WorkFlex

THE HIDDEN COSTS OF BUSINESS TRAVEL

An assessment based on three actual examples of business travel compliance gone wrong

BY
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Infosys - an Indian IT outsourcing company - was forced to pay €30 million in immigration penalties, the highest amount ever in the United States. Netflix was confronted with a €2 million tax bill in India, as its business travellers had constituted a Permanent Establishment (PE). Bosch had to accept a €320 million settlement to avoid further litigation for its project workers in Italy. By assessing these three actual examples of business travel gone wrong, this article illustrates the hidden costs of business travel. Before discussing the Infosys, Netflix and Bosch cases, the article summarizes what business travel compliance is, and why it has been becoming more relevant. Finally, the article explains what employers can do to achieve it.

What is business travel compliance?

Business travel compliance means that the business trip, both from the perspective of the employer and the employee, is compliant with the relevant tax and legal regulations. In general, the following seven risk dimensions cover the relevant tax and legal regulations.

Corporate Tax

Does the business traveller constitute a Permanent Establishment (PE) or works for the benefit of a pre-existing PE? If so, the company profit generated by the business traveller are taxable in the destination country. The examples of Netflix and Bosch both included their business travellers constituting PE's.

Wage Tax

If the business traveller constitutes or works for a PE, this will likely also trigger a wage tax obligation in the destination country. This means that the company must locally withhold and remit wage tax over the business traveller's salary. Given the fact that wage tax rates may exceed 50%, the financial damage involved will be very high.

Social Security

Business travellers should carry an A1-certificate (EU destinations) or Certificate of Coverage (other destinations with a social security treaty). If these cannot be successfully obtained, there are two potential issues: the first one is that the business traveller may lose coverage of the home country social security scheme. The second one is that the business traveller may become covered by the host country social security scheme. Although coverage sounds positive, the negative is that it will require local social security contributions to be paid - obviously costing financial but especially also administrative resources.

Labour Law

Does local labour law become applicable on the business traveller's employment, meaning e.g. that local public holidays should be appreciated. The employer's duty of care is another labour aspect, that requires an employer to do whatever can reasonably be expected to ensure the business traveller is safe, stays healthy, and can work efficiently and effectively. Published in 2021, ISO31030 provides a guidance on this topic.

VISA / Immigration

Is the business traveller allowed to (a) enter the country, and (b) perform work activities there? Immigration requirements depend on the nationality of the traveller, the duration, and the objective of the trip. Incompliance with the requirements may lead to the business traveller being denied entry to the country, but also - as the Infosys example below will clearly show - very significant penalties.

Posted Workers' Directive

When traveling to an EU country, the Posted Workers´ Directive (PWD) needs to be considered. The PWD aims at ensuring minimum labour conditions for all workers in the EU, Business travellers needs to be registered with the local authorities of the destination country. The content of the registration as well as the process that needs to be followed, differ strongly per country. Failing to do the notifications (timely) can result in penalties of up to €500k[1].

Data Security

Of growing importance has been data security regulations. On the one hand, companies need to make sure they are compliant with the relevant regulations in the destination country, such as minimum privacy requirements. On the other hand, and generally considered more important, is the fact that companies need to make sure company and client data safe when the employee is traveling. How can we ensure that the laptop / WIFI is always secured? Did we commit to clients that data does not leave the EU? Do the local authorities appreciate similar non-interference standards are we are used to at home?

The summary above shows that business travel compliance is an incredibly broad topic. And as one expects from a regulatory area, each of the seven risk dimensions above are already complex on themselves too, let alone the overall complexity of all dimensions combined.

[1] Stefanov, Mineva, Schönenberg, Vanden Broeck; "Enhanced learning resource paper: Cross-border sanctions in the area of undeclared work", EU 2021

Business travel compliance has been becoming more relevant

Business travel has been around for decades. Why wonder about compliance now? In the first place because authorities from different countries are better connected. Especially within the EU, tax and immigration offices have intensified the sharing of information regarding taxation and immigration. The introduction of the European Travel Information and Authorisation System (ETIAS) is not only another symptom of the first point, but it is also a reason on itself to prioritize compliance. After all, now that the European governments will have the data on who enter the region, it should not come as a surprise that they increase control and enforcement efforts. Already before the Covid-19 pandemic, the authorities were increasing their attention for business travel compliance.

