kind.

Where individuals are providing their services via a Personal Service Company and the end user is a public sector organisation, the new IR35 Off Payroll Rules apply and PAYE tax/NIC will be withheld from invoices if they are deemed to fall under those rules.

In respect to healthcare, European Health Insurance Card arrangements will cease.

As can be seen, the precise arrangements post 29 March 2018 are not yet known (*and may well have changed by the time you read this article*). We therefore recommend that you and your clients assess any foreign assignees as the Brexit talks progress and take appropriate advice.

**Contact Smith Cooper**

Please contact **Jackie Hendley** ([jackie.hendley@smithcooper.co.uk](mailto:jackie.hendley@smithcooper.co.uk)) or visit [www.smithcooper.co.uk](http://www.smithcooper.co.uk).





# Going North of the Border: Selected Issues Facing US Employers Seconding Employees to Canada



US employers who send one or more US-based employees to work on assignment in Canada will likely encounter, either directly or indirectly through their employees, a number of economic, tax and regulatory issues. This article, authored jointly by the global mobility experts at Alliot Group member firms **Farkouh Furman & Faccio** (New York, NY) and **Hardy, Normand & Associés** (Montreal, Canada) is meant to give a general overview of some of the more common issues that could arise in connection with seconding an employee to Canada. However, it is not meant to address the tax and compliance issues a US employer will face from an entity perspective on account of its conducting business in Canada through a permanent establishment.

## Compensation considerations

While on assignment in Canada, employees may receive various types of additional compensation, e.g. amounts paid for moving, housing, transportation, taxes on the purchase of goods and services and other incremental costs, as well as receipt of restricted stock, the payment of deferred compensation or the exercise of stock options. Due to differences under Canadian and US tax law as to the timing or the sourcing of income attributable to certain of

these compensation events, an employee's ability to credit Canadian taxes paid against a present or future US income tax liability may be negatively affected without proper planning. For example, restricted stock is taxed at grant in Canada while in the US it is taxable only when the stock is vested and there is no longer a substantial risk of forfeiture. To avoid a situation in which an employee would generate foreign tax credits that could go unutilized before expiration, an employee could make a timely section 83(b) election

to make the receipt of the restricted stock a taxable event for US tax purposes in the year of receipt. In some cases, proper planning may involve deferring the compensation event until the employee's assignment is completed.

### Social security

The application of either US or Canadian social security tax provisions on the compensation paid to an employee working on assignment in Canada is governed by the US-Canada Social Security Agreement. This agreement generally provides that in certain instances where the Canadian social security tax provisions would otherwise apply, the US social security tax provisions will in fact apply. Generally, where an employee works for a US employer in Canada and the expected term of the assignment is less than five years, the employee will be subject only to the US social security tax provisions.

### Tax equalization

When employees are working on assignment in Canada and are receiving additional compensation as mentioned above, it is important to ensure assignees do not incur a greater tax burden than they would have had they remained in the US. The receipt of additional compensation (*such as reimbursements for housing and moving costs*) combined with higher Canadian income tax rates (*up to 54%*) generally will result in an employee incurring a larger combined (*Canadian and US*) income tax liability. To compensate personnel for this additional income tax liability, the employer pays additional compensation based upon a calculation referred to as a 'tax equalization'. Generally, a company's global mobility tax services provider will prepare the annual tax equalization calculation on the employer's behalf.

### Retirement plans

For assignees working in Canada, contributions to US qualified retirement plans generally are deductible for the employer and the employee for both US tax purposes and for Canadian tax purposes pursuant to the US-Canada Income Tax Treaty (*'Income Tax Treaty'*). For Canadian tax purposes however, the assignee must not have performed services in Canada for more than 60 months and the deduction for contributions may not exceed the deductible limit under Canadian law. In lieu of continuing to participate in a US retirement plan, employees can participate in a Canadian retirement plan and will generally obtain a deduction for contributions to such a plan for both US and Canadian tax purposes under the Income Tax Treaty. Employees should be aware that certain Canadian savings plans that people may utilize as retirement plans, such as a Tax-free Savings Account (*'TFSA'*) or a personal Registered Retirement Savings Plan (*'RRSP'*) do not meet the definition of a qualifying retirement plan under the Income Tax Treaty and contributions to such plans are not deductible for US tax purposes.

