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How to Structure Global Mobility Assignments, Expatriate Postings and Cross-Border Secondments

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Because multinationals by definition operate internationally, they often post staff overseas. In structuring overseas postings, multinationals inevitably struggle with the interplay between expatriate assignment strategy and the legal ramifications of a particular foreign posting. Legal issues in play in structuring an expatriate assignment go beyond the need for a visa, and include compliance with payroll laws, employment laws and "permanent establishment" (corporate tax presence).

Multinationals sometimes jump to the conclusion that there must be one best way to structure all international assignments. And so they grab whatever expatriate package got used last time, change the names, make some tweaks, and move on. (*"Hey, in February we sent Carlos to Brazil—let's use Carlos's assignment package as a template now, for posting Susan to Paris."*) This approach skips over the vital step of tailoring the cross-border posting to meet the employer's human resources needs while complying with legal mandates.

There are several different global mobility and expatriate assignment structures, and they are not interchangeable. In a way, deciding how to structure an overseas employee posting is like deciding how to structure a business entity—whether a business should be a C corporation, an S corporation, an LLC or a partnership. Which of several possible structures is most appropriate depends on the specific situation at hand and requires strategic thinking about both structural and legal issues. (*"You know, while we 'seconded' Carlos to our affiliate in Brazil in February, now we need to 'localize' Susan temporarily to our facility in Paris. So Carlos's assignment package is the wrong model here."*)

Expatriate postings traditionally came about when a multinational tapped an employee to go work abroad for one of three reasons: to support a foreign affiliate, as a broadening assignment, or to work overseas for the home country employer's own benefit. Today, though, multinationals increasingly see these "traditional" expatriate assignments as less effective—employers these days turn to new mobility models like commuter assignments, extended business travel, rotational assignments and "local-plus assignments."[1] We now see more "floating employees" moving abroad to work in countries where the employer has no registered entity, and we see more *employee-driven* international moves—expats convincing their managers to let them work overseas and telecommute for personal reasons, such as, for example, employees who have to move back to their home countries to nurse a sick relative, and so-called "trailing spouses" married to other companies' expatriates.

The various types of cross-border personnel moves raise questions of how best to structure a given international assignment. To resolve these questions, we address four threshold issues: (A) who is and is not an expatriate?; (B) four expatriate structures; (C) selecting the best expatriate structure; and (D) written expatriate agreements.

A. Who Is and Is Not an Expatriate?

Not all globally mobile employees are business expatriates. Arrangements for international assignees who are *not* expats are easy to structure, while structuring assignments for bona fide expats can be complex. Before structuring any cross-border work assignment, the first step is to ascertain whether the mobile staffer is, or is not, an actual business expatriate.

Colloquially, an "expatriate" is anyone who lives somewhere other than his native country. For example, poet and essayist Phillip Lopate described American author James Baldwin as having "lived most of his adult life as an expatriate in Europe."[2] But here we are addressing *business* expatriates. A business expatriate is someone originally hired to work in one country but later reassigned to work in a new overseas place of employment temporarily. A business expatriate expects to return home or be "repatriated" at the end of the assignment—an overseas assignee who does not expect to repatriate is not a business expat but a localized *permanent transferee*.

1 Eric Krell, "Easy Come, Easy Go: Weigh Alternatives to Long-Term International Expatriate Assignment," *SHRM HR Magazine*, 1/3/13, at p.59.

2 *Columbia Magazine*, Spring 2016 at pg. 32.

- **Inpatriates and third country nationals.** Two common global mobility terms are in effect synonyms for "expatriate" that betray the speaker's point of view: "inpatriate" and "third country national." An inpatriate is an expatriate coming into a host country, while a third country national is an expatriate not working at headquarters on either end of the assignment. For example, if the Paris office of a Kansas City-based multinational were to assign an employee to work temporarily at the company's Tokyo facility, the assignee would be an "expatriate" to her former Paris colleagues, an "inpatriate" to her new Tokyo colleagues, and a "third country national" to human resources back in Kansas City. For our purposes here, she is an expat.

