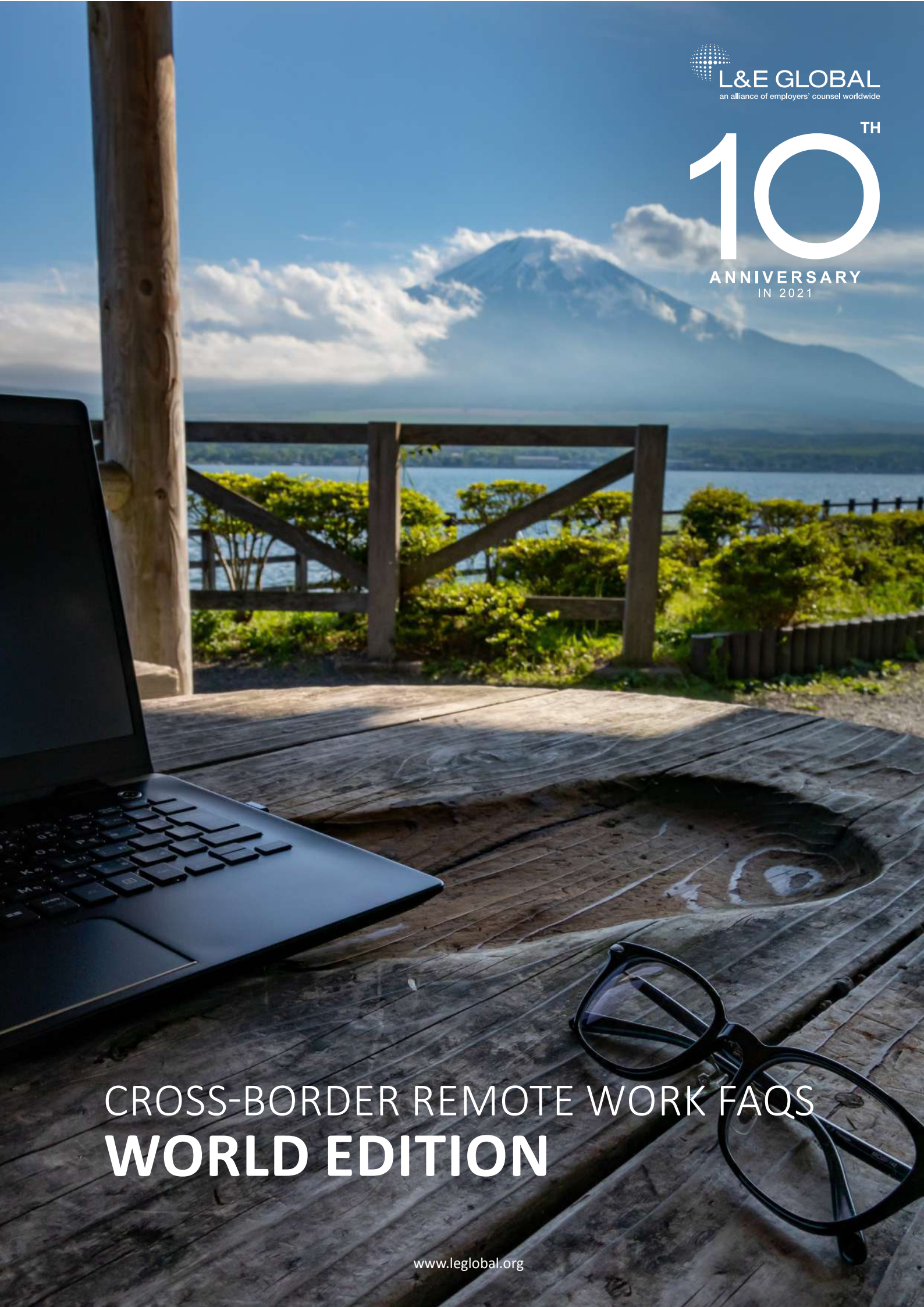

CROSS-BORDER REMOTE WORK FAQS
WORLD EDITION

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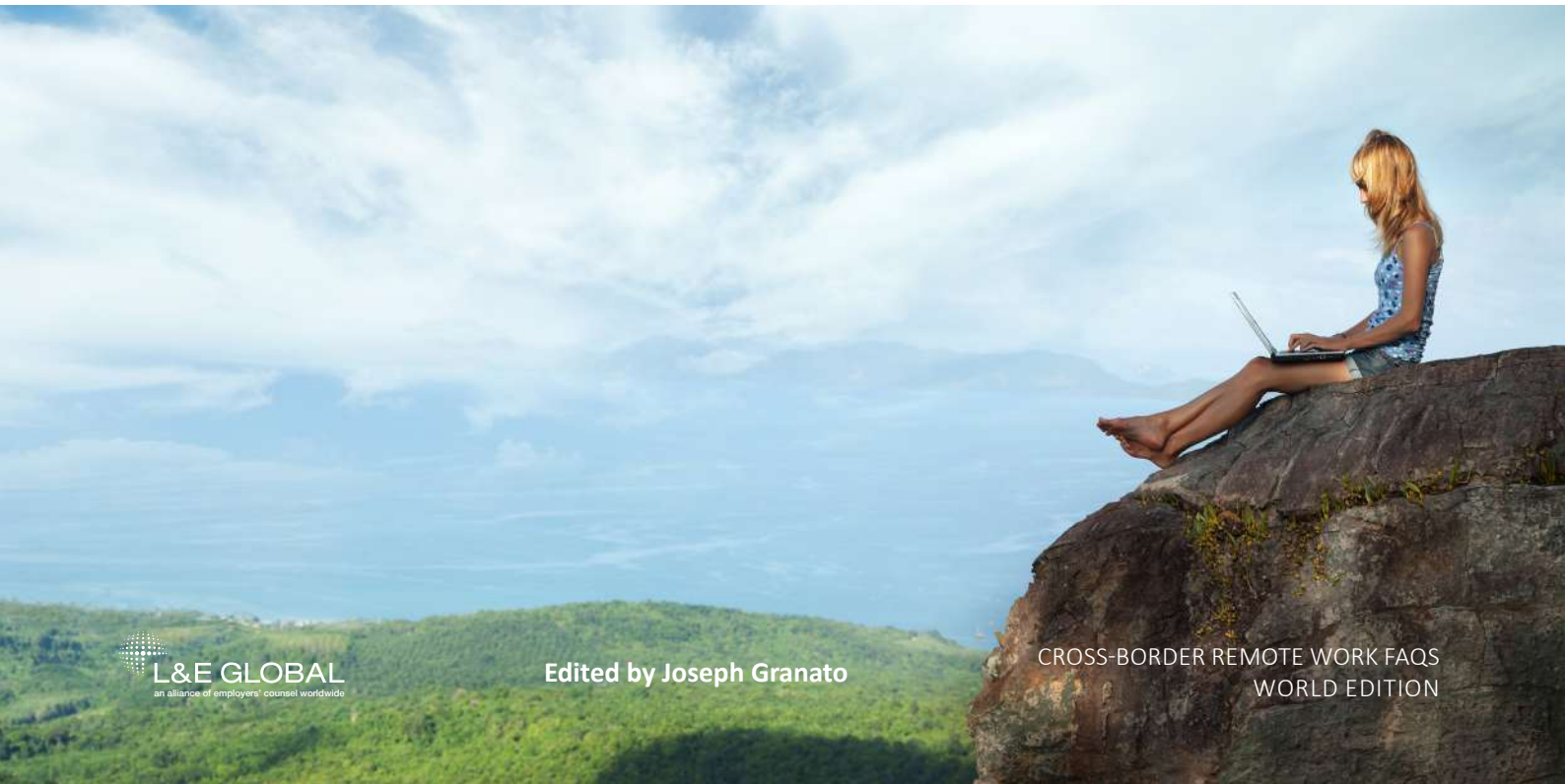

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10TH ANNIVERSARY IN 2021

ALLENDE
ALLENDE & BREA

CROSS-BORDER REMOTE WORK FAQS

ARGENTINA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

If the worker becomes subject to local employment law requirements, he/she must apply for a work visa. Unlike other countries, in Argentina, it is not possible to apply for a remote work visa. Due to this, a foreign employee working for a foreign company, is not able to obtain a work permit in Argentina, unless, a local company requests it. Furthermore, it is important to consider that a person is not able to work in our country as a tourist.

Depending on the length of the stay, the applicant should obtain a transitory work visa or a temporary work visa, at the corresponding Argentine Consulates from abroad or through the National Migration Office in Argentina.

Through the Mercosur Agreement, foreigners from Uruguay, Paraguay, Brazil, Bolivia, Chile, Peru, Colombia, Ecuador, Guyana, Surinam and Venezuela may request their temporary visas at the Argentine Consulate or at the Argentine Migration Office, providing evidence of their nationality, among other documents. This temporary visa will be entitled to such foreign individuals to work in Argentina for a two-year period. After the first two-year period, the employee will be able to request a permanent residence.

Argentine companies should request to the Argentine Migration Office temporary work visas for Non-Mercosur employees. For this purpose, the Argentine company must submit: (i) a labor agreement entered into between the Argentine company and the foreign employee; (ii) evidences that the Argentine company has no outstanding obligations vis-à-vis the tax and social security authorities; (iii) proof of employer's registration with the National Registry of Foreign Applicants (RENURE); (iv) a good conduct certificate issued by the police (both Argentine and from the country where the foreign employee has resided in the preceding three years, for at least one year), certificate of domicile, among others. In case of applying for a temporary visa for the employee's family members, the

corresponding family ties should be proven. This visa has a validity of one year and grants multiple entries. All documents must be duly legalized in the jurisdiction of origin, as well as a consular legalization (or the Apostille). Documents in a foreign language must be then translated by a public translator in Argentina.

The processing time of the visas will depend in each case in particular. In normal circumstances, the Argentine Consulates from abroad could issue the visas in five business day, after the presentation of all the required documents. The National Migration Office will issue a provisory work permit the same day of the application, until the approval of the Immigration file.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

From 2018 onwards Argentina incorporated into domestic Argentine Income Tax Law ("ITL")'s Section 22 permanent establishment provisions defining this concept as a "fixed place of business". A typical example of what is understood as a fixed place of business is a dependent agent of a foreign company acting in Argentina.

Argentine Income Tax Law defines a dependent agent as an individual that (i) has the authority or habitually exercises an authority to conclude contracts in the name of the foreign entity, or has a relevant role to celebrate those contracts (ii) maintains a deposit of goods from which they regularly deliver those goods (iii) undertakes risks on behalf of the foreign entity (iv) acts under the orders of the foreign entity or under dispositions arising from a contract relationship with it (v) exercises activities which corresponded economically to the foreign entity and (vi) is paid independently from the result of their activities.

These provisions shall apply when these activities are carried out for more than six months. Pursuant to Implementation Decree's Section 62, the six-month period shall be computed as from the day in which the services or activities are effectively rendered or carried out. Please note that the Implementation Decree does not provide with cases under which the six-month period shall be suspended or reinitiated.

Considering the above, the Argentine Tax Authority may conclude that a foreign national employee constitutes a permanent establishment if the abovementioned requirements are met, and the six-month threshold is surpassed. If that were the case, then the foreign entity shall have to assess and pay Income Tax for their Argentine-sourced income (i.e., effectively connected income of the foreign entity to the foreign national employee's activities in Argentina).

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

If the worker is considered subject to local employment law requirements, such requirements cannot be fulfilled by a foreign company. The foreign company must incorporate a local company to register the worker and be able to pay local taxes and social security.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

If the worker performs work in Argentina, even if employed by a foreign company that wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in Argentina, the worker becomes subject to local employment law requirements.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Yes, Teleworking Law 27,555 and Decree 27/2021 provides that the worker must voluntarily agree in writing to work remotely, the right to digital disconnection, that the worker can interrupt the work day to take care of any of the following dependents of the worker: (i) persons under thirteen (13) years old; (ii) persons with disabilities; or (iii) elderly adults who live with the worker and require specific assistance The remote worker may revoke the consent given to work remotely at any time during the employment relationship. The employer must provide the worker with the necessary equipment to perform tasks, as well as assume the costs of installation, maintenance and repair of such devices. The worker shall have the right to compensation for the higher connectivity and/or service consumption expenses incurred within the performance of tasks. The Ministry of Labor will keep a register of the companies that implement a telework modality, where the employer must present the software or platform to be used and the list of the employees under this working modality.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The foreign employee will be subject to Income Tax only to the extent of their Argentine-sourced income, since foreign tax residents are liable to pay Income Tax in Argentina on their Argentine-sourced income only.

However, if the foreign employee acquired Argentine tax residency (i.e., acquiring a permanent residency in Argentina or staying in Argentina for more than 180 days within a 12-month period willing to remain in the country) then they would be subject to Income Tax in Argentina on their foreign-sourced income as well.

In both cases, since there would be no local employer, the individual shall assess and pay for their own Income Tax in Argentina, as applicable.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Yes, if he is subject to local employment law requirements.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

No, unless he is registered as an employee of a local employer, in accordance with applicable local employment law requirements.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Argentine Data Protection Act ("PDPA") has no extraterritorial scope. In this regard, the PDPA applies whenever personal data is processed within the Argentine territory. Consequently, a foreign employer will be subject to the Argentine Data Protection Act regarding the protection of employee personal information for a foreign employer working remotely in Argentina.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No specific litigation or law, besides the Teleworking Law 27,555 and Decree 27/2021 mentioned above.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

No from a labor law perspective.

From an Argentine tax perspective, if the remote worker was an Argentine citizen then the answers to the questions above might change considering that Argentine citizens are deemed Argentine tax residents (unless they meet criteria to lose their tax residency).

Because of that, Argentine tax resident individuals shall pay Income Tax in Argentina on their Argentine and foreign sourced income (e.g., income arising from a local or foreign labor relationship).

However, this circumstance should not affect the individual's foreign employer since the individual would be liable to assess and pay for their own taxes in Argentina. Please bear in mind that if the employer was an Argentine entity then they shall withhold and remit income tax arising from the local labor relationship to the Argentine Tax Authority.

If the foreign national employee engages in activity interacting with the local market then it might be construed by the Argentine Tax Authority that such engagement constitutes a permanent establishment under ITL's provisions, and that such income is effectively connected to the foreign entity by the foreign national employee's activities in Argentina. In this case the foreign entity should assess Income Tax in Argentina for its Argentine-sourced income.

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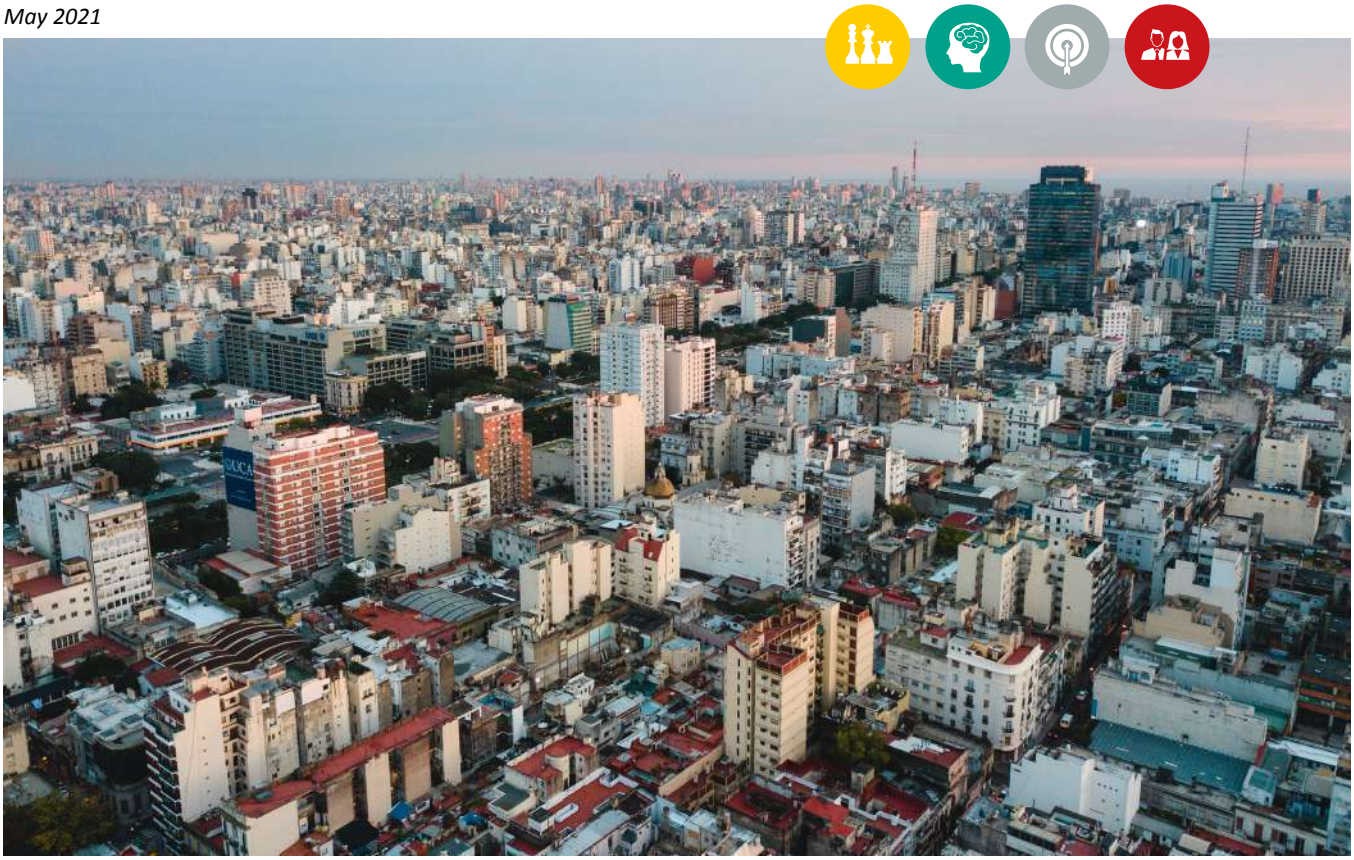

CROSS-BORDER REMOTE WORK FAQS

AUSTRALIA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

A visa is required in order to work in Australia, and anyone who is not a permanent resident or citizen needs work authorisation. The most appropriate visa for a remote worker would be a Temporary Skills Shortage visa (subclass 482). This requires sponsorship from an employer (which can be an overseas business), and the employer does not need to have any operations or links to Australia to sponsor an employee to work in Australia. Additionally, a worker must be nominated to work in an approved occupation (for e.g., marketing specialist or web developer). As part of the nomination process, the employer needs to show that they have taken steps to recruit an Australian worker but have been unable to so. Clearly, the more specialised the role, the easier it will be for an employer to argue that their existing employee (the employee that wishes to travel to Australia to work) is the most qualified person for the role.

It is advisable that foreign companies seek immigration advice before permitting employees to work remotely overseas.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

A foreign company may be considered as having a permanent establishment in Australia in circumstances where they have an employee working in Australia who becomes a resident for tax purposes. The existence of a permanent establishment in Australia will render a foreign corporation liable to pay Australian company tax on profits generated within Australia.

However, the Australian Tax Office has confirmed that foreign companies will not be assessed as having a permanent establishment in Australia if the presence of their employee(s) in Australia is solely as a result of COVID-19 related travel restrictions. Further, where the remote worker is prevented from leaving due to COVID-19 restrictions, they will not become an Australian resident for tax purposes if they usually live overseas permanently and intend to return there as soon as they are able. It is important that a remote worker temporarily working in Australia relocates overseas as soon as practicable following the relaxation of international travel restrictions.

It is advisable that foreign companies seek tax advice before permitting employees to work remotely overseas. Employers should also be aware of the existence of a double tax agreement between their home country and Australia. Australia has double tax agreements with China, France, Germany, India, Ireland, Japan, Malaysia, Singapore, the US and UK, among other countries. These agreements may also make provision for social security obligations on home and host countries.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS? AND WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

Australian residents for tax purposes are liable to pay the Medicare levy, being 2% of taxable income (used to fund some of the costs of Australia's publicly funded system of universal healthcare). Foreign tax residents will need to apply for an exemption from paying the Medicare levy. Generally speaking, when employers withhold PAYG (pay as you go) income tax from employees, the Medicare levy is included as part of the calculation. Australia's social security system is predominantly funded through general government revenue, as opposed to specific levies on employers.

It is unlikely that state payroll tax would apply to the situation where a foreign company has one employee working remotely in Australia, given this tax only applies where the total Australian wages they pay exceeds the threshold of $1,200,000 in a financial year.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Generally, all people working in Australia, including foreign workers, are entitled to basic rights and protections in the workplace. This includes foreign workers who are not Australian citizens or permanent residents, such as 'backpackers', seasonal workers, or international students.

Under the Fair Work Act 2009 (Cth) (FW Act) these protections will apply to employees of a foreign corporation engaged to perform work within Australia, where they are 'national system employers'. However, this does not mean the FW Act encompasses every foreign corporation. As was stressed in FWO v Valuair (2014) and Holmes v Balance Water (2015), before a company will be considered a 'national system employer', and thereby before the FW Act will apply, there must be:

a) an "appropriate connection" aligning the employment relationship with Australia; and

b) the employment relationship must be "sufficiently" linked with Australia.

Relevant factors include:

- *Proportion of overall working time spent in Australia*
- *Domicile of employing entity*
- *Currency income is paid in*
- *Employment address*
- *Jurisdiction where taxation is paid*
- *Existence of directions from employer as to location of work*
- *Contractual stipulations as to location & choice of law in the employment contract*

- *Location where worker employed/contract formed*
- *Whether decision to work remotely is that of the employee*
- *Whether employee becomes a resident for tax purposes*

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

There are no special requirements governing remote workers per se. The above principles apply.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Subject to the exemption for an employee(s) who cannot return to their usual place of work overseas due to COVID travel restrictions, if an individual is present in Australia for more than 183 days (continuously or intermittently), they will be a resident for taxation purposes unless it can be established that their usual place of abode is outside Australia and that they have no intention to take up residence here. If they are a resident, they will be liable to pay Australian income tax, and their employer will be liable to withhold that tax on their behalf (and remit it to the Australian Taxation Office).

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Work, health and safety laws provide that employers have a primary duty to ensure, as far as reasonably practicable, the health and safety of their employees and all persons in their workplace. This extends to an obligation to, so far is reasonably practicable, provide and maintain a work environment without risks to health and safety.

Where a duty is owed to workers travelling or based abroad for work, employers will owe the same primary duty to those workers as to their Australian based workers. However, what is 'reasonably practicable' in terms of providing a safe working environment will be impacted by the ability of the employer to control or influence safety outcomes in the relevant circumstances.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

*The Privacy Act 1988 (Cth) ('**the Act**') provides the Australian Privacy Principles ('**APP**s') and governs the collection of personal information by certain entities in Australia. The APPs apply to APP entities, which includes private sector organisations with an annual turnover of more than A$3 million and their related companies, as well as some others including health service providers and organisations that trade in personal information.*

The Act extends to the activities of foreign companies in Australia, and to the activities of foreign companies outside Australia, where those companies carry on business in Australia, and collect or hold personal information in Australia. The Office of the Australian Information Commissioner ("OAIC") considers the collection of personal information from an individual located in Australia to be a collection 'in Australia', even if the company collecting the information is outside Australia at the time.

Importantly, APP 11 provides that if an APP entity holds personal information, the entity must take such steps as are reasonable in the circumstances to protect the information from:

(a) misuse, interference and loss; and

(b) from unauthorised access, modification or disclosure.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

As previously mentioned, the Australian Taxation Office has clarified that if a remote worker is present in Australia and is prevented from leaving due to COVID-19 restrictions, they will not become an Australian resident for tax purposes if they usually live overseas permanently and intend to return there as soon as they are able. Additionally, the ATO has confirmed that foreign companies will not be assessed as having a permanent establishment in Australia if the presence of their employees in Australia is solely as a result of COVID-19 related travel restrictions. It is important, however, that those employees are temporarily in Australia and that they will relocate overseas as soon as practicable following the relaxation of international travel restrictions.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

(a) Citizenship does not determine entitlements to minimum rights and conditions under Australian employment law. However, Australian citizens working remotely in Australia will not need work authorisation.

(b) Engaging in activity interacting with the local market may have implications regarding the creation of a permanent establishment in Australia for taxation purposes. Employers should seek specialist taxation advice.

