Tax Implications of Global Mobility

London

27 September 2023

Purpose of the presentation

The existence of a remote workforce was initially accelerated by the COVID pandemic. However, this has remained post-COVID and now many companies are either exploring or dealing with a ‘global workforce’ model

The purpose of the presentation is:

- Providing an overview of tax implications of having a global workforce so you can identify these situations and understand what policies or measures could be put in place
- Explaining how we can help you to not only navigate the complexities created by a global workforce but also with compliance in different jurisdictions
- Answering your questions

Our

Agenda

Audience Poll

How does your organisation deal with working from abroad requests?

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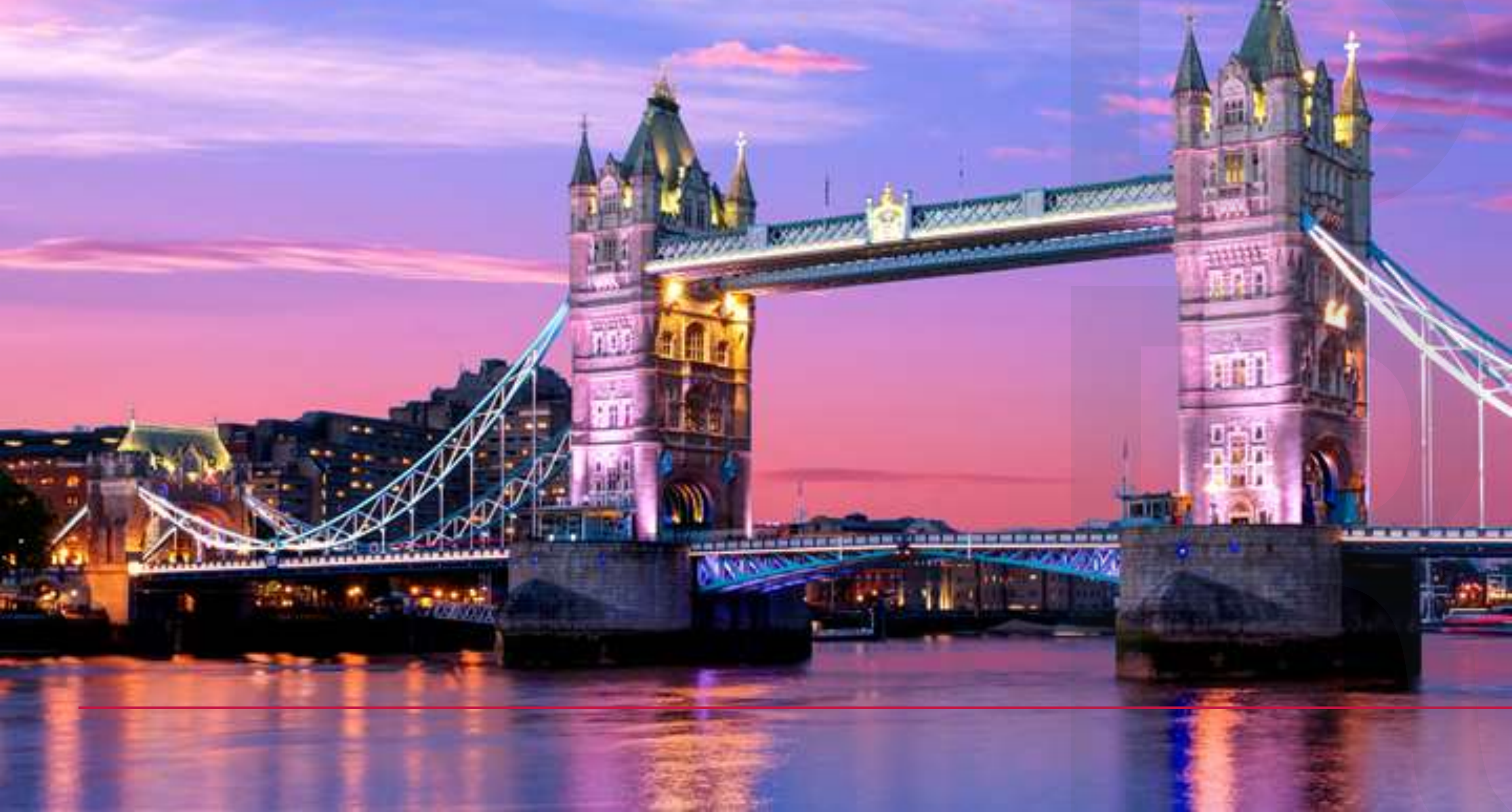
What is global mobility?