Watch for *false expatriates*—internationally mobile staff who do not meet our definition of business expatriate and who therefore usually should not get structured as expats. Also watch for actual expats whom an employer misperceives to be non-expats. In separating out who is and is not a genuine business expatriate, account for the concepts of business traveler; stealth/accidental expat; place of employment; foreign hire; in-house expat benefits program; and Global Employment Company:

- **Business traveler.** Some short-term global mobility assignments get staffed by business travelers who are not true expats. A business traveler remains employed and payrolled by the home country employer entity, with a place of employment that remains the home country throughout the overseas assignment. Everyone recognizes that someone working overseas for just a few days or a couple of weeks is simply on an international business trip, but sometimes even a longer (yet still short-term) global assignment might also appropriately get structured as a business trip—even where the employer and assignee refer to the trip as an international "assignment" or foreign "posting," even where the employer provides expatriate benefits and even where the host country requires a visa or work permit. Structure a short-term international assignment as a business trip whenever the home country will remain the assignee's place of employment during the posting.

- **Stealth/accidental expat.** When a business traveler stays abroad too long, as a matter of host country law the place of employment at some point may shift to the host country and the would-be business traveler risks becoming a so-called "stealth" or "accidental" expatriate. Another stealth/accidental expatriate scenario is the internationally mobile telecommuter: An employer lets an employee telecommute from home locally, and at some point the telecommuter slips away (moving abroad and continuing to telecommute from a new country).

  Stealth/accidental expat status is an internal misclassification that can trigger legal problems under host country immigration, payroll, employment and "permanent establishment" law. As soon as a business traveler's or telecommuter's place of employment shifts abroad, consider reclassifying the employee as an expatriate.

- **Place of employment.** The concepts of business traveler and stealth or accidental expat turn on "place of employment." Under the law of most countries, each employee has a single "place of employment" at a time with each employer ("place of employment" is a legal concept or status, analogous to "residence" and "domicile"). But ascertaining a given expat's place of employment can be difficult.

  The inevitable question that gets asked in the mobile employee contest is: *How long can we post a business traveler abroad before the host country becomes the "place of employment"?* There is no easy answer because "place of employment" is a construct of more than just time—in sharp contrast to the completely separate legal concept of *tax residence*, which usually gets triggered at 183 days worked in a country in a single tax year. Unlike tax residence, place of employment can attach in a matter of minutes: A new hire almost always acquires an in-country place of employment on the first morning on the job, and a transferee usually acquires an in-country place of employment on the first morning after the reassignment. The place of employment of a mobile employee moving from a home country to a new host country is a question not only of time worked in the host country, but also of

visa status, intended future repatriation date, place of payroll and link between tasks worked and the local market. This said, after a mobile employee has worked in a host country for more than several months, that country might plausibly take the position it has become the place of employment, if only temporarily.

  - *Synonymous legal concepts.* Having said that "place of employment" is a discrete legal concept or status, this concept varies in some jurisdictions. Where European law applies, the Rome I Regulation[3] on choice-of-law controls; instead of "place of employment," Rome I looks to where an employee "habitually carries out his work." And UK case law in certain contexts looks to an employee's "connection" to the place of work or the "nature" of where the job is based. For our purposes here, principles like these are roughly synonymous with "place of employment."

In structuring a short-term global mobility assignment, decide whether the employer can plausibly maintain that the home country will remain the place of employment throughout the posting. When structuring a short-term assignee as a business traveler, guard against the stealth or accidental expat scenario.

- **Foreign hire.** Business travelers aside, another breed of false expatriate is the *foreign hire*. Multinationals occasionally recruit candidates in one country to work jobs overseas. As some examples, recruiting on global websites attracts candidates in different countries. Construction contractors in the Middle East constantly recruit laborers and carpenters from Indonesia, the Philippines and other developing Asian countries. Silicon Valley technology companies frequently recruit graduates from top universities in India for jobs in California. American multinationals often recruit American security guards for jobs in the Middle East and recruit American technicians for jobs at oil fields in Africa. All these employees are foreign hires, not business expatriates, because they work for their employer in just one country. They might be emigrants. They might need visas. Some of them might qualify for company expatriate benefit packages (paid housing and drivers, for example). But foreign hires are not business expatriates because they work for their employer in just one country. Their border-crossing status relates to recruitment, not employment.[4] Avoid structuring foreign hires as expatriates.

