

Global Mobility Best Practices

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Agenda

Topic

Brief overview of the session's objectives

Global trends impacting mobility today

Immigration strategy to achieve mobility goals

Global mobility framework & tax considerations

Global employment models

Case Study

Q&A



Panelists

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Senior Manager
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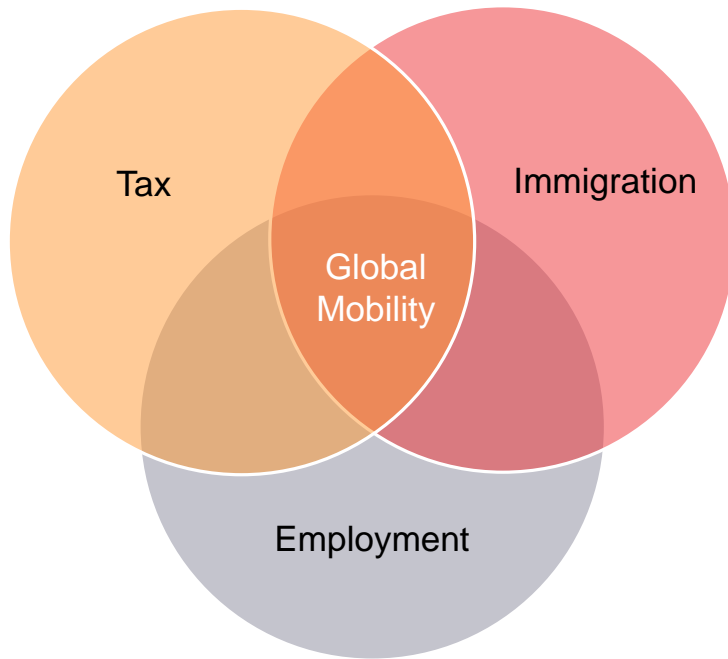
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Defining global
mobility

Global mobility defined



The cross-border move of employees triggers tax, immigration, and employment considerations.

The intersection of tax, immigration, and employment – with potentially competing or conflicting requirements, depending on jurisdiction – requires a holistic approach.

Strategic planning across intersecting areas

TAX

- Advising on corporate tax/PE risk
- Advising on individual income tax, social security and payroll triggers

Factors to consider

Tax residence, employment status, jurisdictions involved, extent of presence in a particular jurisdiction, and nature of the activities

IMMIGRATION

- Assessing requirements for short- and long-term travel
- Securing visas, work permits, and residency authorization

Factors to consider

Traveler's nationality, destination country, length of stay, nature of activities, and availability of a legal entity to act as sponsor

EMPLOYMENT

- Structuring short- and long-term assignments
- Drafting employment contracts and assignment agreements

Factors to consider

Contractual framework (including assignments, employment contracts), short-term and long-term priorities, rights to return to home location role

Global trends impacting mobility today

Global mobility landscape



Increased work flexibility

- Hybrid or remote work opportunities
- Flexible hour options including compressed workweeks, job sharing
- Greater focus on employee well-being
- Talent access vs attrition
- Freelancing vs traditional employment



Accelerated digital transformation

- Job displacement & creation: Automation vs AI integration, data analysis
- Flexibility in work models and assignment types
- Employee experience



Geopolitical factors

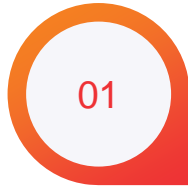
- Enhanced focus on offshore tax avoidance
- Transparency and information sharing
- Trade agreements
- Global supply chains
- Corporate governance with increased regulatory review and focus
- Immigration policies



Economic downturns and its effects on mobility

Increased Uncertainty in Markets

Economic instability leads to fluctuating exchange rates and at times unpredictable market conditions.



Talent Retention Challenges

Economic downturns can result in layoffs and hiring freezes, causing organizations to struggle with retaining top talent.

Opportunities for Cost Optimization

Companies can leverage economic turmoil to reassess and optimize their mobility programs, focusing on cost-effective solutions such as remote work arrangements and localized talent sourcing.