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For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

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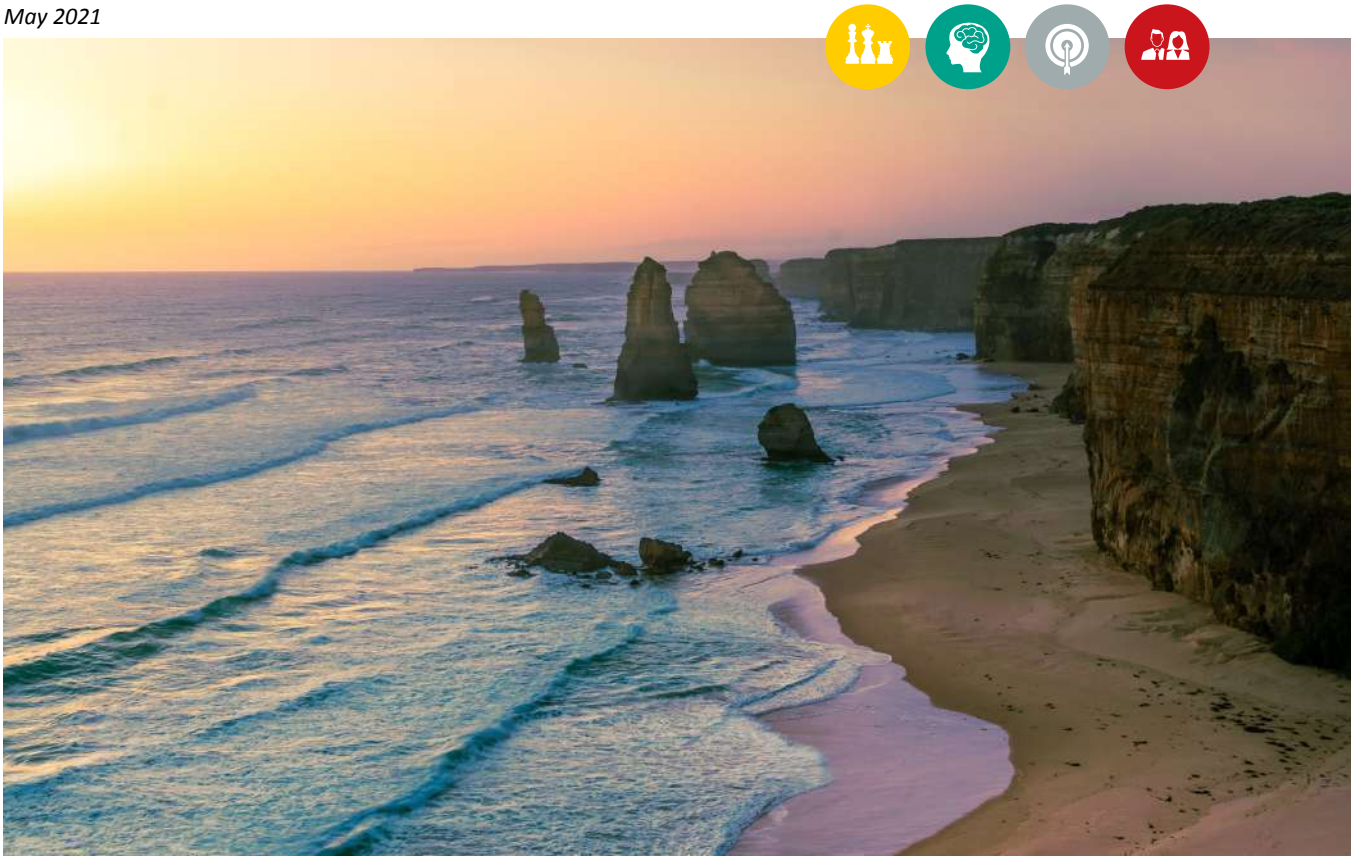

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10TH ANNIVERSARY IN 2021

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CROSS-BORDER REMOTE WORK FAQS

BELGIUM

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

A work authorisation is not required for nationals from the European Economic Area and Switzerland. Other nationals require a single permit (if longer than 90 days) or a work permit (if less than 90 days). The employer will have to request the permit from the administration of the competent Region (Brussels, Flanders or Wallonia). Requesting a single permit can take up to 4 months; requesting a work permit usually takes several weeks up to more than a month.

The access to the single permit procedure is restricted to certain categories of workers, which are enshrined in the regional regulations. Most important for the majority of employers, are the categories of highly skilled workers and managerial employees. This means that the employees have to fulfil certain conditions of higher education degrees and higher wages or they have to take up certain leading functions within the company. The specific conditions to be fulfilled and the necessary documents which have to be submitted are laid down in legislation of the Regions, but in general the following documents will be necessary for posting non-EEA workers:

- *copy of the passport of the worker*
- *copy of the degree(s) of the worker*
- *recent criminal records of the worker*
- *recent medical certificate of the worker*
- *employment contract between the posting company and the worker*
- *proof of health insurance coverage*
- *proof of the payment of the administrative fees*
- *power of attorney for the agent of the foreign employer*

These documents have to be submitted together with the regional application form (signed by the employer and the employee). These application forms will only be in Dutch or French. Submitting English documents is allowed, but documents in other languages should be translated by an official translator.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

The term "Belgian establishment" is broadly understood to mean any fixed place of business through which a foreign company carries out all or part of its business activity in Belgium. The threshold is very low. A dependent agent is enough, even if he is not entitled to conclude contracts in the name of the enterprise. Where a foreign undertaking performs services in Belgium, for the same or related projects, through one or more natural persons who are present and perform those services in Belgium, for a period exceeding 30 days in any twelve-month period, the activities carried out in Belgium in connection with the performance of those services also constitute a Belgian permanent establishment. In contrast, if the remote worker only continues to work for the employer and does not "come into contact" with the local market (e.g. no provision of services) there will not be a permanent establishment.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

The National Employment Office has decided not to take into account the (temporary) remote work in Belgium during the COVID-19 pandemic in order to determine the applicable social security rules. Under normal circumstance for EEA nationals, temporary remote workers can remain under the social security rules of the country where they come from for (in principle) 24 months if there is an A-1 declaration.

For non-EEA nationals, the bilateral social security treaties that Belgian has concluded with other nations should be consulted. If there is no treaty, the Belgian administration will have to discuss with the foreign administration which system will be applied, in order to avoid a double application of social security systems.

Other Belgian payroll requirements will be applicable. E.g. the obligation to draft certain social documents, i.e. pay slips and an individual account. If there was a valid declaration of a posting of workers (LIMOSA) the other social documents (internal work rules, register of employees, etc.) do not have to be drafted for the first 12 months.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Belgium will apply almost all its labour law provisions immediately to the remote worker, except for the rules concerning the concluding and termination of employment contracts, including non-compete clauses laid down in the Employment Contracts Act. After 12 months, the rules concerning the general obligations of employers and employees, the liability and the suspension of employment contracts will also become applicable.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Yes, remote work should be covered by the rules for structural telework in Collective Bargaining Agreement no. 85 or the rules for Telework during the pandemic, laid down in CBA no. 149.
See: https://www.vow.be/node/229

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The applicable tax will depend on the double tax treaties that Belgium has concluded with most countries. If such a treaty states that the Belgian income tax applies and there is a permanent establishment in Belgium,

the foreign employer will have to withhold the Belgian taxes on the remuneration of the employee. However, Belgium has signed several tax treaties with its neighbouring countries to avoid the consequences of a temporary change of location due to the pandemic.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

The worker should be covered by an insurance for occupational accidents (concluded by the employer) in the country of the applicable social security system. This means that, as long as the Belgian social security system is not applicable for this worker, the employee should normally be compensated by the foreign insurance. However, the Belgian legislation will be applicable concerning the obligations of the employer relating to an occupational accident, e.g. the duty to make a report on the accident (which then needs to be given to the insurer).

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

This worker remains covered by the health care system of the country of the applicable social security system (see above). However, the remote worker can have access to immediate health care services: EU citizens will have such access (and will be insured) with a European Health Insurance Card. Non-EU citizens might not be insured (this will depend on their own insurance).

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

The GDPR applies to processing companies with an establishment in the EU and to the processing of personal data of data subjects who are in the EU, by a controller or processor not established in the Union, where the processing is related to:

- *the offering of goods or services to such data subjects in the EU, regardless of whether a payment is required by the data subjects; or*
- *the monitoring of their behaviour, insofar as this behaviour occurs in the EU.*

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

In most circumstances the remote work might be seen as a posting of workers situation (which is broader than the EU concept). In this case, the act of 5 March 2002 on posting of workers applies, which allows Belgium to apply most of its labour provisions.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) Citizenship can e.g. have an impact on the application of certain provisions of bilateral treaties on the applicable tax or social security system.

b) This could mean that there is a permanent establishment in Belgium.

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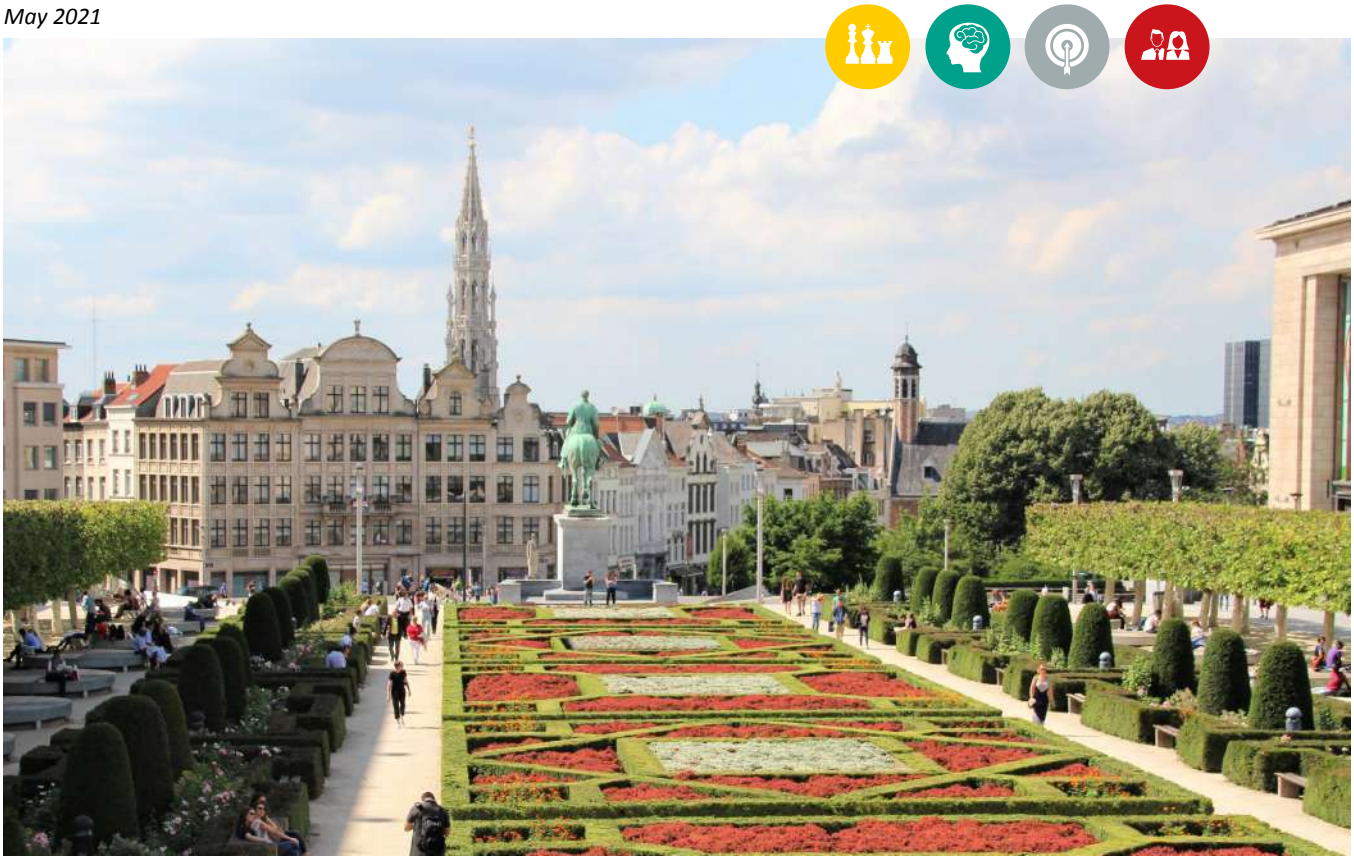

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10TH ANNIVERSARY IN 2021

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CROSS-BORDER REMOTE WORK FAQS

BRAZIL

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

Although several companies and employees are interested in adopting cross-border remote work, up to now there is no specific provision in the Brazilian migratory or labour legislation regulating this situation. Therefore, the general rules shall apply.

Whenever a foreigner wants to live and render services in the Brazilian territory, a work visa/residence authorisation must be previously requested. Selection of the proper work visa depends on the activities that will be executed in Brazil by the foreigner. The Brazilian company for which the foreigner will work, should request the work visa on his/her behalf.

Considering that in the situation described above (e.g., the foreigner will not work for a Brazilian company and will continue to work exclusively for the foreign company) it will not be possible to apply for a work visa under the terms of the Brazilian migratory law, primarily if the foreign company does not have a subsidiary (i.e., company of the same economic group) in Brazil.

Hence, the situation involving a foreigner in Brazil working for a foreign company and not interacting with the local market, will only be possible in the following alternatives:

*i. **Visitor Visa:** Foreigner will come and stay in Brazil for a short period with a visitor visa. Visitor visas are valid for a period of up to 90 days, which can be extended for another 90 days, depending on the foreigner's citizenship.*

A visitor visa is usually for tourism or business activities and thus to perform activities other than work (i.e., tourism or to participate in meetings, become aware of the Brazilian company' practices and policies, obtain information about the market, perform independent

market research, meet with clients and potential clients, come to know the Brazilian employees, set up investments, negotiate contracts, purchase orders or statements of work to be performed in a foreign country, look for real estate and attend professional conferences, lectures or conventions, among other activities that do not involve assuming responsibilities and obligations on behalf of the Brazilian company nor receiving any type of compensation in Brazil). Hence, this type of visa is not the ideal visa to perform work from Brazil, nor is it a risk-free situation. Nevertheless, it is an alternative that some foreigners/companies are adopting due to a lack of any specific legislation.

Since the foreigner is not in Brazil for tourism purposes or for business activities, the foreigner may be subject to penalties from the immigration authorities, if the immigration authorities are able to verify the situation, which, although very unlikely to happen, this may in fact take place. The penalty for the foreigner corresponds to BRL 100 per each irregular day in Brazil, capped at BRL 10,000.

The procedure to apply for a visitor visa depends on the nationality of the foreigner. Foreigners from countries that have treaties with Brazil (i.e., countries from the European Union, Mercosur, among others) do not need to obtain a prior visitor visa to travel, enter and stay in Brazil as visitors. Foreigners from countries that do not have treaties with Brazil however, will need to apply for the visitor visa at the Brazilian Consulate abroad (the one closest to the current residence of the foreigner) before travelling to Brazil.

*ii. **Family Reunion Visa:** Foreigner will come and stay in Brazil linked to a family reunion visa, because his/her partner/spouse has a Brazilian work visa, or is a Brazilian national, or they have a Brazilian child. Usually, the family reunion visa by itself, linked to the work visa of the partner/spouse, does not allow the foreigner to work in Brazil for a Brazilian company, although some exceptions apply. Moreover, it does not have a clear prohibition on the situation described (foreigner working for a foreign company).*

The family reunion visa linked to a formal relationship with a Brazilian national or linked to a Brazilian child, allows the foreigner to work in Brazil.

*iii. **Visa linked to the Foreigner's Citizenship:** Applicable to foreigners from countries that have specific treaties with Brazil (i.e., Mercosur countries) and allow foreigners to enter, stay and work in Brazil for up to 2 years. Since such visa is only linked to the foreigner's citizenship, it does not require a relationship with a Brazilian company or with a Brazilian national.*

Therefore, the foreigner is legally able to work from Brazil and the risk related to inspections and administrative penalties from the immigration authorities mentioned above (penalty for the foreigner) will not apply.

To obtain such visa, the foreigner may come to Brazil as a visitor and needs to schedule an appointment at the Federal Police to register and obtain their authorisation to stay in Brazil (i.e., Brazilian ID for foreigners - "CRNM number/card"). We recommend checking the Federal Police agenda before coming to Brazil.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Brazilian law does not provide for specific internal rules regarding taxation or the definition of a "permanent establishment" (PE). The doctrine debates whether national legislation should define and tax the PE, while only Double Taxation Agreements (DTA) could restrict this right to tax.

As a general rule, Article 7 of the DTA states that a company's profits will be subject to taxation only in the jurisdiction of residence, unless they are attributable to a PE, which is defined by Article 5 of the DTA as the fixed place of business where the company develops all or part of its activities, especially, among others: (i) the registered office of the company; (ii) subsidiaries; (iii) offices; and (iv) manufacturing facilities.

A person who acts in a contracting state on behalf of a company established in the other contracting state is also considered a PE, if this person has and exercises the power to conclude agreements on behalf of the company of the other contracting state; an exception is made if the person is acting as an independent agent.

Thus, if the foreigner is in Brazil for a short term, performing services exclusively for the foreign company, and he/she does not have the power to conclude agreements on behalf of the foreign company, then an argument could be made defending the lack of a permanent establishment.

Nevertheless, Double Taxation Agreements do not expressly address the impact of the remote worker's activities. However, we recognise that several remote activities have replaced the need for physical presence; thus, although not expressly provided for in the DTAs, one could argue that depending on the activities developed by the remote workers, a permanent establishment could be characterised.

There are few administrative decisions regarding a permanent establishment. In at least two cases, the characterisation of a permanent establishment was recognised, thus allowing the income tax charge. To recognise the permanent establishment in such decisions, it was considered that the activities of such foreigner in Brazil (in view of the circumstances analysed in each case) corresponded to the existence of a material installation, on a permanent basis in Brazil, which allowed the foreign company to perform activities in such installation or through it.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

First, considering that the foreigner will be employed by the foreign company and will not be employed by any Brazilian company or interact with the local market, it is possible to propose that the applicable labour law should be that from the country of the foreign company and therefore, no social security and labour charges should be paid in Brazil. Nevertheless, this is not a risk-free situation and there is no case law concerning the matter.

In Brazil, the current understanding, for labour purposes, is still that the law which should govern the relationship between the parties is the applicable law in the location where the services are rendered. Thus, considering that the services will be rendered in Brazil, the foreigner may file a labour claim requesting to be entitled to Brazilian employment and social security rights (pursuant to such risks associated therewith).

Finally, only Brazilian companies are able to comply with the payment of Brazilian social security charges and payroll requirements. Therefore, to be able to pay labour and social security charges linked to an employee working in Brazil, a foreign company would have to: (i) have a Brazilian subsidiary/affiliated company, and the foreigner would be considered an employee of such company; or (ii) contract a human resources company (like a PEO or employer of records) to hire the foreigner on its behalf and comply with all labour and social security obligations; under in this alternative however, it would no longer be a foreigner employed by a company abroad, but a foreigner employed by a Brazilian company, subject to all Brazilian employment rights. For a foreigner in Brazil for a short term and not performing any activity with the local market, this alternative is unlikely to be adopted.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

As mentioned, the Brazilian labour authorities currently recognise that the law which should govern the relationship between the parties is the applicable law in the location where the services are rendered. Moreover, the court that would be responsible for rendering a ruling in the case, would be the labour court in such location. Based on these concepts, the foreigner may argue that because he is rendering services in Brazil, he should be entitled to the rights provided under Brazilian labour and social security law, including the rights established by collective

bargaining agreements applicable to his category, and from the time since of his entry into Brazil.

If the foreign company does not have a subsidiary in Brazil, and the foreigner will stay in Brazil for a short term, this risk is unlikely to materialise. The risk increases if the foreign company has a subsidiary/ affiliated company in Brazil (because the foreigner may, more easily, file a claim against the Brazilian company) and if the foreigner stays in Brazil for a long period and interacts with the Brazilian market.

In summary, if the foreigner will stay for a short period, will work exclusively for the foreign company and the foreign company does not have a subsidiary/affiliated company in Brazil, the labour and social security risks are remote and a strong argument may exist proposing that the Brazilian labour and social security law does not apply to the foreigner. Nevertheless, due to a lack of specific legislation and because this is a fairly new discussion, it is not possible to confirm that this is a risk-free situation altogether.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Sections "75-A to 75-E" of the Brazilian Labour Code establish specific rules regulating remote work/ teleworking system. As per section 75-B of the law, remote work /teleworking system is that which is performed primarily outside the employer's premises, using information and communication technologies.

The law states, in summary, that there should be an agreement between employee and employer related to the remote work including, among others, provisions regarding (i) the activities that will be performed remotely; (ii) acquisition, maintenance or supply of technological equipment and necessary infrastructure; and (iii) reimbursement of expenses incurred by the employee. The employer must also provide, in an express and ostensive manner, the health and safety guidelines to avoid work-related illness and accidents in the remote working system. The employee should sign a responsibility clause stating that he/she has received the guidelines and will comply with them.

The employee who works in the remote working system may be classified as an exempt employee (section 62, III, of the Brazilian labour law) if, in fact, the company will not control his/her working hours.

Although it is possible to argue that the rights set forth in the Brazilian labour law do not apply to a foreigner who comes to Brazil and works only for a foreign company, in order to reduce risks, employers are recommended to observe the rules related to the remote working system, mainly those regarding the health and safety aspects.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

As a rule, resident individuals are subject to taxation on a worldwide basis, meaning that all income (both active and passive) derived from Brazilian and foreign sources is subject to income tax in Brazil.

Foreigners will be considered residents in Brazil for tax purposes if they: (i) stay in Brazil for a period longer than 183 days within a period of 12 months or (ii) obtain a work visa/permit (depending on the type of the work visa/permit, the foreigner will be considered a tax resident as from his/her arrival in Brazil and the 183-day rule will not apply). Therefore, they will have to pay income tax over the total amounts received on a worldwide basis.

For instance, a foreigner with a visitor visa is not considered a Brazilian tax resident, except if he/she stays in Brazil for a period longer than 183 days. On the other hand, a foreigner with a family reunion visa or a visa linked to his/her citizenship is considered a Brazilian tax resident as from his/her arrival in Brazil (though some exceptions apply).

It is necessary to analyse whether there is a bilateral income tax treaty between Brazil and the country where the foreigner is from, in order to verify alternatives related to the income tax that would be due in Brazil.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

In accordance with Brazilian law, an accident that takes place during working hours and/or at the workplace is considered a work-related accident. In this case, since the foreigner's workplace would be his/her residence in Brazil, in the event of an accident at his/her residence during working hours, this may be classified as a work-related accident. In addition, as we mentioned above: (i) it is understood that the law that should govern the relationship between the parties is the applicable law in the location where the services are rendered and (ii) the rules regarding remote working systems establish that an employer has the obligation of providing, in an express and ostensive manner, health and safety guidelines to its employees to avoid work-related illnesses and accidents.

In view of the above, the foreigner could file a claim requesting the recognition of a work-related accident and the payment of indemnification in Brazil. For that, he/she would have to file a claim in Brazil against the foreign company (or its Brazilian subsidiary/affiliated company, if any) claiming to be entitled to the Brazilian labour and social security law and therefore, entitled as well to have the work-related accident recognised with the consequent payment of an indemnification and/or other related rights (i.e., job stability). This risk may increase if she is able to prove that she was not provided with the guidelines regarding health and safety when working remotely. That said, it is not very common for there to be a labour claim in Brazil from a foreigner against its foreign employer, especially if the foreigner will stay in Brazil for a short term. The risk would increase if the accident results in severe consequences for the employee. In a worst-case scenario, it could also harm the reputation of the company.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

In Brazil, there is a national healthcare system, which is known as "SUS". Foreigners who live in Brazil are covered by SUS. However, despite the fact that this is a universal system, due to the large number of users, which results in an overload of the system, several companies provide healthcare plans for their employees.

Additionally, in order to have access to SUS services, it is necessary to obtain the SUS card. To receive this card, the foreigner is required to have the Brazilian ID ("CRNM") and also the National Registry of Individual Taxpayers (CPF). Thus, if the foreigner is in Brazil under the circumstances of a visitor, she will not have such documents and, consequently, she will not be able to obtain the SUS card.

Therefore, we recommend reaching an agreement on this matter with the foreigner, before allowing him/her to come to Brazil. Some companies provide private international health plans to foreigners working from Brazil to reduce the risks, while others agree to reimburse medical expenses, and still others agree not to provide any reimbursement or international health insurance plan, especially when the foreigner is the one who initiates the request to work from Brazil.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Yes, the Brazilian data privacy law ("LGPD") applies to any operation(s) that involves the processing of personal data, carried out by an individual or legal entity, governed by public or private law, and regardless of the country where its corporate headquarters are located or the country where such data is located, provided that:

- *the processing operation is carried out in the national territory; or*
- *the purpose of the processing activity is to offer or provide goods or services or the processing of data of individuals who are located in the national territory; or*
- *the personal data being processed was collected in the Brazilian territory. For this rule, personal data collected in the national territory is understood as those personal data whose data subject is in the Brazilian territory at the time of the collection.*

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

Although remote work existed prior to the COVID-19 pandemic, it has become much more popular since the worldwide outbreak of the coronavirus. However, as this situation is a rather new one, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Brazil.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

Yes. First, the worker will not need any visa to enter and work from Brazil. In addition, the interaction with the local market increases the risks of labor and social security inspections and the risk of labor claims. Considering he/she will be rendering services from Brazil to Brazilian market, the Brazilian labor law will apply to the situation in the event of questionings.

Moreover, the interaction with the local market, depending on the activities developed by the remote worker, also increases the risk of permanent establishment.

