

COVID (Tele)Commuting Conundrums

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Agenda

Introductions

(Tele)Commuting Conundrums

Forced Displacement

Chosen Displacement

Virtual Relocations

Telecommuting Policy

Questions

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Revance Therapeutics, Inc

Public since February 2014

In 2014 only California and 60 employees

By end of 2019, 5 states and 192 employees

By end of 2020, forecasting 32 states and 410 employees

- HintMD acquired 7/23/20
- Product launch and sales teams to begin in August 2020

Issue:

- Previously stock options and RSAs to all new hires
- Currently RSAs to all employees, stock options to senior level, PSAs to executives
- ESPP

Vocera Communications, Inc

Public since March 2012

Approx. 700 employees worldwide

Six countries and 39 U.S. states

Issue:

- Previously RSAs, RSUs, PSU, stock options and ESPP
- Currently RSUs, PSU and ESPP

Match The Quote to The CEO

QUOTES

"We're going to be the most forward-leaning company on remote work at our scale"

"... prepare to work remotely through October and possibly to the end of the year"

"The workplace we all know is a thing of the past"

"..employees whose jobs permit it will be allowed to work remotely forever — even after the coronavirus pandemic is over."

CEO

Mark Zuckerberg, Facebook

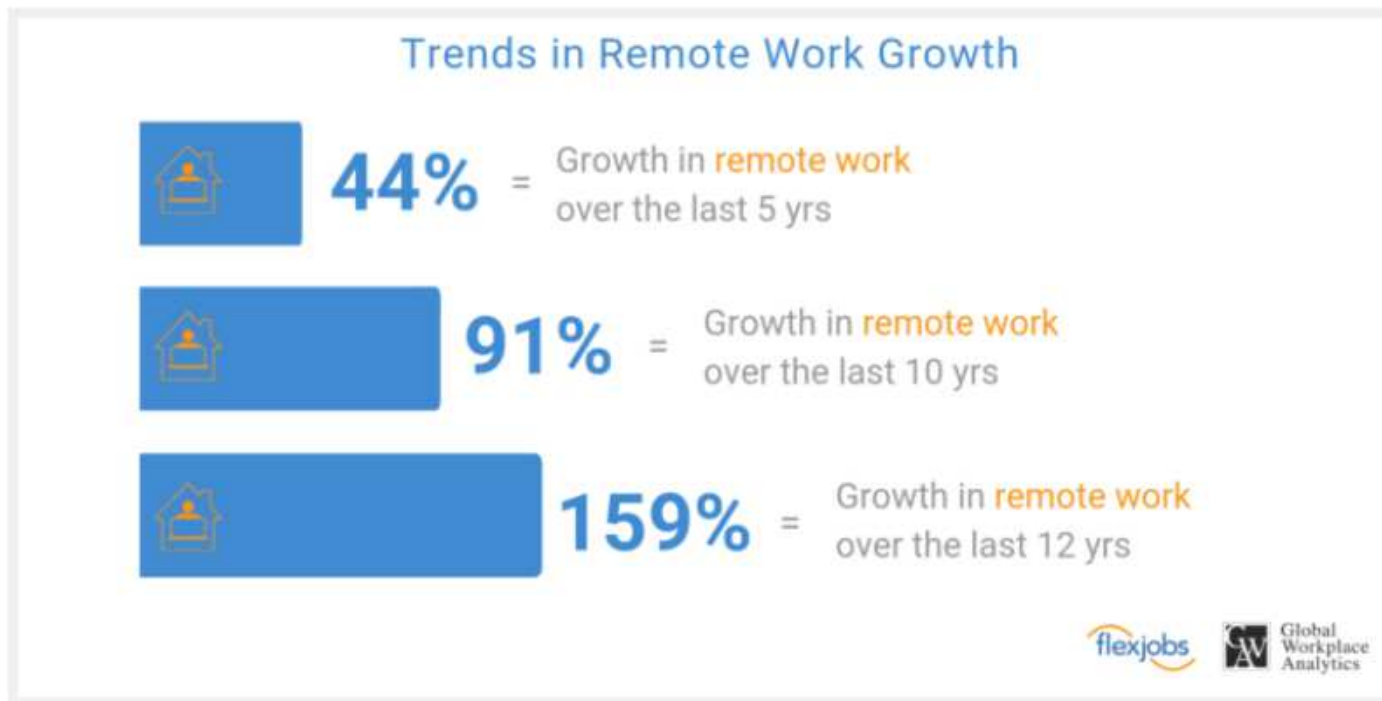
Sundar Pichai, Google & Alphabet

Todd McKinnon, Okta

Jack Dorsey, Twitter

Future Trends

Pre-pandemic increase of working remotely



* Flexjobs survey from 2005 to 2017

Polling Question

How supportive was your company to employees working remotely pre-pandemic?

