

From clear as mud, to clear as water

A suggestion for standardized compliant global mobility assignment types

FINAL PAPER

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Summary

When speaking amongst global mobility professionals, it is typical for confusion of tongues to occur when it comes to assignment types. The disagreement on assignment types can lead to the wrong expectation, causing disappointment, increased costs, and a lack of compliance. This is especially an issue within the EU where, with the perception of open borders, non-compliance is a viable risk.

The objective of this paper is, firstly, to give an overview of which parameters can be used to determine global mobility assignment types. Secondly, to establish which set of parameters is optimal to establish compliant global mobility assignment types. The objectives will be met by answering the thesis statement: "Modelling assignment types based on a common set of parameters increases compliance within companies operating in the EU."

The statement is answered by answering the main question ("Which set of global mobility assignment type parameters is optimal in increasing compliance?") and two sub-questions: Which areas of compliance are most at risk in a company when using unclear definitions?

Which parameters can be used to determine assignment types, and what are their pros and cons?

The (sub)-questions are answered by conducting a qualitative review of relevant law, legislation, and literature and forming this into a model.

Compliance in the areas of immigration, tax, and social security is crucial for the assignment to be completed, the assignee to be remunerated correctly (tax equalization or protection) and have a social security fallback when things go wrong.

Five parameters indicate whether we are dealing with international employment, e.g., employment law, fiscal residence, social security, immigration, and pension. The following nine parameters frequently change or are relevant in general during an assignment and are therefore also looked into, e.g., duration, function, tax facilities, health insurance, shadow payroll, nationality, primary residence, type, and the number of employers and family status.

All parameters are tested for their relevance in the compliance areas of social security, tax, and immigration.

Subsequently, the most relevant parameters for each of the compliance areas are listed separately. Then, the limitations of the research are listed.

In conclusion, it becomes clear that a number of parameters are relevant for compliance in each of the fields of social security, immigration and tax. These core parameters have subsequently been put in a matrix that forms the basis of a flow chart. The flow chart gives definitions for the most commonly used global mobility types based on compliant parameters.

Therefore, the answer to the research question is in the affirmative: modelling assignment types based on commonly used parameters increases compliance within companies operating in the EU, when choosing the assignment type to be used for a particular assignment on the basis of (i) change in employment law, (ii) duration, (iii) change in primary residence, (iv) change in employer form and (v) family status parameters. This will enhance visibility of the applicable issues in the areas of tax, social security and immigration and thus promote both compliance in these fields and a fair benefits package for the employee.

1.1 Introduction

Ask twenty global mobility professionals to define a Foreign Local Hire, and you will get twenty different answers. Ask them about Commuters and you will have forty answers, Secondedes will get you to sixty. Sometimes it seems that there are as many definitions for global mobility types as there are global mobility specialists. Therefore, there seem to be no standard definitions, no framework in which the use of the assignment types falls.

While some global mobility specialists and companies base their global mobility assignment type definitions on practicalities, historical practice, tax compliance or immigration rules, others use theoretical models. Kühlmann¹, for example, describes an assignment type model based on duration, contractual basis, and tax residence. There are, however, far more applicable areas of law and related compliance areas that provide global mobility professionals with a daily headache.

The daily reality for global mobility professionals is that many decisions are made, and benefits given, on the basis of the sole denominator of the assignment type. Challenges arise when these assignment types are unclear, subsequently mixed up or misused, all resulting in wrong expectations from the assignee. The latter will generally cause disappointment, cost money, and most importantly often result in non-compliance by both the employer and the employee.

Especially within the EU the lack of uniform and compliant global mobility assignment types is an issue. When an assignment is initiated from a non-EU country to an EU country, and visa-versa, it is usually clear from the outset that the assignee will change fiscal residence, primary residence, and has to go through an immigration process.

With intra-EU-assignments questions on fiscal residence, primary residence and immigration are not that clear cut. For example, when an assignee has a work contract in Belgium and lives there without a family, works 3 days a week in The Netherlands, there are many parameters needed to determine fiscal residence, primary residence and immigration. The common perception with some companies is that the EU provides for free movement of people, goods and services², '*so everything must be alright*'. These companies, however, fail to acknowledge that these assignments still have social security, immigration and tax implications.

Therefore, the aim of this paper is to create an assessment framework for compliant global mobility assignment types. While there is a perceived broad meaning among mobility professionals for the assignment types discussed, there is no fixed meaning for them in law or a detailed established practice, which in practice does result in miscommunications, disappointments and ultimately breaches of law. In this paper, I will attempt to establish a model where the assignment types will be defined by reference to the laws and legal frameworks that determine the assignee's position under the most relevant area of law in this type of context: immigration, tax and social security. The aim is to come up with definitions for Long and Short Term Assignments, Frequent Business Travelers, Commuters, Secondedes and Foreign Local Hires that minimise the chances of a breach of law and that will promote that assignees within one organisation with substantially the same type of legal positions can receive a substantially equal treatment.

In current practice, *the generic* common understanding of the assignment types is:

¹ Weinberger, Angela, The Global Mobility Workbook, 2019

² Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU)

- Long / Short Term Assignments: *employee* relocates for a *definite* period to another country for work, *but* stays on home contract.
- Frequent Business Travelers: employee travels to other countries for business meetings for a couple of days at a time, *then* returns home.
- Commuters: employee lives in a country different from the work country, *At the employee's discretion, this situation could continue* for the duration of the employment agreement.
- Secondes: employee works in a country different from the *home* country of the contract for a definite period of time, *staying on home contract and without relocation*.
- Foreign Local Hires: employee works *and lives in a country that is not the employee's home country* on a local contract, *possibly moving into that host country when commencing the role*.

1.2 Objectives

The choice between global mobility assignment types within a company will generally result in different local tax treatments, social security packages and approaches to the local immigration authorities. Getting it wrong can have severe compliance repercussions with local tax, social security, and immigration authorities. Therefore, the objective of this paper is:

Firstly, to give an overview of which parameters can be used to determine global mobility assignment types.

Secondly, to establish which set of parameters is optimal to establish compliant global mobility assignment types.

This paper will be limited to the scope of the European Union. As set out in the introduction, intra EU assignments are especially at risk because of the open border perception that many people have. This is not to say that inbound assignments into the EU or assignments from the EU to third countries would not benefit from a similar type of parameters. These situations are, however, not being considered given differences in applicable legislation.

However, many countries within the EU share the same directives, treaties, regulations and laws when it comes to tax, social security and immigration, even though the execution may be different per country. The same principles may also apply in countries with close relationships with the European Union, being Norway, Iceland, Switzerland and Liechtenstein, as well as a post-Brexit United Kingdom. Unless stated otherwise, however, these countries are treated as third countries for the purpose of this paper.

1.3 Thesis statement

The statement that will be tested in this paper is as follows:

"Modelling assignment types based on a common set of parameters increases compliance within companies operating in the EU."

1.4 Research question

The statement will be tested by answering the main research question and two sub-questions. The main question to test the thesis statement is:

“Which set of global mobility assignment type parameters is optimal in increasing compliance?”

1.5 Research sub-questions

To answer the main question, we will need to answer two sub-questions first:

“Which areas of compliance are most at risk in a company when using unclear global mobility assignment type definitions?”

“Which parameters can be used to determine global mobility assignment types, and what are their pros and cons?”