- **In-house expat benefits program.** An expatriate benefits program is an organization's package of paid global mobility extras like moving expenses, housing allowance, tax equalization, international tax preparation, spousal support, children's tuition, car and driver, social club membership, hardship pay, flights home, expat medical insurance, repatriation costs, immigration services and the like. Not all business expatriates get to participate in expat benefits programs (think of telecommuters moving abroad for personal reasons). And not everyone who receives expat benefits is a true business expatriate (think of foreign hires recruited to work in "hardship" locations[5]).

  Many multinationals use the term "expatriate" to mean participant in their in-house expat benefits program (as in: *"Tiffany is transferring to our London office for a year, but she asked for the posting herself and we're accommodating her request—so she won't be an expat"*). This usage lulls employers into misclassifying false expats who happen to be eligible for expat benefits and can lead to stealth or accidental expats who happen to be ineligible for expat benefits. It is best to avoid this dangerous usage. Instead, distinguish "structural expats" from "expat-benefits-eligible assignees."

- **Global employment company.** Some multinationals employ corps of "career expats" who migrate from one posting to the next, spending little or no time working in any home country

3 EU Regulation 593/2008.

4 For example, imagine an American military government contractor company recruits an American currently living in North Carolina to work a security job in Afghanistan. That North Carolina employee will work for that particular employer in just one single country—Afghanistan. Afghanistan will be the employee's sole "place of employment" for that particular job. This employee is therefore a foreign hire who does meet the definition of "business expatriate" (even if the employer provides an "expat"-style benefits package).

5 This is the case in the example in note 4, *supra.*

or headquarters place of employment. Sometimes these multinationals incorporate—often in a tax-advantageous jurisdiction like Switzerland or the Cayman Islands—a so-called "global employment company" (GEC) subsidiary with the *raison d'être* of employing and administering benefits for career business expats. GECs offer logistical advantages, particularly as to pension administration. Contrary to a widespread misperception, though, GECs are not expat structures unto themselves. (And a GEC cannot stop the mandatory application of host country employment protection laws.) The arrangements for an expat employee of a GEC ultimately must be structured just as any other expat.

B. Four Expatriate Structures

Once an employer understands which globally mobile employees are and are not actual business expatriates, the next task is to slot each actual expat into the most appropriate expat category. That is, select the most appropriate expat structure. Expatriate structures take different forms at different multinationals, but ultimately all business expats fit into or among four broad categories: foreign correspondent, secondee, temporary transferee/localized and co-/dual-/joint-employee.

1. **Foreign correspondent.** A "foreign correspondent" expatriate remains employed and payrolled by the home country employer entity while working abroad, rendering services from afar for the home country entity (not for some local host country affiliate or business partner). Foreign correspondent postings are easy to set up because nothing changes other than the place of employment (and other than that the expat might start receiving expat benefits). The challenge is that foreign correspondent postings risk violating host country immigration and payroll laws. A foreign correspondent may need a visa sponsored by some host country employer, and host country payroll laws may require the employer to make reportings, deductions, withholdings and contributions to host country tax and social security agencies that the home country employer entity is not set up to make without a host country taxpayer identification number (even an outsourced payroll provider needs its customer's local taxpayer number).

    » *Shadow payroll.* One tool here is "shadow payroll" (also called "zero payroll" and "mirror payroll")—some cooperating host country entity reports the foreign correspondent expat's income to local tax and social security authorities as if it were the payrolling employer, and then that entity and the employer do an inter-company reconciliation each payroll period, behind the scenes, perhaps with the employer paying for the shadow payroll service.

2. **Secondee.** "Secondment" means "employee loan." A seconded expatriate remains an employee only of the home country employer entity but gets lent out to work for a host country entity, usually an affiliate or business partner of the employer. The secondee might get payrolled by either the home or host country employer (or both, via a "split payroll"). Usually the host country employer—which we might call the "beneficial employer"—reimburses wages and payroll costs to the home country "nominal employer." Some secondees stay on the home country payroll while the host country entity issues a shadow payroll[6] to comply with local payroll laws. But a true secondee is not a co-/dual-/joint employee, because a true secondee never gets privity of employment contract with the host country employer.[7]

3. **Temporary transferee/localized.** An expatriate transferee or "localized" expat resigns from the home country employer, moves abroad and gets hired and payrolled by a new (host country) employer, often an affiliate or joint venture partner of the original employer but sometimes a host country services company like a local office of Globalization Partners, Adecco, Manpower or Kelly Services (or the expat might even become an independent contractor in the host country). The new host country employer usually extends retroactive service/seniority credit for past service with the home country employer and sometimes also pays some extra expat benefits—a so-called "local-plus" assignment.