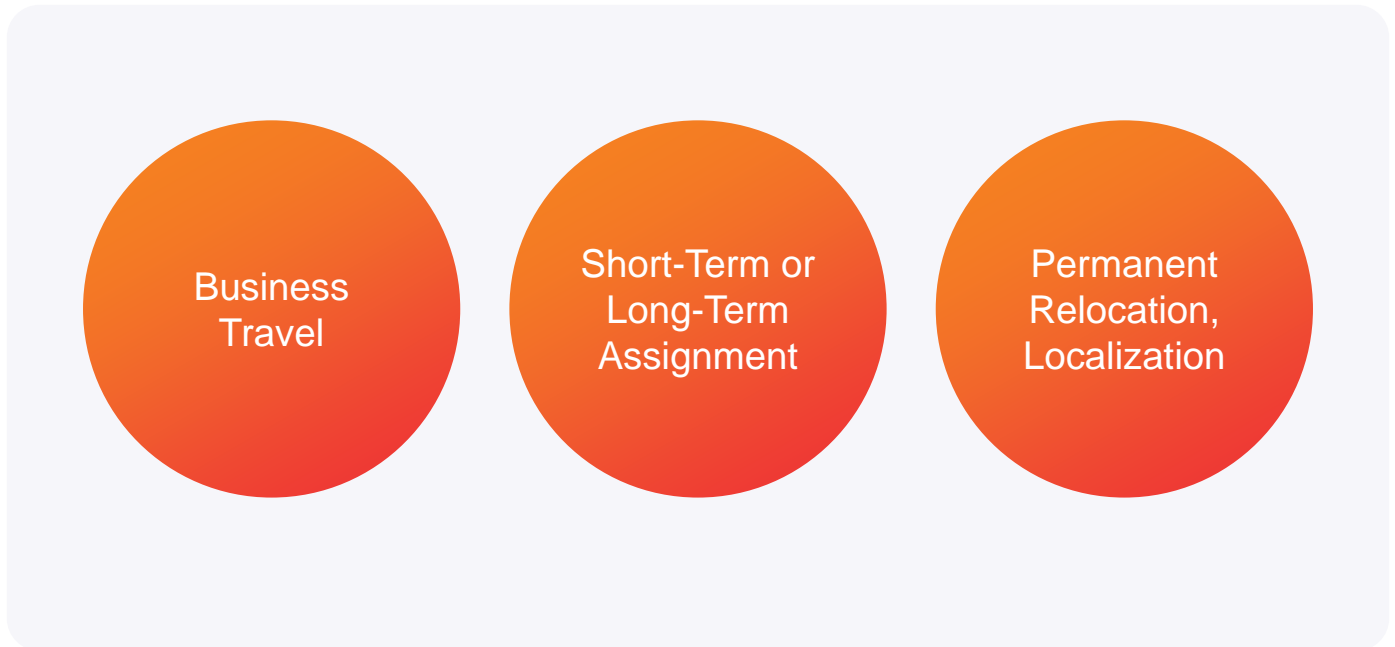
Geopolitical Risk Management

Organizations must develop robust strategies to navigate the geopolitical implications of economic fluctuations, ensuring they can adapt their mobility policies to mitigate risks.

Immigration
strategy to achieve
mobility goals



Immigration strategy: Traveler profile



Immigration strategy: Business travel



General principles:

Temporary purpose
Short duration of stay
Limited nature of activities
Remains on home country payroll



Red flags:

Recurring or frequent visits
Extended stays
Productive work, including billable or client-chargeable activities

Example: US Definition of Permitted Business Activities ([9 FAM 402.2-5\(b\)](#)):

- Engage in commercial transactions which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad);
- Negotiate contracts;
- Consult with business associates;
- Litigate;
- Participate in scientific, educational, professional, or business conventions, conferences, or seminars; or
- Undertake independent research.



Immigration strategy:

Business visa requirements

Visa-Waiver or Visa-Free

- Exempt from applying for visa label
- Pre-travel online registration may be required (e.g., ESTA for US-bound travel)

Visa-on-Arrival

- Visa is obtained upon arrival in host country, as part of immigration clearance

E-Visa

- Visa is electronically issued based on application

Visa or Entry Clearance

- Application must be submitted to Embassy or Consulate of destination country
- Visa label will be issued in traveler's passport

Travel-readiness depends on the visa requirement.