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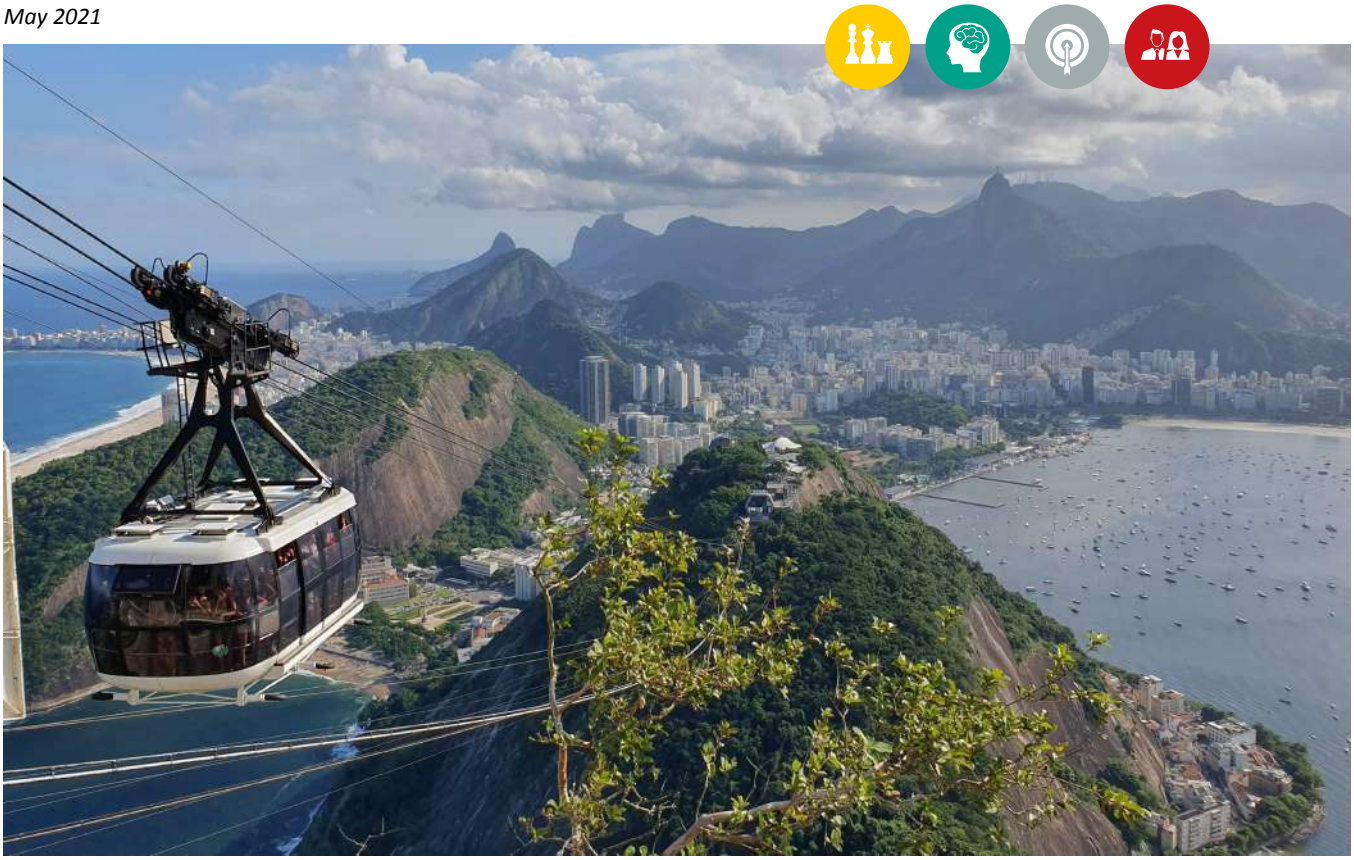

CROSS-BORDER REMOTE WORK FAQS

CANADA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

*Typically, a foreign national requires a work permit to undertake "work" activities in Canada. However, under the Government of Canada's Temporary Foreign Worker and International Mobility Programs policy guidance found **here**, certain activities that are incidental to a person's visit to Canada are not classified as "work", and will therefore not require a work permit. For example, "long distance work" (either by telephone or internet) done by a temporary resident whose employer is outside Canada and who is remunerated from outside Canada, is not characterized as work requiring a work permit. A person is considered to be a temporary resident if they hold a **Temporary Resident Visa**, either as a visitor, student, or worker.*

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

*Foreign companies that are non-resident in Canada can become resident if they are deemed to be a "permanent establishment". A permanent establishment can be deemed where the company has an agent/employee in Canada that habitually exercises an authority to conclude contracts on behalf of the company ("Agency Permanent Establishment"). In light of the current travel restrictions that may potentially bar foreign nationals from leaving Canada, the Canada Revenue Agency ("CRA") has provided guidelines that provide relief from the assessment of a permanent establishment based on an Agency Permanent Establishment. The relief guidelines can be found **here**.*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Typically, foreign employers are required to withhold the following payroll deductions in Canada: Canadian Pension Plan ("CPP"); Employment Insurance ("EI"); and, Federal, Provincial or Territorial income tax. However, there are limited exceptions to these withholding obligations for certain non-resident/ foreign employers. Foreign employers may apply for a "non-resident employer certification" and will not have to withhold and remit tax on the payments to non-resident workers who are working in Canada for a limited time, if the workers are exempt from tax in Canada under a tax treaty. Additionally, the foreign employer will be exempt from withholding CPP contributions if the foreign employer's worker comes from a country that has a social security agreement with Canada. Finally, foreign employers may also be exempt from EI deductions if the unemployment insurance laws of the worker's home country require premiums to be paid on the same employment income. Details and requirements for these exemptions can be found ***here****.*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

This depends on the province in which the remote worker is located given that employment standards vary by province. In Ontario, for example, section 3(1)(a) indicates that the Employment Standards Act, 2000 (the "ESA") applies to all employees whose work is to be performed in Ontario and their employers. However, the fact that some work is performed in Ontario may be insufficient to bring the employee under the jurisdiction of the ESA. For example, if the employee's work in Ontario is merely a continuation of the work performed in another jurisdiction, then the laws of the other jurisdiction may apply rather than the ESA.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Currently, due to COVID-19 restrictions, foreign nationals departing from any country other than the United States are prohibited from boarding an aircraft for a flight to Canada when:

a) they are not covered by any of the exemptions in the Orders (consult ***Travel restriction exemptions*** *for those Departing from a country other than the U.S.), or*

b) they are travelling for an optional and discretionary purpose

Foreign nationals departing from the United States are prohibited from entering Canada when they are travelling for an optional or discretionary purpose.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Under the Canadian income tax system, an individual's liability for income tax is based on his or her status as a resident or a non-resident of Canada. An individual who is resident in Canada during a tax year is subject to Canadian income tax on his or her worldwide income from all sources. Generally, a non-resident individual is only subject to Canadian income tax on income from sources inside Canada. The term resident is not defined in the ITA and is highly factually specific. In any event, according to the CRA's ***guidance****, if a non-resident employee performs their duties of employment remotely while in Canada, the non-resident employer would be subject to Canadian withholding, remitting, and reporting obligations.*

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

This depends on the province in which the remote worker is located given that eligibility for workers' compensation varies by province. In Ontario, for example, a non-resident worker or non-resident employer must have a substantial connection with Ontario in order to come within the scope of the Workplace Safety and Insurance Act or the Workers' Compensation Act. A guide setting out the factors to consider whether a non-resident worker will qualify for coverage under workers compensation legislation can be found ***here****. In most cases, the key consideration is the amount of time that the worker spends working in Ontario.*

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

This depends on the province in which the remote worker is located given that eligibility for healthcare coverage varies by province. In Ontario, for example, in order to be eligible for healthcare coverage, a worker must be physically present on Ontario for 153 days in any 12 month period, must be physically in Ontario for at least 153 days of the first 183 days immediately after the employee began living in the province, and the worker must make Ontario their primary place of residence. Additionally, the worker must be one of the following: a Canadian citizen, an indigenous person, be a permanent resident of Canada, have applied for permanent residence in Canada, have a valid work permit and work for an Ontario employer, or hold a temporary resident permit.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

In Canada, the Personal Information Protection and Electronic Documents Act ("PIPEDA") is a federal statute governing the collection, use and disclosure of personal information by private sector organizations. While PIPEDA generally applies to personal information an organization collects in Canada, it does not apply to employee personal information, except for employee personal information of federal works, undertakings, and businesses.

Currently, the provinces of British Columbia, Alberta, and Québec have adopted generally applicable privacy legislation that has been deemed substantially similar to PIPEDA that may apply.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

In order to mitigate the effects of travel restrictions and international tax consequences that have arisen as a result of the prevalence of remote work during the COVID-19 pandemic, the CRA has published relief guidelines that are applicable to foreign remote workers in Canada. The relief guidelines can be found ***here****.*

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

If a remote worker is a Canadian citizen, the above answers could change depending on the circumstances of their presence in Canada (i.e. if their presence is on a temporary, or permanent basis). If the remote worker is engaged in the local labour market, almost all of the answers above would change. In these circumstances, and in order to ensure compliance with local tax withholding, payroll and benefits requirements, it would be advisable for the foreign company to utilize the services of a PEO.

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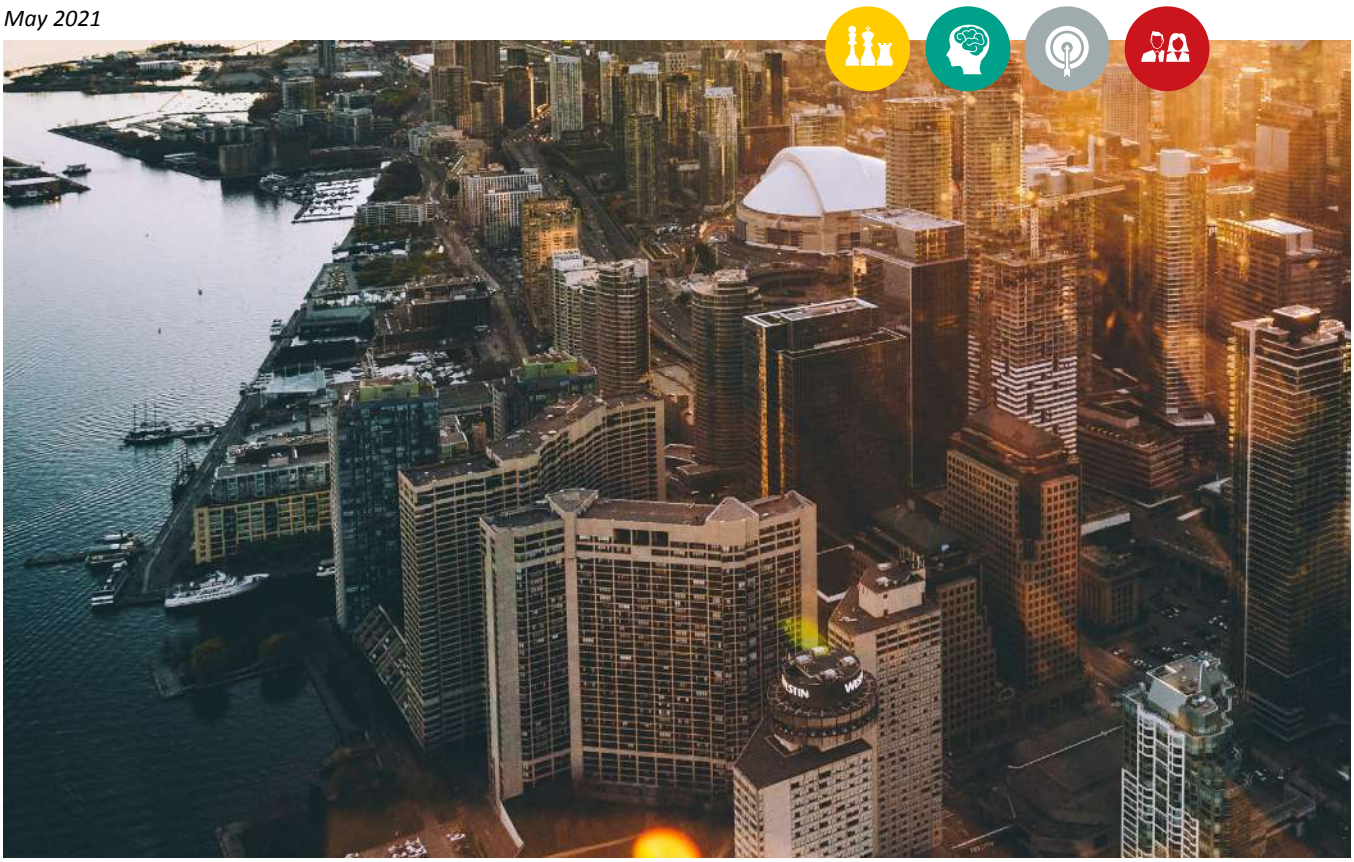

CROSS-BORDER REMOTE WORK FAQS

CHILE

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

Generally, foreigners are prohibited from engaging in remunerated activities, even if they are paid abroad by a foreign employer. In very qualified cases, the Immigration Department may authorise foreign tourists to apply for a special permit to work in the country for a period not exceeding 30 days, extendable for equal periods until the expiration of the tourist visa. Foreigners may remain in Chile on this condition for a maximum of 180 days. For this work authorisation and for each extension, a fee must be paid, according to the applicant's nationality. The entire processing occurs online and may take 1 week.

If the foreigner is required to stay in Chile for more than 180 days, he/she must apply for a residence visa, which takes at least 1 full year to be processed, and in the meantime he/she may request a work authorisation with a visa, in process.

As a general rule, when the employer is a foreign entity, a local employment agreement must be executed, and the foreign employer must appoint a representative in Chile (typically a payroll firm provider) to manage the employment contract, regarding obligations due in Chile.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

According to the Chilean Income Tax Law, there will be a Permanent Establishment (PE) in Chile in case (i) there is a place of business in Chile in which the foreign company permanently develops its business activity; or (ii) there is a representative in Chile with powers to close agreements related to the business of the company in Chile, or to negotiate its essential terms and conditions.

However, if the foreign company only performs ancillary or preparatory activities in Chile, there is no PE. Therefore, it will be important to consider the following factors:

- *what is the foreign company's main activity and the purpose of having the employee in Chile?*
- *which specific activities will the employee be carrying out in Chile?*
- *if the employee will have the competence to represent the Company in Chile?*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Remote workers rendering services in Chile are subject to all local payroll obligations. In case of a work/ residence visa, the foreign employee must be subject to the Chilean social security system as well.

However, foreign professionals or technicians can choose to be exempted from contributing to the Chilean social security system (pension/retirement and health contributions) and maintain an affiliation and coverage in their home country. Other payroll requirements and labour accident insurance always apply.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

The remote worker will be subject to local labour laws to the extent that he/she is entering into an employment contract, even with a foreign entity. It is assumed by law that any individual (national or foreign national employee) performing services in Chile under labour control, direction and subordination, must be covered by a local labour contract, even if the employer is based abroad.

As mentioned, when the employer is a foreign entity, a local employment agreement must be executed, and the foreign employer must appoint a representative in Chile (typically a payroll firm provider) to manage the employment contract, regarding obligations due in Chile.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

The new Remote Work and Telework Law ('Remote Law') entered into force effective July 2020. The Remote Law does not distinguish between foreign and Chilean employees; however, it is applicable to those who have an employment agreement in force. Under the Remote Law, employers must afford any cost arising from the employee working remotely.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

If any of the circumstances referred to above regarding the PE are met, the company may be deemed to have a permanent establishment and will be taxed in Chile for the income attributed to that permanent establishment, without any limit.

As for the employee, as long as he/she continues to be a resident or is domiciled in Chile, he/she will be subject to the Second Category Tax on his/her employment income, on a worldwide income basis. Thus, the remuneration will be taxed in Chile. Please note that the Second Category Tax is a progressive tax that levies income from dependent work, and its rate varies from 0% to 40%.

If a Double Tax Convention is in force between Chile and the country where the company is located, the remuneration may also be taxed in that country; the employee will then be able to use the tax paid abroad as a credit in Chile. However, if there is a remnant of credit at the end of the year, the remnant will not be refunded nor carried forward to be used in future years.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Yes, that claim must be addressed with the local representative appointed by the foreign employer.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

All employees, even when working remotely, are entitled to health benefits as established by law. The legal health contribution (7% deducted from the employee's gross salary) must be declared and paid by the employer and is administered by the National Health Fund (Fonasa) or a private health insurance company (Isapre).

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Law 19,628 on the Protection of Private Life establishes that personal data includes data relating to any information concerning natural persons, identified or identifiable, and does not make a distinction between Chileans and foreigners. The processing of personal data can only be carried out when such law, or other laws, authorise it, or the holder - in this case the foreign worker - expressly consents to it. In order to grant the authorisation, the employee must be duly informed as to what is, or will be, the purpose of the storage of his personal data and its possible communication to the public, and must grant his authorisation in writing.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

On the whole, the answers would be the same. Any disparity would be related to immigration issues and mandatory social security contributions, in the country.

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CROSS-BORDER REMOTE WORK FAQS

CHINA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

Work authorization is required for foreign nationals to work in China. In specific, foreign nationals need to obtain both the work permit and the residence permit of work category to legitimately work in China. However, foreign nationals are unable to obtain these two permits without endorsement by a local company in China. As the hypothetical scenario is that the foreign company does not have a local presence, the foreign nationals are unable to work legitimately in China.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

(a) If the remote worker is a foreign national and engages in activity interacting with the local market, the above answer will be the same.

(b) If the remote worker is a Chinese citizen, the answers will be as follows:

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

Chinese citizens do not need work authorization to work in China.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Yes, there is risk for the remote worker to be determined as a permanent establishment of the foreign company. The main factors to determine a permanent establishment include: (1) the period for the individual to provide service; and (2) whether the individual's activity can be deemed as conducting business in China.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS? AND

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Pursuant to PRC Employment Contract Law, only entities registered in mainland China are qualified to establish employment relationship with individuals. Therefore, the relationship between the foreign company and the remote worker is civil relationship rather than employment relationship.

Under the civil relationship, the rights and obligations between the foreign company and the remote worker will be mainly determined by mutual agreement. The local employment laws and regulations will not be applicable to remote workers under civil relationship.

Thus, such remote workers are unable to participate in local social security scheme as employee and payroll requirements imposed by local employment laws are also not applicable.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

There is no such special requirements for the moment.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

In most cases, such remote workers with Chinese citizenship will be found as resident taxpayer and are obligated to declare and pay individual income tax for their globally sourced income on their own. The foreign company will not be deemed as a withholder under Chinese tax laws.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

No. Because the remote worker is not under an employment relationship.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

No. Because the remote worker is not under an employment relationship.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Foreign company's collection and transmission of personal information inside China shall be governed by the PRC Civil Code. Therefore, we consider the foreign company is subjected to personal information protection requirements prescribed by the PRC Civil Code and other appliable Chinese laws and regulations.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

There is no such special law for the moment.

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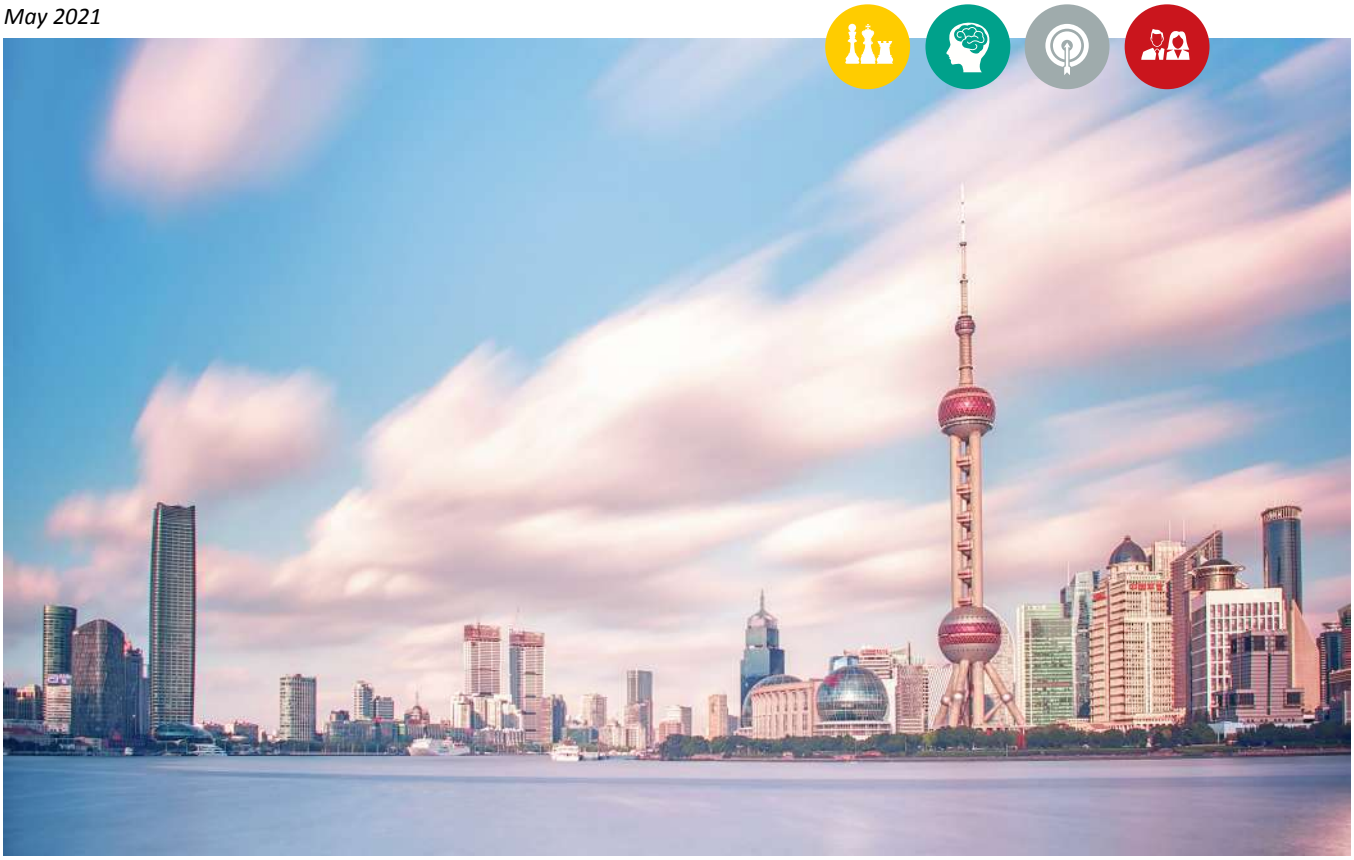

CROSS-BORDER REMOTE WORK FAQS

COLOMBIA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

In general, an authorization or permit for a foreigner to work remotely from Colombia is not required. Hence, any foreigner could work from Colombia without a "work visa" as long as they respect the terms of the permit or visa used to enter and remain in the country, either as tourists or any other situation different than a worker.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

This depends on the activities that the person will be performing in Colombia on behalf of the foreign company. If they act as a representative of the foreign company in Colombia by contracting on behalf of it (except for preparatory and auxiliary activities), they could be understood as a permanent establishment (PE) of the foreign company in Colombia (OECD criteria).

In order to determine if the behavior of a person has triggered the Colombian PE regulation, it should be analyzed if there is (1) a fixed place with (2) a level of permanence in Colombia, (3) through which the activities of the foreign company have been developed. Once the services rendered by the foreigner deem a PE, both the worldwide income and the Colombian income of the PE will be taxable in Colombia.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Under one of the following two circumstances could a foreigner be called to make social security contributions in Colombia:

1. *When the foreigner is considered an employee protected by Colombian Employment law, according to the territorial principle further explained.*

Therefore, the foreign company must guarantee the payment of the social contributions through an online mechanism (Comprehensive Contribution Payment Form -PILA) offered by several providers in the country, as well as the tax withholding as those payments will be considered Colombian/national income.

2. *When the foreigner performing activities in Colombia perceives income derived directly or indirectly from a Colombian source. In such case they should pay social contributions according to the income source (either an employment contract, a civil contract or other source). In addition, the foreigner could be subject to tax withholding according to the type of contract executed in Colombia.*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

As said before, Colombia follows a territorial principle regarding the employment regulation, which entails that the foreigner could be considered an employee in Colombia, subject to the protection of Colombian employment law, in the following two circumstances:

1. *When the foreigner could compromise the foreign company in Colombia (e.g., acting as PE), or when the services must be performed from Colombia regardless of the employee's nationality, according to the agreement between the parties of the employment contract.*

2. *When the activities are initially performed in Colombia and subsequently executed abroad but the direction and subordination power of the employer is performed from Colombia, regardless of where the employee is located or their nationality.*

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Yes, if the foreigner is considered an employee covered by an employment contract regulated by Colombian law, following the abovementioned rules. Specifically, the teleworking regulation will apply, obliging the foreign company to pay energy and internet expenses, among other Occupational Safety and Health (OSH) responsibilities.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The foreigner could be subject to tax withholding when they receive a Colombian income, which can occur if the foreigner is protected by Colombian employment law, under the territorial principle following the abovementioned rules.

In addition, and as Colombia follows the 183-day rule, if the person stays more than 183 days in a 365 year, they will be considered a tax resident in Colombia.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Only when the foreigner is considered an employee covered by an employment contract regulated by Colombian law, following the abovementioned rules.