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6 *See* "shadow payroll" bullet immediately above.

7 Here we address an arrangement *ultimately held to be* a true secondment. In practice, of course, an employer *intending* to structure a secondment should account for the risk that the would-be secondee could be argued to a co-/dual-joint employee simultaneously employed by both the nominal employer and the beneficial employer.

While working in the new host country place of employment, a localized transferee expat renders services only for the new host country employer and does not retain privity of employment contract with the home country employer—other than perhaps an informal side letter or email outlining post-assignment repatriation expectations. The home country employer is not a co-/dual-/joint-employer because the expat formally resigned.[8]

Of course, an expat transferee localization is only temporary. (A transferee who does not expect to repatriate is a "permanent transferee," not a business expatriate.) A localized expat (as opposed to a permanent transferee) expects someday to repatriate and re-localize back to the original home country location. A side-letter (or email) between the expat and the home country employer entity might memorialize this.[9]

4. **Co-/dual-/joint-employee.** A co-/dual-/joint-employee expatriate is an expat simultaneously employed by two masters, the home and host country employer entities, essentially on a moonlighting basis. The employee works for two employers simultaneously, or else works a host country job actively while formally retaining status as "on leave" from the home country employer entity, with the home country employment arrangement suspended or "hibernating"—but not terminated. A co-/dual-/joint-employee expat may be payrolled by either the home or host country employer (or both, on a "split payroll"), or may be on a "shadow payroll" actually paid by the home country employer while the host country employer complies with its jurisdiction's payroll laws.

    » *Intended co-/dual-/joint-employment.* Ideally every co-/dual-/joint-employee expat arrangement gets structured overtly, with the expat either actively structured as an employee of both home and host country entities or else with the expat expressly on leave from the home country employer, leaving that employment relationship expressly "hibernating" but not severed. Sometimes the home and host country employers decide to use the co-/dual-/joint-employee structure to keep the expat enrolled in home country benefits programs or home country social security (say, under a social security totalization agreement certificate of coverage).

    » *Unintended co-/dual-/joint-employment.* Too many co-/dual-/joint-employment expatriate arrangements get structured accidentally, either when an expat assignment is meant to be a secondment but the expat somehow enters an employment relationship with the host country employer, or else when an expat assignment is meant to be a temporary transfer (localization), but the parties fail to extinguish the home country employment relationship. A dismissed expat who ultimately wins the argument that he had served as an unintended co-/dual-/joint-employee could seek reinstatement or severance pay from the home or host country employer. These situations often get complex and expensive.

C. Selecting the Best Expatriate Structure

The question becomes how to select which of the four expatriate structures is most appropriate for a given expat assignment. Answering this depends on nuances of the particular expat's given situation, and on the employer's strategic needs. Even within one multinational employer, different expats may get structured differently. Therefore, in drafting a given expat's assignment package, avoid reflexively copying the last expat's assignment package (unless the ideal structure for the current expat posting happens to coincide with what was the ideal structure last time). If, for example, the last expat was a secondee while this expat needs to be temporarily localized, then the secondee's assignment package is the wrong model for documenting this assignment.

8 Here we address a *genuinely* localized transferee. In practice, of course, an employer *intending* to localize an expat should account for the risk that the would-be localized expat could be argued to a co-/dual-/joint-employee simultaneously employed by both the current host-country employer and the former home-country employer. For example, the expat might argue the employer coerced the resignation from the host-country employer, and so the resignation is void. Or, for example, a side-letter between the expat and the home country employer entity memorializing an intent to repatriate the expat might be said to evidence an ongoing employment relationship with the home country employer entity.

9 On the risk of a side letter (or email) in this context, see *supra* note 8.

In selecting among the four expat structures in structuring any given expatriate assignment, think through practicalities of the particular posting, like whether the expat will serve a home or host country entity, and which employer affiliate will fund compensation. Then factor in three legal issues: immigration, payroll laws and permanent establishment. How these three issues play out for a given expat should point to the most appropriate of the four expat structures.