For example, for US-bound travelers:

- If UK citizen, immediately authorized to travel with a valid [ESTA](https://esta.cbp.dhs.gov) (<https://esta.cbp.dhs.gov>).
- If Indian national, must apply for a B-1 business visa from US consulate in India, where [visa appointment wait times](#) are over 400 days



Immigration strategy:

Work assignments (short or long-term)

- Employees relocating to host country for a bona fide work assignment will require **visa sponsorship**, if they do not otherwise have the legal right to work (typically, a citizen or permanent resident of the host country)
- Each country has its own work permit categories with **distinct eligibility requirements**, application steps, processing times, and employer and employee **obligations**
- **Common work permit categories:**
 - Intracompany transfer or ICT (US, Canada, France)
 - Degreed or skilled worker (US H-1B “specialty occupation,” UK “skilled worker”)

Factors impacting visa strategy:

EMPLOYEE

- Country of nationality
- Academic credentials
- Work experience
- Job position, including duties, salary, payroll, work location
- Employment arrangement
- Family members

EMPLOYER

- Corporate presence in host country
- Nature of business
- Ownership
- Whether domestic or multinational (operating in multiple countries)



Immigration strategy:

Work permit considerations

Corporate sponsorship requirements

certification to act as visa sponsor, proof of payment of corporate income taxes, proof of compliance with other employer or “doing business” obligations

Quota requirements

visa quota, local national quota

Employment tenure

with employer or other qualifying work experience

Qualifications

proof of required education, work experience, skills, training

Minimum wage

allowances and benefits (may or may not be included)

Visa validity

renewable on indefinite basis, or time-limited

Three-stage process (subject to requirements of jurisdiction):

1. **Work Permit:** Application filed with local labor or immigration authority, showing employee meets eligibility requirements
2. **Consular Process:** Visa application filed with the embassy/consular post by employee in home country
3. **Post-Entry Registration:** Post-arrival formalities and registrations completed with the local authorities, typically leading to the issuance of a Resident Permit and/or ID card



Immigration strategy:

Permanent relocation, localization

PERMANENT RESIDENCY

- Legal Permanent Resident, “Green Card,” Indefinite Leave to Remain
- Multiple pathways: Employment, Family, Investment, Self-Sponsor
- Typically, provides extended right to live and work in host country

Challenges

- Eligibility prerequisites may include labor market testing, certain work experience in host country
- Quotas
- Meeting or maintaining physical presence requirements, even post-approval
- Tax considerations

CITIZENSHIP

- Typically, eligibility to apply for citizenship after holding legal permanent resident status for required number of years and meeting other conditions
 - Note: Citizenship-by-investment pathways
- Provides right to apply for passport from host country, with rights accorded to citizens of that country

Challenges

- Meeting or maintaining physical presence requirements
- Tests for language, knowledge of history
- Dual nationality considerations
- Tax considerations

Global mobility framework & tax considerations



Global mobility framework



Strategic Alignment with Business

- Business expansion
- Talent mobility as a competitive advantage
- Integrating mobility costs into the company's financial planning and reporting on ROI, cost savings or productivity



Duty of Care

- Talent management & employee experience
- Connected experience for employee and corporate internal stakeholders including finance, legal and HR
- Benchmarking & continuous improvement
- Company awareness of work location, time periods, citizenship and residency to manage risk exposure for individual and company.



Governance Model

- Supports compliance with local and international regulations
 - Individual tax
 - Corporate tax (Permanent Establishment, Transfer Pricing, VAT)
 - Global employment/payroll tax requirements
- Policy and program design
- Risk management including tax, legal, security and health
- Data privacy and security



Importance of planning for globally mobile population

Exploring Opportunities and Benefits

Tax & Employment Obligations

- Different countries have unique definitions and rules regarding tax residency and basis of taxation, leading to potential complexities for individuals with cross-border ties or multiple residences.
- Number of days spent in country or the location of one's permanent home may be used to determine tax residency, influencing an individual's global tax rate and responsibilities.
- Social and welfare coverage
- Pension and benefits

Minimize global effective tax rate for individuals

- Leverage exemptions or expatriate provisions
- Double taxation may occur based on timing differences or variances in the character of income when an individual becomes taxable in multiple jurisdictions.
- Foreign tax credit rules in the US limit credit on taxes paid or accrued in the year for a specific basket (or category) of income. Misalignment on timing of payment can result in double taxation or result in adverse cash flow for the individual.