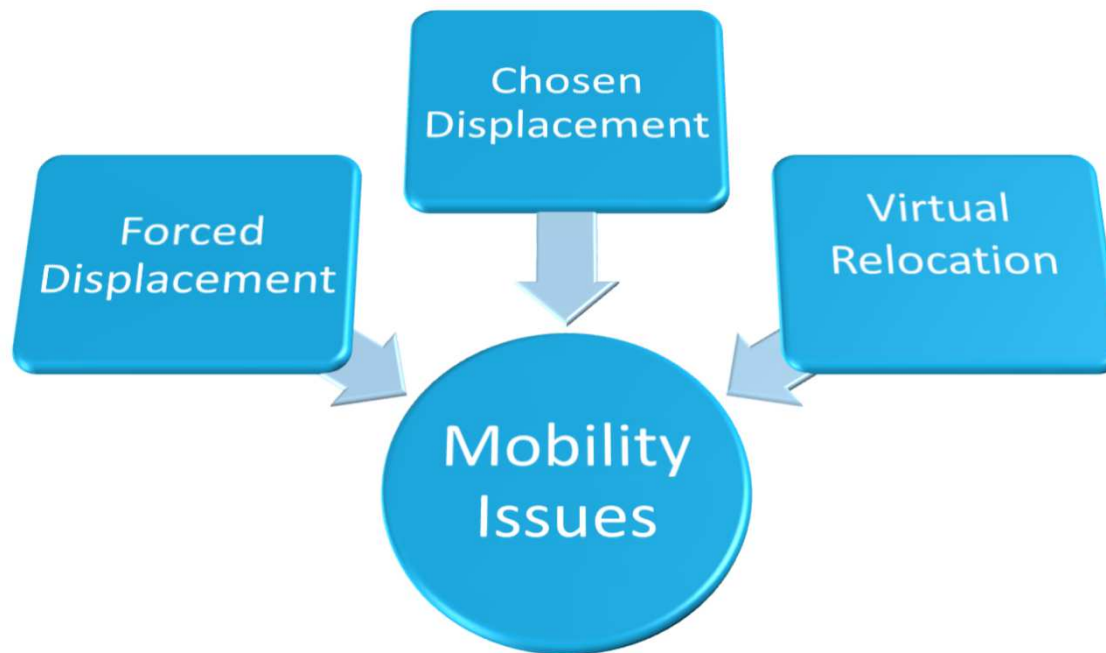
- 1) Not at all
- 2) In limited circumstances
- 3) Somewhat supportive
- 4) Extremely supportive
- 5) Not applicable

Polling Question

How supportive has your company become to employees working remotely even after offices are open post-pandemic?

- 1) Not at all
- 2) In limited circumstances
- 3) Somewhat supportive
- 4) Extremely supportive
- 5) Not applicable

COVID (Tele)Commuting Conundrums



Mobility issues can be domestic or international

What Are The Mobility Issues?

Income taxation

Employer payroll obligations

Employee tax return obligations



Our focus today

Gathering location data

Corporate nexus

Immigration & visa

Labor laws



Outside scope of today's presentation

Terminology

Anti avoidance – legislation that ignores certain actions taken solely for the purpose of avoiding tax

Jurisdiction – a country, state or locality. For the purposes of our webinar today, jurisdiction will be used to refer to a taxing authority

Mobile employee – an employee who works in more than one jurisdiction between the grant of the award and the sale of the shares

Reciprocal agreement – an agreement between two U.S. states whereby the individual is only taxed in the resident state even if working in the other state

Residence – refer to the jurisdiction where someone is resident. Each jurisdiction has different rules on becoming or ceasing to be a resident. Residents are usually taxed on worldwide income