1. **Immigration.** All countries impose immigration laws. An expat who does not happen to be a citizen or legal resident of the host country almost certainly needs a visa or work permit to work in-country. The visa and work permit process often requires an in-country employer visa sponsor. The foreign correspondent and secondee expat structures may not work because they do not include any host country employer to sponsor the visa. (In a secondment, the host country beneficial employer may be *willing* to sponsor the visa but because it does not actually employ the expat, in some cases it will be *ineligible* to sponsor.) Also think through expat family visa issues. For example, some countries will not issue a spouse visa for a same-sex partner.

2. **Payroll laws.** Most countries impose what we have been calling "payroll laws"—analogues to U.S. reporting/withholding/contribution mandates as to employee income tax (federal and state), social security, state workers' compensation insurance, state unemployment insurance and federal unemployment tax. Even oil-rich countries like Qatar that did not used to impose payroll laws now do.

   » *The compliance imperative.* The headquarters team structuring a global mobility assignment that keeps an expat on home country payroll might be more focused on complying with *home country* payroll mandates than on *host country* payroll laws. But actually, host country payroll compliance may be more vital, because during the assignment the host country is the place of employment—the expat lives and works in the host country using its roads, sewers, garbage pick-up and other services, and is probably liable personally for host country income tax.

   Imagine, for example, the employer of a foreign correspondent assigned from Rome to a temporary place of employment in Raleigh. The home-country Italian employer should comply with U.S. and North Carolina payroll laws, and so should not illegally payroll its expat on an offshore Italian payroll that fails to report income to the IRS and other U.S. federal and state agencies. An employer based in Raleigh will face reciprocal compliance challenges when assigning someone to work in Rome.

   Violating host country payroll laws by illegally paying an expat offshore can be a crime—indeed, it can be a felony in the United States.[10] This is usually true even where the employer gets a certificate of coverage under a social security totalization agreement, because those certificates do not address *income tax* withholding and reporting.[11]

   In structuring expatriate payroll, consider vehicles like "split payroll" and "shadow payroll" that facilitate compliant payrolling. In many countries, structuring an expat as a foreign correspondent or secondee without a "shadow payroll" is effectively illegal because it violates host country payroll laws. But not always. Some countries' payroll laws obligingly exempt foreign employers that do not transact business locally—Guatemala, Ivory Coast, U.K. and Thailand are examples. Still other countries—France and Estonia, for example—offer special expat payroll registration procedures that let foreign employers comply with local payroll laws without otherwise registering to do business locally.

3. **Permanent establishment.** A third vital legal issue in structuring expatriate assignments is avoiding an unwanted host country corporate and tax presence for a home country employer entity. "Permanent establishment" (PE) is a corporate tax presence that host country law imposes on a foreign entity held to be "doing business" locally in the host country. The expat

10 26 U.S.C. § 7202.

11 *See* U.S. Social Security Administration web page on "U.S. International Social Security [Totalization] Agreements," *available at* https://www.ssa.gov/international/agreements_overview.html.

structure challenge is where host country law might deem a home country entity employing an expat working in the host country to be "doing business" in the host country, because of the work the expat performs. The expat's in-country activities on behalf of the home country employer are said to trigger a PE. Even if the home country employer has a local sister entity registered to do business in the host country, an expat who is a foreign correspondent, secondee or co-/dual-/joint employee might trigger a separate PE for the home country employer affiliate.

Imagine, for example, a Berlin-headquartered organization that directly employs a full-time highly-compensated expat in Chicago but otherwise does little or no business stateside. If the German expat telecommutes, contributing to German matters, in German, from an apartment on Lake Shore Drive—making phone calls, receiving mail, occasionally meeting with traveling colleagues—might the U.S. IRS and Illinois secretary of state take the position the German company now "does business" in Illinois and so must register with the Illinois secretary of state and file U.S. federal and state tax returns? If so, the German company would be said to have a U.S. PE. Its unlicensed U.S. operation might trigger fines and taxes. The reciprocal issue could arise in the outbound scenario—imagine, for example, a Chicago organization employing a full-time highly-compensated expat in Berlin.