Facilitates Compliance Locally

- Individual activities and/or individual taxation often incite employer responsibilities (for example, payroll reporting & withholding; or Permanent Establishment exposure).
- Labor law, currency exchange controls, mandatory benefits and entitlements
- Leveraging multi-disciplinary team

Planning Opportunities

- Planning opportunities and leverage treaty benefits.
- Effective structuring of compensation and employment
- Timing of events or key pay-outs in consideration of residency timing can offer cost benefits.
- Review personal investment considerations for individuals moving globally.
- Company policy decision to support vs laissez faire



Taxation of US citizens

Navigating Tax Residency and Basis of Taxation

Basis of taxation

- US citizens are taxed on worldwide income.

Exemptions and credits available

- **Foreign earned income exclusion** [IRC §911] allows "qualified individuals" to elect to exclude from gross income foreign earned income and housing cost amount. Qualified individual is an individual whose tax home is in a foreign country and who is
 - A US citizen who established they are a "bona fide resident" of a foreign country or countries for an uninterrupted period that includes an entire taxable year (Bona Fide Residence Test), or
 - A US citizen or resident of the US who during any period of 12 consecutive months, is present in a foreign country or countries during 330 full days in such period (Physical Presence Test)
- **Foreign tax credit** [IRC § § 901-906, 27] for foreign income taxes paid or accrued limited to:
- [individual's US tax before applying credit] * [foreign source taxable income/total worldwide taxable income]
 - Calculated separately with different baskets: 1. General, 2. Passive, 3. Foreign branch and 4. 951A income.
 - Source of income determined under US sourcing principles §861-865

US tax residency for non-citizens

Navigating Tax Residency and Basis of Taxation

Tax Residence

- Individuals will be considered tax resident if
- Greencard holder (lawful permanent resident) [IRC §7701(b)(1)(A)(i)], or .
- Meets the substantial presence test (SPT) [defined IRC §7701(b)(3)]
 - Present in the US at least 31 days during current year, and
 - Total # of days individual was present in US during the current year + 1/3 days in the preceding year + 1/6 days in the 2nd preceding year equals or exceeds 183 days
- With noted elections and exemptions including
 - Residency election §7701(b)(4); §6013(g) and §6013(h)
 - Exemption for days in the US in calculating SPT for Government (A or G visa), Teachers/Trainees (J or Q visa) and Students (F, J, M or Q visa)
 - Medical exception
 - Closer Connection Exception

Basis of Taxation

- Resident aliens: taxed on worldwide income
- Nonresident aliens: Gross income includes only ECI and generally US source income-
 - Gross income: §872(a),(b); Deductions: §873
 - Sourcing of income: §861-865
 - ECI: §864(b),(c); ECI tax §871(b); Non-ECI tax: §871(a)
 - Taxpayer must be engaged in a trade or business within the US (ETBUS)
 - Determine income which is “effectively connected with a US trade or business”
 - FDAP: US-sourced fixed or determinable annual or periodic income
 - subject to gross basis taxation at 30%, withholding under §1441
 - §871(i) exempts portfolio interest at US bank from tax for NRAs
 - Capital gains of NRA present less than 183 days is generally exempt if assets are not connected with a US trade or business
 - 7701(b)(10): special rules for temporary nonresident aliens

Tax treaties

Navigating Tax Residency and Basis of Taxation

Tax Residence – Treaty Tie Break

- An alien considered a resident based on either SPT or a green card may, for any portion of a tax year, be treated as a nonresident alien for purposes of calculating federal income tax if requirements are met and benefits of treaty are chosen. Reg. Sec. 301.7701(b)-7
- Form 1040NR with Form 8833 required. [*Aroeste case*]
- An individual resident under US domestic law may qualify solely as a foreign resident if resident in a treaty country and ‘tie-break’ to the treaty country. Typical order of tests: >> Permanent Home Available >> Center of Vital Interests (Personal, Economic) >> Habitual Abode >> Citizenship >> Competent Authority
- Taxpayer must be a resident of the foreign country under the domestic law of such country
- Taxpayer must meet other rules outlined under treaty for residence [*Stephen Podd case*]