### Employee tax and foreign bank and financial account reporting compliance

Employees on assignment will be required to file both Canadian and US income tax returns. The US income tax return generally will be more involved than in prior years because in addition to the normal reporting, an employee will likely claim the foreign earned income and foreign housing exclusions and may have additional foreign tax credit reporting. The foreign earned income and foreign housing exclusions are special provisions in the US tax code that allow a person who lives and works outside of the US for a sustained period of time to exclude from gross income a certain amount of earned income (*\$103,900 in 2018 for the foreign earned income exclusion*).

An employee on assignment may establish a local bank account and if the balance in that account plus any other non-US-based bank or financial accounts exceeds \$10,000 on any day in the tax year, the employee will have to file a report disclosing all foreign bank and financial accounts with the US Treasury. Canada has similar foreign bank and financial account reporting requirements that apply to Canadian residents after their first year of residency if the aggregate cost of all non-Canadian foreign account assets exceeds CAD \$100,000.

### Departure tax

On terminating an assignment and moving back to the US, an employee may be subject to Canadian departure tax. This tax deems the employee to have disposed of all his assets (*Canadian and foreign*), except certain assets (*e.g. Canadian real property*), at fair market value. The resulting capital gain, if any, will be subject to tax at a maximum rate of 26.5%. If the employee resided in Canada for less than 60 months, the rules apply only to assets acquired while a Canadian resident. Payment of the additional tax may be deferred until the asset is actually sold if proper security is given to the tax authorities. Under the Income Tax Treaty, an employee may elect on his US income tax return to recognize a deemed sale of property and source the gain to Canada so as to be able to credit the Canadian taxes paid on the gain.

### For more information contact



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#### 4. Employee rights

During the assignment/secondment, the employee's home country employment contract remains applicable; therefore, employment laws of the home country also apply. A separate assignment contract is needed in which terms are agreed. However, if Austrian law provides better conditions for the employee than those in the foreign employment contract, then Austrian regulations will also apply to the foreign employee.

Minimum salaries and working time regulations should be given careful attention as violations result in stiff penalties.

#### 5. Obligation to keep reporting and salary documents readily available

For an assignment/secondment, the following documents must be available in Austria:

- Employment contract or statement of terms and conditions (*in German or English*)
- Payslips
- Proof of wage payment or bank transfer statements

- Wage records
- Records of working hours
- Documents relating to salary categorization to verify the remuneration payable to the posted worker under Austrian law for the duration of employment
- A copy of the assignment contract
- Documents related to the employee's social security insurance registration (*e.g. A1 form in the EU*)
- If an official permit is required to employ the posted worker in the country where the employer is established, this permit or a copy must also be readily available.

Each assignment/secondment is unique and demands a separate review in order to comply with Austrian law. For non-EU companies, the review is even more complex as stricter rules apply and the regulations are not standardized.

#### For more information

Contact **Martin Seidl** ([m.seidl@rothenbuchner.co.at](mailto:m.seidl@rothenbuchner.co.at)) or **Silvia Breyer** ([s.breyer@rothenbuchner.co.at](mailto:s.breyer@rothenbuchner.co.at)) or visit [www.rothenbuchner.co.at](http://www.rothenbuchner.co.at).

# Alliott Group Sponsors **EMEA** **Global Mobility Summit**

Alliott Group will once again be a sponsor of one of the global mobility business community's major events, the Forum for Expatriate Management's 2018 EMEA Global Mobility Summit. Our participation will aim to further establish the Alliott Group name among global mobility, tax and HR directors working for global employers who need help complying with the tax, payroll and legal matters that arise when moving their workers across geographic borders.

The event takes place from 8-9 November at the InterContinental London at The O2 and is expected to attract 350-400 global mobility and HR directors from international companies with operations in the Europe, Middle East & Africa region.



As co-sponsors of the summit, Alliott Group members from the UK, USA, Belgium, Germany and the Netherlands will be delivering a 40-minute seminar on the tax and legal challenges of moving assignees from one region to another. An Alliott Group stand in the conference's expo area for the duration of the event will also ensure a strongly branded presence and a meeting point where members can discuss new business relationships with potential clients and collaborative partners who add further value to Alliott Group's Global Mobility Services offering.

#### Get involved

Members interested in participating in this strategic marketing initiative should contact **Giles Brake** at the Executive Office ([giles@alliottgroup.net](mailto:giles@alliottgroup.net)).