Terminology

Rev Proc - an official statement of a procedure that affects the rights or duties of taxpayers or other members of the public under the Internal Revenue Code, related statutes, tax treaties and regulations and that should be a matter of public knowledge

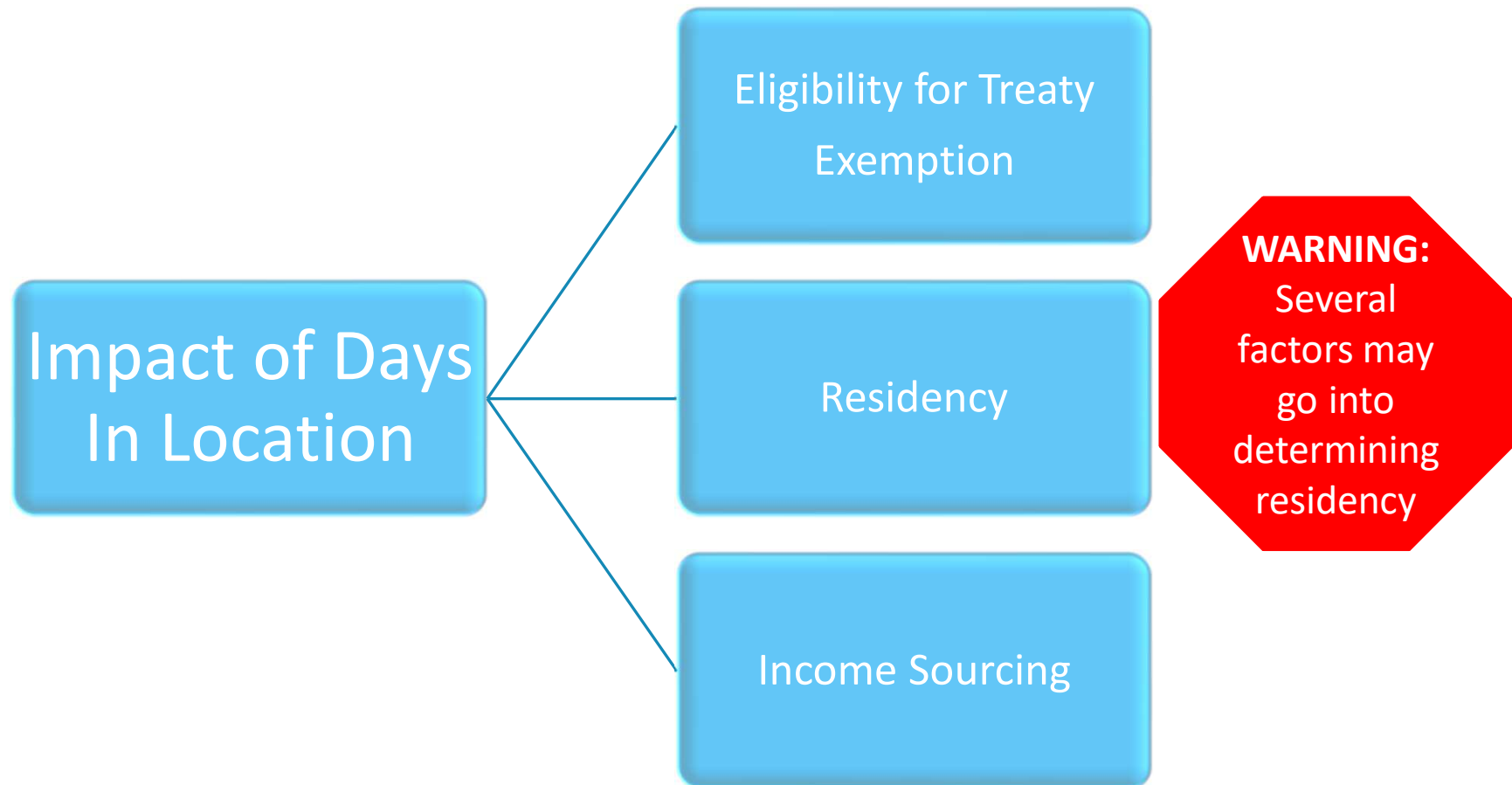
Sourced/allocated income – the income arising from a jurisdiction, for compensation this usually determined by the number of workdays spent there