However, it is highly recommended to check if there is any OSH regulation of the "home country" applicable to the employee when working remotely abroad.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

Only when the foreigner is considered an employee covered by an employment contract regulated by Colombian law, following the abovementioned rules.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Yes, as Colombia has a general approach to personal data protection; therefore, any data that the foreigner provides in Colombia will be subject to protection, under Law 1266 and 1581, and could be exchanged or transferred to third countries, following the Colombian regulation.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

Yes, Law 2069 of 2020 brought the "digital nomads" concept to the country and mandated the government to regulate the matter (up until March 2021, it has not been done). This concept includes teleworkers, distance workers, or remote workers, regardless the type of contract executed for that purpose.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

(a) *The nationality of the foreigner does not have impact on the above answers.*

b) *When the foreigner interacts with the local market, following the territorial principle, the foreigner could be considered an employee covered by an employment contract regulated by Colombian law, as explained above.*

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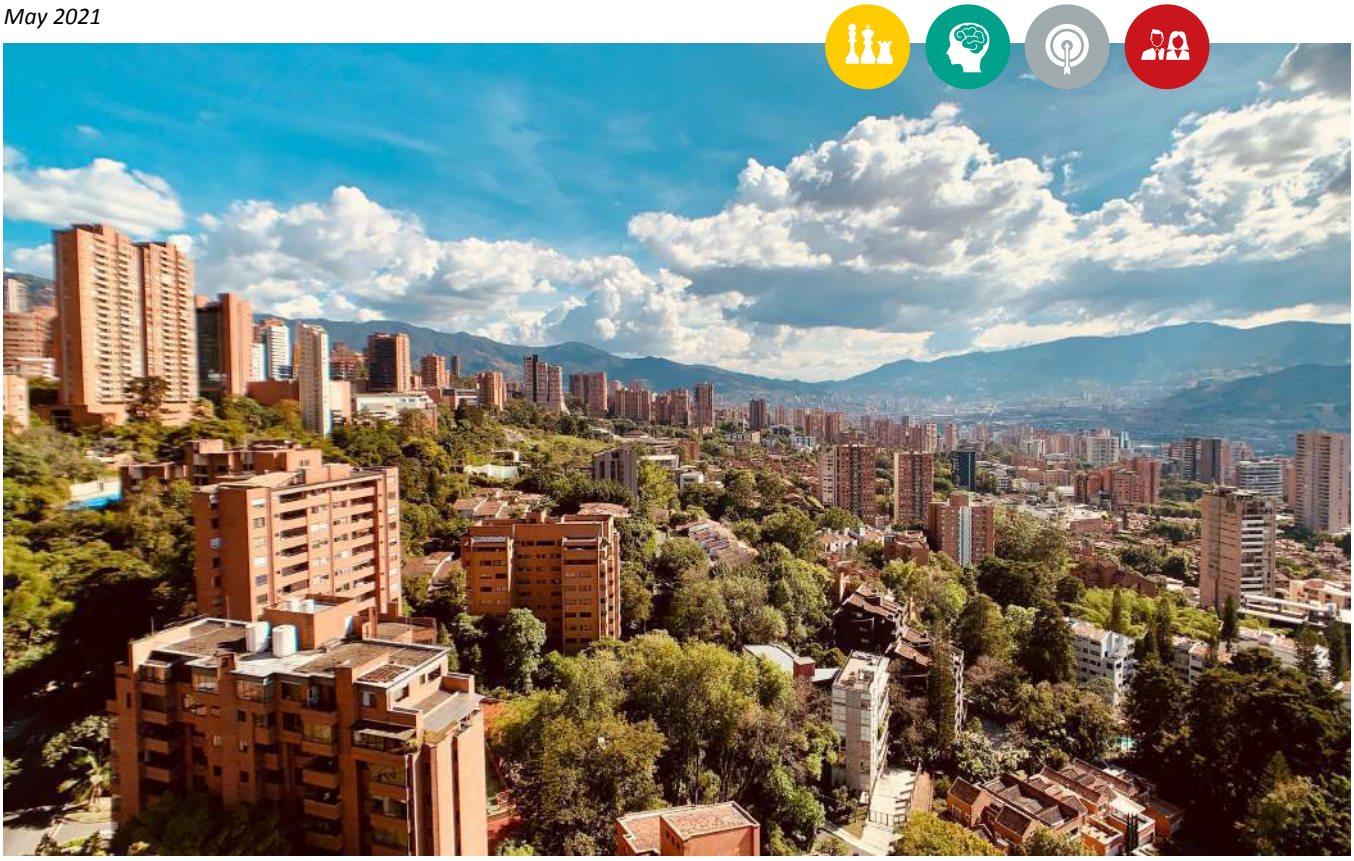

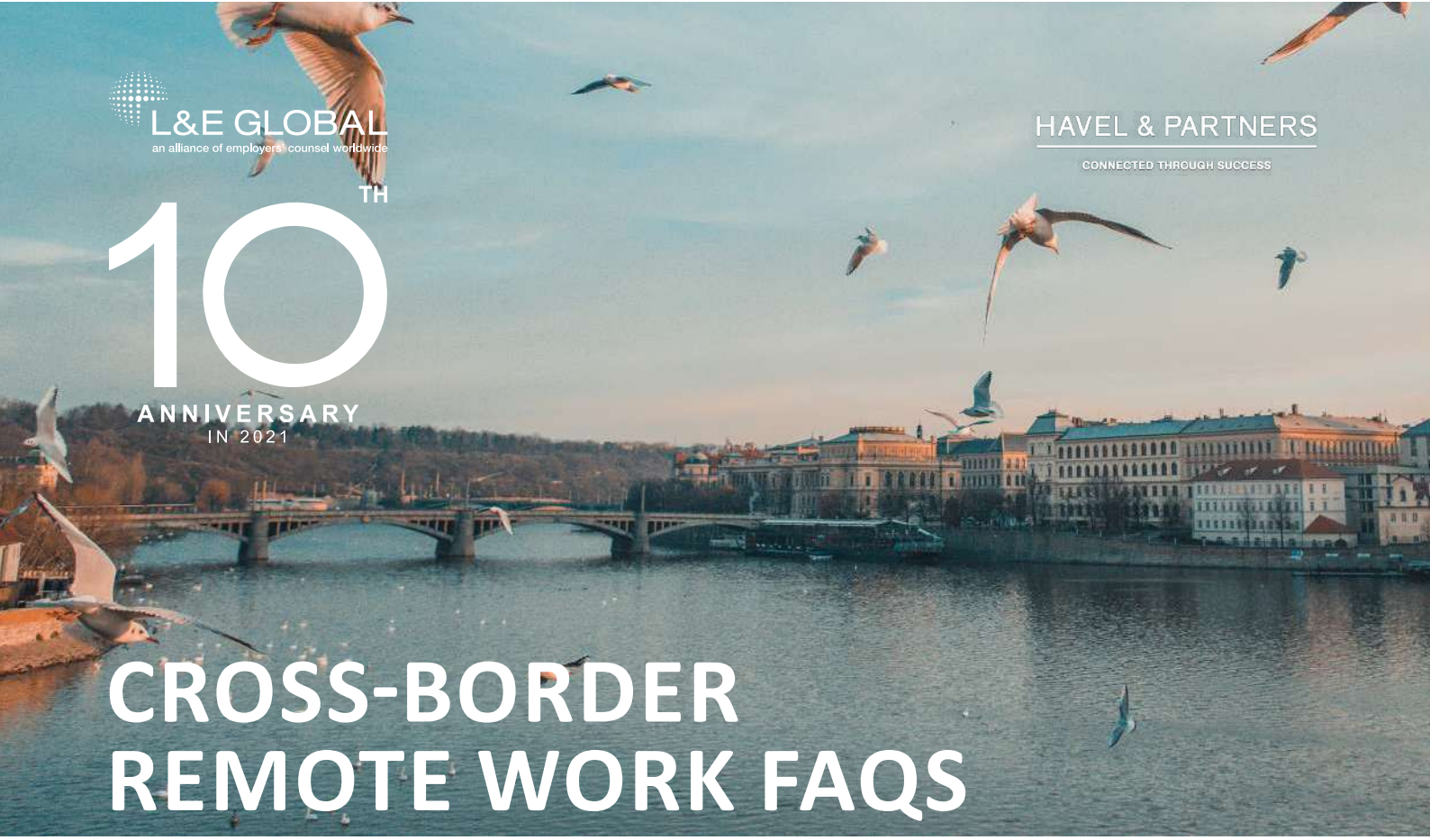

CROSS-BORDER REMOTE WORK FAQS

CZECH REPUBLIC

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

Strictly speaking, legally, any non-EU national working in the Czech Republic (remotely or not) should have a work authorisation (work permit and/or employee card or blue card or other type of permit). Exceptions may apply, mainly to persons who are: i) a European Union national; ii) a national of a European Economic Area member state (Iceland, Liechtenstein, Norway); or iii) a national of Switzerland.

However, granting a permit would usually require an employer in the Czech Republic or a company in the Czech Republic to which the employee would be seconded, and that is not the case in the present situation. Should the worker, in performing carrying out his professional activities, refrain from interacting with local clients and engaging the local market, a working permit might not be required. Nevertheless, the foreigner would have to prove some of the legally stated purposes for his/her stay in the Czech Republic, besides work, to be granted a residency permit.

Depending on the intended period of stay, citizenship and legal purpose of the stay, a visa/other type of residency card might be required. The processing time differs, but in general issuing a visa/residency card usually takes up to 2-3 months.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Yes, there may arise a permanent establishment in the Czech Republic, if a foreign company contracts employees in the Czech Republic to perform activities for, generally, at least 6 months. The permanent establishment might also be created due to a fixed

place of business, with certain continuity in the Czech Republic. However, it is necessary to consider each situation individually, as it depends on additional factors, e.g. double tax treaty between the state of the foreign company and the Czech Republic; corporate structure; services performed and the period/frequency in which the services are performed; in cases involving a home-office it is necessary to assess whether the home office could be seen, in any way at all, as a fixed place of the foreign entity; etc.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Generally, the foreign entity starts to be treated as a tax payer (withholding agent) in the Czech Republic with the obligation to calculate and withhold monthly payroll taxes if (i) there is a permanent establishment of the foreign company created in the Czech Republic (except for the permanent establishment of a service), or (ii) if the foreign entity employs the employee for more than 183 days.

Determining such obligations must be made on a case-by-case basis. If the foreign entity becomes a Czech tax payer (withholding agent), it must fulfill all the employer´s standard obligations in the Czech Republic (e.g. register for payroll taxes, withhold monthly payroll taxes, file annual reports, keep Czech wage lists, etc.).

With regards to social security, the general rule for the EU countries and States with a bilateral social security agreement with the Czech Republic, is to contribute to the state where the work is performed, i.e. the Czech Republic in this case, unless any exemption (for assignment or the standard exemption) is applied, and a respective document confirming this status is obtained (i.e. A1 certificate for the EU, Certificate of Coverage for States with bilateral agreements).

If the foreign entity becomes a social security payer in the Czech Republic, the foreign entity must register and fulfill all the related obligations (e.g. calculate and settle the monthly contributions, file monthly reports, announce any changes, file an annual pension list, etc.). As the fulfilment of the necessary obligations may be difficult for the foreign company, it might grant Power of Attorney to a Czech accounting company/ advisor to manage these responsibilities on its behalf. Furthermore, the foreign employer would also need to register for the mandatory employer´s liability insurance and settle quarterly contributions.

For non-EU and non-agreement countries, special rules apply. As such, the situation with each employee should be considered individually.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

A remote foreign employee might not be subject to local employment law requirements if he/she performs services exclusively for a foreign company.

However, should the situation be considered as an employee posting, within the meaning of EU guidelines and the Czech Labour Code, some of the provisions of local employment law may apply (working hours, vacation, minimum wage, etc.).

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

There is a very brief regulation covering requirements for remote work of Czech employees, but a special directive that would cover the remote foreign worker does not exist, at this time.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Provided that the employee would be treated, for Czech tax purposes, as a non-resident performing the activities for the foreign entity in the Czech Republic

for less than 183 days in any 12 month period (and provided there is no permanent establishment), his employment income would be exempt from taxes in the Czech Republic. If the abovementioned limit is exceeded, the employee´s income will be subject to Czech taxation as of the first day of his/her presence in the Czech Republic, via filing the annual personal income tax return (see above regarding the potential payroll obligations of the foreign employer in the Czech Republic). If the employee is treated as a Czech resident for tax purposes, he/she will be subject to unlimited taxation in the Czech Republic.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

If the remote worker performed services exclusively for a foreign company in the Czech Republic (from his/her home/Czech residence) and was not covered by Czech employment law, he/she would not be entitled to bring a claim for workplace injury according to Czech employment law.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

Health insurance is determined together with the social security rules, as described above.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

There is only a general protection of data privacy and security of personal information. If the remote worker is not covered by Czech employment law, the foreign employer will not have duties according to the Czech employment/data protection laws.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No, there has not been any such litigation. Czech labour law, generally, stipulates certain rules that should reflect the requirements of the EU Posted Workers Directive.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) Yes, the situation would be very different for Czech citizens due to the application of Czech law. Also, if the employee is a Czech citizen, he/she will most likely be treated as a Czech resident (for tax purposes) and subject to unlimited taxation in the Czech Republic. Methods to settle Czech employment taxes (i.e. via annual personal income tax return, or via monthly payroll tax withholdings, payable by the employer) depend greatly on the exact circumstances of the particular situation.

The employee will most likely be subject to the Czech social security and health insurance scheme also, which would result in the need for the foreign employer to register and fulfill the related obligations.

b) Yes, interaction with the local market would have a significant impact on the work permit requirement and application of Czech employment law, and, as a result, there is a greater risk of creating a permanent establishment ("dependent agent permanent establishment"); and so, it would largely depend on the exact nature, frequency, etc. of the "interaction".

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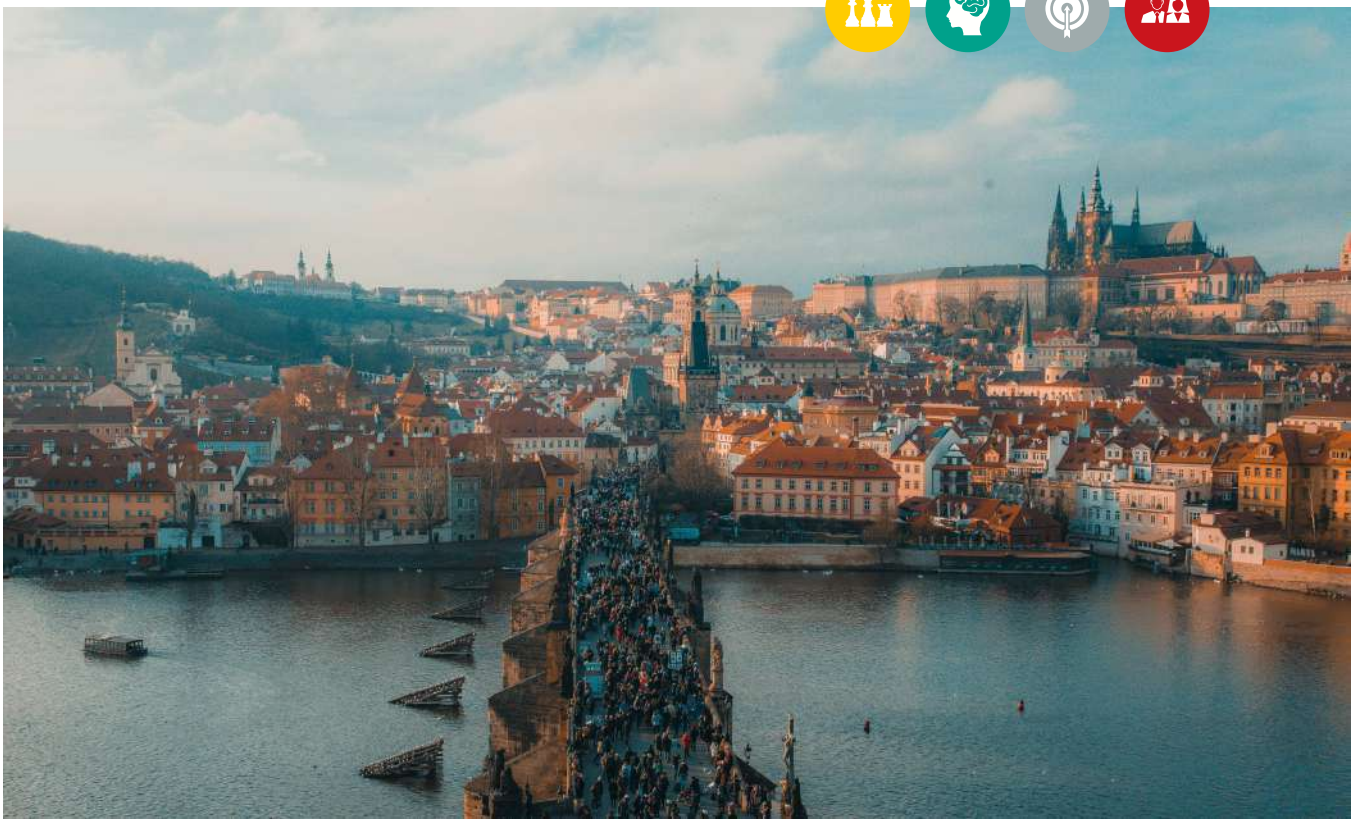

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CROSS-BORDER REMOTE WORK FAQS

DOMINICAN REPUBLIC

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

So far, our legislation has not considered, let alone analysed this possibility. In our country, there is a work visa, but in this case, it could not be feasible. To obtain a work visa, it is necessary to initiate the application for employment in a company with a permanent establishment. In which case, that company has to comply with the 80/20 requirement. That is to say that 80% of the employer's employees must be Dominicans; only 20% can be foreigners. In this case, this would not be feasible.

Usually, foreigners enter the country with either a tourist visa or a business visa. However, if you are going to work in the country for a foreign company, in principle, you would not be able to claim that you are a tourist or that you are about to do business in the country.

Therefore, the only possible way is to obtain a residence visa. These residence visas will be issued in favor of persons interested in residing permanently in the country. Persons who have the following reasons, will qualify for this type of visa:

- *family ties (family reunification by marriage / direct dependency), per Investors Law 171-07.*
- *pensioners, retirees or rentiers, according to Law 171-07.*

We will analyse the possibilities of residence for investors, pensioners or retirees, and rentiers in the present case.

Investment Residence in Investment Quality – *this type of visa is intended for foreign-minded investors. One of the requisites will be an investment from abroad, of a minimum amount of US $200,000.00, or its equivalent in national currency. The processing time is forty-five (45) working days.*

Residence for Investment in Quality of Retired or Pensioned –
this type of visa is intended for foreign pensioners or retirees. One of the requisites, is evidence that the person has a pension of a minimum amount of US $1,500.00 per month. Likewise, an additional amount of US $250.00 is required for each direct dependent included in the application. In none of the cases, does income earned by wages apply. The processing time is forty-five (45) working days.

Residence for Investment in Rentier Quality –
this type of visa is intended for a foreigner who enters the Dominican Republic to establish residence in the country and is a beneficiary of a monthly income or permanent income of a minimum amount of US $2,000.00, from a company or agency of foreign origin. The processing time for this procedure is, in principle, forty-five (45) working days.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

The concept of permanent establishment is provided by the Tax Code of the Dominican Republic and its Regulation 139-98. The term "permanent establishment" is defined by Regulation 139-98 as a fixed place of business in which a foreign company, person or entity, performs all or part of its activity, such as management headquarters, offices, branches and business consulting services, provided they exceed six (6) months within an annual period. For those reasons, we consider that there is no risk for the company to be regarded as a permanent establishment.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

We only see the possibility for the employee to contribute personally to the Social Security System of the Dominican Republic. Since the company would not have a permanent establishment, the company cannot fulfill that requirement.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Dominican labour law is characteristically territorial. For instance, suppose an employee is working in the Dominican Republic. In that case, it could be understood that Dominican law will apply to that employee, unless the foreign law is more convenient for the employee.

Since the employee is teleworking, one could argue that the work is not being performed in the Dominican Republic, but rather the location agreed upon by the parties in the employment contract.

In any case, we understand that it will be essential to determine whether or not the company knew that the employee was usually, working from the Dominican Republic.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

The Ministry of Labour has issued two resolutions about telework: Resolution No. 23/2020, dated 12 November 2020, and Resolution 27-2020, dated 11 December 2020. Neither resolution makes a distinction between foreign and Dominican employees.

Nevertheless, the requirements imposed by those resolutions (the legality of which is questionable) provides that the telework contract must, among others:

- *specify the place or places where the employee will work;*
- *that the employer must communicate the contract to the Directorate General of Labour of the Ministry of Labour; and*

- *the use of controls for video surveillance of the employee is prohibited.*

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

In principle, the remote employee will not be obliged to file an income tax return, as his income will not be considered as originating from a Dominican source. If the company operates in the Dominican Republic, the employee could be obliged to file an income tax return, and the company could be obliged to withhold the income tax.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Possibly, but it would depend on several factors, among them, whether the company knew that the employee was usually working in the Dominican Republic.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

In principle, no. It is unlikely that the employee can enroll in the Dominican Social Security System. Therefore, the employee would not be covered by the Dominican Social Security and Health system, unless the employee contributes personally.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

In principle, no. The law applicable to the employment contract would apply.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

The only regulations that exist are the two telework resolutions previously mentioned, and they do not provide any express order regarding the foreign worker. Also, the 80/20 regulation (80% of the employees of a company operating in the Dominican Republic must be Dominicans) would complicate any work activities of a foreigner in the Dominican Republic. Finally, we are not currently aware of any relevant litigation concerning this matter.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) If the citizen is Dominican, several points would change, but everything will depend on the specific circumstances of each case. Also, much would depend on whether the company knew that the employee was working from the Dominican Republic. In any case, if the employee is a Dominican citizen, he would have an obligation to report income taxes on the income he receives.

b) If the company interacts directly in the Dominican market, it will likely apply Dominican law to that contractual relationship. However, if it interacts indirectly, say for example, it sells products through a distributor in the country, then, in principle, Dominican law will not apply. Of course, each particular case would have to be analysed carefully.

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CROSS-BORDER REMOTE WORK FAQS

FRANCE

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

Unless being an EU national or fitting into a limited specific category of exceptions, such as those provided by the Brexit withdrawal agreement or the EU–UK Trade and Cooperation Agreement, work authorisations are required for all work (even remote work) in France and regardless of whether or not such work interacts with the local market.

There are numerous types of visas that can be applied for through French consular services. It is important to apply for the one that is most appropriate for an individual's personal and professional situation. During the COVID-19 pandemic, only the "Passeport Talent" visa (European Blue Card) allows for entry into France.

Once the elements of the dossier have been provided to the immigration authorities, the standard processing time for a visa is a minimum of 3-6 weeks. The required elements vary from one type of visa to another. There are minimum remuneration requirements in addition to the standard identification elements (birth certificates, ID, diplomas, CV, marriage and divorce certificates, etc.).

Please note that not all visas grant the right to work.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

There is little to no risk that the remote worker's activities would generate a permanent establish consequence, unless they yield an important commercial activity on the French territory. However, as explained below in more detail, there are significant social contributions, employment rights and administrative consequences risks.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

From a purely theoretical standpoint, French social security/payroll/employment dues and rights may begin to become due from the very moment the work is performed on French soil, unless an A1 Form (that would demonstrate that the remote worker is subject to another social security scheme, for a limited period of time) is provided.

From experience though, we can advise that the risk increases with time:

- *it is low-to medium for the first 6 months;*
- *at one year, the risk is probable;*
- *at two years, there is a very high risk.*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

When the employee can demonstrate that the work was effectively performed from France and that the employment relationship contains numerous "links" with France, the contract can easily become subject to French law, if there was no other formal agreement excluding this. However, even if a formal agreement should provide that another law applies, this may be overridden by the performance of work on French soil. Only a secondment (detachment) can offer some greater security on the applicable law.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

The French State has not yet taken any specific measures concerning remote foreign workers. The extensive legislative debates and ministerial initiatives regarding telework only concern national employees. This is a rapidly evolving legal subject that could therefore, change in the coming months and years.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

It is very difficult to evaluate the employee's exposure to local income tax. The general rule though, is that if the individual spends more than 183 days per year in France, they are subject to taxation in France. However, it is possible for some individuals to owe tax in France even without reaching 183 days per year. Indeed, article 4A of the General Tax Code provides that those who are "fiscal residents" must pay income tax, regardless of where they spend their actual time.

Payroll should be handled through a local provider that can calculate the appropriate withholding of income tax. When this is not possible for technical reasons, the employee is responsible for declaring their income and paying the appropriate amounts to the French State.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

If French law is found to apply to the relationship, it is quite probable that an employee working remotely could bring a claim. Indeed, under French law, the employer's obligation to ensure the health and safety (mental and/or physical) of their employees, extends to situations where an employee works remotely. The accident may be considered a workplace accident/ occupational illness.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

As explained above, unless the remote worker is provided with an A1 Form (that would demonstrate that he/she is subject to another social security scheme, for a limited period of time), the performance of work on French soil would require affiliation with the French national healthcare and insurance system ("sécurité sociale").

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Yes, as France is part of the European Union, the GDPR applies. Accordingly, GDPR regulations will extend to personal data and company information that, in any way, "passes" through the European Union. Moreover, France has its own 'layer' of data privacy requirements laid out by the CNIL - the French data protection agency. These rules are very likely to apply to the remote worker in France and therefore, the hiring company.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

There is ongoing and developing litigation in France regarding foreign remote workers, who are requesting the application of French labour and employment laws to their contract. In the absence of a formal agreement, such as a secondment, these claims can be successful and may lead to social, employment and administrative consequences.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) If the remote worker is a French citizen, the likelihood that a claim for the application of French law to the employment relationship would be successful, significantly increases.

b) Similarly, interaction with the local market is sure to draw attention to the situation and expose the employer to greater risks.

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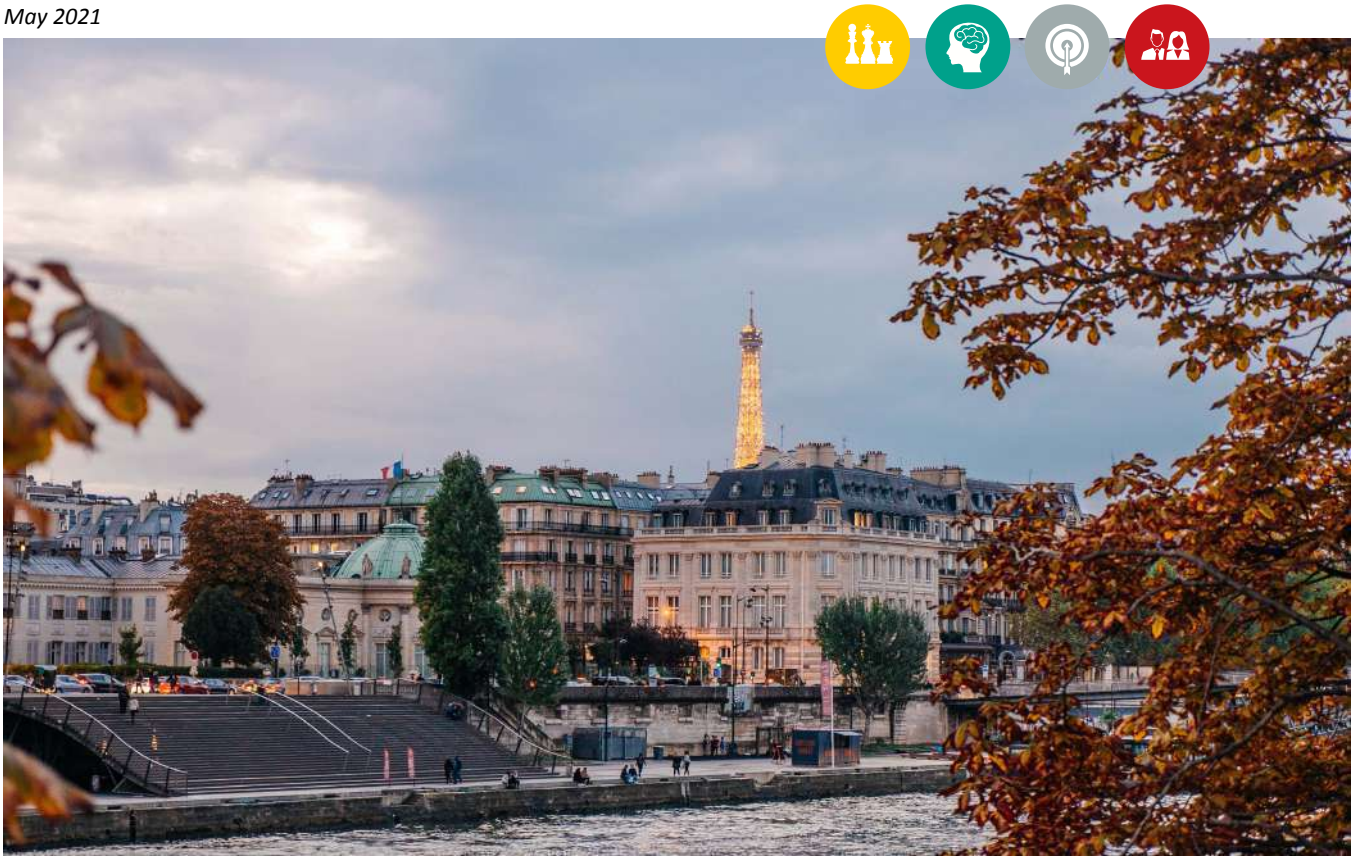

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CROSS-BORDER REMOTE WORK FAQS

GERMANY

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

In principle, every employee who would like to work in Germany (remotely or not) requires a residence title and a work permit before entering Germany. This does not apply to persons who are: i) of German nationality; ii) a European Union national; iii) a national of a European Economic Area member state (Iceland, Liechtenstein, Norway); or iv) a national of Switzerland.