After factoring in these three issues and selecting among the four expatriate structures, document the expat assignment to reflect the selected structure, and take other steps to shore up the position that the selected expat structure is legitimate. When an expat and an employer get in a dispute (disputes tend to arise in the context of expat dismissals), the expat structure question can get litigated in court. The court will look at the actual facts and circumstances without necessarily deferring to the employer's characterization. In a 2014 case, as one example, the U.S. Second Circuit Court of Appeals rejected an employer's argument that its expat was temporarily transferred/localized; the Second Circuit ruled that particular expat was a co-/dual-/joint-employee.[12]

D. Written Expatriate Agreements

After settling on the best structure for a given expat assignment, decide how to memorialize or document the posting. Properly documenting an expat assignment, of course, is the most important step to take to shore up an employer's position that the selected expat structure is legitimate.

There are two very different kinds of written "expat agreements": (1) an expat assignment letter agreement between the expat and the employer (be it the home country entity, host country entity or both) and (2) an inter-affiliate assignment arrangement between a home country employer entity and host country employer to which the expat is not a party. Do not confuse these. Document an expat assignment using one or both agreements, as appropriate. Expat assignment letters or agreements with expats themselves are important in most all expat postings, whereas inter-affiliate assignment documents tend to be relevant only in assignments structured as secondments and co-/dual-/joint-employment postings. In crafting inter-affiliate assignment agreements, factor in balance-of-power issues. For example, in a secondment, the nominal (home country) employer usually retains the ultimate power to make employment decisions like setting pay/benefits, imposing discipline/termination and determining length of assignment.

Two vital issues in documenting an expat assignment are "hibernating" home country employment agreements and choice-of-law clauses.

- **"Hibernating" home country employment agreements.** The primary agreement of a co-/dual-/joint-employee expat is often with the *host* country employer entity, but by definition a co-/dual-/joint-employee expat retains privity of employment contract with the *home* country employer. The expat's home country employment arrangement may become dormant or may "hibernate"—but is not extinguished. Hibernating home country agreements complicate expat dismissals when they "spring back to life."

  Be careful to suspend or hibernate home country employment arrangements in a way that will not surprise anyone later. Guard against *unintended* hibernating home country employment

12 *Brown v. Daiken America*, 756 F. 3d 219 (2nd Cir. 2014).

agreements—the scenario of the employer that had tried to structure a temporary transfer/localization, but that inadvertently failed to extinguish the home country employment agreement. The problem of the hibernating home-country employment agreement unexpectedly springing back to life tends to arise in the situation of an employer that had *thought* it was temporarily localizing an expat, but *inadvertently* ended up allowing the expat to work as a co-/dual-/joint-employee. Any employer intending to localize an expat must extinguish the underlying home-country employment contract, such as by having the expat sign a resignation letter resigning from the home country entity when simultaneously "onboarding" with the host country employer (usually getting retroactive service credit).

- **Choice-of-law clauses.** Too many expat assignment documents, expat benefits plans and expat restrictive covenants contain home country choice-of-law clauses that might ultimately backfire against the employer. As soon as an expat's place of employment becomes a new host country, local (host country) employee protection laws—laws regulating work hours, overtime, vacation, holidays, wages, benefits, payroll, health/safety, unions, restrictive covenants, discrimination, harassment and severance—usually attach and protect the expat by force of public policy. Think carefully before sticking a home country choice-of-law clause into expat documents, because the clause may well pull in home country employee protection laws without shutting off the mandatory application of host country employment protections (although there are some exceptions, such as in China). When an expat assignment ends or when an expat gets dismissed, a home country choice-of-law clause more often seems to help the expat rather than the employer, because it empowers the assignee to cherry-pick from two sets of employment protection laws. Rather than a home-country choice-of-law clause, consider a host-country choice-of-law clause, or a clause simply calling for the law of the "place of employment," or even no choice-of-law clause at all.

Conclusion

When structuring a cross-border assignment, posting, or secondment, first determine whether the assignee will actually be an expatriate. Globally mobile staff who do not qualify as expats—for example, business travelers, permanent transferees and foreign hires—are easy to structure. But misclassifying an actual expatriate as a non-expat, or misclassifying a non-expat as an expat, increases costs and introduces complications.

Expatriate postings come in many forms but ultimately fit into or among four categories: foreign correspondent, secondment, temporary transferee (localized) and co-/dual-/joint-employee. Structure each expat assignment into the most appropriate category.