1.6 Methodology

The primary question and the sub-questions are answered by conducting a qualitative review of relevant law and literature. However, the questions revolve around means of achieving compliance. Therefore, the legal position is taken as a given. That position needs to be described to set the scene in which compliance functions monitoring global mobility assignments should work optimally, but it is not part of the evaluation made in this paper. Descriptions of legal and tax positions are therefore generic and largely un-annotated (bearing in mind that different rules would typically apply in individual countries or between the countries relevant for a specific assignment). This legal landscape, together with an analysis of scholarly writing on assignment types and relevant practical experience, has been used as a basis to build a model of relevant parameters to assess when deciding the assignment types to use for the main types of assignments. The parameters have distilled from experience. These parameters land most frequently on global mobility professionals' desks in the form of questions from employees and hiring managers. The parameters all find their origin in tax laws, social security treaties and immigration law.

As will be concluded in the evaluation of this paper, modelling can increase compliance and result in greater employee satisfaction in comparison to more or less traditional approaches where choices are mostly driven by historical practice or one individual area of focus (e.g. tax). At the same time, a comparison between the model presented in this paper, potential other models and potential other non-model based methods of achieving compliance is out of the scope of this paper and potentially requires further research.

2. Theoretical framework

2.1 Definitions

EU is defined as the 28 member states of the European Union, without regard to any transitional provisions that may apply in respect of latest accessions of member states or the forthcoming withdrawal of the United Kingdom from the EU.

The assignment framework is defined as the theoretical framework in which several types of assignments are defined. It is essential to distinguish between assignments and assignment types. In this paper, an assignment is defined as one of the assignment types discussed in this paper: long-term assignment, short-term assignment, commuter, secondment, foreign local hire and frequent business travellers.

Compliance is defined as “the fact of obeying a particular law or rule, or of acting according to an agreement.”³

Parameters are defined as a set of facts or a fixed limit that establishes or limits how something can or must happen or be done.⁴

The aim is to come up with substantiated definitions for long-term assignment (LTA), short-term assignment (STA), Commuter, Secondment, foreign local hire (FLH) and frequent business travelers (FBTs). I refer back to the common understanding of these types in the introduction 1.1, *which I seek to deepen in this paper*.

However, some professionals will argue that frequent business travellers and foreign local hires are not assignments, given the absence of a move. That may be the case, but as there is much confusion on the definition of especially these two categories in combination with the assignment types, I still considered it beneficial for them to be included in the scope of this research.

2.2 Areas of compliance

Even though, as mentioned in the previous paragraph, the choice for a certain assignment type may be driven by a desire to reduce costs, compliance is a more critical factor that should drive the decision.

Compliance in the areas of immigration, tax and social security is crucial for the assignment to complete successfully, the assignee to be remunerated correctly and have a social security fallback when things go wrong, and to protect the employer from penalties. Compliance, in general, helps to determine the appropriate assignment type and its terms and helps setting expectations with the company and with the internationally mobile employee.

2.2.1 Immigration compliance

Immigration compliance is essential: faults in the immigration paperwork undermines the very basis of the assignment, namely the internationally mobile employee's work. Repercussions may differ from country to country, but they include the employee being

³ Compliance. In *Cambridge Dictionary*, Retrieved November 11, 2019, from <https://dictionary.cambridge.org/dictionary/english/parameter?q=compliance>

⁴ Parameters. In *Cambridge Dictionary*, Retrieved November 11, 2019, from <https://dictionary.cambridge.org/dictionary/english/parameter?q=parameters>

refused entry to the country,⁵ prohibited to work,⁶ a company's sponsorship being revoked⁷, and fines. No matter the exact consequence, the internationally mobile employee is unable to work.

The EU has a harmonised set of rules for immigration between member states. Not one country can set rules on its own.⁸ Notwithstanding this uniformity and the freedom of movement embedded in the EU treaties, however, obtaining a residence permit in any of the EU countries may still cause compliance issues for third country nationals. For example, a third-country national is only allowed to work in the country of which the internationally mobile employee has a work permit. He or she is only allowed to attend business meetings for 90 out of 180 days within 12 months⁹ (depending on further parameters). Companies employing third-country nationals will need to be aware of the applicable boundaries to tackle this immigration compliance risk.

2.2.2 Tax compliance

It is vital to register the internationally mobile employee with the correct tax authorities. If done incorrectly, an employer making 'pay as you earn' withholdings and the employee filing personal tax returns may apply the wrong tax regime. Internationally mobile employees may need to transfer to alternative (shadow) payrolls, and the tax authorities may start an investigation and issue fines in addition to the taxes due¹⁰.

The EU is not directly involved in collecting or setting taxes. Member states determine the tax payable by each resident, as well as how these taxes are spent.

However, the EU does oversee national tax rules to ensure compliance of these rules with broader principles of EU law, notably:

- the free flow of goods, services and capital throughout the EU
- business competition
- non-discrimination of taxes against consumers, workers or businesses from other EU countries¹¹

Specific attention from global mobility professionals is needed for double taxation tax treaties, as these affect tax compliance. These tax treaties are not EU-law, but are entered into on a bilateral basis between the countries concerned. Some of the tax treaties have specific frontier working rules as part of them. There is, for example a frontier working rule between Belgium and The Netherlands.¹² At the same time, there is a degree of

⁵ As a Dutch example of the potential consequence of misunderstanding visa rules (even though the mobile person eventually prevailed), see District Court of The Hague 13 July 2006, ECLI:NL:RBSGR:2006:AY4139.

⁶ In the Dutch context, see Article 3 of the Dutch Werkloosheidswet and applicable secondary legislation (notably the Besluit uitbreiding en beperking kring verzekerden volksverzekeringen). An example of an foreign employee missing out on social benefits can be found in District Court of Arnhem 11 February 2008, ECLI:NL:RBARN:2008:BC5322.

⁷ As a Dutch example, District Court of The Hague 10 July 2018, ECLI:NL:RBDHA:2018:16436

⁸ Koslowsky, R., Global Mobility Regimes: A Conceptual Framework, 2011

⁹ Article 4.5 of the Dutch Vreemdelingen-circulaire 2000 A.

¹⁰ An example of a German-Dutch mobility situation gone wrong was Court of Appeal of Leeuwarden 3 April 2012, ECLI:NL:GHLEE:2012:BW0974 (this order was partially reversed on appeal to the Dutch Supreme Court, but that reversal was on more procedural grounds less relevant for mobility).

¹¹ A fair share, taxation in the EU for the 21st century, European Commission, 2018, paragraph 2.1.

¹² Belgium - Netherlands Income and Capital Tax Treaty (2001) Art. 27.1.

harmonization as the OECD prepares model treaties¹³, in which the main principles as to where the main sources of income will be subject to taxation have been crystallised.

2.2.3 Social security compliance

An individual's centre of social activity determines the individual's social security position. The main factors for determining the social security position are¹⁴:

- Place of work
- Primary residence of the employee
- Primary residence of the employee's dependent family

A posting abroad might, therefore, have consequences for the posted employee and his/her family's social security position. Questions of cover may arise where an employee changes residence, yet is not accompanied by dependent family.

The premia and benefits of the social security system differ per country. Employees pay into the social security system via their formal employers' payroll. In an ideal situation, the formal employer, primary residence employee, primary residence family, and pension are all in one country. If this is not the case, it may become challenging to determine the social security position. In a worst-case scenario, several countries might claim the social security position of an internationally mobile employee and hence demand contributions. Even the small notion of "to replace another person" may become crucial.¹⁵

The need to move an employee onto a different social security system might arise when the social security position is unclear or changes. The premia under the new system may be significantly higher, adding significantly to the employment costs of the relevant part of the organisation, with the costs of external consultants of managing the process and payrolling coming on top.¹⁶

In line with the double taxation treaties discussed above, social security treaties were formed.

When the employee works mainly in the country of residence, at least for more than 25%, the employee socially secures himself in this country. Should the person work in another country, this is called a secondment situation for social security purposes. The 25% rule is therefore also applicable in that case. The 25% rule pertains to workdays only, not sick days, weekends and holidays.