What is global mobility?

- The ‘seamless’ operation of a company and its workforce across international borders
- Global mobility is not just a tax issue. Covers immigration, employment law, relocation, employee support, ongoing career development and performance, cost management, the list is not exhaustive!
- What is meant by a workforce operating across international borders?
- Can include: Remote workers, business visitors, commuters, traditional secondments, local transfers, digital nomads, non-resident Directors
- This session will cover current hot topics that we are seeing, in particular: Short term business visitors, non-resident Directors and remote workers
- Will also look at the wider tax risks of global mobility

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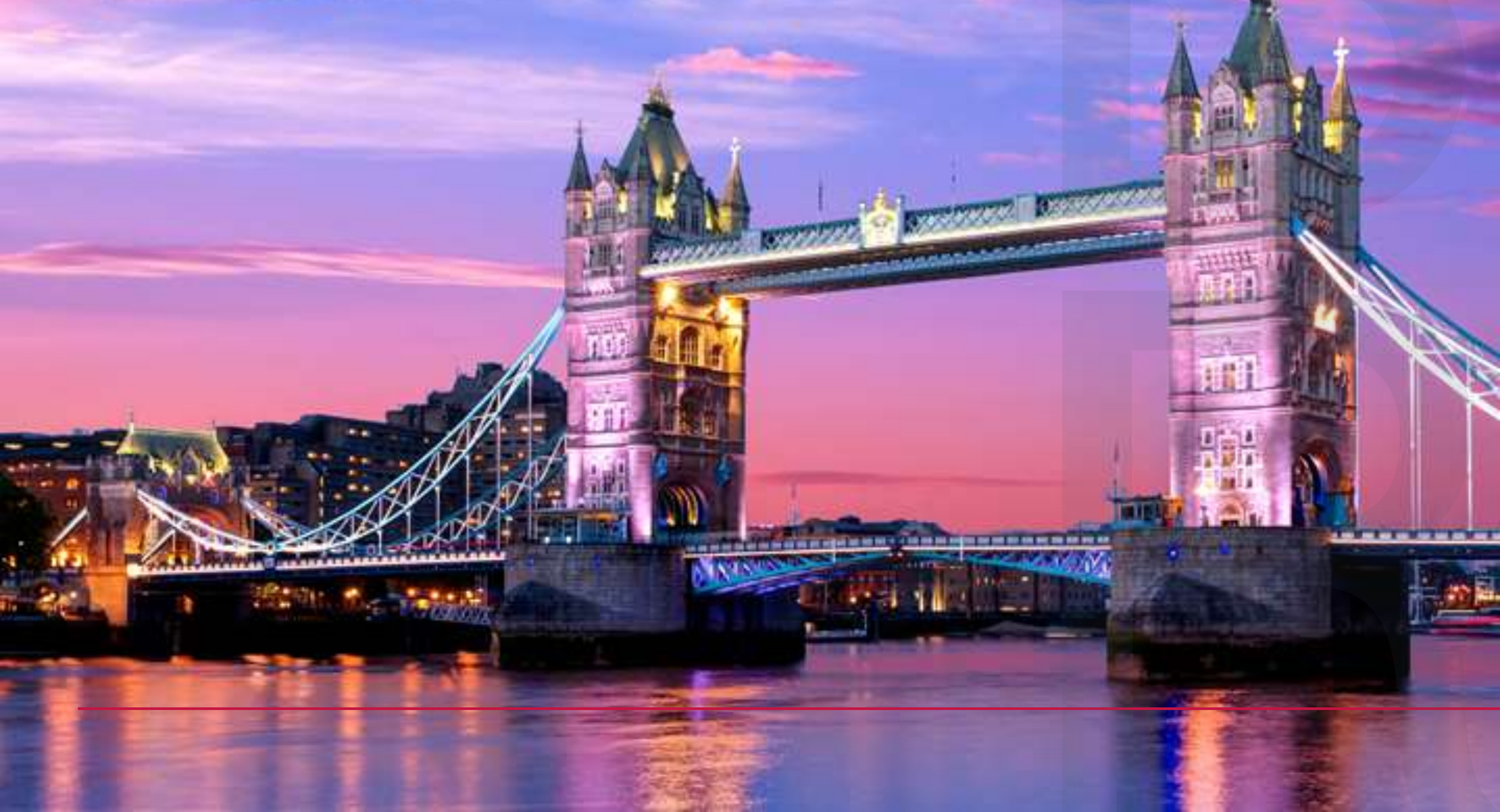
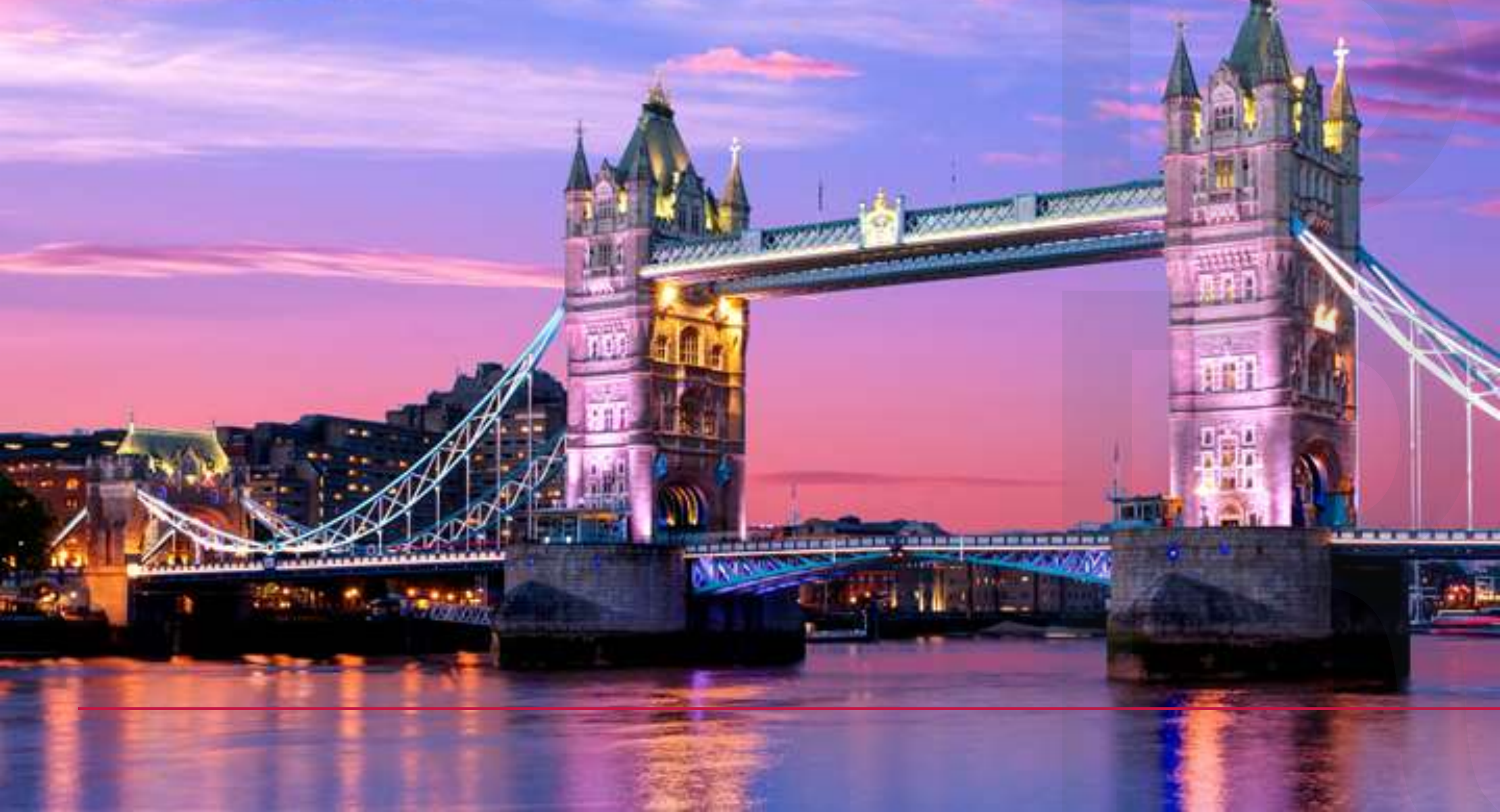
General Tax Principles