Additionally business travel is - slowly but surely - on its way back to pre-pandemic levels. A Morgan Stanley survey found that nearly a quarter of both large and small companies say their firms are already back to pre-COVID travel levels, and 34% anticipate a full recovery by the end of 2023[2]. The pandemic did raise more awareness for the health and safety of employees in general, but especially of those having to travel for work. Given this, it is not a coincidence that, at end of 2021, the ISO organization published a guidance on business travel risk management[3].

Examples of business travel compliance gone wrong

Infosys paid a €31,5m immigration penalty in the US[4]

Infosys is a major Indian IT company that employs more than 300.000 employees worldwide. Many of them work on various temporary projects all around the world. Throughout the years 2010 and 2011, the company had obtained wrong VISA for some of their business travellers to the US. Compared to the VISA obtained (1B), the correct VISA (H1B) would have been much more expensive, time-consuming, and more difficult to obtain. The authorities identified the incompliance and ultimately imposed the highest VISA penalty in US history: €31,5 million. Moreover, in the years that followed the company had additional settlements with separate US States on the same our similar matters. In June 2017, it paid €900k to the state of New York, followed by €750k to the state of California in 2019.

[2] Business Travel Trends: 2023 Outlook | Morgan Stanley
[3] ISO 31030:2021 - Travel risk management — Guidance for organizations
[4] Indian corporation pays record $34 million fine to settle allegations of systemic visa fraud and abuse of immigration processes | ICE

Netflix received a €2m corporate tax bill in India[5]

Early 2023 the Indian tax authorities took the position that Netflix has a PE in the country. Netflix does not have an office or anything similar in India; the PE was deemed to be constituted by the presence of merely some business travellers in the country. As such, the local presence was rather limited and so should the profits be allocated to the PE, right? On the contrary. Due to the company's 'digital presence' the Indian tax authorities allocated no less than €5 million in profits to the PE. The digital presence consists of Indian citizens having Netflix subscriptions, accounting for revenue that local authorities could not tax before. The impossibility to tax digital presence has been a major annoyance for many countries, for many years. The EU has been working on some kind of a digital services tax for at least a decade, but without considerable success. It is interesting to see how business travel incompliance, in this example by Netflix, may have provided authorities with an easier alternative to tax the digital presence in their countries.

Bosch agreed to a €320m settlement in Italy[6]

Probably one of the largest business travel compliance cases, is that of Bosch in Italy. For several years, business travellers had been working on local projects. Mainly at the premises of car manufacturer Fiat, they had been performing local maintenance activities, etc. Just as with Netflix in India, the Italian authorities took the position that these employees had constituted a PE. The tax bill that was initially presented amounted to a staggering €1,4 billion. Moreover, as part of the looming judicial case, Bosch staff was even facing custodial sanctions (i.e. jail-time) for committing tax fraud. Eager to settle, Bosch ultimately agreed to pay €320 million to the Italian authorities. The company initially thought to ease the pain by deducting these Italian paid taxes in Germany. This turned out unsuccessful, resulting in a significant double tax burden.

[5] India's IT department looking to tax Netflix's India operations - ET | Reuters
[6] Bosch und Italiens Fiskus: Bosch zahlt Steuern doppelt – und erhält nichts zurück (stuttgarter-zeitung.de)

The hidden costs of incompliance

The amounts €31,5 million, €2 million and €320 million are very high and clearly they were imposed to large companies. However, the cases of Infosys and Netflix were identified by the local authorities through probe controls by customs officers. As such, this could have happened to business travellers of companies any size. Also, from Infosys it is known that only 0,02% of the days that Infosys staff worked on US projects, were performed on the basis of the faulty VISA.[7] This shows that a relatively small number of compliance misconducts can lead to serious financial damages. At the time Infosys had 1.600 business travellers working on the 1B VISA. Doing the mathematics lead to costs of incompliance of €626,25 per business trip.[8] Doing a similar calculation for the Netflix case, the costs of incompliance amount to €2.222 per trip.[9] The Bosch settlement included ca. 1.000 travellers per year for a total duration of ca. 11 years. As a result, the estimated costs of incompliance for these business trips amount to €1.939,39 per trip.[10]