However, working remotely from Germany for a foreign company is only possible for citizens of the states of Andorra, Australia, Israel, Japan, Canada, Republic of Korea, Monaco, New Zeeland, San Marino, the United Kingdom of Great Britain and Northern Ireland and the United States of America. For citizens of all other countries, a local (i.e. German) employer is necessary, unless working remotely for a foreign company meets the requirements of a so-called posting of worker, or the employee has been working in Germany for already two years. There are different types of residence permits for employment purposes available for foreign national employees (e.g. regular residence permit for employment purposes, Blue Card, ICT-card, mobile ICT-card, Vander-Elst visa, etc.). However, the residence title for employment purposes at issue, must be determined on a case-by-case basis.

Depending on the type of visa and the citizenship of the employee, it may be mandatory to apply for a visa to enter Germany, at the German embassy in the applicable country, before the employee travels to Germany. Only for nationals of those countries for which the European Community has abolished the visa requirement, is a visa not required in order to enter Germany. Please note that even though those nationals are allowed to enter Germany visa-free for 90 days, they must apply for a residence permit at the German Foreigner's Authority before they are allowed to perform any work activities. Only a few activities are considered not to be "work activities" and therefore, do not require a residence permit for employment purposes.

The processing time depends on whether the application is submitted at the German embassy or at a German Foreigner's Authority, and usually takes between 6 weeks and 3 months.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Yes. However, in general, for the assessment of the existence of a permanent establishment it is decisive that an entrepreneurial activity is carried out with a certain continuity. The main factors determining the exposure cannot be answered in general terms, but rather the specific company, with its corporate structure and the activities performed, must be considered.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Whether the German social security regulations shall apply, will depend on:

- *first, if there is (or is not) a bilateral agreement on social security between Germany and the employer's country; and*
- *second, whether or not the remote working is considered as the posting of an employee.*

If the German social security system applies, the foreign employer is obliged to pay the social security contributions in Germany and appoint a contact person (can be an employee) for the social security authorities in Germany. There are also payroll providers in Germany, which can carry out the payroll for the foreign company.

Please note that due to the lack of a bilateral agreement on social security, the employee working remotely from Germany may be subject to both social security systems (i.e. Germany and the employer's country of origin).

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

The Posted Workers Act stipulates that in some business sectors, certain minimum working conditions must be observed if the remote work qualifies as posting.

Additionally, mandatory German provisions might apply, such as minimum wage, maximum working hours, minimum rest periods, annual leave, termination and pay protection regulations in favour of pregnant women, mothers and disabled employees, which it is not possible to deviate from to the detriment of the employee.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

There are no special regulations in Germany regarding mobile work. However, the German government is currently considering the draft Mobile Work Act, which could pass momentarily.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Employees are subject to unlimited tax liability in their country of residence and are therefore, also taxed on their remuneration in that country. However, double taxation agreements exist between Germany and other countries and, accordingly, the remuneration is generally taxable in the country in which the activity is performed.

If the employee is subject to German income tax pursuant to a double taxation agreement, the employer is required to arrange for withholding the income tax. If there is no double taxation agreement between the two countries, the foreign income tax is credited against the German income tax.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

This depends on whether (or not) the employee is subject to German social security regulations. If the German social security regulations apply, the remote worker will be entitled to bring a claim for workplace injury before a German court.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

This depends on whether the employee is subject to German social security regulations or if the bilateral agreement specifically includes provisions relating to regulations for healthcare and insurance. If the German social security regulations apply, the remote worker is covered under the local national healthcare system and insurance.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Provided that the foreign employer does not have an establishment within the territory of the European Union, the fact that an employee will work remotely from Germany, will make it rather unlikely that relevant data protection implications, in the context of business activities, would apply. However, the General Data Protection Regulations could be applicable if the mobile working involves the processing of personal data.

If the foreign employer monitors the behaviour of the employee, or intends to monitor such behaviour while the employee is in Germany, then whether (or not) the GDPR is applicable, should be assessed for on a case-by-case basis, respectively.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Germany.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) Yes, the answer on immigration requirements changes if the employee is citizen of Germany or EU country.

b) Depending on the activity with the local market, this might increase the risk of creating a permanent establishment in Germany (e.g. if business meetings with local clients are to take place at the employee's premises).

German citizens could also be subject to German income tax, even if a double taxation agreement exists.

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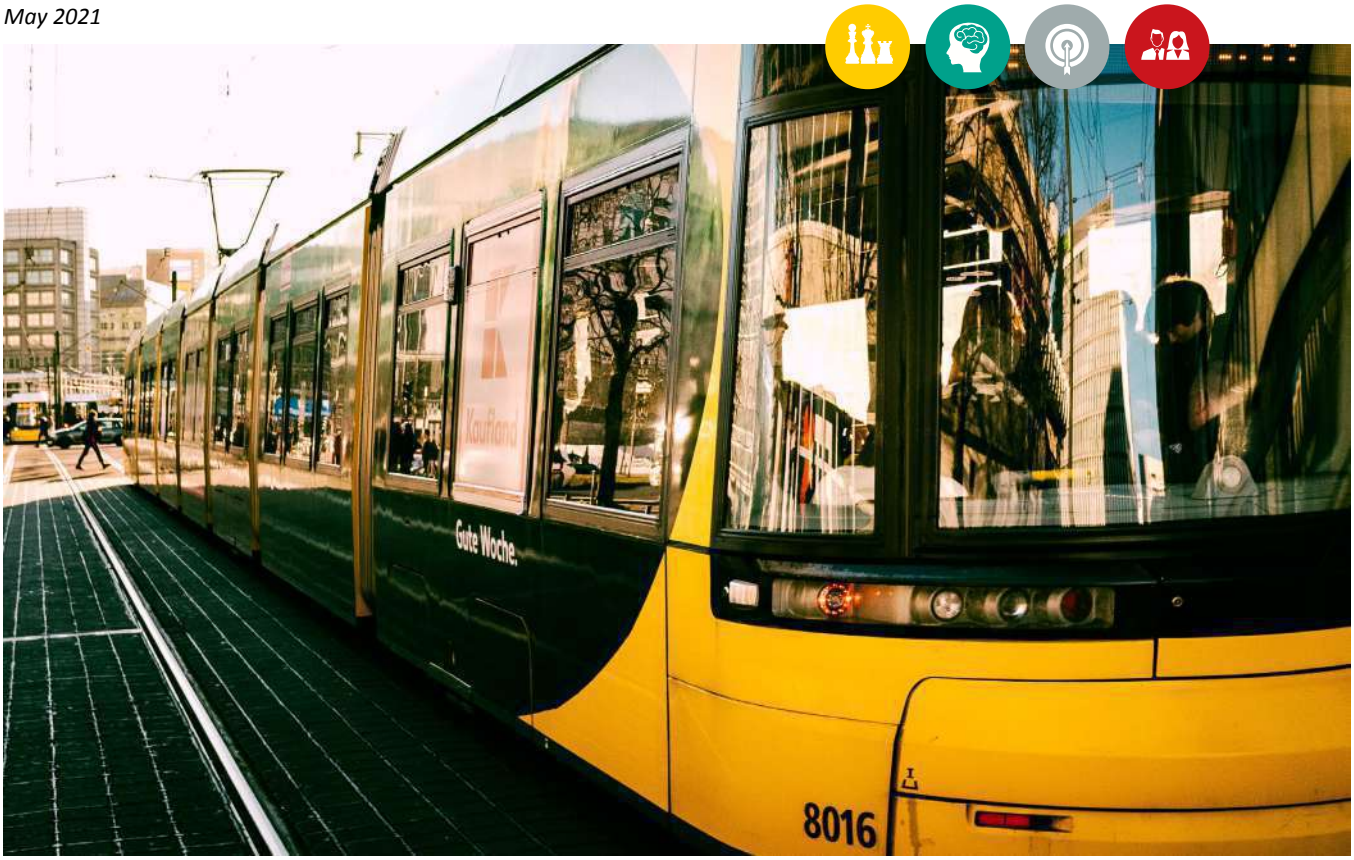

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CROSS-BORDER REMOTE WORK FAQS

INDIA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

While several countries have begun experimenting with remote work visas, India has not explored this option yet. If the foreign national already has an existing and valid business visa, then he/she may work remotely for the foreign company in India. The foreign national holding a business visa enjoys a multiple entry facility for as long as the visa is granted, however, each visit must be limited to a maximum period of 6 (six) months. As of 30 March 2021, the Indian Government has restored the issuance of fresh business e-visas, which had earlier been suspended due to the COVID-19 pandemic. Please note that business activities are prohibited while a foreign national is on a tourist visa; hence we do not advise that foreign nationals work remotely in India on tourist visas.

In order to obtain a business visa, a foreign national should be of assured financial standing, with sufficient proof to substantiate their financial status. While assessing the eligibility of business visas, the expertise of the person in the intended field of business and their business purpose will be thoroughly evaluated.

Depending on the citizenship of the foreign national, a business visa may be granted for either 10 years or 5 years. For foreign nationals from Bangladesh, China, and Pakistan, provisions in the bilateral agreements/ policy guidelines will be applicable.

Do note that the Indian Government has recently revoked its suspension of e-business visas. However, only foreign nationals of certain countries may apply for e-business visas, and such visas can only be granted for a period of up to 60 days.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Yes, the foreign national's remote working activities in India could potentially lead to a Permanent Establishment ("PE") risk for the foreign company in India. Typically, the PE risk is significantly higher if the foreign national has the ability to conclude contracts on behalf of the foreign company, or if the foreign national habitually plays the principal role leading to the conclusion of contracts for the foreign company, or provides services to third-parties in India, or habitually secures orders in India for the foreign company. Furthermore, it would be necessary to examine any tax treaty that India may have entered into with the foreign country, where the company is situated.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Social security contributions in India arise only for those foreign nationals working in establishments in India to which the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act") are applicable, unless specifically exempted. Since the foreign national in this situation will be working remotely from India, exclusively for a foreign company, EPF and other such statutory deductions under Indian law, will not apply to the foreign national in question.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

The foreign national would typically not be subject to Indian employment law requirements, since he is not employed in India and has privity of contract with a foreign company that would not be subject to local employment laws. It is likely that the foreign national will remain subject to the employment law requirements of the employer's home country.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Currently, there are no special requirement provisions governing remote foreign workers in India, which continues to remain under the discretion of the employer's company policies.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

In India, an individual's tax liability would depend on their tax residency during a fiscal year. The tax residency of an individual is dependent on the duration of stay of the individual in India, irrespective of the purpose of such stay. There are three recognised categories for tax residency under the taxation legislation in India, based on duration of stay:

- *Resident Ordinarily Resident (ROR);*
- *Resident but not Ordinarily Resident (RNOR); and*
- *Non-Resident (NR).*

The tax residency of an individual determines the scope of income liable to be taxed in India. If the foreign national is staying in India for more than 182 (one hundred eighty-two) days, the foreign company may be required to arrange for withholding taxation of the foreign employee(s).

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Given that the foreign company is not governed by Indian employment laws, the foreign national employee working remotely from India, would most likely not be able to bring such a claim against the foreign company within India.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

Currently, India does not have a national healthcare system that would provide protection to foreign workers, working remotely in India for a foreign employer. However, the foreign national may be covered by the extant laws (i.e. laws that are still in use, often despite being very old) of the country in which the foreign company is situated, or by the foreign company's insurance policies.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Assuming that the sensitive personal data or information for the foreign company has already been collected, received and stored in the foreign country, then no additional compliance requirements would be imposed on the foreign employer, under India's extant data privacy laws.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

Thus far, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in India.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) If the remote worker is a citizen of India, he would not need a visa to enter India. However, at present, the Indian Government is only allowing citizens to return to India under specific circumstances.

b) If the remote worker's activities lead him to interact with the local market, and depending on the nature of the interactions, it is quite possible that tax liabilities could be imposed on the foreign company/employer. If personal information or sensitive personal data is collected from third-parties by the foreign national, then this will likely attract provisions of extant data privacy laws in India, as well.

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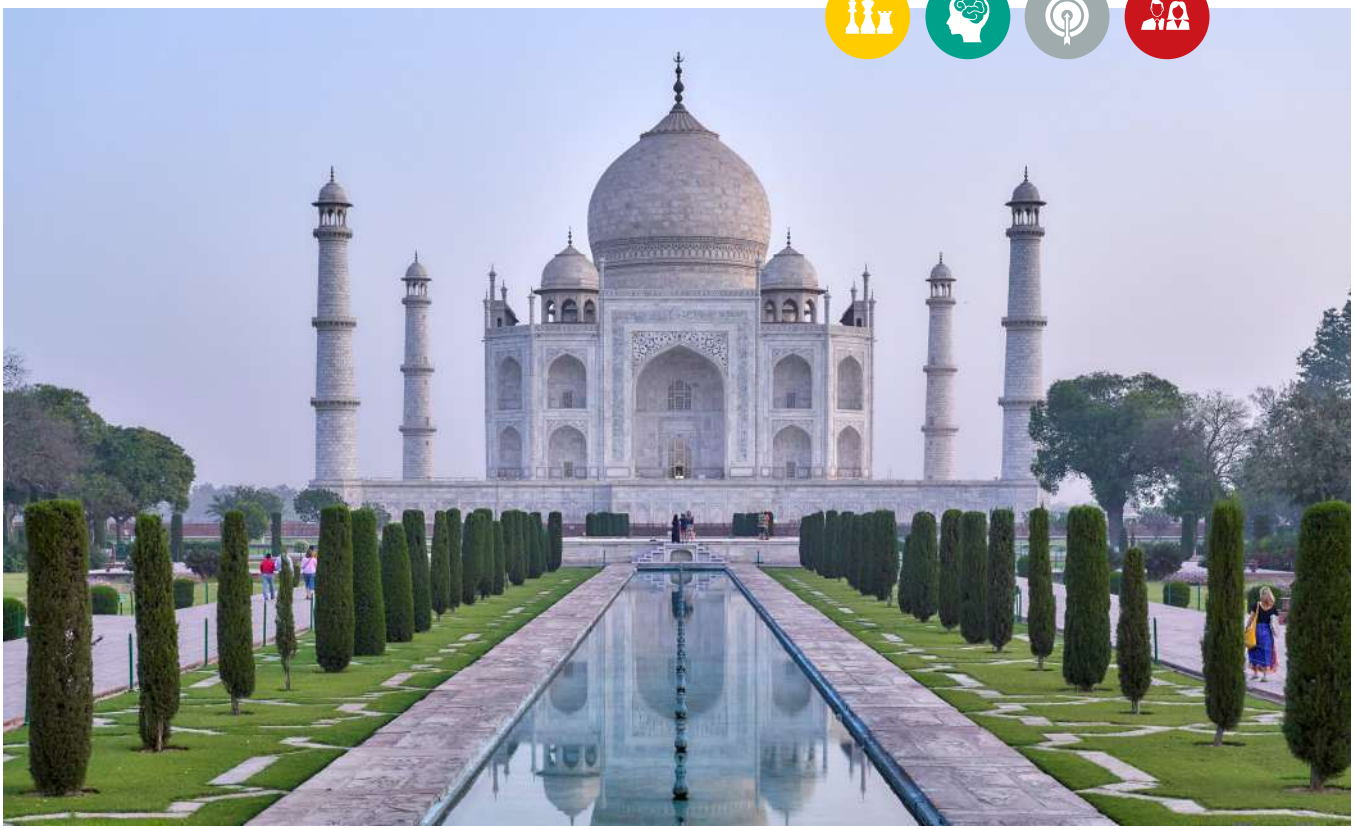

CROSS-BORDER REMOTE WORK FAQS

JAPAN

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

Whether or not a work permit is required and whether or not a work status of residence is required under Japanese law is determined by (i) where the employee is and (ii) what the employee does.

If the employee has a permanent resident status, such employee may be directly employed by a foreign entity outside Japan and may work exclusively for the benefit of such employer without work authorisation under Japanese law. The same logic applies to the case where an employee is temporarily located in Japan and working remotely for a foreign entity by carrying his/her laptop to Japan.

If the employee stays in Japan and works remotely for a foreign entity with a short stay visa without work authorisation, theoretically, it may lead to the revocation of his/her residence status. However, the authorities concern usually make the decision on a case-by-case basis considering all relevant facts.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Yes, the longer the employee stays in Japan while working remotely for the foreign entity, the higher the risk of such foreign entity being found to have Permanent Establishment in Japan. The authorities concerned also consider other various factors comprehensively when deciding whether a foreign entity has Permanent Establishment in Japan.

For example, if an employee is obliged to temporarily stay and work remotely in Japan due to the impact of COVID-19, such situation would be interpreted as

exceptional and temporary changes in the place where the employee works so that it is not likely that such employee is considered as Permanent Establishment in Japan.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

All the resident individuals in Japan, are obliged to join i) the national health insurance plan (or the industrial health insurance association, if any and applicable); and ii) the national pension plan.

As for social insurance (health insurance and employee pension) and labour insurance (employment insurance and industrial injury insurance), if the foreign employer does not have any Japanese entity and the employee is not regarded as Permanent Establishment in Japan, such foreign employer is not required to fulfill the social insurance and labour insurance while the employee is not able to enjoy the benefits of such insurance as an employee employed by a Japanese local entity may do.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Pursuant to the Act on General Rules for Application of Law, in the absence of a choice of law in the labour contract, the law of the place where the work should be provided is presumed as the governing law. Therefore, if there is no governing laws agreed upon and if the employee conducts no activity in Japan while working remotely for the foreign employer, Japanese law basically does not apply to such labour contract and therefore Japanese labour law requirements and regulations are not applicable.

However, even if non-Japanese law is chosen as the governing law in the labour contract, if some part of the work is deemed to be performed in Japan, Japanese labour law requirements and regulations such as compulsory provisions could apply. Nevertheless, the terms and conditions of the contract will not be interpreted in accordance with the Japanese law.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

N/A.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Generally, if an employee is scheduled to move overseas from Japan for one year or more, he or she is deemed as a non-resident of Japan for tax purposes. Even if such employee temporarily returns to Japan during such relocation assignment, this employee will continue to be treated as a non-resident as far as such return is temporary such as not planning to reside in Japan for more than one year. Non-residents are taxed only on salaries for working in Japan.

Whether or not the salary is actually taxed in Japan depends on whether or not the short-term resident tax exemption under the tax treaty between Japan and the country of assignment is applicable. Taking the tax treaty between the United States and Japan as an example, even if the employee temporarily returns to Japan, income taxation in Japan is exempted and would not be levied on the salary paid by the employer in the United States, as long as the length of stay is 183 days or less.

Unless there is domestic-sourced income in Japan, the foreign employer, who does not have any Japanese entity and whose employee is not regarded as Permanent Establishment in Japan, is not required to arrange for withholding of income tax.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

As stated above, for industrial injury insurance, if the foreign employer does not have any Japanese entity and the employee is not regarded as Permanent Establishment in Japan, the employee is not able to enjoy the benefits of such insurance as an employee employed by a Japanese local entity may do.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

As stated above, all the resident individuals in Japan, are obliged to join i) the national health insurance plan (or the industrial health insurance association, if any and applicable); and ii) the national pension plan.

As for social insurance (health insurance and employee pension) and labour insurance (employment insurance and industrial injury insurance), if the foreign employer does not have any Japanese entity and the employee is not regarded as Permanent Establishment in Japan, the employee is not able to enjoy the benefits of these insurance as an employee employed by a Japanese local entity may do.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Assuming that the employer does not have any Japanese entity and whose employee is not regarded as Permanent Establishment in Japan, such employer whose employee is working remotely from Japan is not subject to data privacy and security requirements regarding protection of employee personal information under the Act on the Protection of Personal Information in Japan.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) No except for the answer to the first question.

b) In the case of an employee who is a Japanese national, such employee may be directly employed by a foreign entity and may work exclusively for the benefit of such employer without work authorisation under Japanese law.

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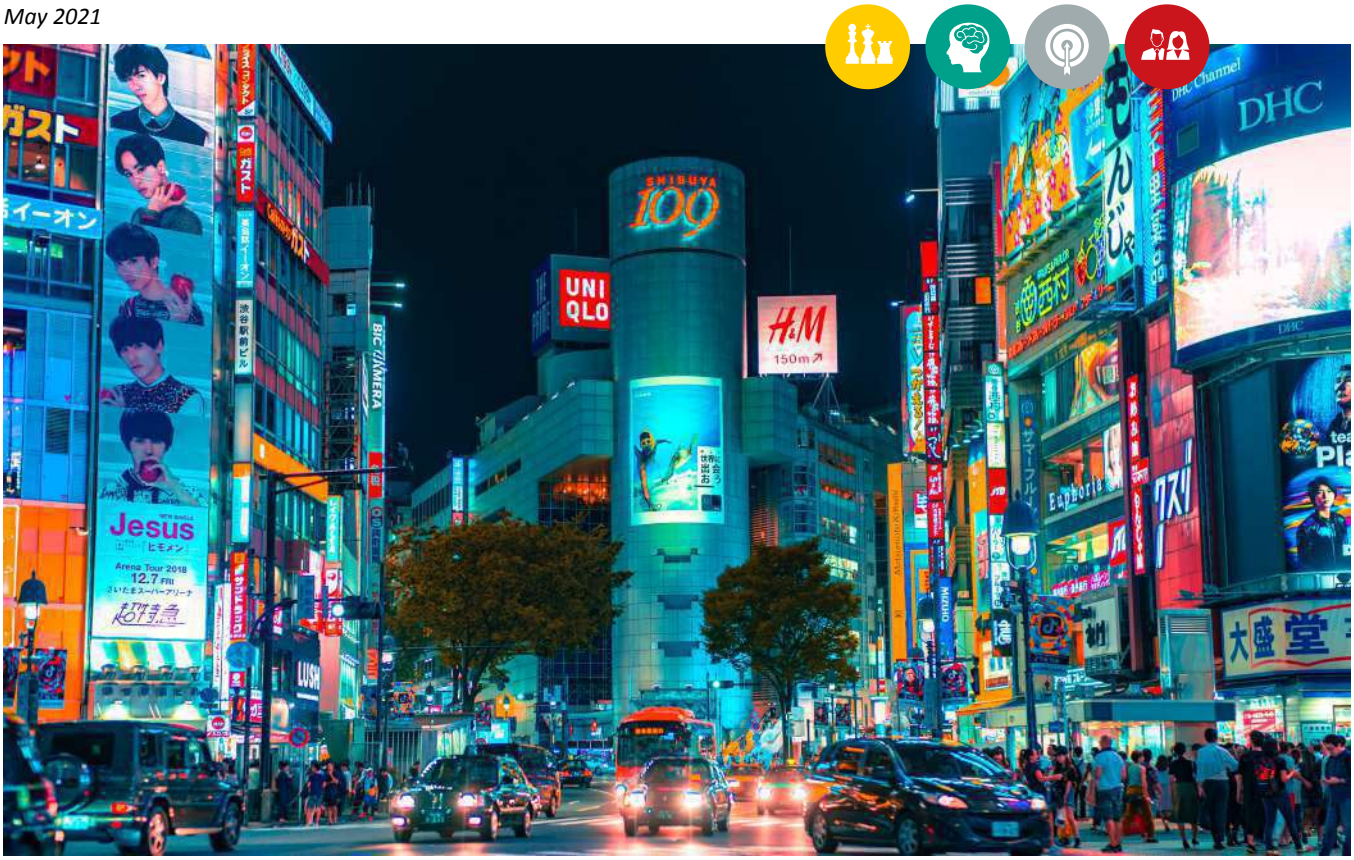

CROSS-BORDER REMOTE WORK FAQS

LUXEMBOURG

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

First, please note that in Luxembourg, what we call a "residence permit" covers both residence and work permits. In only a few cases, are the "work" and "residence" permits considered separately (e.g. for cross-border workers). In the context described above, a work permit will not be required. However, a stay permit may be required:

- *for a stay of less than 3 months, no stay permit is required of EU citizens and third-country nationals, subject to visa requirements; they must hold a visa C (short-term visa).*
- *for a stay of more than 3 months, EU citizens as well as third-country nationals, must have a "residence" permit.*

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Matters of this kind typically fall within the purview and expertise of tax advisors, and largely depend on the location where the company was established and on the provisions which, if any, are specified in the tax agreement between Luxembourg and the country concerned.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

If the employee is an EU citizen, and if Luxembourg becomes the country of residence, the employee will

be subject to Luxembourg law and must be affiliated with the local social security regime, if the employee performs more than 25% of his/her activity in Luxembourg.

If the employee is a third-country national, the implications for social security will be contingent upon the social security agreement between Luxembourg and the country in question.

Concerning payroll requirements: employees working in Luxembourg are immediately subject to the Luxembourg provisions of public order, this includes the respect by the employer to the payment of the social minimum wage and the automatic adjustment of remuneration to changes in the cost of living.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Employees working in Luxembourg are immediately subject to the Luxembourg provisions of public order.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

From a tax and social security perspective, any specific requirements that exist will be determined by the provisions of the applicable agreements between Luxembourg and the respective country.

From a labour law perspective, the provisions related to telework are provided for by the **Convention of 20 October 2020** *on teleworking, which has been declared mandatory and therefore applicable by the Grand Ducal Regulation of 22 January 2021 (hereinafter the "Convention of Telework").*

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The income tax modalities will depend on the double tax treaty agreement between Luxembourg and the country concerned; also within the purview of tax professionals.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Concerning the claim itself in the event of a work related accident, much will depend on what has been foreseen between the employee and the employer, from a social security point of view, to safeguard the employee in case of a work accident.

If the employee is in Luxembourg for a short term for private reasons (secondary residence or to visit a relative, for example), he should keep an official residence in his country of origin, so that such an action could be considered in his country of residence.