Where, on the other hand, the employee has a primary residence outside the formal employer's country, the working days must not exceed 25% in the country of the primary residence.¹⁷

¹³ OECD (2017), Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing, Paris, https://doi.org/10.1787/mtc_cond-2017-en.

¹⁴ Belastingdienst, Handboek loonheffingen 2019, 2019, Article 18 and Official Journal of the European Union, C 202, 7 June 2016, articles 48 and 352

¹⁵ ECJ 6 September 2018, case C-2018/669 (Alpenrind), ECLI:EU:C:2018:669.

¹⁶ By way of example, an extensive research has been conducted by the *French* Cour de Comptes to make a comparison between the taxes and social contributions of France and Germany. Cour des Comptes, , Taxes and social contributions in France and Germany. https://www.ccomptes.fr/sites/default/files/EzPublish/Taxes_and_social_contributions_in_France_and_in_Germany_summary_032011.pdf, retrieved 05-01-2020

¹⁷ Belastingdienst, Handboek loonheffingen 2019, 2019, Article 18

2.3 Parameters

Before one can determine what assignment type is applicable or desirable, it is necessary to confirm that a situation qualifies as international employment. In-country moves are specifically not included in this research. For this paper, there should be international employment if there is a change in, or at least a question, on:

- the applicable employment law
- fiscal residence
- social security statute
- immigration
- pension



Figure 1: based on sheets Pallas (Camonier & Ruitenbeek)

Besides the scope determination above, it is good to consider that some relevant facts and circumstances only arise after the events have taken place. The original plan may not have been followed through, and in many global mobility cases the actual move materialises not in line with the original plans. Therefore it is essential for the employee (and possibly the employer) to maintain a travel calendar or engage a provider that can count days and proactively inform the employer and the employee when discrepancies between agreed plan and actual interpretation start growing too large (all of course with the employee's informed consent). It might be worthwhile to perform a data-driven revision of an assignment six months after the assignment's start, in order to determine whether the facts and circumstances add up to the desired situation.

The parameters discussed below as relevant to determine areas of compliance are used when comparing a home state with a host state. To this end, home is defined as the country of origin and host as the receiving country. The first five parameters discussed below are those also used to determine whether a situation qualifies as international assignment in the first place. The 14 parameters discussed thereafter are solely used to define what sort of assignment is taking place and/or how an assignment could be best structured.

2.3.1 Change of employment law

When an employee goes on an international assignment, the working relationship changes. The employer in the home country may be a different legal entity than the employer in the host country. The employee may or may not still work under his original employment contract and a pre-assignment employment contract may have been supplemented for the purpose of

the assignment by an assignment letter. The above steps will be visible to the employee, but there are also several things happening on the employer side that will be less apparent to the employee. The home and host company may, for example, agree on a service contract and on recharging all or part of the salary cost. The Expatriate handbook describes several types of constructs that may be used in different scenarios.

1. The termination construct: pre-assignment contracts are terminated, and a new contract entered into in the host state, under host state law. This construct is above all used in situations where assignments are anticipated to last longer than five years
2. The secondment construct: pre-assignment employment contract continues, possibly with assignment letter. This construct is above all used for short term assignments shorter than one year, frequent business travellers, assignments longer than five years with clear conditions.
3. Suspension constructs: pre-assignment contracts are temporarily suspended so that new temporary arrangements can be entered into in the host state. These constructs are primarily used for board members and assignments longer than one year but shorter than five years.
4. The dual employment construct: pre-assignment contract continues, yet a separate new contract is entered into in the host state.

This construct is chosen when built-up rights need to be safeguarded, to reduce the effect of currency fluctuations and to facilitate the cash-flow of the employee in the host location.

In a concise summary: once the (contractual) parties and the construct have been determined, indicating also the several employers, the applicable labour law can be determined.¹⁸ Determining a change in the applicable labour law is the first parameter to confirm the existence of an assignment. This is a factor that will directly affect all areas of compliance.

2.3.2 Change in fiscal residence, taxability in work country and economic employer

In recent years global mobility has become more tax-driven. It is widespread for Global Mobility managers to have sound backgrounds in tax. Tax is, indeed, an essential and complex specialist area. Situations that are now discussed would not have been on the agenda a couple of years ago.

However, it does appear that this tax analysis is largely focused on the employee's benefits and risks, notably personal income tax treatment and tax residence¹⁹, facilities like the 30% tax ruling²⁰ in the Netherlands and the 183 day²¹ rule. However, for commuters and married couples working across borders other issues may arise. The EU has established

¹⁸ In the EU, the applicable law to an employment contract is determined by the Rome I Regulation (Regulation 593/2008 on the law applicable to contractual obligations). This regulation leaves the parties some freedom to choose the law of their employment contract, but never to a point where the employee's position will be worse than the position would have been, had the law applied of the state where the employee habitually carries out his work (article 8 of the Rome I Regulation).

¹⁹ <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/> The OECD provides extensive guidelines for determining tax residence per country.

²⁰ Besluit van 21 oktober 2005, nr. CPP2005/2378M., as amended since.

²¹ Article 15 OECD Model Treaty.

extensive case law in recent years addressing these issues.²² The economic employer concept tends to get less attention, yet it may have the consequence that an internationally mobile employee becomes taxable from the outset of an assignment in a country and a manner not initially foreseen.

The concept of economic employer is based on OECD model treaties to avoid double taxation.²³ It can be considered somewhat opaque; more on this in 2.3.10. The fact that not all OECD countries have actually fully implemented the economic employer concept adds to the complexity. One country that has implemented the concept is The Netherlands,²⁴ yet even the Dutch full implementation leaves plenty of scope for interpretation.

In the Dutch interpretation, three factors are being considered to determine whether there is an economic employer in an international assignment. Fulfilment of all three indicators means that the economic employer principle applies, which causes the employee to be taxable in the country of work as of day 1 of the assignment.

The first indicator is whether there is a line of authority between the employer and the employee. In practice, the question is whether the employee receives instructions from the employer. If the answer to this question is "yes", indicator one is fulfilled.

The second indicator is to determine which employer carries the risk and benefits from the employment of the employee. The practical question to ask is: who will pay for it if the employee makes a mistake in their employment.

The third indicator is to determine which employer bears the cost of the salary. The practical question to ask is: who is paying for this employment and what financial mechanism has been chosen to do so. This is important, as solely individual recharged salary costs are believed to fall within the scope of the economic employer.

The third indicator is not always clear cut. Case law indicates that especially the determination if salaries have been paid directly or indirectly by a foreign employee is an area of uncertainty.²⁵

When all of the three above indicators have been fulfilled, there is an economic employer, unless the 60-day exception applies.²⁶ In short, this ruling determines that the economic employment is not believed to exist when an employee travels less than 60 days on a temporary and non-crucial basis to the country where he or she has an economic employer.

Especially in matrix companies where some employees travel much, an analysis of these indicators can be complex. One can imagine a manager who is always travelling and whose activities benefit several entities. Who then carries the risk? Who has the authority?

Cost recharging complicates this even further, as only individual retraceable salary costs are considered to qualify as recharge, unless it concerns a recharge of a service used by the whole company (IT, facilities etc.). Allocations, therefore, do not count as a recharge. One can imagine this is an area where finance managers can become very creative to engineer a certain outcome that is perceived desirable. Further guidelines from tax authorities and courts would be welcome, next to the existing case law, but these are still to materialise.

²² For an overview: A fair share, taxation in the EU for the 21st century, European Commission, 2018, paragraphs 2.1 and 2.2.

²³ OECD (2017), Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing, Paris, https://doi.org/10.1787/mtc_cond-2017-en.

²⁴ Resolution of the Dutch Staatssecretaris van Financiën of 12 January 2010, Stcrt 2010, 788.