Treaty key aspects

- “Saving clause” included in all treaties that allow the U.S. to tax its citizens as if the provisions of the treaty do not apply
 - Certain limited exceptions apply with regards to Pension, Social Security, Annuities, Alimony and Child Support
- US taxpayers benefit from tax treaties by limiting the foreign jurisdiction's ability to tax the US taxpayer's foreign activities
 - Reduced tax rates (down to 0%) on dividends, interest, royalties, gains from the sale of property.
 - If taxpayer does not claim the benefit of a treaty in the foreign country, taxes paid in excess of the treaty rate will be considered non-compulsory and non-creditable
- Mechanisms provided for relief from double taxation and relief from taxation not in accordance with the treaty through the competent authority process



Companies sponsoring green cards

Navigating Tax Residency and Basis of Taxation

Green card status & exit tax

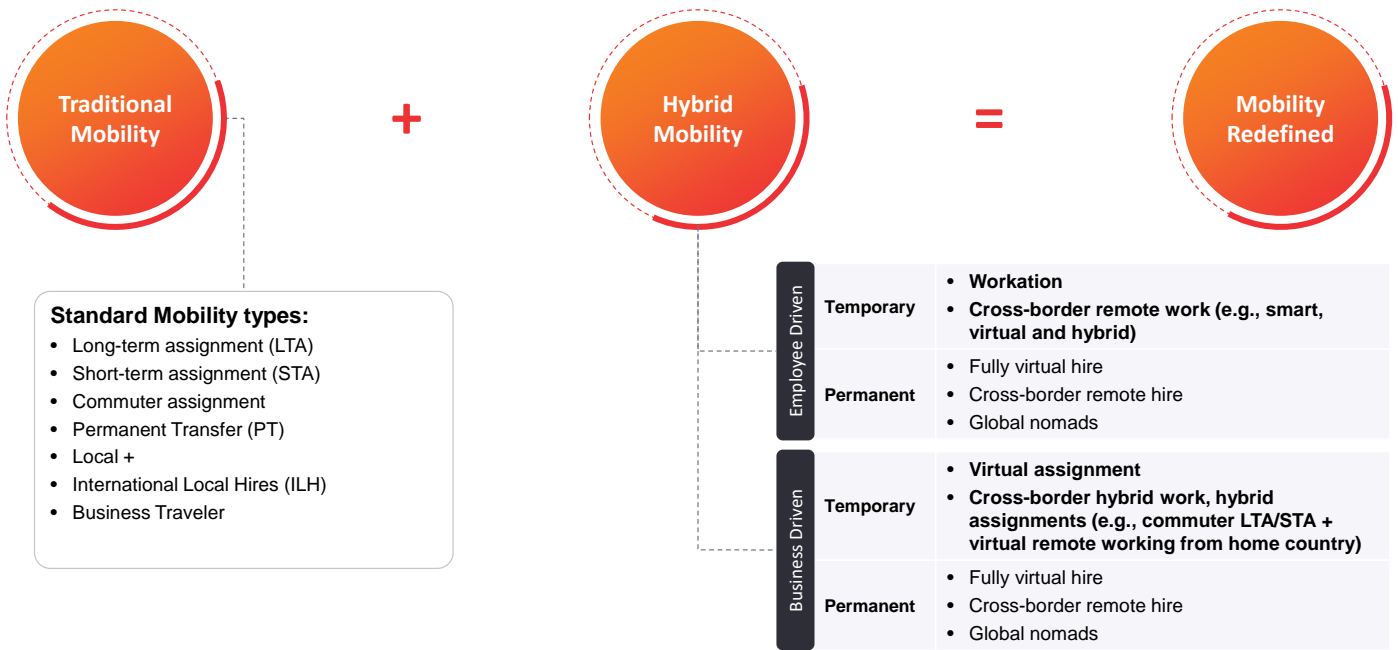
- When US citizens renounce citizenship and relinquishes US status, expatriation and exit tax rules applies.
- Green card holder who has had the status of a legal permanent resident and has been a permanent resident for any part of 8 of the past 15 years, are subject to expatriation laws
- Expatriation on or after June 17, 2008, expatriation taxation applies if:
- Average annual net income tax for the 5 years ending before date of expatriation or termination of residency (\$190,000 for 2023),
- Net worth is \$2 million or more, or
- Fail to certify on Form 8854 compliance with US federal tax obligations for the 5 years preceding expatriation