On the other hand, if he really intends to establish his residence in Luxembourg, and officially resides in Luxembourg, then he should, in principle, be affiliated with the Luxembourg social security regime. In the event of a work accident not covered by the competent authority in Luxembourg, he would have to take action against his employer before the courts, as provided for under the EU Regulation of 12 December 2012. According to Article 21 of this Regulation, the employee may act:

- *before the courts of the Member State where the employer is domiciled, or*
- *before the courts of the place where, or from which, the employee habitually carries out his work, or the courts of the last place where he habitually carried out his work, or before the courts in the place where the business, which had engaged the employee, is or was situated, if the employee does not, or did not, habitually carry out his work in any one country.*

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

This will also depend on the law applicable to the contract, from a social security point of view, and the social security agreement between both countries.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Regarding data protection, the Convention on Telework provides, in particular, that the employer is responsible for taking the measures required by law and by the General Data Protection Regulation (GDPR), to ensure the protection of data, including personal data, used and processed by the teleworker for business purposes.

The employer is obliged to inform the teleworker about data protection and to train the employee (to the extent necessary). The information and training obligation includes all legislation that is pertinent to the company, in addition to the rules on data protection.

The employer shall inform the teleworker in particular, of any restrictions on the use of IT equipment or tools such as the Internet, e-mail or mobile phones and the sanctions applicable in case of non-compliance.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

As previously mentioned, the provisions for telework are provided for by the **Convention of 20 October 2020.**

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) No, the above hypotheses would not change.

b) Yes, changes would be necessary, particularly regarding the risk of "permanent establishment" and the work permit requirement.

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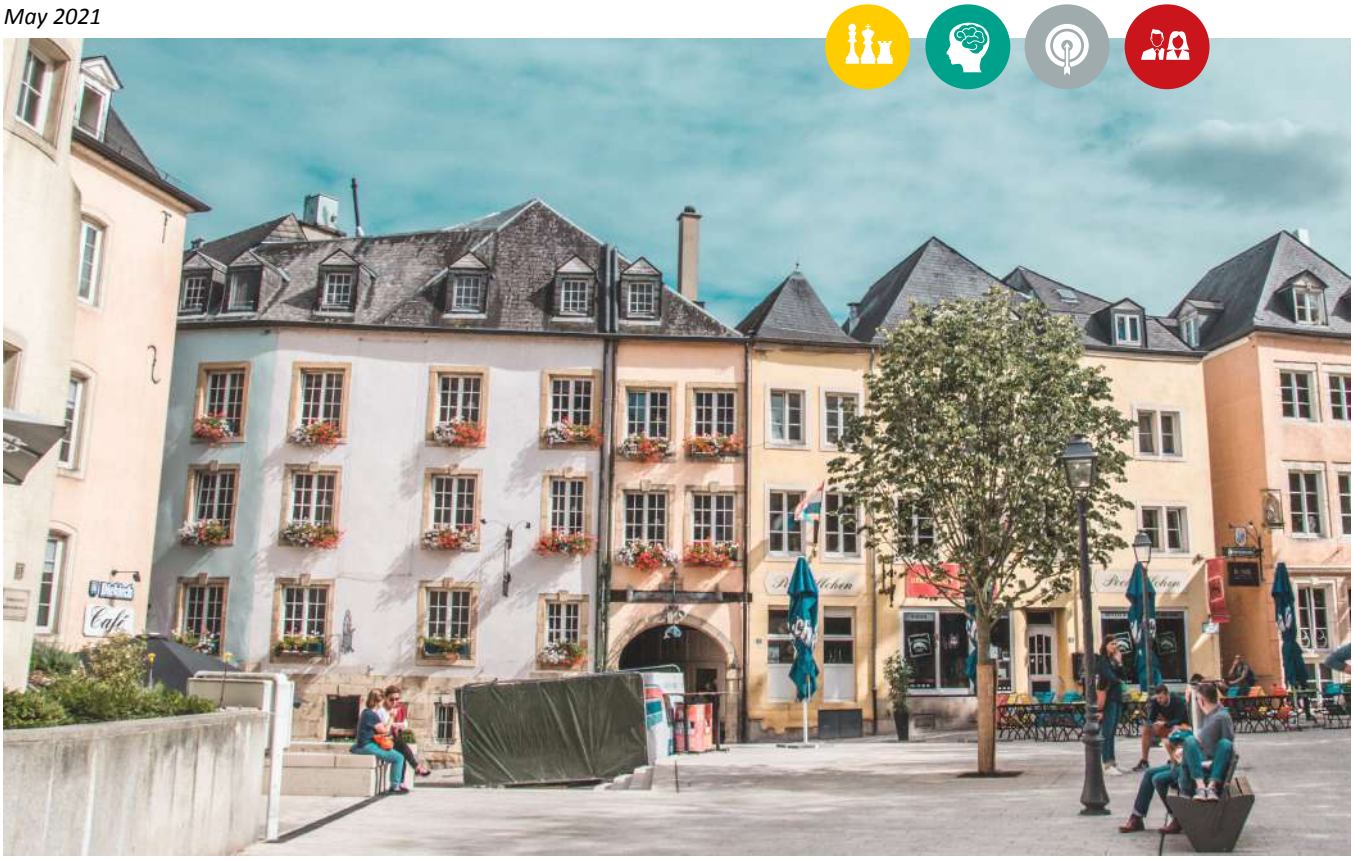

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10TH ANNIVERSARY IN 2021

De la Vega & Martínez Rojas, S.C.
ABOGADOS

CROSS-BORDER REMOTE WORK FAQS

MEXICO

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

A temporary residence visa is required for economic solvency. This type of visa is applicable for the foreigner who intends to reside in Mexico for more than 180 days and up to 4 years, without permission to receive income in Mexico.

The requirements are: Copy of valid passport; photograph with visible face; Copy of the employment contract; Copy of payroll receipts for the last six months and Copy of bank statements that prove monthly income for the amount of at least $ 2,200, during the last six months.

Once the visa is granted and stamped by the Mexican Consulate, immigration agents will grant an FM-M immigration document (Multiple Migration Form), in which they will check the box corresponding to the redemption and seal the day of entry to the country, from now, there are 30 calendar days to apply for the corresponding redemption with the National Institute of Migration, this process costs 44 USD for government rights.

The process of exchange and issuance of the immigration document will be resolved within a period of 1 to 5 business days, subsequently, the foreigner will have to stamp their fingerprints and sign the exchange authorization. That same day they will give the applicant their temporary resident card valid for one year, after by which the temporary resident immigration condition may be renewed annually, up until the 4-year maximum period. The foreigner national must provide evidence that the activity authorized subsists to obtain the renewal of his/her immigration condition.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

According to Mexican Income Tax Law (MITL), a non-resident corporation, although legally incorporated abroad, may be considered an income taxpayer in Mexico. Whether this is according to Mexican law, it is considered a tax resident in the country or it is subject to taxation by virtue of the business activities it carries on in the country. Under the first assumption (tax residence in Mexico result of having its place of management in the country), the legal entity will be subject to taxation in Mexico as a regular corporate taxpayer. Under the second assumption (business activities in Mexico), the legal foreign entity is deemed to have a Permanent Establishment (PE) in Mexico and therefore, subject to taxation in the country with respect to the income attributable to such establishment.

In particular, the first section of the MITL establishes that all non-Mexican residents are subject to Mexican income tax, to the extent the non-resident has a PE in Mexico. All activities attributable to such PE will be subject to Mexican income tax. Unless the non-resident can prove which activities are attributable to the PE and which are not, the non-resident will be subject to tax in Mexico for all its activities. According to the MITL, a Mexican PE is subject to the same general income tax rates and obligations as a domestic Mexican corporation.

For these purposes, Section 2 of the MITL defines a PE as any place of business in which business activities are conducted, either in whole or in part, or independent personal services are provided. First, it states that, among others that a PE shall be deemed to be, among others, branches, agencies, offices, factories, workshops, facilities, mines, quarries, or any place for exploring, extracting, or exploiting natural resources.

When a non-resident acts through an individual or an entity (dependent status), the non-resident will be deemed to have a PE in Mexico with respect to all the activities that such individual or entity carries out for the non-resident, even if such individual or entity does not have a place of business in Mexico. For these purposes, if an individual or entity has or exercises the authority to conclude contracts on behalf of the non-resident related to its activities in Mexico, the non-resident will be deemed to have a PE in Mexico. Certain limited exceptions related to preparatory or auxiliary services apply.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

As long as there is no employment relationship between the remote worker and a legally established Mexican company, the remote worker would not be subject to local social security or payroll requirement. Such requirements cannot be fulfilled by a foreign company.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Given that there is no employment relationship between the remote worker and a legally established Mexican company, the remote worker would not be subject local employment law requirements.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

The Mexican Labor Law does analyze telework in Chapter XII Bis, but given the circumstances there is no employment relationship between the worker and a legally established Mexican company.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Since the remote worker will be paid by a foreign and non-Mexican entity, they will not be subject to tax regulations in Mexican territory.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

The remote worker would not be entitled to a claim for workplace injury, as there is no employment relationship between them and a legally established Mexican company.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

The remote worker would not covered under the local national healthcare system or insurance, as there is no employment relationship between them and a legally established Mexican company.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

No, a foreign employer would not be subject to data privacy and security requirements regarding protection of employee personal information for a foreign employee working remotely in Mexico.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

The Mexican Labor Law does analyze telework in Chapter XII Bis, but given that there is no employment relationship between the remote worker and a legally established Mexican company, those telework provisions are not applicable.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

(a) *The citizenship is not relevant as long as the labour relationship is based in a foreign country and no wages are paid in Mexico; however, from a tax standpoint, the worker will be responsible for declaring his/her income received in a foreign country.*

b) *If the employee interacts with local market, then a risk of creating a Permanent Establishment (discussed above) would arise, since he/she will be performing business activity on behalf of the foreign company.*

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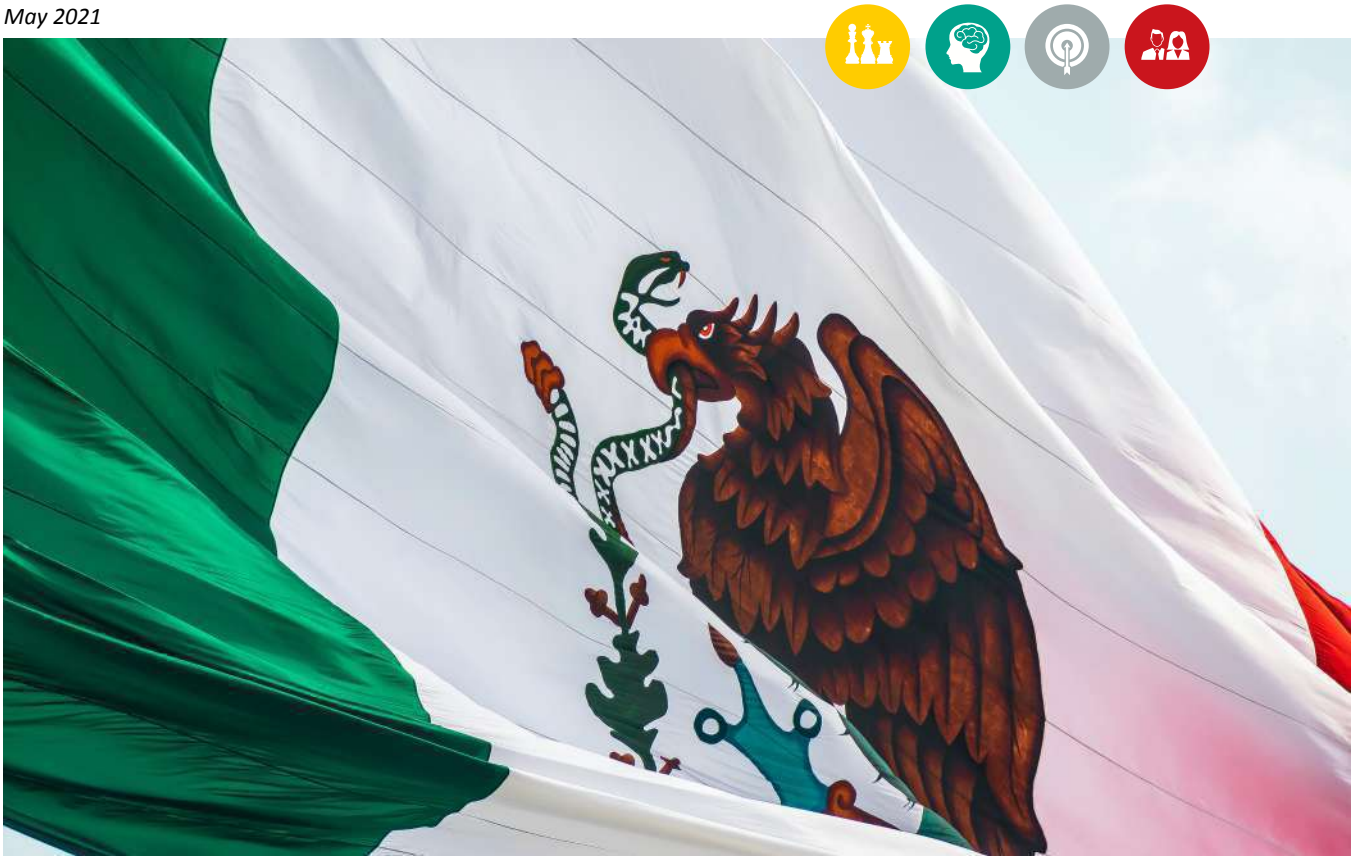

CROSS-BORDER REMOTE WORK FAQS

NETHERLANDS

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

A work authorisation is not required for nationals from the European Economic Area (EEA) and Switzerland. People from outside the EEA and Switzerland often need a work permit (if less than 3 months) or a combined residence and work permit, known as a single permit (if longer than 3 months). The employer applies to the Employee Insurance Agency (UWV) for an employment permit or to the Immigration and Naturalisation Service (IND) for a single permit. Simplified procedures apply to skilled and highly educated foreign nationals. One is considered as highly skilled or educated, primarily on the basis of his/her salary or education.

The application forms are only available in Dutch. Before the application process, all the documentation must be translated into Dutch, English, French or German. Permit application procedures require extensive preparation, which can easily take several weeks (aside from the time it takes the authorities to process the application). Requesting a single permit, the IND has three months to process the application.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

A permanent establishment exists when an enterprise has a physical structure (building or office) in the Netherlands, for the purpose of carrying out business activities. The performance of building, construction or installation activities can also give rise to a permanent establishment. This is the case if the work abroad lasts longer than twelve months. Supporting activities, such as storage of goods or merchandise or collection of

information, do not normally constitute a permanent establishment. A permanent establishment may also exist if the enterprise has a permanent representative in the relevant country. A permanent representative has the power to conclude contracts on behalf of the enterprise. An independent agent does not constitute a permanent establishment. In this case, if the remote worker only works for the foreign employer and does not "come into contact" with the local market, there will not be a permanent establishment.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

In principle, if the employee lives and works (more than 25% of his activities) in the Netherlands, social security will be governed by Dutch law. Employers pay contributions on behalf of their employees to the Dutch Tax and Customs Administration. These contributions form a part of the payroll tax. The Employee Insurance Agency (UWV) arranges the payment of the employee benefits. In the Netherlands, the following employee insurance schemes are compulsory for each employee:

- *Unemployment Insurance Act*
- *Work and Income (Capacity for Work) Act*
- *Sickness Benefits Act*

If the employer is based outside of the Netherlands and intends to have an employee work temporarily in the Netherlands, the employee usually remains covered by his/her own country's social insurance system. An A1/ certificate is required for this. This certificate is valid in the EU and the countries of the European Economic Area (EEA) and countries with which the Netherlands has a social security agreement.

For non-EEA nationals, the bilateral social security treaties that the Netherlands has concluded with other nations should be consulted. The relevant treaty determines where the employee is insured. If there is no treaty, the Dutch administration will have to discuss with the foreign administration which system will be applied, in order to avoid a double application of social security systems.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

If the foreign employee works in the Netherlands, based on international treaties, specific statutory Dutch employment law requirements apply such as:

- *the employer must pay at least the Dutch statutory minimum wage;*
- *the employee is entitled to at least the minimum number of holidays as Dutch employees;*
- *the working conditions (such as maternity leave and safety at the workplace) and working- and rest-times must comply with Dutch legislation.*

Parties may make a choice of law when concluding an employment contract. However, apart from the above and based on international treaties as well, this choice of law may not deprive the employee of the protection afforded to him by provisions from which it is not possible to derogate by agreement, such as the statutory Dutch dismissal law (which contains a preventive test) and the payment of the salary during illness (for at least 2 years). These provisions derive from the law of the country in which the employee normally carries out his/her work. The country where the work is normally performed is not considered to have changed if the employee temporarily performs his work in another country. There is one exception to this rule; if it is clear from all the circumstances of the case that the contract is more closely connected with another country, the law of that other country shall apply. Consequently, to determine if statutory Dutch law applies (such as Dutch dismissal law) to the foreign employee, depends on the above circumstances.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Yes, the foreign employer must comply with the provisions of the collective bargaining agreement (CAO) that is relevant for the company or the sector.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The Netherlands has tax treaties and regulations with many countries. These treaties state which country may levy tax on certain income. If the employee has income from a country without a treaty with the Netherlands, the employee will not automatically have to pay income tax in the Netherlands. To avoid paying income tax in several countries on the same income, the employee can get a double tax relief in the Netherlands.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Following the Working Conditions Act, the employer is obliged to provide a healthy and safe work environment for its employees (duty of care). If a workplace injury occurs, the employer is liable unless he can prove that he has fulfilled his duty of care. If liability is determined and the employer can be held liable, the injured employee must be compensated.

Serious accidents at work must be reported immediately by the employer to the Inspectie SZW. Insurance for accidents in the workplace is not compulsory for the employer. However, many collective bargaining agreements (CAO) include accident insurance as an employment condition.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

In the Netherlands, there is no obligation for the employer to provide for a healthcare insurance policy. However, anyone who lives or works in the Netherlands (the employee) must take out a basic healthcare insurance. This insurance covers the employee for care from, for instance, the hospital, the psychiatrist and the pharmacy. EU-citizens will have such insurance with a European Health Insurance Card (for up to four months).

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

A foreign employer who uses or stores personal data from employees, must take measures to protect the data. The employer should comply with the European privacy law (GDPR). The GDPR applies if the company:

- *is based in the EU and processes personal data (no matter where the processing takes place);*
- *is established outside the EU but processes personal data because the company offers goods or services to individuals in the EU, or monitors the behaviour of individuals within the EU. Non-EU based companies processing an EU citizen's data need to appoint a representative in the EU.*

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

Yes, there is case law in the Netherlands regarding the applicability of Dutch dismissal law on foreign workers in the Netherlands.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) Citizenship in the Netherland can have an impact on the necessary (work) permits and application of certain treaties on the applicable tax or social security system.

b) This could mean that there is a permanent establishment in the Netherlands and, thus, Dutch statutory law applies (such as Dutch dismissal law), apart from the fact that specific statutory Dutch employment law applies as explained above.

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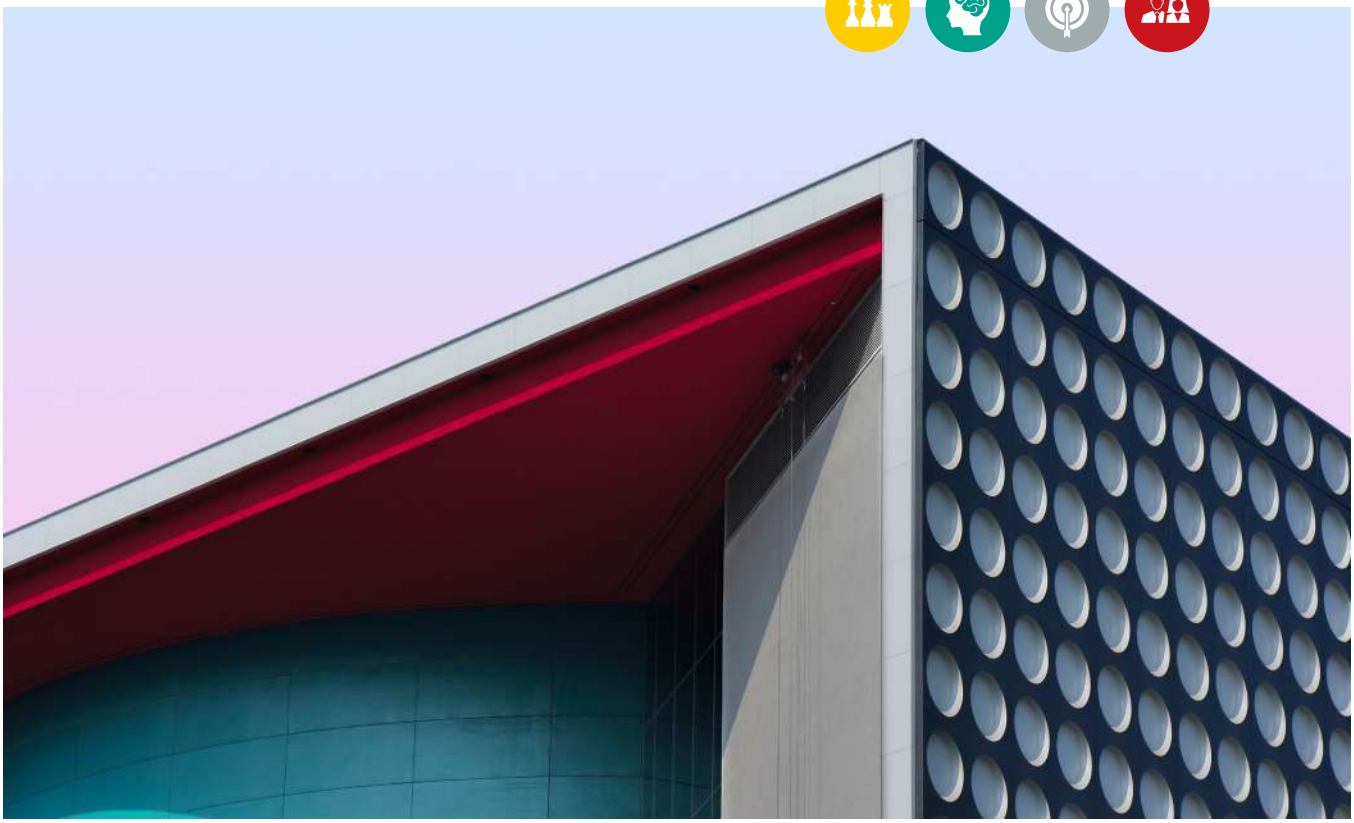

CROSS-BORDER REMOTE WORK FAQS

NORWAY

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

Depends on nationality. EU/EEA employees who are going to work for and live in Norway more than 3 months, need to register as a worker obtaining a job in a Norwegian or foreign company. Non EU/EEA workers need a residence permit. The main requirements are that the employee is a skilled worker meaning that the employee obtain a higher education or have completed vocational training and have obtained employment/ received a job offer. Working for a foreign company that does not have a legal entity in Norway requires that the foreign company have a contract with an enterprise in Norway to carry out an assignment in Norway.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Highly unlikely. Most companies and self-employed persons engaged in business activities in Norway are liable to pay tax to Norway.

If a company or self-employed person resides in a country with which Norway has entered into a tax treaty, the condition for tax liability in Norway is that the business income originates from business activity that is carried on through a permanent establishment in Norway.

A 'permanent establishment' means that the company or self-employed person has a fixed place of business through which they run the business all or some of the time. The business must also have been operating for a sufficient period of time.

Examples of permanent establishments are:
- *a place of management*
- *a branch*
- *an office*
- *a factory.*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Workers in Norway are as point of departure covered by/members of the National Insurance (social security). This does not apply if the employee work temporary for a foreign company. For work in Norway different rules apply, dependent on whether the employee is from the Nordic countries and the EEA, from countries with an agreement on national insurance/ social benefits with Norway or countries from outside of the EEA without such agreement on national insurance/social benefit. For workers from countries outside of the EEA with an agreement on national insurance/social benefits with Norway, the workers are obliged members of the National Insurance, unless you are regarded as a posted worker from your home country in accordance with the law in your home country. Workers from countries from outside of the EEA without an agreement on national insurance/social benefits are obliged members in the National Insurance. Membership in the national insurance provides entitlement to national health services and other social benefits. A foreign company may fulfill such requirements.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

This depends on the rules on choice of law. Norwegian choice of law rules are, as the clear main rule based on case law and follow the so-called "Irma Mignon formula" which the Supreme Court established in Rt. 1923 II p. 59, according to which the laws of the country to which the case "has its strongest connection" shall be applied. In this connection, both the country in which the work is performed, where the employment contract was entered into and the language in which it was entered into, the parties 'joint affiliation with a country's legal system and the parties' assumptions and course of action are important for the assessment.

A number of legal sources state that Norwegian conflict-of-law rules must be harmonized with those of the EU, so that as long as there is no direct conflict between Norwegian and EU legal conflict-of-law rules, the latter rules must be followed. This is stated, among other things, in the Supreme Court's statements in Rt. 2009 p. 1537 (The bookseller in Kabul), which is followed up in Rt. 2011 p. 531 and HR-2016-1251-A et al.

The rules on the choice of law for international working conditions in the EU are set out in art. 8 of the Rome I Regulation of 2008, Regulation No 593/2008.

The starting point is that the parties themselves can decide which country's law is to be applied to each individual employment relationship, cf. art. 8 (1), first sentence, of the Rome I Regulation. This corresponds with the case law principle in Norwegian law of party autonomy (the parties decide for themselves). If the parties to an international employment relationship have agreed on the choice of law in the employment agreement, for example that Norwegian law shall apply, this is also the starting point. Art. 8 no. 1 second sentence, however, established an important limitation on this starting point: if the choice of law means that the employee loses protection that he would have had if the relevant choice of law had not been made, the rules of the law of the country that would have been applied given that the choice had not taken place, will apply.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Provided that Norwegian law applies, the regulation on working remote (FOR-2002-07-05-715) sets out certain requirements for working remote, when the work is not brief or temporary. Among others,

the regulation set out requirements for a separate agreement in addition to the employment agreement.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The rules concerning tax residence upon moving to Norway apply to those who have not previously been resident in Norway. The rules also apply to have been residents in Norway before, if previous emigration has been approved for tax purposes.

If you stay in Norway for more than 183 days during a twelve-month period, you will become a tax resident in Norway. The same applies if you stay in Norway for more than 270 days during a thirty six-month period. All whole or part calendar days in Norway are included in the calculation of the number of days.

If you stay in Norway for more than 183 days during the year in which you move to Norway, you will be deemed a tax resident from your first day in Norway. If the 183 days are split between two income years, you will become a tax resident from 1 January of the second year. (You will have limited tax liability in the year before. This means you are only liable to tax on certain income linked to Norway.)