Telecommuting/Remote working – working for an employer from your home which may be located in another jurisdiction

Trailing Tax Liability – a tax liability that arises after an individual has left the Jurisdiction. Usually because income allocated to that jurisdiction is paid after the individual has relocated

Treaty – an agreement between two countries to apply taxes in a certain way to avoid double taxing individuals

Days - Impact on Taxation



Tax Treaty Exemptions

Tax treaties aim to avoid situations where individuals and companies pay double tax on the same income

Each treaty is different

Example from U.S. Model Treaty:

Article 14 INCOME FROM EMPLOYMENT

1. Subject to ...salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days for all twelve-month periods commencing or ending in the taxable year concerned;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

c) the remuneration is not borne by a permanent establishment that the employer has in the other Contracting State.

Residency & Taxation

Residency rules vary by jurisdiction

Possible to be resident of more than one state – but unlikely

- Most states view this as only one state and that of primary residency

Most jurisdictions tax worldwide income of residents

- Regardless where income originated or was earned
- May provide tax credits for taxes paid to other states
- Tax credits may not be available at withholding level

Most jurisdictions tax income of non-residents earned in that state

- Allocation of income earned over time
- Applies to former residents and “never-residents”

U.S. Residency

Two main tests:

- Green card test
- Substantial presence test
 - 31 days during the current year, and
 - 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - All the days you were present in the current year, and
 - 1/3 of the days you were present in the first year before the current year, and
 - 1/6 of the days you were present in the second year before the current year.
 - Certain exemptions apply including the count of days you are unable to leave the U.S. because of a medical condition that develops while you are in the United States
- Rev. Proc 2020-20 ignores up to 60 consecutive days of U.S. presence that due to travel disruptions caused by the COVID-19
- Each state has their own residency tests

California Residency

FTB Publication 1031 Guidelines for Determining Resident Status

A resident is any individual who meets any of the following:

- Present in California for other than a temporary or transitory purpose.
- Domiciled in California, but outside California for a temporary or transitory purpose.

A nonresident is any individual who is not a resident

Closest Connection Tests:

- Amount of time spent in California vs outside California
- Location of family
- Location of your principal residence
- Driver's license
- Vehicle registration
- Etc.

A company can accept employee's determination of residency as long as it is reasonable

Addresses & Taxation

Both home address and work address can impact taxation

Consistency with payroll

- And ideally with HR

Remote workers need extra attention as sometimes 'work state' refers to employment office location which may not be where the employee works

Reporting full income to resident state

- Software limitations

Sourcing Principles

The general rule is that income is sourced where it is earned

If earned over time, the sourcing is over the “earnings period”

Each tax jurisdiction may have a different determination of

- Sourcing
- Earnings period

Sourcing \neq taxability

Sourcing is important to determine:

- Amount subject to tax in nonresident jurisdiction
- Amount allowable for tax credits

U.S. Sourcing Rules – Equity

Since January 1, 2006 ‘default’ Federal sourcing is based on U.S. workdays from grant to vest

Some treaties allow sourcing using days from grant to exercise:

- U.S.: Canada
- U.S.: Japan
- U.S.: U.K.