Having a global workforce may result in:

- The creation of a taxable presence from a corporation tax perspective in another jurisdiction (permanent establishment)
- A company becoming resident for corporation tax purposes in another jurisdiction (dual residency)
- The pricing of intercompany transactions between entities under common control needing revisiting (transfer pricing)
- UK employment tax implications for the overseas company in relation to employees working in the UK (STBVs, NRDs, Remote Workers, secondments, transfers, rotators etc.)
- Social Security implications for employer and employee
- Other implications (immigration approvals required to work, updates needed to employment contracts based on local labour law)

Short Term Business Visitors



Short Term Business Visitors

Most treaties** include a variation of the following tests for exemption:

- Employee must remain tax resident and have a closer connection to their home country
- Employee must spend 183 days* or less in the host country in any tax year/12 month period
- Employed and paid from outside of the host country
- Costs of remuneration borne outside of, and not recharged to the host country
- Overseas business continues to be the individual's Economic Employer (EE)

Tracking visitors to your country is key!

**When counting days for tax treaty purposes, all time must be counted (including non-working time).*

*** Care should be taken with visitors from non-treaty countries or visitors from overseas branches of the host country parent.*

UK considerations

- PAYE is typically due (even if exempt from UK tax under a treaty) unless a Short Term Business Visitors Agreement (STBVA) is in place with HMRC

- The STBVA applies where individuals are exempt from UK tax under a double tax treaty

- 60 day rule – Specific to the UK

Note: There are additional complexities with using an 'employer of record or a professional employer organisation ("PEO") to hire employees. The individual would usually be considered economically employed by the business that controls and instructs them in their day-to-day role. They would not be eligible to claim a UK tax exemption under a double taxation agreement having a UK economic employment.

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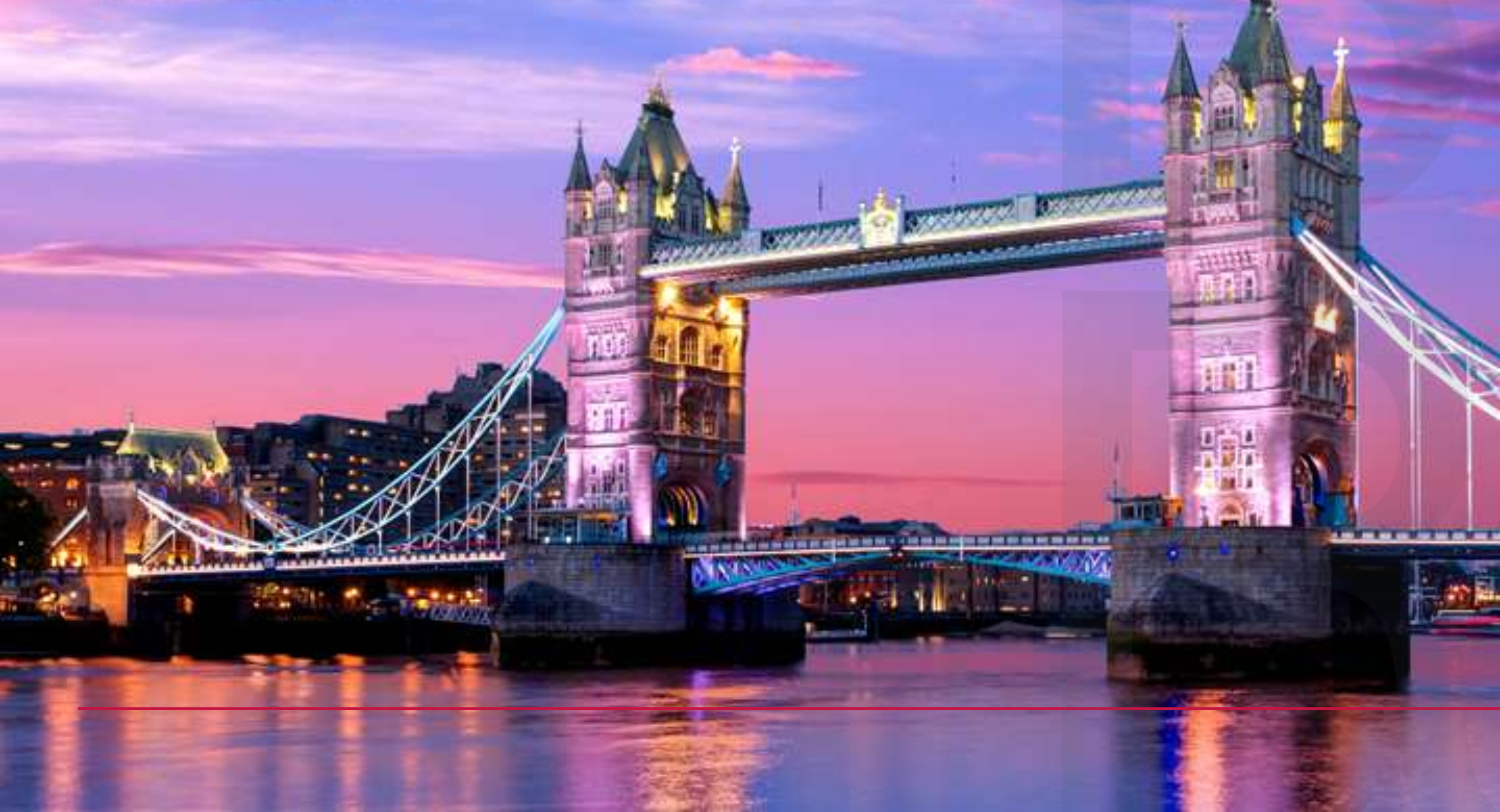
Non-Resident Directors