If you stay in Norway for more than 270 days during a thirty six-month period, you will be deemed a tax resident from 1 January of the year in which the stay exceeds 270 days. (You will have limited tax liability in the preceding year(s).)

As the company/employer in the example is foreign, and as long as their activities through the remote worker is not considered a "permanent settlement" or the likes, Norwegian law does not apply directly. Hence, the duties put on employers situated in Norway to withhold income tax are not relevant for such foreign employers.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

If covered by Norwegian law and Norwegian occupational injury insurance – in principle yes. Depends on what type of injury and further what kind social benefit/insurance that will be relevant/in question.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

See above regarding social benefits.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Yes. GDPR and the Norwegian personal data/privacy regulation applies to all physical and legal persons in Norway.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

Not as far as we know.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

(a) *All the questions presupposes that there is a "foreign" employee in question, thus the questions will have to be looked at from a pure Norwegian perspective if the employee is Norwegian citizen. A Norwegian citizen will not need residence permit/visa working from remote in Norway etc. The other rules regarding tax, working environment, employment protection, tax, GDPR all apply to Norwegian employment if they are deemed Norwegian according to the rules on choice of law.*

b) *Not necessarily, unless such activity results in "permanent establishment" status, discussed above .*

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For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

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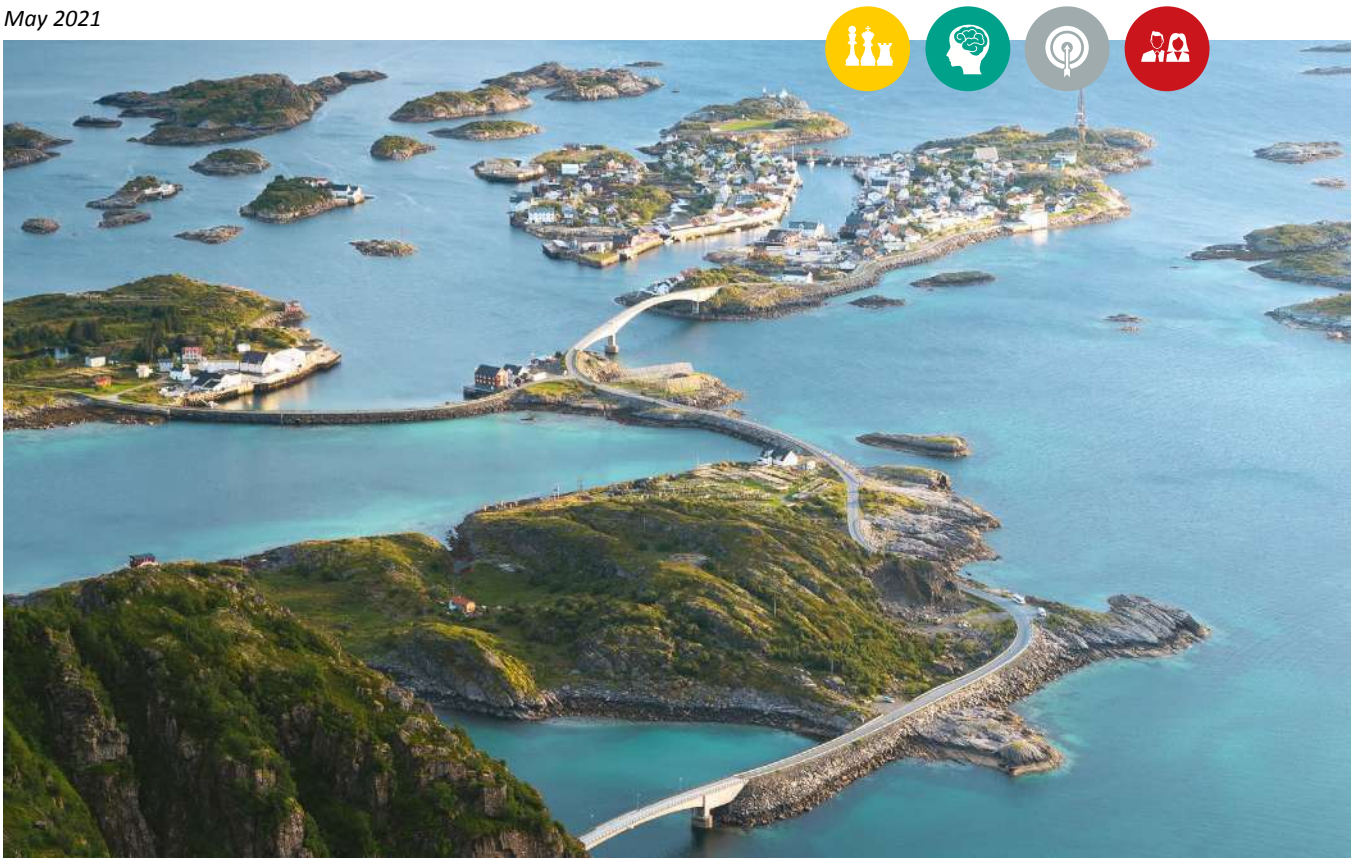

CROSS-BORDER REMOTE WORK FAQS

PERU

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

No, since the foreign national employee will not be subject to a labour relationship under Peruvian regulation. However, from an immigration point of view, the foreign employee should apply for a Mercosur visa, if he is a national of any of the countries that have subscribed to the residence agreement for nationals of the member states of Mercosur, Bolivia and Chile. Such residence is granted for two (2) years with the possibility of obtaining a permanent residence. To apply, the foreign employee will need to submit an affidavit attaching a certificate which evidences the lack of a judicial, criminal and police background in his country of origin or in which the foreigner has resided during the last five (5) years, prior to his arrival in Peru.

Alternatively, the foreign employee could apply for an Investor visa, which will require, among others, to submit a notarised copy of the deed registered in the Public Registries where the beneficiary appears, with a representation equal to or greater than, five hundred thousand soles (S / 500,000.00) in the capital stock subscribed and paid in full, in cash and in a single act.

Likewise, evidence that the money invested comes from abroad through the "Sworn Baggage-Income Declaration" made before the Peruvian Tax Authority (SUNAT) by the foreigner at the time of entering the country, or documents related to interbank transactions or other forms of money transfer in favour of the foreigner and/or the Peruvian company where the foreigner is a partner, must be notarised or certified. It is also necessary to attach/enclose a letter of commitment to create at least five (5) jobs for Peruvian citizens within one year, a requirement that will be essential to request the extension of residence.

Similarly, it is necessary to attach/enclose a business feasibility project (if it is a newly incorporated company) or a business plan (if it is an existing company) that includes the creation of five (5) jobs in a period of no more than two (2) years. This must be prepared by a professional, duly authorised and certified.

The beneficiary must have the qualifying immigration status or the permission to sign contracts, at the time of signing the company's incorporation. This migratory status does not authorise the foreign employee to work for a local company.

The term "permanence" refers to a period of three hundred and sixty-five (365) days, extendable for the same term.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Article 14-B of the Peruvian Income Tax Law stipulates that a permanent establishment in Peru is deemed to exist, among others, when any of the following situations occur:

1. *the provision of services, when those are carried out in the country for the same project, service or for one related, for a period or periods that exceed one hundred and eighty-three (183) calendar days within a period of twelve (12) months, unless a minor term is established in a Double Taxation Treaty (in this case, such term will be applicable).*
2. *when a person acts in the country, on behalf of a company incorporated abroad and as such, habitually concludes contracts or habitually exercises the main role in the conclusion of routine contracts without substantial modification by the sole proprietorship, partnership or entity, of any nature, incorporated abroad and those contracts are concluded on their behalf; or for the transfer of property rights, or the right to use property owned by them, or over which they have the right to use; or for the provision of services by them.*

For these purposes, the time period under point 1) is determined by adding the period in which the company performs the aforementioned activities, the period or periods in which related parties carry out identical, substantially similar or related activities.

Likewise, Article 3 of the Peruvian Income Tax Regulations establishes that, for the purposes of point 2), it is further required that the person acting on behalf of the company also habitually exercises powers to conclude contracts on behalf of the company, or habitually maintains the stock of goods or merchandise to be negotiated in the country on behalf of the company.

Be advised that if a permanent establishment is deemed to exist, it will have the status of a legal entity domiciled in Peru as established by Articles 7 and 14 of the Peruvian Income Tax Law; however, said permanent establishment will only be taxed on its Peruvian source of income. Consequently, the permanent establishment must comply with the payment of taxes (such as the Value Added Tax) and with the other formal obligations required of domiciled entities, such as:

- *registering with the Taxpayer Registry (RUC);*
- *issuing invoices and payment vouchers in compliance with the Payment Vouchers Regulations;*
- *retain (have in their possession) and update accounting books and records;*
- *determine and pay monthly and annual tax obligations.*

It is important to bear in mind however, that the Peruvian Income Tax Law identifies certain scenarios that do not constitute the existence of a permanent establishment, including – and with particular significance to the present case – the following:

"When a company incorporated abroad carries out commercial operations in the country through a broker, a general commission agent or any other independent representative, provided that the broker, general commission agent or independent representative acts as such in the usual performance of their activities. However, when that representative performs more than 80% of his activities on behalf of such company, he will not be considered an independent representative in the sense of this numeral."

Therefore, it is recommendable to evaluate the operations that said individual would carry out in the country, the contractual conditions and the powers granted to him, in order to identify if such activities would effectively constitute a permanent establishment of the company in Peru. Additionally, it is important to consider how long the operation will last.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Pursuant to Article 9 of Supreme Decree No. 003-97-TR, if an individual renders subordinated personal services for remuneration in favour of another party, such relationship should have an employment nature. Said conclusion applies, regardless of whether the employer is domiciled outside Peru.

To that end, if the activities that the remote worker performs on behalf of the foreign company qualify as subordinate services, for instance if they are normally part of the regular duties of an employee, the remote worker should be considered as an employee of the foreign entity, which will act as the remote worker's employer (i.e., will issue instructions to him/her, supervise him/her and even punish any breach of commandments by him/her). Such a labour relationship could be subject to foreign regulations; thus the remote worker would be included in the foreign company payroll and he/she would earn the corresponding labour benefits.

Another alternative is to choose Peruvian Law; however, such choice requires the employer to register with the Peruvian Taxpayer Registry (RUC); to implement an electronic payroll; and to enroll the remote worker, accordingly. Under such a scenario, the remote worker will be entitled to receive Peruvian labour benefits and to register with the national social security system (health assistance provision and pension). Unfortunately, in the present case, this alternative is not possible from a practical perspective, since the foreign company is not domiciled in Peru; consequently, there is no possibility to generate a local payroll in order to register the employee.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Given that there is no employment relationship between the remote worker and a legally established Peruvian company, the remote worker would not be subject to local employment law requirements.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Given that there is no employment relationship between the remote worker and a legally established Peruvian company, the remote worker would not be subject to local employment law requirements.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

In accordance with the provisions of Article 9 of the Peruvian Income Tax Law , income that originates from work performed in Peru is deemed as a Peruvian source of income; therefore, the remote worker will be taxed on said income, as such. Furthermore, under Article 6 of the Income Tax Law, persons who are domiciled in Peruvian territory are subject to taxation on their income source worldwide (e.g. from wherever the source of the income originates). Conversely, non-domiciled individuals are only taxed on their Peruvian source of income. In both scenarios, the remote worker would be responsible for paying the income tax directly, since his employer is not a Peruvian-domiciled company.

Significantly, the income that an individual earns for his work performed within the Peruvian territory could be classified, according to the Peruvian Income Tax Law, as fifth category income. Article 34 of the Peruvian Income Tax Law establishes that fifth category income includes, among others, income earned from the personal work carried out in a working relationship with an employer, regardless of the name given to the payment (e.g. wages, salaries, allowances, bonuses, commissions, etc.).

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Given that there is no employment relationship between the remote worker and a legally established Peruvian company, the remote worker would not be subject to local employment law requirements. Therefore, Peruvian regulations regarding health and safety will not be applicable.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

The remote worker would not be covered under the local national healthcare system or insurance, as there is no employment relationship between the worker and a legally established Peruvian company.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

No, a foreign employer would not be subject to data privacy and security requirements aimed at the protection of employees' personal information, in the event of a foreign employee working remotely in Peru.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

Since 2015, teleworking in Peru has been regulated by Law No. 30036 and Supreme Decree No. 017-2015-TR. There is also a specific regulation on remote work in force until 31 July 2021; however, in the case at hand, given that there is no employment relationship between the remote worker and a legally established Peruvian company, such provisions are not applicable.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) In the present case, citizenship is not relevant, as the labour relationship is based in a foreign country and so Peruvian law is not applicable. However, from an immigration perspective, if the remote worker is a Peruvian citizen, there is no need to acquire a visa of any kind. From a tax standpoint, since the income is paid by a non-Peruvian-domiciled company, the worker will be responsible for declaring his/her income received from an entity in a foreign country.

b) If the foreign remote worker interacts with the local market, then as a result, there is a greater risk of creating a permanent establishment, since he/she will be engaging in business activities on behalf of the foreign company. However, a specific analysis of the "interaction" would be necessary.

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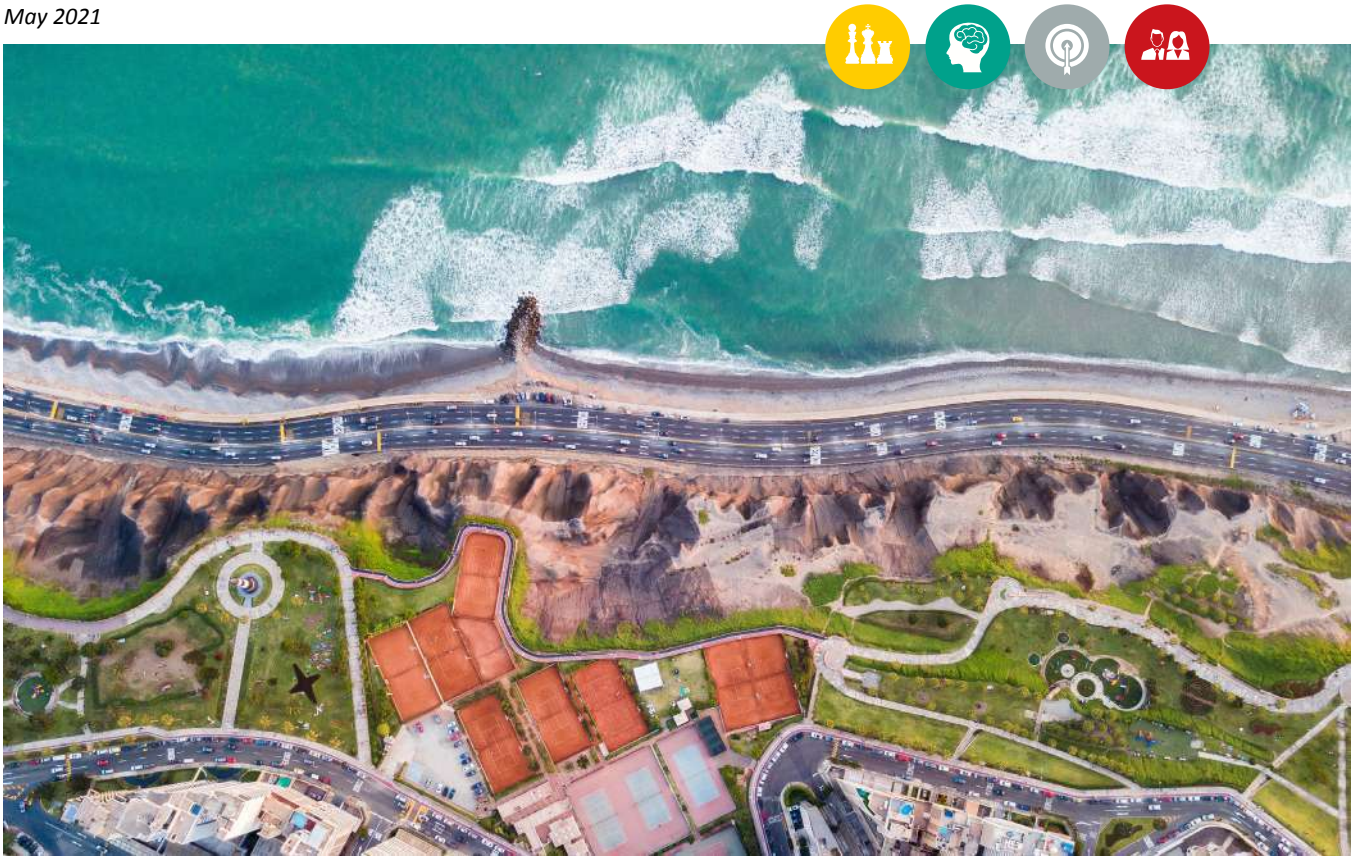

CROSS-BORDER REMOTE WORK FAQS

POLAND

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

European Union citizens are not required to obtain any documents before they can begin to work in Poland. If the stay exceeds 3 months, the foreigner (not the employer) is only obliged to register their stay at the nearest Voivodeship Office (regional administrative divisions with authority over all matters related to the legalisation of the stay of foreigners in the Republic of Poland, matters of the residence of EU citizens and their family members, and where the registration of invitations and granting permits for foreigners to perform work, can be arranged).

In order to work in the territory of Poland, foreigners who are not citizens of the European Union, are required (with some exceptions) to obtain documents legalising their work and stay.

In a typical case, the foreigner must obtain a work permit before starting work in Poland. The processing time is approximately 3 months and is usually initiated by the employer. In the case of citizens from countries such as Armenia, Belarus, Russia, Ukraine, etc. it is possible to use the simplified procedure: obtaining a "declaration of the intention to entrust the foreigner with the performance of work". The simplified procedure takes between several days and several weeks to process.

Most important of all, is that the foreigner must secure the legal right to stay in Poland (e.g. visa, residence permit or visa-free stay permit, depending on the particular circumstances). As a rule, a residence permit can be obtained on the basis of a work permit or the above-mentioned declaration, unless the stay takes place as part of visa-free travel (then the employee must obtain the right to stay as part of visa-free travel, after 90 days of stay).

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

As a rule, a foreign enterprise will not be deemed to have a "permanent establishment" in Poland as long as the employer does not conduct business here, which could be considered a foreign establishment in accordance with the provisions of the Personal Income Tax Act (on terms consistent with the OECD Model Tax Convention) and pursuant to the provisions of a double taxation treaty (if any) between Poland and the home country of a given employer. We suggest analysing the obligations of future employees and bilateral agreements carefully, so as to exclude the risk that the employer has a recognised permanent establishment in Poland.

Temporary remote work, generally, will not create a permanent establishment in Poland. Currently, remote work is most often forced by government restrictions; as such, this eliminates any consideration that mandatory remote working arrangements are a result of the employer's will (it could be otherwise if an employee, after the COVID-19 restrictions are withdrawn, continues to work remotely in Poland, e.g. concluded agreements on behalf of the employer as an agent).

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Basically, every citizen of the EU should be subject to the legislation of the country where he or she works, but employees of the Member States will be able to work in Poland without changing the place of social insurance, on the basis of the A1 document. However, not every state wants to issue this document in case of remote work. If the A1 document is not issued, there is a risk that the Polish Social Insurance Institution will demand payment of contributions for work performed in Poland. In such cases, the employer has to register as the payer of contributions with the Polish Social Insurance Institution and obtain a tax identification number. In addition, the employer is required to register the remote employee within 7 days from when his work commences within the territory of Poland. The employee, however, may perform duties on behalf of the payer, including paying contributions.

If an employer is not from the EU, it should be verified whether an agreement between Poland and a given country, which regulates the rules on being subject to insurance, has been concluded. Poland has established bilateral social security agreements with e.g. the former Yugoslavia (now Serbia, Bosnia and Herzegovina and Montenegro), Macedonia, Canada, the United States of America, South Korea, Australia, Ukraine, Israel, Moldova, Turkey and Mongolia.

In the absence of a bilateral agreement, temporary remote employees from outside the EU, will be covered by insurance, only on a voluntary basis.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

As long as the work is habitually performed in the home country and not in Poland, the Polish labour provisions will not apply.

The possibility that Polish law will apply depends on the particular facts concerned, e.g. if the work is performed habitually in Poland under the "Rome I" Regulation (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations).

The choice of law stipulated in an employment agreement may not result in depriving the employee of the protections afforded to him under Polish law; nor can the parties, by agreement, deviate from such provisions; this means that an employee would be subject to the law chosen in the contract, unless Polish employment law provided him/her with better

protection (e.g. working time norms, minimum wage, amount of days of annual leave, occupational health and safety regulations, etc.).

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

As mentioned above, as long as the work is habitually performed in the home country, the provisions of the law regarding remote work, currently in force in the home country, should apply.

The ad hoc regulations sanctioning remote work during the COVID-19 pandemic presently in force in Poland, and which are reappraised only periodically, impose too few obligations (mainly having to do with the provision of tools and work materials, etc.), although general rules of practice and procedure for the provision of appropriate occupational health and safety measures, still apply. However, several draft amendments to change the Labour Code in this respect, have been proposed.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

First of all, it has to be determined whether a particular person is a Polish tax resident, so if he or she:

- *has a centre of personal or economic interests (centre of vital interests) on the territory of the Republic of Poland; or*
- *stays in the territory of the Republic of Poland for more than 183 days in a tax year.*

As a rule, an employee temporarily working here will not be considered a Polish resident, and will be subject to tax only on income achieved in the territory of the Republic of Poland (limited tax obligation). Typically, in this case, a double tax treaty applies, which limits the obligation to pay income tax in Poland.

If no double tax treaty between Poland and a given country has been concluded, tax obligations will arise and the remote employee will have to register with the Polish Tax Authority (a foreign employer, as a rule, has no payroll withholding or reporting obligations in Poland).

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

In general, post-accident proceedings aimed at determining whether (or not) an accident at work has occurred, should be conducted in accordance with the regulations of the place where the employee usually works. As long as the work is habitually performed in the home country, and not in Poland, the Polish provisions in this matter are unlikely to be applied. In some cases however, it cannot be ruled out that claims will be filed against the employer at the place of the accident, i.e. in Poland.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

If an employee is covered by social insurance, he/she can also be covered by health insurance. In this case he/she is entitled to the same benefits as Polish employees.

If the stay of a remote employee insured in an EU country is temporary, she may receive necessary medical care by presenting the European Health Insurance Card. If an employee is a citizen of a country with which Poland has signed a treaty or bilateral agreement, the employee may also be entitled to receive the necessary medical care. In other cases, medical assistance is provided against payment.

In addition, people who are currently staying in Poland are eligible to receive healthcare services (e.g. prescriptions) and epidemiological tests, which are related to the fight against diseases, infections and infectious diseases, including COVID-19.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

In the field of data protection in Poland, as in all European countries, the GDPR provisions apply. If the employer's activity is conducted in the EU or is related to European citizens, the obligation to comply with the GDPR regulations arises. In case of the non-EU employer who has no connection to the European market, the GDPR may not apply.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Poland.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) If a remote employee is a Polish citizen, he or she will most likely also be a Polish resident for tax purposes and will pay income taxes in Poland. Presumably, the employee will also be subject to Polish social and health insurance. The employer will therefore, have to register with the relevant authorities and pay contributions. Polish labour law regulations, which are more favourable than the laws of the country designated in the contract, will apply if the performance of work in Poland will be permanent; therefore a detailed analysis of working conditions in Poland will be necessary.

b) If the foreign worker is actively interacting with the Polish market and depending on the interaction, in certain situations, according to the principles of the Personal Income Tax Act, it may be that the foreign employer is deemed to have a permanent establishment in Poland; consequently, the foreign enterprise is will pay taxes on corporate income in Poland, in accordance with the Corporate Income Tax Act (CIT).

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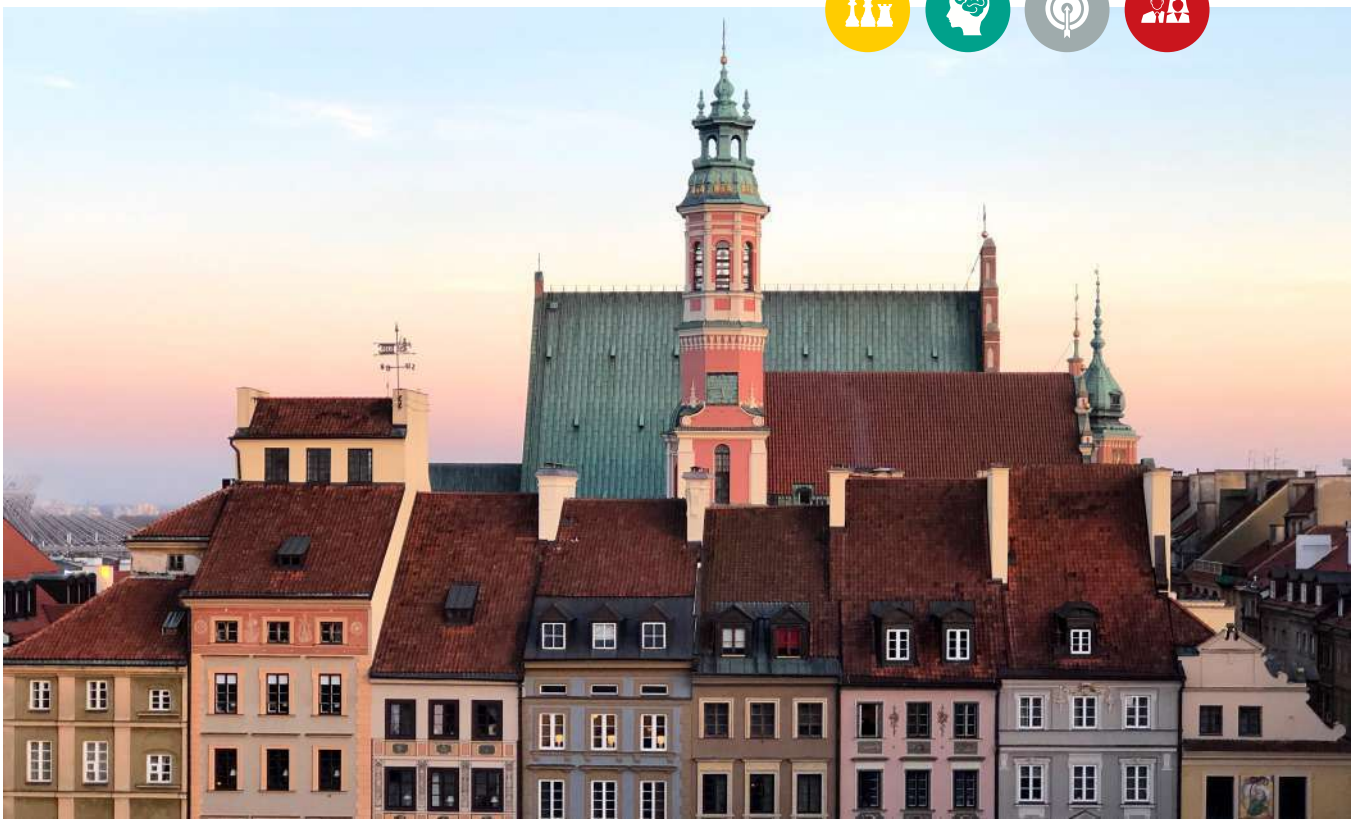

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CROSS-BORDER REMOTE WORK FAQS

ROMANIA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

A foreign national from an EU or EEC country, who wishes to work remotely for a period of time in Romania for a foreign company does not require authorisation or even a visa.