²⁵ In respect of a Belgian-Dutch scenario: Dutch Supreme Court 1 December 2006, ECLI:NL:HR:2006:AT3928.

²⁶ Article 6 of the Dutch resolution referred to in footnote 24.

Below in figure 2.²⁷ An overview has been given on how the current EU countries use and interpret the economic employer concept under the OECD model treaty. While the majority of member states has not implemented the concept, the trend is towards first introducing the principle and to only give further guidelines significantly after the event.

Art. 15 OECD treaty in EU countries



Figure 2.

2.3.3 Change in social security

The area of social security has not had the same focus among global mobility specialists as immigration and tax. It is probably fair to say that it is the topic least understood among professionals, and many deem it not very crucial or needed. However, in a downside scenario social security set-ups will need to be unwound, which results in very high costs for the employer and the employee. It is, like tax and immigration, an area where situations can be construed for financial gain.²⁸ This is above all relevant when employees fall ill and have utilised their social security benefit entitlements. Unlike the network of double taxation treaties, the social security treaty network is not extensive. The potential costs involved are, however, significant and in many instances higher than an additional tax burden.²⁹

The basics of social security have been described in paragraph 2.2.3. When looking at this from an assignment perspective, it is necessary to assess the employee's specific situation. Notable items to consider are:

- The coverage of the relevant social security scheme
- Fragmentation of the social security scheme
- The determination rules that determine the system
- Family members

²⁷ The model below is based on KPMG's country by country's research on tax systems. KPMG.com

²⁸ ECJ 4 February 2018, Case C-359/16 (Altun) ECLI:EU:C:2018:63.

²⁹ Expatriate Handbook for Global Mobility Professionals, page 7.

Between the countries of the EU, the EEA and Switzerland there are multilateral treaties. Among EU member states, Regulation 883/2004 applies. These treaties seek to achieve that an employee will be socially secured in one country.³⁰

As social security is usually paid for via 'pay as you earn' withholdings on wages and direct payments by the employer to the state that account for both withheld taxes and social security premia, it is important to pay into the scheme of the right country. The reversal of an incorrect payment will often result in not only the social security payment having to be undone, but usually also the related tax returns or applications. This typically occurs in both countries involved, hence is a costly and time-consuming affair. In figure 3, three situations are visualised and their respective risks (the riskier situations being earmarked as "approval needed", so that they should not be permitted within an organisation without having obtained expert advice as regards the exact impact).

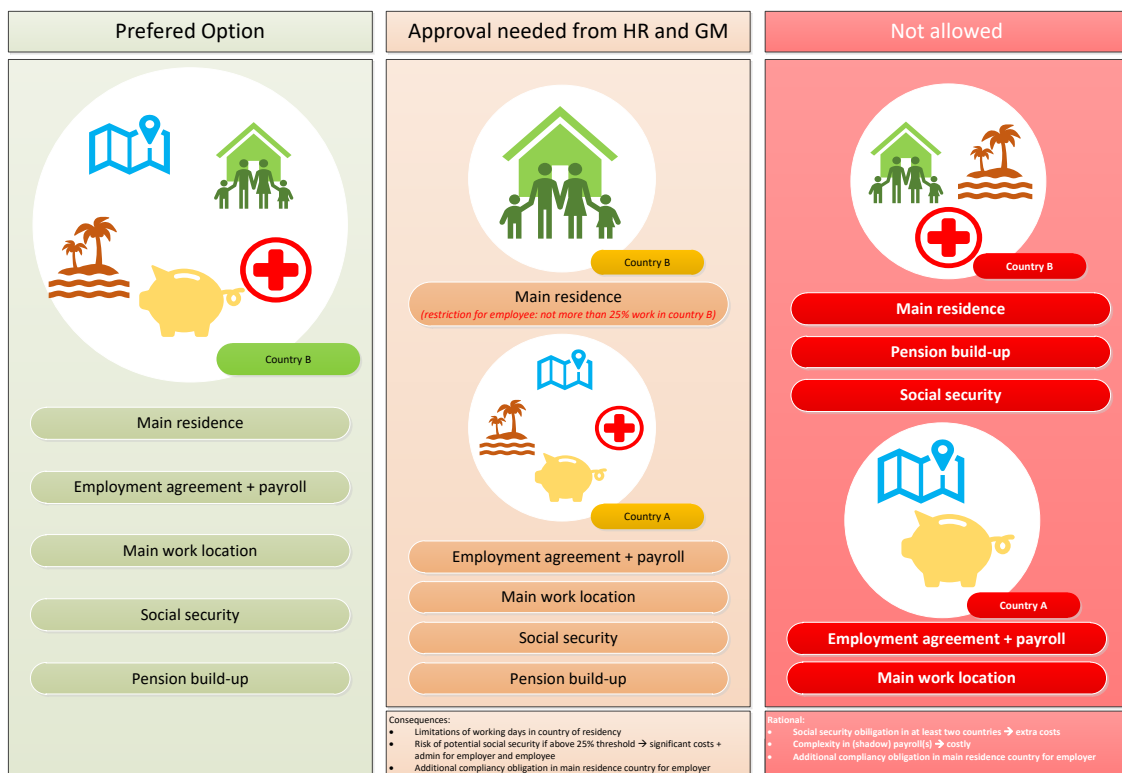


Figure 3.

2.3.4 Change in or necessity for immigration

The EU has set out several directives to streamline immigration into the EU. The most relevant directives are:

- Directive 2011/98/EU; the single permit directive. This directive focuses on providing third-country nationals with a single permit for residence and work.³¹
- Directive 2014/66/EU; the ICT directive. This directive focuses on facilitating companies on posting their managers, trainees, and specialists to branches or subsidiaries within the EU.³²

³⁰ Expatriate Handbook for Global Mobility Professionals, page 16.

³¹ Recital (2) to Directive 2011/98/EU.

³² Recital (10) to Directive 2014/66/EU.

Next to potentially being subject to an immigration procedure, an employee may also be a visa-national. This means that if an employee wishes to enter the Schengen area or other EU countries, he or she will need to apply for an entry visa.³³

While the above rings true for third-country nationals in the EU, the focus for EU nationals is increasingly the Posted Worker Directive (Regulation 883/2004). While this is technically not an immigration route governed by EU law, it is a good indication of intra-EU mobility as it also encompasses a registration obligation. Many countries still have to implement the Posted Workers Directive. Belgium is an example of a member state that has already implemented the Directive, using the online notification tool Limosa.

The Directive sets out the terms and condition on which intra-EU mobility can take place for posted workers.³⁴ The Directive mainly serves to guarantee rights and working conditions throughout the EU, and notably to avoid forms of dumping of cheap labour by exploiting loopholes in the freedom of movement, potentially resulting in exploitation of workers.

Two law cases deserve specific attention when looking at intra-EU immigration and the freedom of services.³⁵ The first is the *Rush Portuguesa* case³⁶, the second the *VanderElst* case³⁷.

It is beyond doubt that in the classic case of Central or Eastern European ‘blue collar’ workers coming to Western Europe to work at far lower prices and live in much poorer circumstances than their Western European peers, the Posted Worker Directive will make a difference. However, it is unclear how countries will interpret what a posted worker exactly is and if they will apply any thresholds. It is presently unclear whether a ‘white collar’ business traveller could also come within the scope of the Directive. If this was the case, the posted worker would need to be registered before the posting takes place. The complications for normal business travel are obvious and many multinationals that adhere respectfully to the rights and working conditions of the employee now face a significant problem in identifying their internationally mobile workforce and registering them with the relevant authorities before the posting. Different implementations throughout the EU add to the complexities of the situation.

Therefore, a need for an immigration procedure is not sufficient anymore to comply with immigration rules. Posting of the worker within the EU is a further factor to consider in this field.