Non-Resident Directors

- Applies to Statutory Directors of a company sited in your country
- Physical presence in your country attending board meetings or performing director duties could typically result in an income tax liability in your country
- Exemption under a double tax treaty (e.g. exemptions applicable for Short Term Business Visitors) will usually not apply to directors
- The company will typically be required to withhold income tax. Complexities (e.g. cash flow) could arise where the director is subject to income tax withholding in both their home country and your country
- Could apply to tax authorities (e.g. the UK) to restrict withholding to estimated workdays in your country but will typically require the director to file Tax Returns to reconcile the position at year end
- Specific income tax rules may apply in your country to certain benefits (e.g. accommodation and flights)
- Social security needs to be reviewed separately to the income tax position. Will depend on the director's home country.
- Care needs to be taken around corporate tax residence especially where directors are performing duties or making management decisions in one location on a regular basis

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Global Remote Workers

Global Remote Workers

What are the benefits?

- Allows a company to gain a competitive advantage and grow more quickly
- Quickly source global talent
- Reduce costs
- Sustainability

Global Remote Workers

What are the challenges?

Income tax and social security

- An income tax and/or social security liability could be created in the country the remote worker is located in – Does this create an overseas withholding requirement for the employer?
- Depending on length of time spent in the UK and overseas, there could be dual residence considerations and dual withholding requirements – cash flow will need to be managed
- Duties performed will need to be carefully reviewed to ensure the remote worker is not creating a Permanent Establishment (PE) overseas (later explained)

Wider employment considerations

- Are the right work permits and visas in place?
- Are there local employment law considerations where the remote worker is based?
- Are existing remuneration packages appropriate given employees are now working in locations outside their normal place of work (especially if there are significant differences in salary benchmarks)?

Global Remote Workers

What are the challenges?

Other considerations

- Care should be taken so that remote workers are not disadvantaged compared to those in the office from a career development or discrimination perspective
- Global mindset and understanding local practices if time is not spent ‘on the ground’
- Employee well being if little or no interaction with their colleagues
- Is there adequate medical insurance cover in place? Are there data protection risks from working in an overseas location?