Structure expatriate assignments strategically. Address business needs and comply with legal mandates. Immigration is a primary legal issue, but also account for payroll laws, employment laws and "permanent establishment" (host country corporate presence and corporate tax exposure). Carefully document the expat assignment to reflect the selected structure. Take other steps to shore up the position that the selected expat structure is legitimate. Unless all structural and legal issues happen to be identical, do not simply copy the documentation package of the previous expat.

Global Mobility Assignment Structures

Assignee Type	Description	Pros	Cons	Comments	Home entity permanent establishment risk
Non-Expatriate Structures:					
A. **Business traveler** *(not a true expatriate because place of employment remains home country)*	• Home country employer entity employs and payrolls • Place of employment remains home country	Extremely easy to administer; there is no host country employer entity	Can be short-term only; risk of stealth/accidental expat	Beware the "stealth expat": Monitor this status closely; remember the need for a visa	Low, as long as the employee does not become a stealth/accidental expat
B. **Permanent transferee** *(not a true expatriate because there is no expectation of repatriation)*	• Host country employer entity employs and payrolls • Home country employment relationship ends • Place of employment becomes host country • No expectation of repatriation	Extremely easy to administer; no expectation of expatriate program benefits	• The employee may want a repatriation promise • Need to extinguish home country employment relationship	Often the employee (not employer) instigates the transfer	None, because the employee works for a host country entity
C. **Foreign hire** *(not a true expatriate because employee works in only one country)*	• Employee hired in country *A* to work only in country *B* • Employee may or may not receive an expat benefit package	This is usually the best structure for a new-hire assigned to work abroad from "Day #1"	This structure is available only when hiring someone new to work the foreign assignment	Too often local hires get confused with expats—do not structure a foreign hire as an expat	Low, if employee works for host country entity; very high if employee gets employed by a home country entity
Expatriate Structures:					
1. **Foreign correspondent**	• Home country employer entity employs and payrolls • Place of employment shifts to host country • Expat renders services for home country entity—not some local host country entity	Extremely easy to administer; one of the only options available where there is no host country employer entity	Violates payroll laws in most countries (unless a host country entity issues shadow payroll); no visa sponsor	Unless the host country imposes no payroll laws (or allows nonregistered employers to issue local payroll), this structure is often non-compliant	High, especially if the expat works on host-country-market projects

Assignee Type	Description	Pros	Cons	Comments	Home entity permanent establishment risk
2. **Secondment**	• Home country employer entity employs • Place of employment shifts to host country • Expat renders services for host country entity • Either home or host country entity payrolls (or both), or home country entity payrolls and host country entity does a "shadow payroll"	Fairly east to administer and logical (if payroll is set up legally); expats often prefer this structure	Visa sponsor and payroll law challenges (unless host country entity issues shadow payroll)	Use this structure only where appropriate: Not all expats are secondees and not all secondees are expats	Usually low, as long as expat does not render services for home country entity (although high in China and some other countries)
3. **Temporary transferee/ localized** *(also called "local-plus" assignment if the expat gets expat benefits)*	• Host country employer entity employs and payrolls • Place of employment shifts to host country • Expat resigns from home country employer entity • A side-letter or side-agreement addresses future return to home-country employer entity	Extremely compliant and low risk; cheaper (if expat is ineligible for company expat program benefits); ideal for employees going abroad for personal reasons	While employers favor localizing expats, expats themselves disfavor and resist this structure	Be sure to extinguish home country entity employment; draft "side agreement" letters (with home-country entity) carefully	None, because the employee works for a host country entity
4. **Co-/dual-/joint-employee**	• Home and host country employer entities simultaneously employ the expat (on either a "moonlighting" or "leave of absence" basis) • Either or both employer entities may payroll • Place of employment is usually host country, but expat might work some time in home country, too • Expat renders services for both employer entities (if expat works only for host country entity, then home country employment "hibernates")	Expats like this structure; host country entity can sponsor visa and issue a legal payroll	• Host country payroll law challenges if home country employer delivers any pay • This structure exposes the employer entities to employment protection laws of two jurisdictions	Structure any "hibernating" home country employment arrangement carefully; plan logistics for how to dismiss the expat, as necessary	Fairly low if the expat renders services for or takes orders from the host country entity only—otherwise, moderate to high

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