Specific grants may require different sourcing

- E.g., an award granted for a project undertaken in a particular location

State sourcing may differ

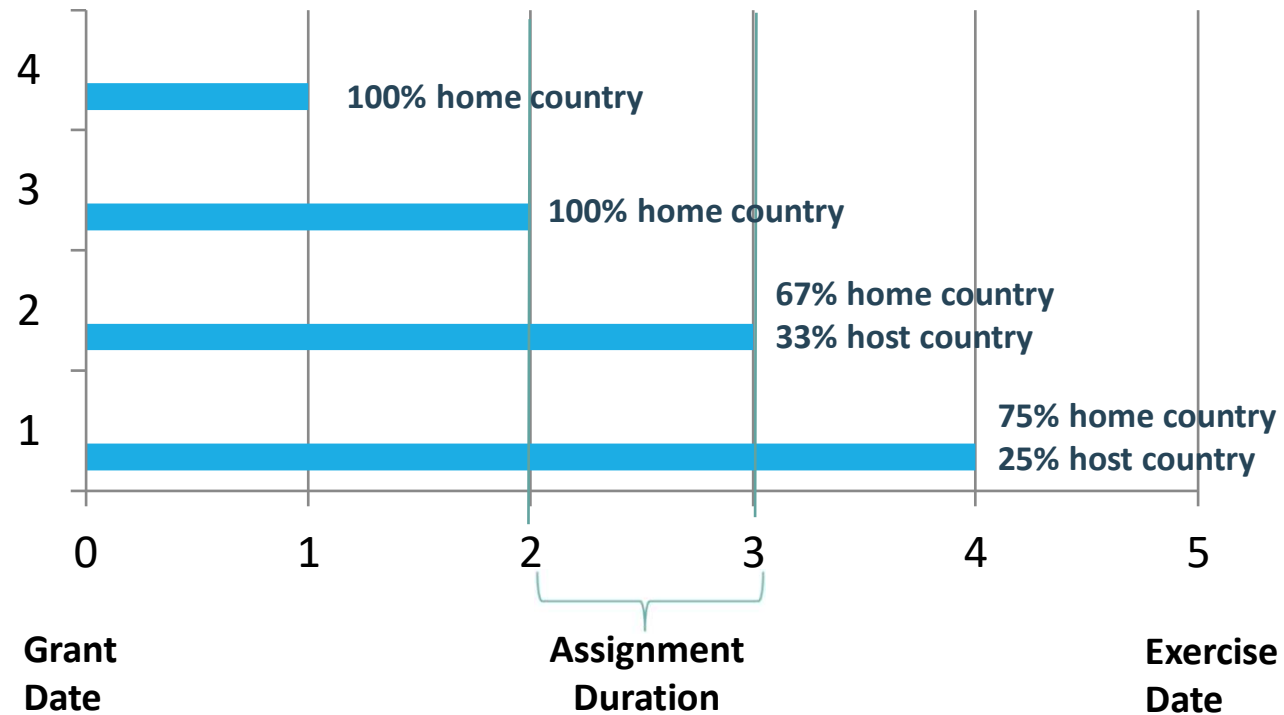
- E.g., Arizona, California

CA Sourcing Rules - Equity

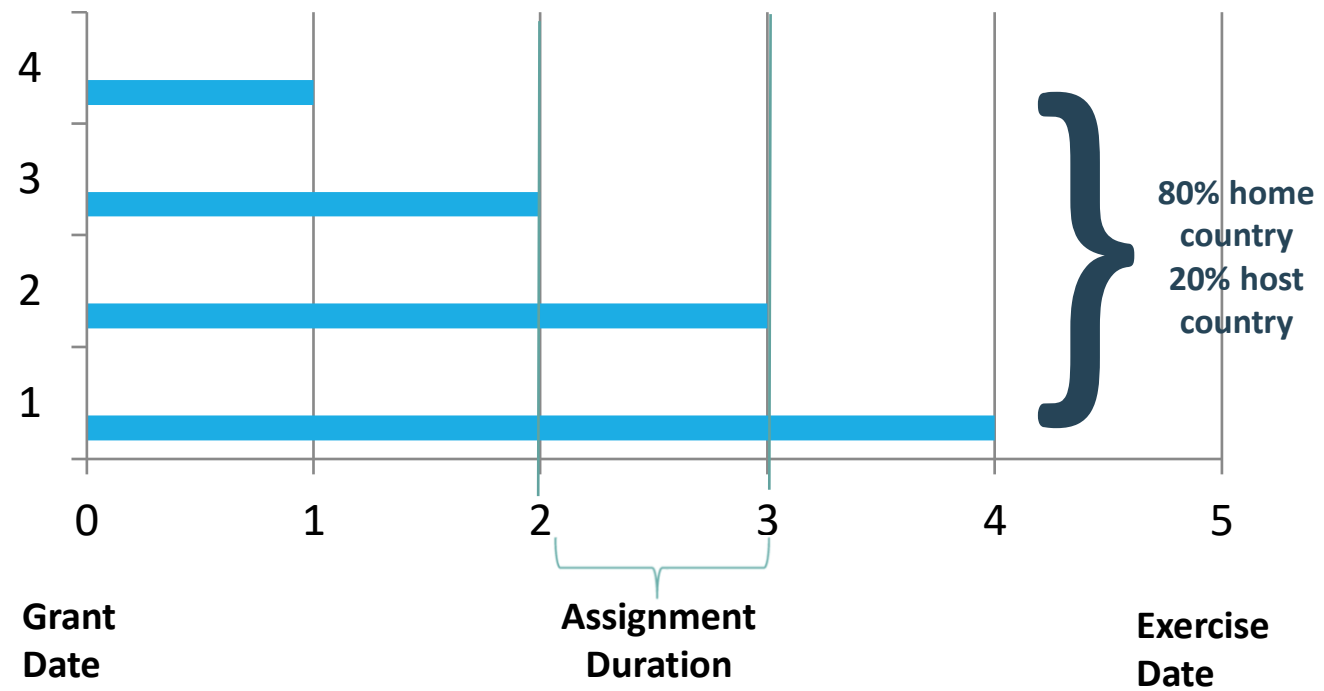
Income taxable to the extent earned in California