Policy and processes

- Identifying, prioritising and taking corrective action for those employees working remotely who previously have not been assessed
- Updating policies and processes to cover remote working as well as educating key stakeholders to help maintain control and visibility
- Having effective tools to track where employees are at any given time and identifying the associated risks in a timely basis

Global Remote Workers

Call to action for our clients!

- ***Health check*** – do you know where your employees are and the risks they are creating
- ***Traffic light report*** – quantifying the risks – where is urgent action required and what perhaps can wait for the time being.
- ***Putting in place policies and governance*** – Understand best practices in the market – Adapt to your own global remote working strategy – Policy and governance along with ongoing tracking, assessment and reporting will help manage the risk and gives a framework for the organisation to communicate to both its stakeholders and employees.

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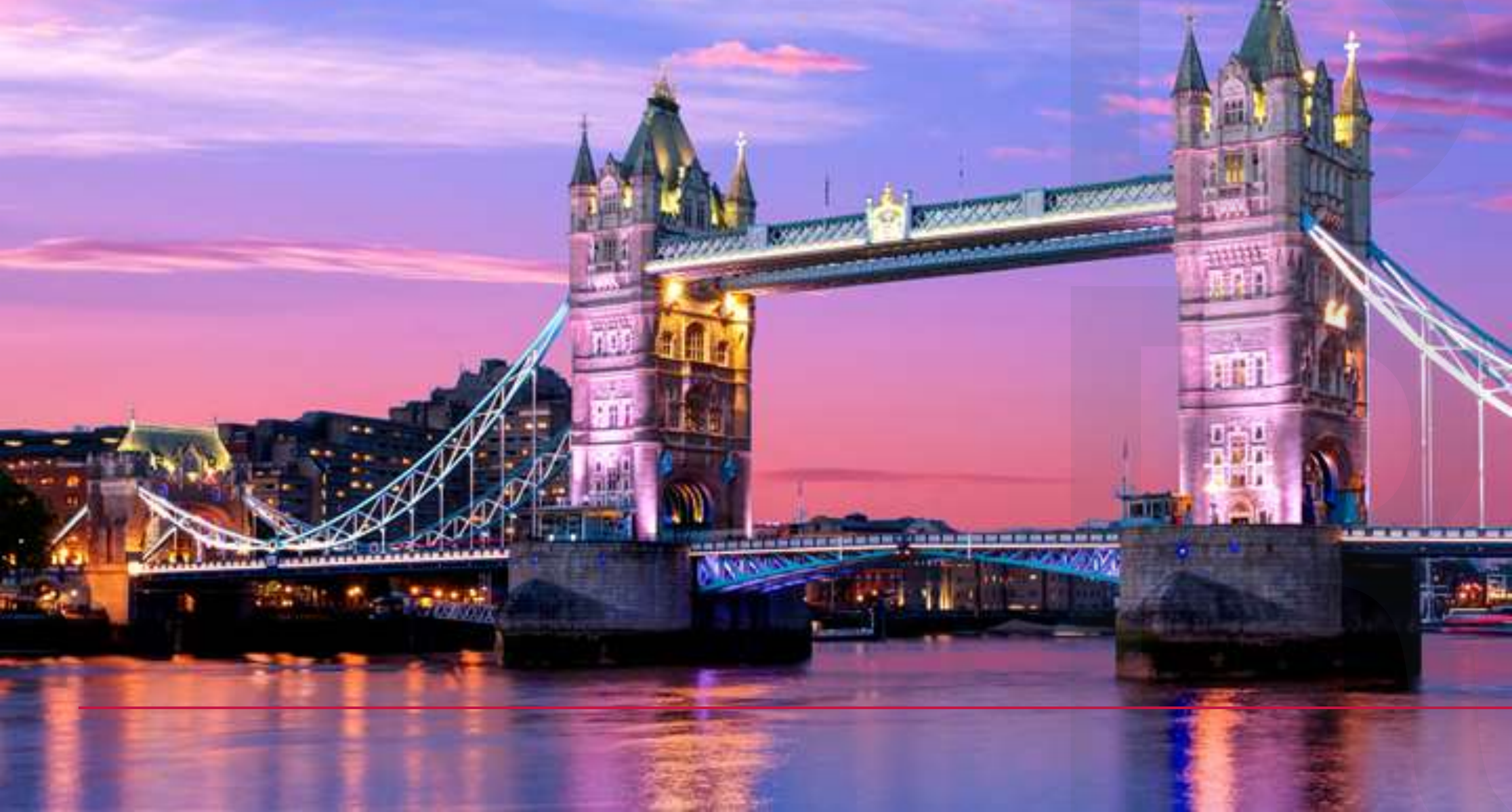
Social Security