2.3.5 Change in pension

Pensions are a further factor often overlooked in an assignment scenario. The EU has a relatively high number of welfare states, up to the point where (arguably somewhat random) lists of countries with the best pension systems will generally have a significant number of EU countries in the top-10 countries with the best pension systems in the world. The impact of losing or gaining this benefit when moving is significant.

³³ As further outlined on https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en, the directives stated do not imply a generic exception from visa rules.

³⁴ Recital (2) to Directive 2014/67/EU.

³⁵ Erik Scheers, *Vrijheid van grensoverschrijdende dienstverrichting “in status quo ante”*, Liber Amoricum Ted L. Badoux, Sdu 2018, page 163-180.

³⁶ ECJ 27 March 1990, Case C-113/89 (*Rush Portuguesa*), ECLI:EU:C:1990:142.

³⁷ ECJ 9 August 1994, Case C-43/93 (*Vander Elst*), ECLI:EU:C:1994:310.

Many countries within the EU have a pension system that contains state pensions, occupational and private pensions. This, however, is where similarities stop, and every member-state has its own mix of instruments and thinking around accrual of the total pension benefit.

Pension within the EU accrues in the country where the employee has worked.³⁸ If a person has worked in several EU countries, pension rights may have accrued in several countries. The country that was the last place of work is responsible for the processing of the application and collecting the information to the employee's rights under the pension schemes of the countries in which the employee has worked. Every country has its own determination rules on the eligible pension and how many years someone has had to work in a specific country to be eligible at all.

Therefore, when an employee starts to pay into a pension fund, it is essential to calculate the potential payout and see if there will be a possibility to transfer the pension fund to either avoid a gap or pay into a private fund. It is vital to calculate the actual costs, including taxation, and the administrative burden will be if the company is willing to pay into a private fund to compensate for loss of state pension.

Next to this, with the uncertainty in pension schemes, e.g. the results of many pension schemes in the current low-growth environment, resulting in below par cover for the contingent pension claims, which have been in the news in recent years, the pension might not be the only way of internationally mobile employees to supply for their old-age. Many people invest in property to fund their retirement, or in stocks. Some people even keep their excess funds in cash despite dwindling interest rates. Whatever the case may be, every pension scheme, whether it being traditional or alternative, will have its own set of rules and, therefore, different permutations as regards outcome for the employee and costs for employer and employee in case they decide on a form of migration.

While there is much theory on how the pension schemes should work and on the eventual payout, the modelling is usually easier said than done. First of all, every EU member state has its own fiscal legislation, which is inherently subject to change. Second, an efficient transfer of the funds from a pension fund in one country to a pension fund in the other is complex and may need expert knowledge.³⁹ Third and last: even if the transfer is possible it may not be financially desirable.⁴⁰

In June 2017 the EU introduced PEPP for Expats, a Pan European Pension Plan. PEPP is a voluntary scheme for the whole of the EU without value or transfer issues. It is unknown if the tax benefits will weigh up to those of corporate pensions.

Attention is also needed for the continuous change in legislation as the demographics and therewith costs increase for member-states. Ireland is currently going through significant changes in its pension plan due to the aforementioned reason.⁴¹

A change in pension could be one of the most expensive questions an internationally mobile employee can ask.

³⁸ Per a line of EU directives and regulations starting with Council Regulations (EEC) 1408/71. Further background on https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index_nl.htm

³⁹ A situation litigated up to the Dutch Supreme Court in a Netherlands-Belgium situation demonstrates the difficulties of transferring funds from one EU-country to another and the different factors that all become relevant for the judge to reach a conclusion: Dutch Supreme Court 27 October 2000, ECLI:NL:HR:2000:AA7916.

⁴⁰ <https://expatpensionholland.nl/europe-expat-pensions>

⁴¹ OECD: review of pension systems: Ireland.

2.3.6 Duration of the assignment

Regardless of the type of assignment, it is essential to know the proposed amount of time expected to be spent abroad by the internationally mobile employee. The need to know comes from the existing thresholds. These thresholds may be an external threshold, e.g. driven by (tax) law⁴². Thresholds can also be internal thresholds within an organisation; e.g. when an employee will be called a Frequent Business Traveller, when authorities will be notified that someone has an economic employer. To show uniformity and good-will, many organizations will share their internal thresholds that pertain to taxation to the tax authorities.

Below are some of the more commonly used thresholds:

The 30 days threshold is mainly used to capture Frequent Business Travellers. Once an employee goes over the 30-day threshold, it is essential to understand to which country he or she travels to determine whether there is a global mobility category he or she falls in. This 30-day threshold is an early indicator and therefore a trigger to start tracking days.

The 90-day threshold is mainly used for immigration⁴³. Within the Schengen area, there is a 90 out of 180 days⁴⁴ threshold for business meetings for third-country nationals with a residence permit for one of the EU countries.

The 120 days threshold pertains to social security, immigration and tax. The 120 days are important because in some EU countries (e.g. The Netherlands), passing the 120 days threshold will have a direct impact on the presumed primary residence. The primary residence may directly affect social security, immigration and tax. More on a primary residence in section 2.4.12

The 183-day threshold mainly pertains to tax, as overstaying 183 days in a particular country may trigger a tax liability in that country⁴⁵. The liability is triggered from day 1, and it may be a costly exercise to fix this retroactively.

The one-year threshold is mainly used to distinguish between a short term or long term assignment.

The five-year threshold is the cap of the assignments within companies⁴⁶. It signals the end of being able to stay in the home social security scheme. After this period, it may be possible to insure the employee through private schemes. Even though this may be the case, this alternative may not offer the exact same benefits as the home social security scheme.

From the above, it is clear the duration affects the tax, social security and immigration law analyses of an assignment.

⁴² Article 15 OECD Model Treaty.

⁴³ Notably in the Schengen area: article 5 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. Although the Convention technically speaks of “three months”, 90 days is the practical implementation thereof.

⁴⁴ Dutch implementation act: article 4.5 of the Vreemdelingenwet 2000 A.

⁴⁵ An example is Dutch Supreme Court 14 July 2017, ECLI:NL:HR:2017:374, which addressed the Netherlands-Belgium Double Taxation Treaty.

⁴⁶ Regulation (EC) No 883/2004.

2.3.7 Function during the assignment

When an employee is working abroad, it may be useful to look at the type of job the employee is fulfilling while abroad. The tasks abroad may give a clear indication of the type of international employment.

One of the main distinctions that need to be made is between work and meetings. This distinction is mainly for immigration purposes. When tasks conducted qualify as meetings, a work permit may not be necessary for a particular population. When the tasks to be conducted qualify as work, a work permit is more likely to be needed.

The general rule of thumb is that all activities fall under work unless the activities are:

- Business meetings and following (but not giving) a training within a company that is part of the same group
 - Business meetings implies attending meetings only, explicitly not heading them. The purpose of the activity should be to receive information
- Attending presentations
- Purchase and sale of products, business transactions and quotations
- Attending a trade show, conference or seminar
- Participation in a cultural or sporting event
- Internship or study (shorter than 90 days)

Above is a list most frequently requested by hiring managers.

It is also important to determine whether the function pertains to trainees, managers, specialists and if there is a rotational element as there are special immigration rules in place for these types of employees. As mentioned previously the Posted Worker Directive, Rush Portuguesa and VanderElst cases also demonstrate the importance of function during the assignment.

From the above, it becomes clear that the function performed during the assignment has a direct impact on the immigration law analysis of an assignment, and less on tax and social security.