The costs of incompliance are not limited to the amounts calculated above. Infosys and Bosch must have spent millions on lawyers and tax lawyers, and Netflix is undoubtedly doing the same as we speak. Moreover, the tax bill for Netflix so far only covers one year and does not yet include any interest and penalties. Other examples of damages are the brand damage for the public, as well as the increased scrutiny going forward from tax authorities in the respective and other countries.

What can employers do to make business travel compliant?

Most companies have always wanted to take business travel compliance more seriously, but so far they struggled in doing so for one or more of the following reasons:

- the regulations are so broad and so complex, that it would take an entire team of various specialists to assess the compliance risks and requirements of each business trip;

[7] Infosys to pay $34m in US visa case - Finance - iTnews

[8] Calculation: - 1.600 business travellers (Infosys to pay $34m in US visa case - Finance - iTnews) * 2 years (Indian corporation pays record $34 million fine to settle allegations of systemic visa fraud and abuse of immigration processes | ICE) = 3.200 business travellers in total - 3.200 business travellers * 15 trips per year (https://www.vdr-service.de/fileadmin/services-leistungen/fachmedien/geschaeftsreiseanalyse/VDR-Geschaeftsreiseanalyse-2020.pdf, p.5) = 48.000 trips - 31,5m / 48.000 trips = €656,25 per trip

[9] Calculation: --est. 60FTE ongoing in India * avg. 15 trips per year (https://www.vdr-service.de/fileadmin/services-leistungen/fachmedien/geschaeftsreiseanalyse/VDR-Geschaeftsreiseanalyse-2020.pdf, p.5) = 900 trips. --2m (India's IT department looking to tax Netflix's India operations - ET | Reuters) / 900 trips = €2.222,22 per trip

[10] Calculation: --€320m / 11 years / 1.000 travellers Bosch und Italiens Fiskus: Bosch zahlt Steuern doppelt – und erhält nichts zurück (stuttgarter-zeitung.de) = €29.091 per traveller --€29.091 / avg. 15 trips per year (https://www.vdr-service.de/fileadmin/services-leistungen/fachmedien/geschaeftsreiseanalyse/VDR-Geschaeftsreiseanalyse-2020.pdf, p.5) = €1.939,39 per trip.

- the authorities have made it practically impossible to obtain the relevant documentation; requesting an A1/CoC and do a PWD notification will easily require three hours per business trip. And even if requested, it easily takes more than 2 months for the social security institutions to issue the A1/CoC;
- the solutions previously available on the market were limited to those of the Big 4 (PwC/Vialto, Deloitte, KPMG and EY), which are expensive and generally limited to assessing the risks only. Today, innovative technology companies such as WorkFlex offer better suited alternatives.

This raises the question what a company can do to ensure business travel compliance. In general, we distinguish three key things the responsible department can do: obtain the right information, identify compliance red flags, and implement the compliant solution.

Obtain the right information

Many HR and/or global mobility departments, usually the responsible department within the company, are not at all involved in the business travel booking and authorization processes. They should be. They should know who is traveling where, when and why - and obviously before the trip commences. In case a booking platform - such as Cytric, BCD or Egencia - are in use, the connection can be established by ensuring a copy of each booking confirmation is sent to the global mobility department. For trips taking place outside of the standard process, an alternative process through the intranet or something similar can be implemented.

Identify compliance red flags

Now that the global mobility department has obtained the right information, it needs to assess the compliance risks to identify any red flags. This assessment should consider the seven risk dimensions mentioned above, from corporate tax up to and including data security. A complication factor is that the assessment should consider each individual trip, as well as the accumulated trips to a certain destination country. Especially the accumulation can trigger the compliance issue, as the examples of Netflix and Bosch show. In the case of Infosys, the accumulation triggered rather an explosion of the magnitude of the issue.