Social security considerations

The world can be divided into three for social security purposes:

- EU countries
- Reciprocal agreement countries
- Rest of the world
  - Assess social security position for employees to determine the obligation in each relevant jurisdiction
  - Per UK/EU trade agreement, there is an automatic payroll reporting obligation where an employee is subject to UK NI, requiring the overseas employer to administer a UK payroll
  - Obtain A1s, Certificates of Coverage (CoCs) in the relevant jurisdiction. Carefully assess Multi State Workers

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Corporate Tax Risks of Global Mobility

What are the corporate tax risks of a global workforce?

- The creation of a taxable presence from a corporation tax perspective in another jurisdiction (permanent establishment)
- A company becoming resident for corporation tax purposes in another jurisdiction (dual residency)
- The pricing of intercompany transactions between entities under common control needing revisiting (transfer pricing)

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Permanent Establishment

Permanent establishment (“PE”) definition

- A PE of a company may be created in the UK if the company trades here through either:
    1. A dependent agent (“DA”), or
    2. A fixed place of business (“FPOB”)
- A DA must habitually exercise its authority to conclude contracts on behalf of a corporation
- A FPOB can be any of the following: place of management, office, factory, workshop (this list is not exhaustive)
- A FPOB can also be an employee’s home if it is used on a continuous basis and has a degree of permanence (which is not defined) for carrying on the employer’s business and the employer has required the individual to use that home office for the employer’s business
- There are exemptions where the activities are of preparatory or auxiliary nature, or through maintaining a warehouse for storage of merchandise only
- Note that the use of an ‘employer of record’ or professional employer organisation (“PEO”) does not mitigate the risk of a PE. If the individual is economically employed by the company (taking day-to-day instructions from the company and acting like an employee), they are treated as an employee for these purposes

Implications of a PE

- The existence of a PE will require the following:
    1. Registration for Corporation tax and requirement to file corporation tax returns in the UK,
    2. Likely cash tax expense in the PE territory, which may or may not be relievable through Double Tax Relief (“DTR”)
    3. Potential employment tax implications (discussed earlier)
    4. Increased tax authority focus on the company
- A PE is often seen as something that is to be avoided at all costs, however in some instances, operation of a PE may be preferable to incorporating a standalone company, and if the PE territory has a lower tax rate than the company’s territory of residence (and DTR is available), the only additional burden may be admin-related

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Corporate Residency

Corporate residency

- UK Corporate residency is determined by 2 factors:
    1. If the company is incorporated in the UK, or
    2. If the company's central management and control ("CMC") is exercised in the UK
- CMC is determined by the location of senior management decisions (often this will be the location of board meetings)
- The residency test is a domestic tax test, and therefore can vary between jurisdictions
- If a company is incorporated in one jurisdiction, and managed and controlled from another, it may be dual resident. The matter may be resolved through the applicable double tax treaty; many contain a tie-breaker (such as the location of 'effective management and control', or recourse to Mutual Agreement Procedure)

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Transfer Pricing

Transfer pricing ("TP")

- TP involves pricing intercompany transactions under the 'arm's length principle', which requires determining the delineation of functions, assets and risks between companies/jurisdictions in a group
- Transfer pricing may be impacted by global mobility in particular through the movement of individuals involved in non-routine functions (e.g. IP management, strategy etc) into countries with no, or routine, limited risk operations:
    - Potential issues for IP ownership/reward
    - Question over validity of limited-risk profit attribution
    - Is the wider TP model still fit for purpose?
- The result could include:
    - Increased tax controversy
    - Impact on cash tax
    - Potential need to rework transfer pricing policy