2.3.8 Tax facilities

Many EU countries have tax rules for expats that benefit their tax rate. One of the countries offering this facility is The Netherlands, with its 30% tax ruling facility that allows for the employer to leave 30% of the Dutch income untaxed.⁴⁷ This facility is believed to be an incentive for employees with skills scarce on the Dutch labour market to come to The Netherlands. With the many changes to the facility, there has been much litigation. A significant one is whether the new criteria apply to a previously approved ruling.⁴⁸

The UK, Denmark, Belgium⁴⁹ and Germany are some of the other countries that offer tax benefits for expats. The benefits for expats may include a tax holiday for non-national assets, or even general capped at a certain amount of years. Other countries tie the benefit to extra-territorial expenses related to the relocation of the expat.

While an expat will not break any compliance rules when not applying for the tax benefit, the opposite may ring true. Once an employee is deemed eligible for a favourable tax ruling, it might be a clear indication of international employment. In many cases the rules to become eligible for the ruling are very strict and ask the employee to prove several things:

⁴⁷ Besluit van 21 oktober 2005, nr. CPP2005/2378M., as amended.

⁴⁸ Dutch Supreme Court 8 December 2017, ECLI:NL:HR:2017:3083.

⁴⁹ Belgian Circulaire of 8 August 1983, *Cl.RH.624/325.294*.

e.g. place of residence, former place of residence, income, incoming labour. Therefore, in some instances, the application for the tax facilities is a compliance test in its own right.

From the above, it becomes clear that the application for any beneficial tax facilities may show tax compliance once the designated authorities have approved the beneficial tax facility. The approval, therefore, might say something about social security, but only on a secondary level. Once someone has an approved tax facility, it becomes apparent that the employee has labour and income in a particular country. This, in turn, may impact the social security position. However, despite widespread expectations to the contrary among assignees, the approval of the tax facility has no direct impact on immigration compliance.

2.3.9 Health insurance

When an internationally mobile employee travels abroad, he may become liable for health insurance. Contributing to national health care is directly linked with social security.⁵⁰ The need for health insurance in the host country is, therefore, a direct connection with international employment.

Within Europe, almost all countries have a universal health care system. This means that all workers need to contribute into a scheme, under which every citizen can draw for the key burdens of health care. This evens out the burden of health care amongst all, instead of an unlucky few that need health care.

There are two options in which an employee (and its family) may need to apply for health insurance.

Firstly, an employee may need to enrol in national health insurance as a requirement of/for registration in the municipality as part of the social security scheme in that country.

Secondly, if there is a social security treaty between the two countries, they may not fully overlap. In some cases, it might be necessary to take out health insurance in the host state on top of, for example, the national health insurance in the home country and the global health care provider.⁵¹

Pre-existing conditions could complicate any migration of health insurance. In some extreme cases, for example, a pregnant expat taking up an assignment in Europe may become uninsurable. This is the case because sometimes pregnancy can be seen as a pre-existing condition. In some countries, insurance companies are specializing in this type of uninsurable people.

When we look at health care, it becomes clear that initially, the need for health care says something about the place of social security and consequently taking out the insurance increases the compliance in this area. The effect on immigration compliance is secondary; e.g. it might be needed to take out health insurance to fulfil the immigration requirements. There is no direct connection to the tax position of an employee.

2.3.10 Shadow payroll

As mentioned in section 2.4.2, there are generally three reasons why an internationally mobile employee may become taxable in the host country:

1. The employee is present for more than 183 days in the host country, making the employee taxable as of day 1

⁵⁰ Recital (6) to Regulation 883/2004.

⁵¹ An (admittedly non-EU) example of this is the treaty between the Philippines and The Netherlands. As there is no overlap in coverage, an additional health insurance needs to be taken out in The Netherlands.

2. The employee creates a permanent establishment with the activities the employee is performing
3. The employee has an economic employer in the host country, also making the employee taxable as of day one when the three requirements of recharging, authority and risk-bearing are fulfilled.

In order to pay the correct taxes for the days worked abroad, the internationally mobile employee needs to be added onto a shadow payroll. In essence, this means that the host country runs a second payroll for all income tax payable over days not spent in the home country. Depending on where the employee is socially insured, the shadow payroll may also take into account social security premia.

Therefore, if an employee has been added onto a shadow payroll, this is not only a clear indication of international employment, but also that an employee can no longer qualify as a frequent business traveller. As far as the latter is concerned, addition to a shadow payroll tells the employer that the employee is travelling more frequently than an average frequent business traveller, and so frequently that the employee has now created a tax liability outside of the home state. It is essential to annually confirm that the correct employees are on the shadow payroll. A correct onboarding increases compliance, but an incorrect onboarding immediately evens this out.

Within Europe the economic employer principle may result in difficult judgment calls whether someone should be on the shadow payroll or not. Especially hybrid or matrix organizations may find it challenging to establish an economic employer definition within the company. These companies are generally advised to set a policy and stick with it. The narrative should be uniform towards the tax office would they audit the books.

While there is a direct connection with tax and shadow payroll onboarding, there is also a direct connection with social security. If the wrong premia were paid in the wrong country, it would be a costly and time-consuming exercise to reverse that after the event. Onboarding an employee onto a shadow payroll will not no directly impact immigration compliance.

2.3.11 Nationality

It is essential to know the nationality of the internationally mobile employee as well as the nationality of its family members. The nationality has a direct impact in the right to work under EU treaties and therefore, immigration as mentioned in section 2.4.4. Simultaneously nationality also has an impact on the freedom of movement and the eligibility to attend business meetings without the need for a work permit (subject to thresholds).

Within the EU, EU nationals have freedom of goods, capital, services and movement.⁵² This entails that EU-nationals are free to move to other EU-countries and take up employment there without the need for a residence or work permit. This is different for third-country nationals. Third-country nationals are defined as a person with nationality not of the EU-countries and Norway, Liechtenstein, Iceland and Switzerland (EFTA). Third-country nationals may have a residence and work permit in an EU-country, but they do not have all freedoms that an EU-national has. For third-country nationals with a residence permit within the Schengen area, there is free movement within this area. However, these third-country nationals are not free to move their labour within the Schengen area. Therefore, a work-permit may still be needed. Even for business meetings, 90/180 day thresholds still apply.

⁵² Articles 45 et seq. of the Treaty on the functioning of the European Union

Besides this, it is essential to remember that third-country nationals may also have to spend a minimum number of days in their host country, under their residence permit in that country. Based on all the above, it is clear that it is vital to track the dates working abroad for an internationally mobile employee and to ensure that these are aligned with the applicable maximum for employees with the relevant nationality.

From the above, it becomes clear that nationality has a direct impact on the compliance in the field of immigration. Its impact on tax and social security is smaller. The nationality of a person will also not automatically predict that an assignment qualifies as international, even though a change in the nationality in connection with an assignment would be a relevant factor.

Figure 3 below shows the complexity of the different areas within the European mainland.⁵³

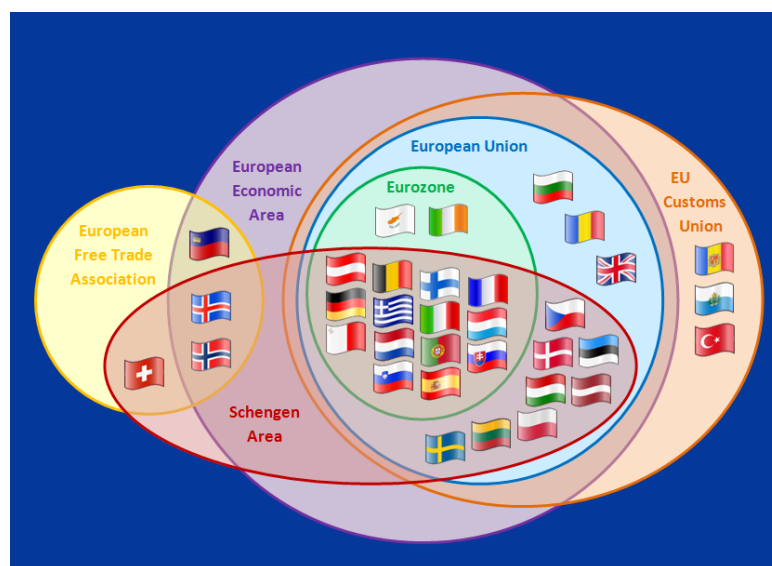


Figure 4.