Implement the compliant solution

Assuming the assessment did not result in any absolute red flags, the third and last to do is to implement the compliant solution. Three types of measures can be distinguished. First, provide or request the relevant documentation. Examples are requesting the aforementioned A1/CoC and do the PWD notification. Second, education of the traveller. The employee should know what (not) to do in order to keep himself safe and the company compliant, e.g. via employee instructions and providing emergency support phone numbers. Third, ensure that the right insurances are in place. Clearly, this includes a travel health insurance. However, the next paragraph addresses another type of insurance that employers should be aware of as well: no-risk business travel by WorkFlex.

THE SOLUTION FOR EMPLOYERS

WorkFlex is a technology platform that ensures business travel compliance. It is easy to use for travellers and HR/GM users, and it integrates with both travel booking platforms and HRIS platforms. WorkFlex collects the relevant information, performs the risk assessment of individual and accumulated trips, and implements the compliant solution. Save time by letting WorkFlex **automatically request** A1's/CoC's and perform PWD notifications. Get insight by having all data in one single platform. And most importantly, **reduce compliance risks to zero** through WorkFlex' unique no-risk business travel concept. Under this concept, WorkFlex accepts full responsibility for the compliance of your business trips by providing a 27/4 escalation support, **legal liability** for the correctness of the assessments, and **financial liability** in case a compliance risk would still materialise.

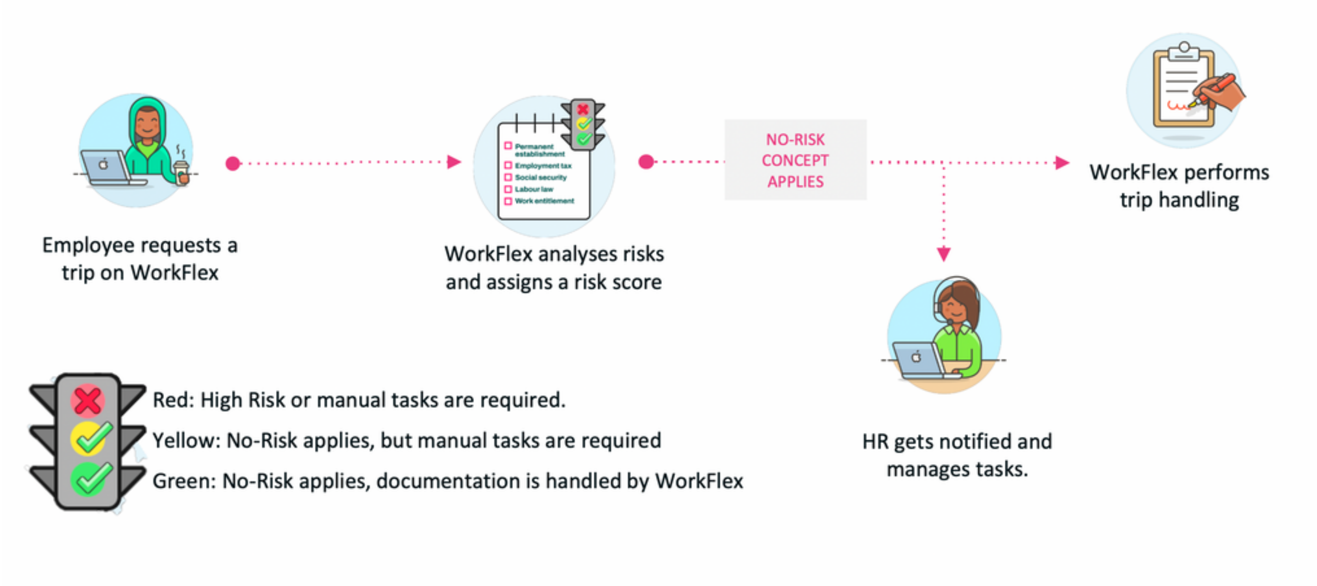
Software license

Trip handling

Responsibility

Additional support

HOW IT WORKS



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