- Title 18 17951-2 Income from Sources Within This State includes *“compensation for personal services performed within this State”*
- Sourcing depends on percentage of workdays. 17951-5: *“...portion of the total compensation for personal services which the total number of working days employed within the State bears to the total number of working days both within and without the State..”*
- Non-qualifying stock option examples and audit manual use time between date of grant to date of exercise
- RSU guidance is to use time between date of grant to date of vest

Grant to Vest Sourcing



Grant to Exercise Sourcing



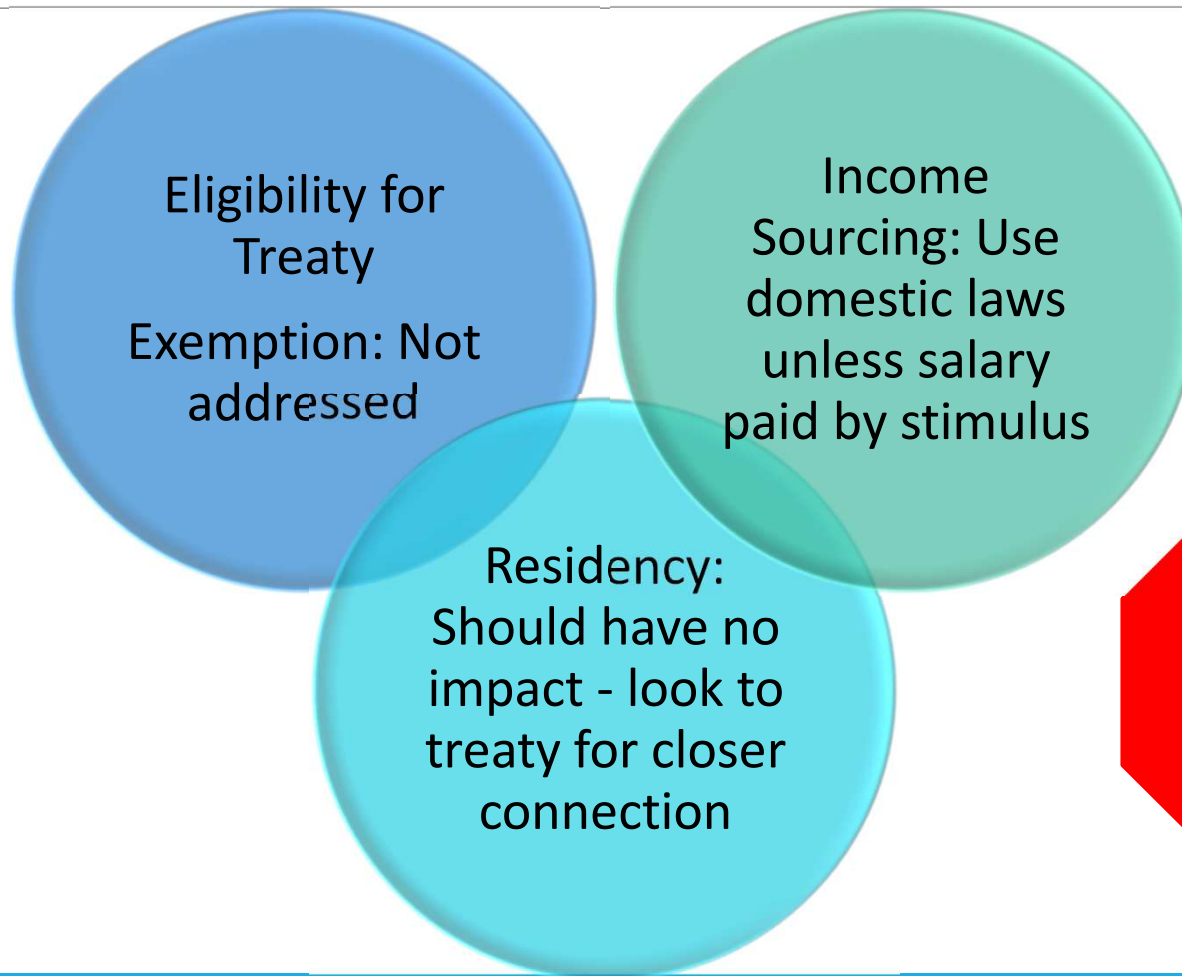
OECD

Organization of Economic Development And Cooperation (OECD)

- Provides guidance on tax related matters for cross-border business