2.3.12 Primary residence

It is essential to understand where an internationally mobile employee had the primary residence and if this changes during international employment. For all the differences in the exact legislation, it is crucial to keep in mind that the facts and circumstances around an individual dictate where that individual has primary residence. In general, the concept of primary residence is defined as the place in which the person has its main centre of activities.⁵⁴

The main centre of activities is a broad concept and mainly defined by facts and circumstances. However, from these facts and circumstances, technical obligations and duties may arise. Clear indicators of primary residence within a particular country are the place of work, place of registration⁵⁵, the place of residence, the place of study, the place where children go to school and the place where the centre of social activities are.

⁵³ <http://european-visa.blogspot.com/2011/09/benefits-of-schengen-visa.html>

⁵⁴ <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-residency/>

⁵⁵ In the Netherlands: article 2.38(1) of the Wet BRP. For the Republic of Ireland, see further background on https://www.citizensinformation.ie/en/money_and_tax/tax/moving_country_and_taxation/tax_residence_and_domicile_in_ireland.html

Duties and obligations that may arise from changing primary residence in a country. Factors that may change the primary residence are: change in registration within the municipality or other administration, change in registration with the relevant tax authorities, change in employment, change in having an active bank account, contributions to an address outside of the country of primary residence, moving household goods and renting out a property.

Should the main residence change, it is essential to subsequently look into if there are any consequences in the field of immigration. More significantly, the change in primary residence has a direct impact on tax and social security.

The primary residence has a direct impact on tax as a person is generally taxable for their worldwide income in the place of the primary residence. Should the primary residence change, the tax position may, therefore, also change. Germany for example has a specific tax regime for resident and non-resident taxpayers.⁵⁶

Primary residence may also have a direct impact on social security. An internationally mobile employee is usually socially secured in the country of work. However, should the country of work and country of primary residence be different, it is essential to establish where the place of primary residence is.

From the above, it becomes clear that primary residence has a direct impact on immigration, tax and social security compliance.

2.3.13 Location of formal, material and economic employer

When an employee starts to work internationally, the employee moves from one employer to potentially two or even three employers. These employers can either be the formal (nominal) employer, the material employer and the economic employer (see section 2.4.2).⁵⁷

The formal employer is the legal entity with whom the employment agreement has formally been signed. The material employer is the legal entity that exercises daily authority over the employee. The economic employer is the legal entity that has the financial interest of the employee.

As an example, an internationally mobile employee may have signed a contract in the USA with the headquarter office of his or her employer (formal employer). The employee is then sent on a 3-year assignment to a group company in Budapest (material employer). However, his manager in Budapest is the global IT-manager with a formal employer in The Netherlands. The Dutch entity carries the risk and authority for the employee, and his costs are recharged there as well. Hence the economic employer is in The Netherlands.

It is essential to determine the locations of the formal, material and economic employers as they have a direct impact on immigration (depending on nationality), tax (especially when looking at the economic employer and potentially being taxable from day 1⁵⁸) and social security (as the main rule is that an employee is socially secured in the country of work unless the facts and circumstances dictate otherwise).

2.3.14 Family status

While family status is the last of the parameters to check against the compliance areas of immigration, social security and tax, it is one of the most important ones. Not only is it

⁵⁶ <http://taxsummaries.pwc.com/ID/Germany-Individual-Taxes-on-personal-income>

⁵⁷ Expatriate Handbook for Global Mobility Professionals

⁵⁸ For a Netherlands-German situation that went wrong for the employer in this respect: Dutch Supreme Court 1 December 2006, ECLI:NL:HR:2006:AZ3175.

essential to check what technically happens when a family does or does not join the employee abroad, the human aspect of global mobility comes to the foreground when analysing this parameter. It even feels strange to write down the family as a parameter, as they have such a significant role to play in the initiation, execution and success of an assignment. The family is a deciding factor on if the employee starts to work abroad at all, and their happiness during the assignment will have a significant impact on the success of an assignment. If the kids cannot find their feet in the new country and the spouse is not happy, the assignment may be terminated early or not extended after an initial period.

Having acknowledged the soft factor of the family status parameter, the family status also directly impacts the compliance areas of immigration, social security and tax.

The family has a direct impact on immigration, of course, depending on their nationality and ages of potential children. Not only is it essential to have the correct immigration procedure in place for the employee, but also the children and spouse. If the immigration for the family is executed incorrectly, it may very well be that the employee has to travel in and out of the country to rectify the mistake. This may bring high costs as well as significant delays. If a family is accompanying more documents are necessary to bring. Amongst others, it is vital to have the correctly legalised and translated birth, marriage and single certificates for all the family members.

The family is considered to be crucial in determining the place of primary residence and place of social security. Even when someone lives and works in country A but his family lives in country B, it may be argued the employee is socially secured in country B, despite the main rule being that the employee is socially secured in country A, the country of work.

It is essential to note that the family is included on a Certificate of Coverage declaration originated as part of the migration. Failure to do so implies that the employee's family members may need to take out local health insurance. This may seem a small thing, but might bring a financial burden to the employee, should health insurance be taken out retroactively to the date of registration in a country.

Depending on the country, there may be benefits attached to bringing a family on assignment. One can think of daycare benefits and health care benefits.

From the above, it becomes clear that the family, besides having a significant impact in the success of an assignment, also has a direct impact on the compliance areas of immigration and social security. Impact on taxation is conceivable, but less apparent.

Now that all parameters have been identified in the pages above, it is time to evaluate the findings on the separate parameters, and weigh and compare them below while acknowledging the limitations.

3. Findings, discussion, and limitations

Now that all the parameters have been discussed, albeit in a simplified version of the many cases one could think off, it is time to order the findings and see if and how they parameters influence the compliance in the area of immigration, social security and tax.

Firstly, a short summary will be given on all the separate parameters and how they influence the three compliance areas. Second, an overview of the compliance areas will be given, and which parameters are most relevant for these specific compliance areas. This choice was made because the overall conclusion will not leave a choice of compliance areas. Naturally, different companies will have different risk strategies and appetites, and they might want to focus more on a specific compliance area than others.

For example, a company that only employs EU nationals may not be too interested in being complaint regarding immigration. Should they have a complex matrix organization and unclarity internally on the recharging, being complaint on tax may be far more relevant? Hence the choice, to split the compliance areas and only bring them together in the conclusion below. All relevant compliance areas will be mentioned in order of importance (most important first) unless otherwise stated.

- The duration of an international assignment is the natural entry point of any analysis, as it has a direct impact on the compliance areas of tax, social security and immigration.
- The function during an international assignment has an impact on immigration and little on tax and social security.
- An approved tax facility has an impact on tax compliance, less on social security and no impact on immigration compliance. As this impact is only secondary, I rate the impact of such a facility on all compliance areas to be zero.
- Health insurance has a direct impact on the compliance area of social security, little on the compliance area of immigration and no impact on the compliance area of tax.
- Shadow payroll is directly linked to the compliance areas of tax and social security, and not linked to the compliance area of immigration.
- Nationality is important for the compliance area of immigration and not or less important to the compliance areas of social security and tax.
- The primary residence has a direct impact on immigration, tax and social security compliance.
- The importance of the parameter employer form is equally crucial for all three compliance areas.
- Family status not only has a direct technical impact on the compliance areas of tax, immigration and social security, it is also the most significant human factor to impact the assignment.

