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A taxing problem for executives

By Charles Wallace

Tracking advice: the need for executives to keep close records of international travel led to the development of software to help do this

In 2009 Julian Robertson, a hedge fund pioneer, was asked by New York to pay an income tax bill of $27m because he had spent just two days too long in the city.

The dispute between Mr Robertson and the city tax authorities came down to whether he was at his Long Island estate outside the city or at his Manhattan apartment with his wife preparing for an overseas trip. This was to determine if he had exceeded the 183 days permitted before triggering city tax liabilities during 2000.

It required four days of hearings before an administrative law judge for the former chief executive of the defunct Tiger Management Corp to establish his whereabouts with credit card receipts and a computer diary compiled by his secretary and get the city's tax assessment thrown out.

The issues at the centre of the Robertson case are attracting increasing attention as governments around the world seek to raise tax revenue by focusing on a new class of globally mobile executives who move from country to country for short periods of time.

Iain McCluskey, a director in the international mobility team at PwC, the professional services firm, in London, says: “It’s absolutely a problem for companies and it’s getting ever greater.”

One Wall Street mergers and acquisitions banker, who asked not to be named, says he sometimes travels between New York and London as often as three times a week.

“Someone in that position has a very difficult set of circumstances to deal with because they have three separate tax jurisdictions, and they all have different rules,” says Matthew Norris, an international expert at tax firm Frank Hirth, who advises travelling executives. For example, he points out that New York demands tax filings from business visitors from outside the state who spend as little as 14 days a year in the state.

The US federal government counts parts of visits from previous years in its residency calculation. This entails all the days in the current year spent in the US, plus one-third of the days spent in the US last year, plus one-sixth of the days spent there the previous year. If that totals 183 days or more, you have become a US tax resident even if you are legally resident somewhere else.

The UK government is also bringing in a slew of tests that requires intricate record keeping.

“I have several clients who have their PAs keep some very complex-looking spreadsheets that are essentially tracking their movements and how many days they are triggering for each jurisdiction,” Mr Norris says.

PwC has a proprietary platform that it gives clients to help keep track of employees’ overseas movements, says Mr McClusky. “A company like [management consultancy] Accenture, with many thousands of employees who are constantly mobile – four months in Switzerland, five months in India and a year in New York – runs into tax systems that are simply not designed for these people.”

Against this backdrop, Anupam Singhal and Nishat Mittal, two Indian expatriates based in the US, are hoping to capitalise on the demand for records of executives’ whereabouts. Five years ago the pair, who met while working at General Atlantic, the asset manager, were in a similar situation to Mr Robertson. Mr Singhal was working in the UK but flying back and forth to visit his wife in Boston. Mr Mittal was working in India while his wife stayed in New York City.

Mr Singhal’s accountant told him he might have to pay 6.5 per cent of his global income in tax to Massachusetts unless he could prove he was not in the state for a total of 183 days. “We spent a lot of time scrambling through calendars, travel records, boarding passes, meeting schedules and credit card receipts trying to put together a record that would show where I was for the entire year,” he says.

Mr Mittal was jetting in and out of India every third day. He discovered he had been in the country for a total of 184 days in one year and was thus liable for a full year of Indian income taxes, which were much higher than those he would owe in the US, where he is a citizen. "Just for two days [in India] I ended up owing a lot of taxes," he says. "But keeping a record of where I am spending time – that is a massive issue for a busy executive."

With their savings, Mr Singhal and Mr Mittal set up Monaeo – from the Latin denoting warn, advise and remind. The company offers a suite of software that includes an app that uses the GPS in a smartphone to record the user's exact whereabouts almost every minute of the day. The software can also send an email or SMS warning users to get out of town or face a tax bill.

The founders expect the Monaeo software will prove most popular among multinationals with numbers of executives who spend a few days at a time in many different tax domiciles. Because the software is new, however, it has not been put through the rigours of an audit. Jonathan Horn, a certified public accountant in New York, says the tax authorities are likely to accept software proof if there is corroborative evidence such as credit card receipts or hotel bills.

New York state alone collected $220m in taxes last year from non-
residents who visited the state for work because they failed to declare and pay state income tax under the new residency rules.

Mr Norris says New York state has "one of the most draconian and aggressive jurisdictions for claiming taxes". Anyone in the state on business for 14 days within one year is not only required to file a tax return but their company must withhold New York state income taxes from the employee's pay.

Mark Klein, a senior partner with Hodgson Russ, a tax advisory firm in New York, sees income tax audits involving residency questions almost daily. The biggest problem in such cases is proving a negative. "If a client says, 'I have a receipt that shows I had dinner in New Jersey and not New York', the auditors say that only proves you had dinner there, not that you spent all 24 hours there," he says.

Tax authorities now routinely audit multinationals' travel and entertainment expense reports to see where each employee was during the tax year. Such an audit recently identified a TV network executive who visited New York about 20 days a year, says Mr Klein, but did not realise he owed taxes until the state

Value of a paper trail

While software products help in keeping track of your whereabouts, experts also recommend that you:

● **Save hotel and restaurant receipts** If you can prove you had dinner in London on a Tuesday and Thursday, tax authorities will generally accept you were in the city on Wednesday.

● **Use credit cards, as they provide further proof of your location** This includes when you are departing in airports and want to buy something, even a small item such as chewing gum or a magazine, as it will show the last time you were in that city.

● **Keep all boarding passes from international flights** Air tickets alone are not considered sufficient proof.

went through his company's expense reports and found his hotel bills.

Mr Mittal says the software would be particularly attractive to companies that send staff on short-term overseas assignments and are obliged to cover the tax costs for those employees. "If the company knew they had to pull them out on a certain day, it could save the firm a lot of money," he says.

Some executives might balk at their company knowing exactly where they are every minute of the day. "There is almost a new type of contract between an employer and an internationally mobile employee that involves the employer interfering in parts of an employee's life that might not necessarily feel natural or welcome," Mr McClusky says.

"As more and more workers cross state lines and international boundaries, companies need to be more aware of the problem," Mr Horn says. "I suspect a lot of smaller companies figure they are sending someone overseas for only a couple of days so it doesn't count. Well, they're wrong."

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