- Released *Cross-border Income Tax Issues Arising From Employee Stock-option Plans* in 2004
- They have no regulatory authority, but membership includes many countries including U.S.

OECD issued *Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis* on April 3, 2020

OECD Recommendations



WARNING:
OECD paper is 9 pages
this slide contains a shortened summary

What Have Countries Done?

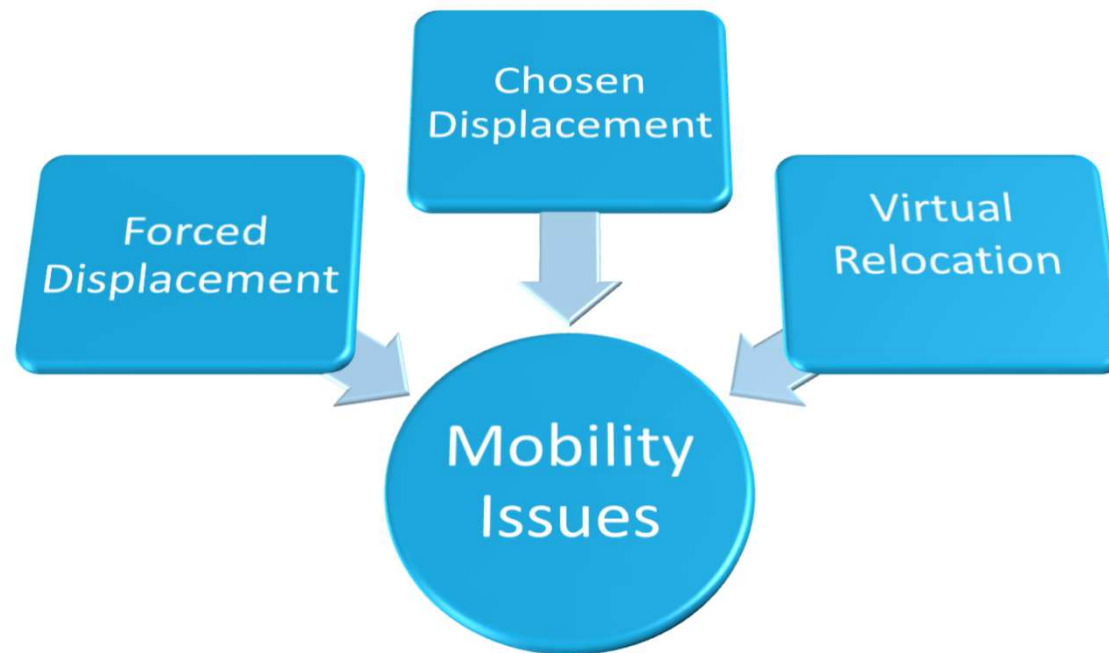
Extended Filing Deadlines

- Canada
- Ireland
- United States

Ignored 'Forced' Days of Presence

- Canada
- India
- Ireland
- Singapore
- United Kingdom
- United States

COVID (Tele)Commuting Conundrums - Refresher



Mobility issues can be domestic or international

Polling Question

Does your company have the following types of mobility as a result of the COVID-19 pandemic?