3.1 Crucial parameters for tax compliance

Should the focus within a company be to optimise the compliance in the area of tax the following parameters should be taken into account; employment law, change in a tax situation, social security, pension, duration, shadow payroll, primary residence, employer form and family status.

3.2 Crucial parameters for social security compliance

Should the focus within a company be to optimise the compliance in the area of social security the following parameters should be taken into account; employment law, change in a tax situation, social security, duration, health insurance, shadow payroll, primary residence, employer form and family status.

3.3 Crucial parameters for immigration compliance

Should the focus within a company be to optimise the compliance in the area of tax the following parameters should be taken into account; employment law, immigration, duration, function, nationality, primary residence, employer form and family status.

Below an overview can be found off the unweighted analysis based on the theory in the previous chapters. Compliance areas in which a specific parameter was supposed to have very little influence or insignificant, is being left out of the equation.

	tax	immigration	social security
1. Employment law	•	•	•
2. Tax situation	•		•
3. Social security	•		•
4. Immigration		•	
5. Pension	•		
6. Duration	•	•	•
7. Function		•	
8. Tax facility			
9. Health insurance			•
10. Shadow payroll	•		•
11. Nationality		•	
12. Main residence	•	•	•
13. Employer form	•	•	•
14. Family status	•	•	•

3.4 Limitations

The scope of this paper only allows for the subjects of compliance and the various parameters to be explored superficially. In an ideal approach, all tax, social security and immigration rules and laws would be fully explored and compared on a country-by-country basis. For instance, there is a statistical likelihood that some examples can be found where a tax facility has a direct impact on the immigration law position in a number of countries. It is however not the aim of this paper to give more than a generic overview of the impact of all the rules.

Another limitation is implied in the limitation to an EU analysis, with the occasional reference to EU law dealings with third-country nationals, who all bring their own set of rules. It is primarily these third-country nationals that bring headaches to many global mobility professionals when it comes to compliance.

A third limitation is that the scores are unweighted. Penalties and other financial impact are not the same in all three compliance areas. The penalties will also differ per

country; therefore, it was chosen to leave them unweighted. The matrix could however, easily be adapted to include weighted scores.

A fourth limitation is that not all internal and external thresholds can be taken into account for every company and country. It is, therefore, advisable for every company to go through the above steps and repeat this exercise to benefit their compliance direction and (internal) threshold.

In the upcoming section, the outcomes on the separate compliance areas will be combined, as to give one-set of parameters that will enhance the compliancy at large, irrespective of a preference for a particular compliance area.

3.5 Modelling the findings as regards the parameters to the assignment types

How can we define the assignment types by using the optimal set of parameters discussed? Now from the above overview, it becomes clear that the following parameters are enhancing compliance at all three compliance levels:

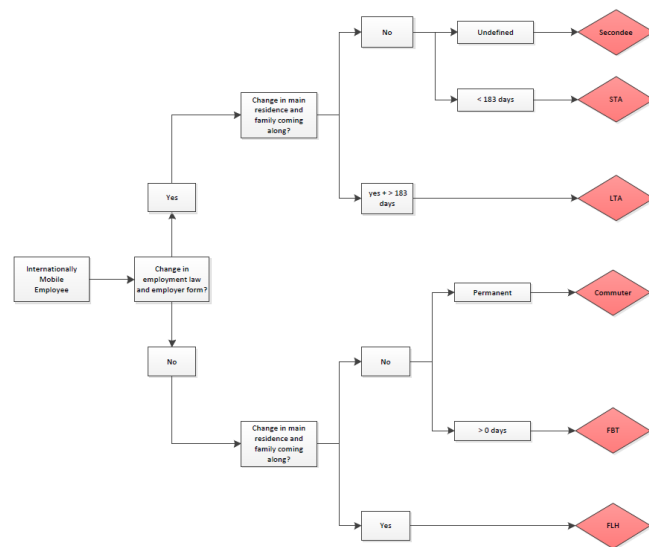
- Change in employment law
- Duration
- Change in the primary residence
- Change in employer form
- Family status

Below is a matrix combining these key parameters with the most common assignment types, to determine where the unique identifying characteristics of the assignment types lie. For clarity, a family situation was used to determine the status in the matrix. Also, the matrix is designed to review the situation before and after a potential assignment.

	FBT	STA	LTA	FLH	Commuter	Seconded
Change in employment law?	no	yes	yes	no	No	yes
Duration?	> 0 days	<183 days	>183 days	permanent	permanent	temporary
Change in primary residence?	no	no	yes	yes	No	no
Change in employer form?	no	yes	yes	No (1)	no (2)	yes
Family coming along?	no	no	yes	yes	No	no

(1) / (2) no home/host situation

Below is a flow chart that summarises the model.



The above flow chart combines the assignment types for internationally mobile employees with the parameters that are most likely to result in different treatments in the fields of tax, immigration and social security. On top of this, thresholds that form the boundaries between two types of assignment have been set in a manner that they reflect likely ‘tipping points’ in the applicable legislation.

4. Conclusion

Below will be given, firstly, the ultimate set of parameters for compliance on all three compliance areas. Second, the research question, as posed in chapter 1, will be answered.

4.1 Relevant set of parameters for tax, immigration and social security compliance

After looking at the relevant parameters in order to obtain the most compliancy in the field of immigration, social security and tax, it is now relevant to look at these parameters again. The aim is to determine the set of parameters that will enhance all three separate compliance areas. When we look at the overview again, it becomes clear that some parameters are relevant for all three compliance areas:

	tax	immigration	social security
1. Employment law	•	•	•
2. Tax situation	•		•
3. Social security	•		•
4. Immigration		•	
5. Pension	•		
6. Duration	•	•	•
7. Function		•	
8. Tax facility			
9. Health insurance			•
10. Shadow payroll	•		•
11. Nationality		•	
12. Main residence	•	•	•
13. Employer form	•	•	•
14. Family status	•	•	•

4.2 Answering research questions

In chapter 1, an overview was given of the research question and the research sub-question in order to affirm or deny the thesis statement.

Working my way up from the sub-questions to the main questions and ultimately the thesis statement, the answers are as follows:

When using unmodeled definitions for the assignment types of internationally mobile employees (in other words, choosing a particular package without due regard to all relevant facts and circumstances and their impact), the compliance areas of tax, immigration and social security are most at risk. In the course of the assignment, relevant thresholds in these areas may be crossed without stakeholders taking note in time.

Looking at an appropriate model, then, in this study, 14 parameters have been examined that typically have some relevance in the compliance areas. Without returning to the detail of the study, those parameters that have relevance in all three compliance areas are the standout parameters to use in any form of modelling. Qualitative research, scratching the surface of the applicable rules, was conducted to prove the relevance of the parameters for

the relevant compliance areas, in order to analyse in more detail their relevance for all three compliance areas.

The set of parameters to be used to increase compliance on all three compliance areas of tax, immigration and social security are: change in employment law, duration, change in primary residence, change in employer form and family status.

This set of parameters gave rise to a matrix and flow chart of assignment types set on the basis of the most relevant thresholds for immigration, tax and social security law. This in itself will significantly reduce the chances of an internationally mobile employee being assigned on a fundamentally inappropriate assignment model. While it should be acknowledged that the model itself has a level of granularity that may still cause compliance issues, the impact of, and the investment required to rectify, any such issues (including to manage the employee's expectations and potentially lack of engagement through 'mobility nitty-gritty') should be more manageable.

Therefore, the answer to the research question is in the affirmative: using theoretical defined assignment types increases compliance within internationally operating EU companies, when using the set of change in employment law, duration, change in primary residence, change in employer form and family status parameters. The increased compliance should above all materialise in the areas of tax, social security and immigration.