Expatriation Rules IRC 877A

- Property of a “covered expatriate” treated as sold on the day before expatriation at fair market value
 - Reduced by \$821,000 (2023 amount); apportioned against all gains ratably
 - Step up in basis to FMV on first date of residency for GC holders
 - Deferred compensation amounts are not treated as disposed (30% withholding upon distribution)
 - Tax deferred accounts taxed on expatriation as if distributed
 - Election to defer payment of tax made on specific asset basis with certain requirements

Global
employment
models

Defining mobility in today's world



Typical global employment models

Employers are much more likely to want employees to work two to three days remotely, whereas employees are more likely to want five days remote.



What is a PEO/EOR?



- Administers payroll & benefits
- Provides HR administration functions
- Assists with employer compliance

- Maintains direction & control of employee
- Determines compensation
- Conducts performance reviews

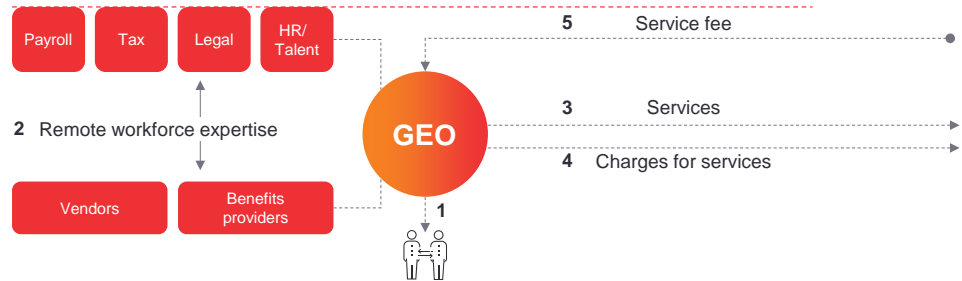
- Works solely on behalf of the company
- Passes themselves off externally as employee of client (e.g., LinkedIn, business cards etc.)

What is a GEO?

A GEO allows for the employment of offshore local workers, along with the provision of intercompany services in locations without a local (entity) presence.

Goal of a GEO:

To manage a global workforce of offshore local workers in a tax-effective and administratively efficient environment while simultaneously providing workers with benefits and a worthwhile employee experience



A GEO acts as an “in-house services agency”, leveraging offshore local workers and/or other select global populations:

1. GEO legally employs individuals, pays salary and provides benefits
2. GEO provides specialized administration to the unique population
3. GEO provides services via GEO employees to affiliated operating entities.
4. GEO charges a service fee to the affiliated operating entities who engages with them for services
5. GEO receives service fee from these affiliated operating entities



Typical global employment models

	Independent contractor	PEO/EOR	Existing foreign operating entity	GEO
Employee of organization	No, self-employed	No, EOR employs	Yes	Yes
Pay method	Accounts payable	EOR pays; company pays service fee	Company payroll	Company (GEO) payroll
Provision of company benefits	No	No	Yes	Yes
Employee affiliation	Limited	Limited	Moderate to high	Moderate to high
Management of reporting and withholding	Contractor manages	EOR manages, gaps may exist	Employing entity manages	GEO manages
Corporate risk	Contractor manages, potential grey area	EOR does not provide protection	Operating entity at risk	GEO can help mitigate
Location of legal employer	Not applicable	EOR location	Operating entity location	GEO location
Local immigration sponsorship	No	Yes (where EOR is in work location)	No	Possibly, based on GEO local presence
Setup time	<30 days	30–75 days	<30 days	100 days+

Case study

Global Mobility Case Study

Background

- US Headquartered Company with international office in India
- Business wants to move the India Department Head to the United States, with a plan to promote her to CTO.
- She will be on a two-year contract assignment from India to the United States, with an option to extend.
- She is accompanied by her spouse and 2 kids

Questions?