- 1) Forced Displacement
- 2) Chosen Displacement
- 3) Virtual Relocations
- 4) Two or all of the above
- 5) Don't know / Not applicable

Forced Displacement

Review host jurisdiction rules on

- Residency
- Income sourcing & taxation
- Tax treaties
- COVID-19 exemptions



Case Study 1

Background

Chinese National

U.S. resident since 2010

Returns to China pre-pandemic to visit family and is forced to shelter-in-place in China

Individual works remotely from China for U.S. employer

Tax Treatment

China usually taxes Chinese nationals as residents

Unlikely to break U.S. residency

Look to treaty for tie-breaker tests

If paid by U.S. entity which has no China presence, then employer position not to report income or withhold taxes for China

Chosen Displacement

Is the move short-term or long-term?

- Did they retain their home in the home jurisdiction?
- Has the address in HRIS system changed?
- Did they request a change to their payroll taxation?

Review host jurisdiction rules on

- Residency
- Income sourcing & taxation
- Tax treaties

These individuals moved voluntarily and are unlikely to be able to benefit from any COVID-19 exemptions

- Check local laws to confirm

Case Study 2

Background

California based employee

Decides to shelter-in-place with family in Colorado

Individual works remotely from Colorado for California employer

Tax Treatment

Is the move temporary or permanent?

If permanent

- Treat as transfer to Colorado
- Tax in Colorado for all income with credits for California taxes
- Tax in California on California sourced income

If temporary

- Likely to remain California resident
- Tax in California for all income with credits for Colorado taxes
- Tax in Colorado on Colorado sourced income

Polling Question

Novel (Corona Virus) Communications! With respect to employees moving to work remotely, who said: *“That means if you live in a location where the cost of living is dramatically lower, or the cost of labor is lower, then salaries do tend to be somewhat lower in those places”*?

- 1) Jeff Bezos, Amazon
- 2) Tim Cook, Apple
- 3) Larry Ellison, Oracle
- 4) Elon Musk, Tesla
- 5) Mark Zuckerberg, Facebook

Virtual Relocation

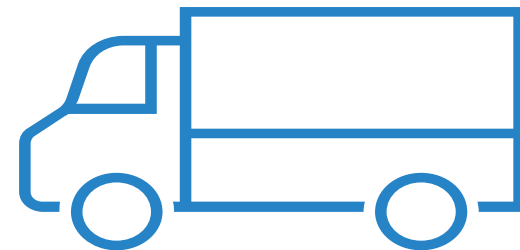
As the new hire is a resident in the current country, then income earned there is likely sourced there even if that is not the employment location

Employer reporting and withholding obligations?

- Does the company have a corporate presence in previous resident location?

If making new hire grants prior to move to employment location, there may be an ongoing trailing tax liability

Anti-avoidance provisions may limit ability to shorten vesting period of future grant to avoid trailing liability in current location



Case Study 3

Background

India National

Hired to work in Canada

Cannot relocate before start date due to COVID-19

Individual works remotely from India for Canadian employer until s/he can relocate

Tax Treatment

India resident and therefore taxable in India on worldwide income

Employer withholding and reporting depend on India corporate presence

Unlikely to be subject to Canadian taxes until working in Canada

Stock awards granted in India will likely have a trailing liability to India

Telecommuting Policy

Telecommuting Policy

Should be part of and aligned with an overall mobility policy

- Address for all compensation not just equity

Short-term – COVID-19

Long-term – ongoing

Corporate permissions on work locations

- Legal
- Corporate tax
- HR
- Payroll
- Stock

Telecommuting Policy

Considerations

- Ongoing or only when offices are closed due to SIP
- Whether the company has an entity in that location
- Whether the employee's work activities create a permanent establishment
- Whether there is a treaty exemption
- Whether the move is temporary or longer term

Telecommuting Policy

Communications

- Corporate policy – need support from Executives

Ignorance is not bliss! For you or your employees!

- HR, Tax, and Payroll teams need to educate employees
 - Mobility taxation
 - Trailing tax liability
 - Employer and Employee responsibility
 - Other ramifications, e.g. visas

Audits Are Costly & Time Consuming

State tax agencies now look for every penny they can get!

Things auditors are looking at:

- Expense reimbursement reports
- Utilities paid (i.e. internet)
- Company events
- Public forums (i.e. Facebook posts)

Questions?

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