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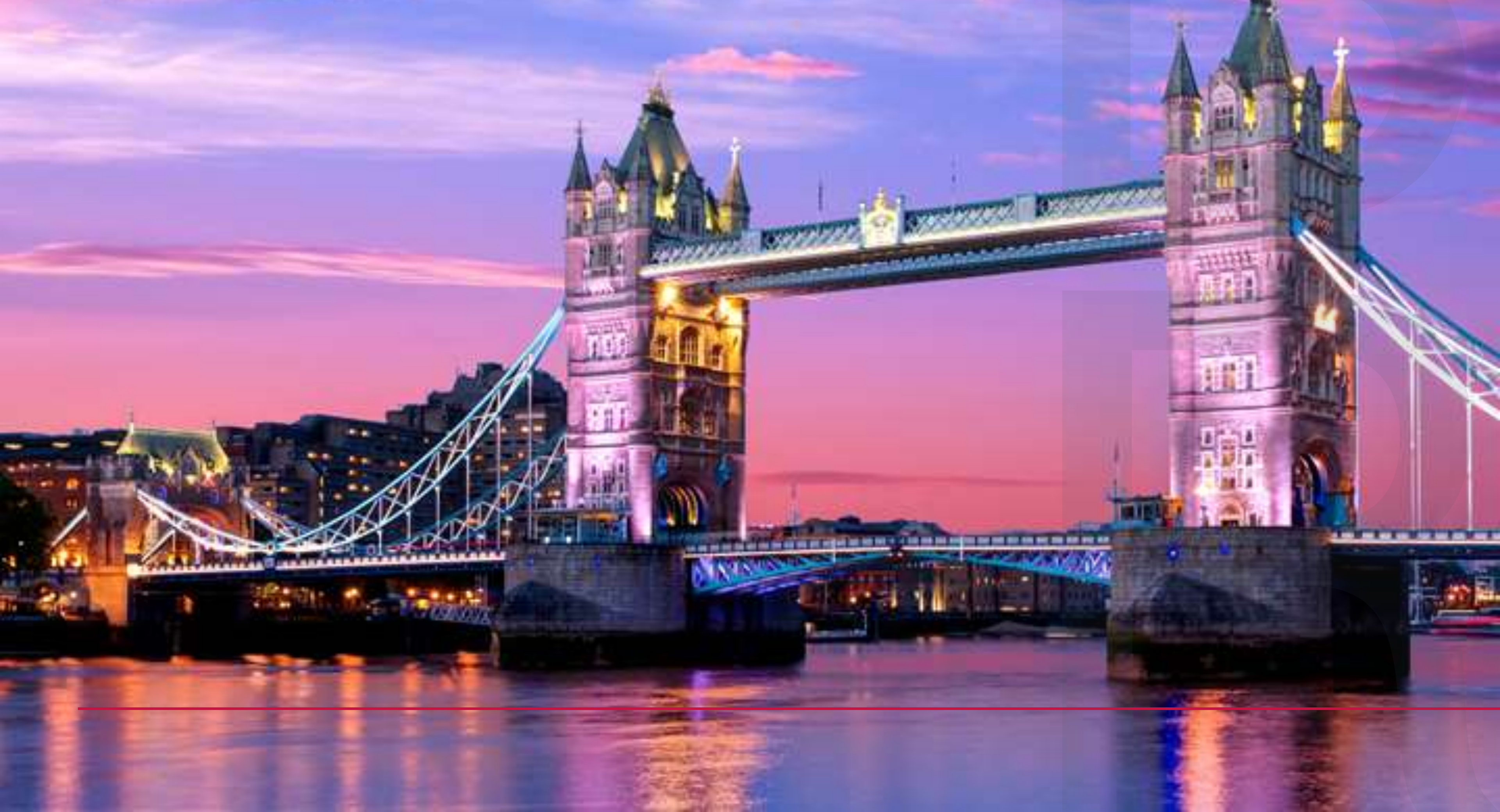
How can Blick Rothenberg help



How can we help your organisation?

Assisting with the implementation of a remote workforce policy or other applicable policies that cover your global workforce

Reviewing your organisation’s transfer pricing policies and proposing amendments if relevant

Assisting with the compliance related to having a global workforce

Discussing the implications of having a global workforce with you and the affected employees

Reviewing your current arrangements to identify any potential tax issues

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Questions

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Thank you

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