A foreign national from a non-EU or non-EEC country, who wishes to work remotely for a period of time in Romania for a foreign company also does not need to have a work authorisation. However, his ability to stay in Romania is limited by the conditions of his visa.

The short term visa allows the foreign national of a non-EU or non-EEC to stay in Romania for up to 90 days over any period of 180 consecutive days. In order to stay in Romania for more than 90 days, a long-term visa or a long-term stay permit is required; either of which can be granted to nationals from a non-EU or non-EEC country, if the foreign nationals can prove:

- *they are performing economic activities in Romania;*
- *they are pursuing their profession (as independent entities, not as employees) in Romania;*
- *they are conducting commercial activities (as managing shareholders or managing directors of a Romanian entity);*
- *they are working for a Romanian employer; or*
- *they are engaged in other regulated activities such as studying, research projects, religious undertakings or volunteer work.*

In order to obtain the long-term stay permit, the foreign national has to prove that he/she fits into one of the categories mentioned above. They must also provide a copy of their criminal record to the local immigration authorities, along with information about their living arrangements and proof of medical insurance.

A foreign national who is a family member of a Romanian citizen or a national from an EU or EEC country, is eligible for a long-term stay permit, subject to certain conditions.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

According to the Romanian Fiscal Code, the 'permanent establishment' is a place through which the activity of a non-resident is carried out, in whole or in part, either directly or through a dependent agent. There are no express rules defining which type of activity performed in Romania by a dependent agent (employee) can lead to acquiring the permanent establishment status. However, reference is made to the existence, in Romania, of a place of management; a branch; office; factory; shop; workshop; mine; oil or gas well; quarry or other places where natural resources are extracted; and a location where certain activities involving the assets and liabilities of a Romanian legal entity entering into reorganisation, continue to be performed.

The methodological norms of the Fiscal Code tie the notion of a 'permanent establishment' to a fixed place of activity, which is maintained for a period of at least 6 months. Apart from buildings or segments of buildings, equipment and new construction, a computer or server can also be considered a fixed place of activity. In order to determine if a non-resident entity has a permanent establishment in Romania, the local tax authorities will take into account Art. 5 of the Model Tax Convention of Organisation for Economic Cooperation and Development.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

A foreign national is considered a non-resident for fiscal purposes in Romania: i) if he is not present in Romania for a period exceeding a total of 183 days, during any interval of 12 consecutive months, which ends in the calendar year concerned; or ii) if the centre of his vital interests is not located within Romania. The 'centre of vital interests' is the place with which the individual's personal and economic relations are the closest. In the analysis of personal relationships, attention will be paid to the family of the spouse, children, dependents and individuals arriving together in Romania, membership in a charitable or religious organisation, and participation in cultural or other similar activities. In the analysis of economic relations, attention will be paid to whether the individual is an employee of a Romanian employer, if he is involved in a business activity in Romania, if he owns real estate in Romania, if he has Romanian bank accounts, or if he has credit/debit cards associated with banks in Romania.

The foreign national who exceeds the time limit or has vital interests in Romania, shall be considered a resident for fiscal purposes and will be subject to taxation in Romania, including social security contributions. As a rule, an employee of a non-resident entity who acquires resident status, is responsible for declaring his income and paying the appropriate income tax and social contributions.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

The foreign national working for a foreign entity in Romania is subject to Romanian employment law, if the employee and employer agree to place the employment under Romanian jurisdiction.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Very general principles only, on remote work performed by Romanian employees or foreign employees of a Romanian entity, are applicable at the present time.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Income tax in Romania is 10%. In addition to the income tax, the resident has to pay health contributions (an additional 10%) and social security contributions – for pension benefits (an additional 25%). As a rule, an employee of a non-resident entity who acquires resident status, is responsible for declaring his income and paying the appropriate income tax and social contributions.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

If the Romanian employment law applies, the remote worker is entitled to bring a claim for workplace injury.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

If the remote worker is qualified as a resident for fiscal purposes and pays the necessary health contributions, the foreign national will be covered under the local national healthcare system.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

While there are no specific rules on the protection of the employee's personal information in Romania, full compliance with Art. 3 of the GDPR will be strictly applied.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Romania, at this time.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) If the remote worker is a Romanian citizen he is considered a resident (if not otherwise declared by fiscal authorities as being a resident of a different country) and is subject to taxation under the Romanian Fiscal Code. Romanian employment law also applies to Romanian citizens working for foreign entities, if they perform their activities in Romania, meaning that rules on minimum wage, local holidays, annual leave, childcare leave, disability leave and protections against unfair dismissals, must be observed.

b) If the remote worker is actively interacting with the local market, the risk of creating a permanent establishment in Romania increases significantly. According to the Fiscal Code, a non-resident is considered to have a permanent establishment in Romania, with respect to the activities that an individual (other than an agent with independent status) undertakes in Romania on behalf of the non-resident and if one of the following conditions are met: i) the individual is authorised and exercises the authority to conclude contracts on behalf of the non-resident in Romania; or ii) the individual maintains a stock of products or goods in Romania, from which he delivers such products or goods on behalf of the non-resident.

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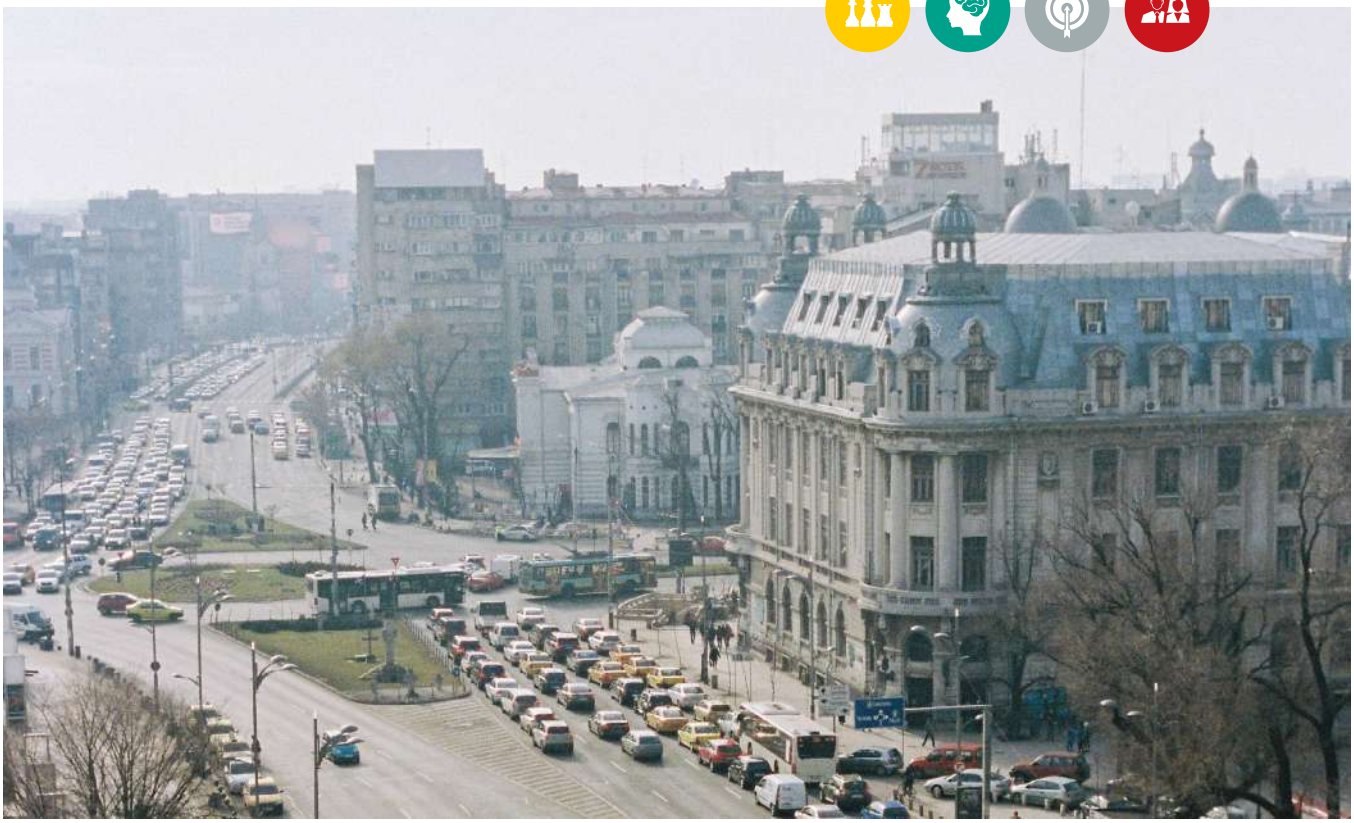

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CROSS-BORDER REMOTE WORK FAQS

RUSSIA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

As a general rule, a foreign national needs to have a work visa and a work permit in order to work in the territory of Russia. Russian migration legislation does not make any exceptions for the case where a foreign national works in Russia remotely for a foreign company. However, a foreign company, technically, would not be able to obtain a work permit and invitation letter for a work visa for its foreign employee in Russia, if it does not have a registered presence in Russia (branch / representative office or a separate legal entity).

Assuming that a foreign employee has a valid contract for remote work with a foreign company, governed by non-Russian legislation, and such employee does not interact with the Russian market and his/her work is not linked to Russia (i.e. a foreign national is not assigned to Russia and Russia is not specified as a territory of work), we believe that in this particular situation, it can be presumed that the foreign employee does not have an employment relationship in Russia governed by Russian employment law and, hence, would not be required to obtain a Russian work permit and work visa. The employee may stay in Russia based on any legal grounds, during the term that his/her visas are valid.

However, the above approach is not explicitly stated in the law and there is a risk that the migration authorities may consider that the foreign national actually works in Russia, without having obtained the necessary Russian work visa and work permit. In that case, the foreign national may face an administrative fine of up to RUB 7,000 (approximately USD 95) with possible deportation from Russia. It is unlikely that the migration authorities would be able to subject the foreign company to liability for using the services of a foreign employee in Russia without the required work permit, in the absence of its registered presence in Russia.

Typically, Russian employers apply for a work visa for highly qualified foreign specialists (HQS) as it is the most simple and efficient option to obtain a work visa. A foreign employee qualifies as an HQS, if the monthly salary which he/she earns is not less than RUB 167 000 (USD 2 290). An HQS visa may be issued for up to 3 years (a standard work visa is issued for up to 1 year) and may be obtained within 4-5 weeks (a standard work visa can require several months to acquire).

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Remote work of a foreign national in Russia, for a foreign company, does not automatically create its permanent establishment in Russia. The main factors determining the exposure of the risk of permanent establishment creation include:

- *the foreign company conducts its activity in Russia through the remote worker, i.e. provides services, sells goods, etc. to its clients in Russia;*
- *the remote worker represents the foreign company's interests in Russia, acts on its behalf in Russia, is authorised and regularly uses such powers to conclude or negotiate contracts on behalf of the foreign company (dependent agent).*

If the above factors are absent, the permanent establishment of a foreign company in Russia should not arise.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

The social security and other payroll requirements apply only to individuals who work under Russian employment or civil law contracts. Therefore, the remote worker would become subject to Russian social security and other payroll requirements if his/her relationship with the foreign company is qualified as an actual employment relationship, in the territory of Russia, subject to Russian employment law. This qualification may be implemented contractually or by court order, if the foreign national applies for relief with the court. However, in the situation where the foreign company does not have a registered presence in Russia and the foreign national works remotely in Russia based on a foreign law contract, we believe that the risk of qualification that the remote work performed in Russia would be considered as an actual Russian employment relationship, is quite low.

Also, it is important to note that it is not in the interests of the foreign national to claim that he/she has an employment relationship in Russia, as consequently, he/she would become subject to Russian migration law and may be fined and or deported from Russia, for not having a valid Russian work permit and work visa.

Please bear in mind that a foreign company would not be able to pay Russian social security contributions if it does not have a registered presence in Russia, as the company must be registered with the Russian social security funds, in order to pay the social security contributions.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

In case a foreign national has a contract for remote work with a foreign company, which is governed by foreign law and does not specify Russia as a place of work, and the foreign national entered Russia voluntarily (i.e. was not assigned by the foreign company), we believe that there is a very low risk that the remote worker would be subject to local employment law.

From a practical point of view, such governance can be confirmed only if the remote worker brings a claim before a Russian court, and the court confirms that the remote work in Russia constitutes an actual employment relationship, subject to Russian employment law (the Labour Code).

Also, as mentioned above, it is not in the interests of the foreign national to claim that he or she has an employment relationship in Russia, as he or she would become subject to Russian migration law and may be fined and or deported from Russia, for not having a valid Russian work permit and work visa.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

The Labour Code has a section governing remote work of employees. However, it applies only to individuals working under Russian employment contracts and should not apply to the relations between the foreign company and the remote foreign worker, if they are not qualified as Russian employment relations (contractually or by court).

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Pursuant to Russian tax law, remuneration received for work performed in Russia is a Russia-sourced income, subject to personal income tax in Russia. The personal income tax rate depends on the individual's tax residency status (30% in the hands of a non-resident for Russian tax purposes and 13% in the hands of a resident for Russian tax purposes). To become a resident for Russian tax purposes, a foreign national shall spend 183 or more calendar days in Russia during the previous 12 calendar months and, finally, during a calendar year.

If the foreign company does not have a separate subdivision in Russia, which pays remuneration to the remote employee working in Russia, then the foreign company does not have income tax withholding obligations with respect to payments to the remote employee. The employee is personally responsible for income tax payments in Russia, by means of filing an annual tax return in Russia.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

The remote worker may bring a claim for workplace injury, but this claim can be satisfied only if the relationship with the foreign company is qualified by a court as an employment relationship in Russia, subject to the Russian Labour Code.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

No, unless his or her relationship with the foreign company is qualified by a court as an employment relationship in Russia, subject to the Russian Labour Code.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Generally, no, unless the relationship with the foreign company is qualified by a court as an employment relationship in Russia, subject to the Russian Labour Code.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No. Although there is a chapter on remote work in the Labour Code, it only applies to remote employees who work under Russian employment contracts.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) If the remote worker is a Russian citizen, he/she would not be required to obtain a Russian work visa for remote work in Russia. However, this may increase the risk that the remote worker would file a court claim to classify the relationship with the foreign company as Russian employment. Nevertheless, this risk should remain low as enforcing such a decision outside of Russia, would be problematic for a Russian national.

Also, the foreign company will be obliged to comply with the personal data requirements under Russian law; companies must store the personal data of Russian citizens on servers located in Russia.

b) If the remote worker engages in activities that involve interacting with the local market, this increases the risks of i) qualifying the work performed for the foreign company as a Russian employment relationship, subject to Russian employment law; and ii) creating a permanent establishment of the foreign company in Russia (depending on the types of activities).

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CROSS-BORDER REMOTE WORK FAQS

SINGAPORE

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

It may be difficult for this employee to be based in Singapore for a prolonged period of time as it is likely that they will be coming into Singapore under a short term visit pass. If they do come into Singapore though, no work authorization is required for this purpose. The duration of the short term visit pass would vary, with the most common duration being up to 30 days and it is (on a case-by-case basis) extendable by another 30 days.

As long as the foreign employee is not deemed to be carrying on business in Singapore (criteria as set out under question 2(b)), work authorisation is not required and as such, in such a situation, the foreign employee can work for the foreign employer while on the short term visit pass.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Yes, there may be a risk of "permanent establishment" if:

- *the foreign company has a fixed place where they wholly or partly carry out their business, including, amongst others, a place of management, a branch and an office; or*
- *if a person, amongst others, has another person acting on their behalf in Singapore who:*
  - *has and habitually exercises an authority to conclude contracts;*
  - *maintains a stock of goods or merchandise for the purpose of delivery on behalf of that person; or*
  - *habitually secures orders wholly or almost wholly for that person or for such other enterprises as are controlled by that person.*

We would highlight that in the event that an employee of a foreign company remains in Singapore due to COVID-19 travel restrictions, the Inland Revenue Authority of Singapore would consider that "permanent establishment" in Singapore for the foreign company has not been created in Singapore for Year of Assessments 2021 and/or 2022 if:

- *the foreign company does not have a permanent establishment in Singapore for the immediate preceding Year of Assessment;*
- *there are no other changes to the economic circumstances of the company;*
- *the presence of the employee in Singapore is due to travel restrictions relating to COVID-19 and their physical presence in Singapore up to 30 June 2021 (subject to review as the COVID-19 situation evolves) is temporary;*
- *the activities performed by the employee during the presence would not have been performed in Singapore if not for the travel restrictions relating to COVID-19; and*
- *the employee will leave Singapore as soon as they are able to do so, following the relaxation of travel restrictions relating to COVID-19.*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Singapore's local social security scheme, being the Central Provident Fund is only applicable to Singapore citizens and Singapore permanent residents (further discussed in scenario 2(a) below) and as such, will not be applicable to a foreign employee.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

There is currently a lack of official guidance from the Singapore labour authorities on the exact point which would subject the remote worker to local employment law requirements. Based on current market practice, the Singapore labour authorities are currently not likely to impose any local requirements under the Employment Act (Cap 91) of Singapore, however it should be noted that this position may change.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

We are not aware of any special requirements governing remote work in Singapore at this point in time.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

As the employee is working in Singapore for a foreign employer, the employee's overseas income from the foreign employer would likely be taxable if the employee is a resident of Singapore or works in Singapore for more than 60 days. The employee would need to declare the taxable overseas income under their tax return filings.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

It is unlikely that the remote worker would be entitled to bring a claim for workplace injury in Singapore as the provisions under the Workplace Safety and Health Act and the Work Injury Compensation Act are not applicable to foreign registered companies.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

No. The local national healthcare savings scheme in Singapore is MediSave. The Central Provident Fund Board also provides a basic health insurance plan –

MediShield Life. However, MediSave is only applicable to Singapore citizens and Singapore permanent residents who have Central Provident Fund contributions while MediShield Life is only applicable to Singapore citizens and Singapore permanent residents.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Data privacy in Singapore is governed by the Personal Data Protection Act ("PDPA"). The PDPA does not contain any express provisions on territorial effect and is therefore likely to apply to the collection, use and/or disclosure of personal data in Singapore.

As such, the foreign employer should obtain consent from the employee before processing the employee's personal data unless exemptions apply. For example, the employer would not need employee's consent if the collection of personal data from the employee is required for the purpose of managing or terminating their employment relationships. However, foreign employers are still required to comply with the other legal obligations under the PDPA (for example, to protect confidential information of their employees and where personal data is transferred outside of Singapore, ensure that such personal data is protected to a standard comparable with the PDPA.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

We are not aware of any litigation or specific law or regulation regarding foreign remote workers in Singapore.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

(a) Citizen of Singapore

Yes, all companies (including foreign companies) are required to pay Central Provident Fund contributions for Singapore citizen and Singapore permanent residents employees working in Singapore. As such, if the remote worker is a Singapore citizen, the foreign employer would need to pay Central Provident Fund contributions for the remote worker.

In the event that a Singapore citizen or a Singapore permanent resident employee of a foreign employer works remotely in Singapore as a temporary arrangement due to COVID-19, Central Provident Fund contributions will not be required in respect of that employee if:

- *there is no change in the contractual terms governing the employee's employment overseas before and after their return to Singapore;*
- *this is a temporary work arrangement due to COVID-19;*
- *the work performed by the employee during their stay in Singapore would have been performed overseas if not for the travel restrictions caused by COVID-19; and*
- *the employee will leave Singapore as soon as they are able to do so.*

(b) Engages in activity interacting with the local market

Yes, the foreign employer would likely be deemed to be carrying on business in Singapore and would generally be required to register a presence in Singapore under the Companies Act (Cap 50) of Singapore. For completeness, "carrying on business in Singapore":

- *includes the administration, management or otherwise dealing with property situated in Singapore as an agent, legal personal representative, or a trustee, whether by employees or agents or others; and*
- *does not exclude activities carried on without a view to any profit.*

Additionally, the foreign employee would need to have a valid work pass in order to work for the foreign company in Singapore if the foreign employee engages in activities interacting with the local market.

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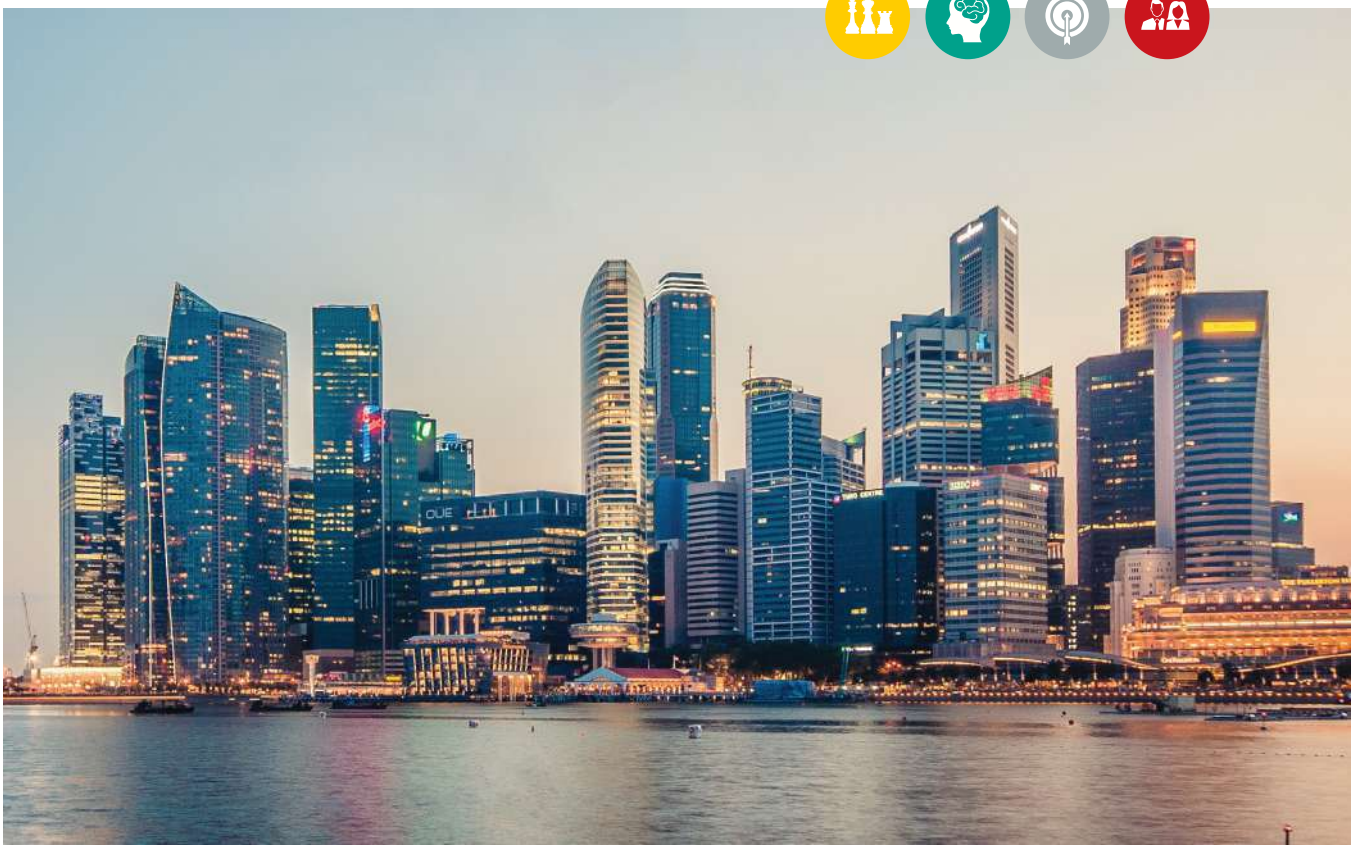

CROSS-BORDER REMOTE WORK FAQS

SPAIN

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

In this case, since the foreign employee will be working exclusively for the foreign company, he will not need a work authorisation. The only aspect that ties the employee with Spain, is that Spain is the place from which he will be remotely working.

Having said that, the employee is required to have a non-profit temporary residence authorisation according to articles 46, 47, 48, 49, 50 and 51 of the 557/2011 Regulation. This type of authorisation allows the employee to live in Spain, while he is still working for his foreign company. The first thing to bear in mind regarding this authorisation is that it does not allow, under any circumstances, for the employee to work for a Spanish company or for any other company here in Spain. On the other hand, the non-profit temporary residence authorisation does in fact, permit the scenario that has been presented to us in this case; a foreign employee working for a foreign company, while living in Spain.

Regarding the paperwork, there are several key issues matters to be aware of. The two requirements that are particularly important in order to procure a non-profit temporary residence authorisation are:

- *the foreign worker must prove that he has the financial means necessary to support himself (since he will not be working in Spain, but will instead just be working from Spain). One way to prove this in the present case, could be for instance, by bringing forth the documentation which certifies that the employee will be paid monthly by the foreign company (the employer) and that he has sufficient means to support himself here in Spain, despite the fact that he is not allowed to work for any company in Spain. The minimum required amount represents the 400% of the monthly Public Multiple-Effect Income Indicator in euros, or its legal equivalent in a foreign currency.*

- *the foreign worker will need to establish that he/she has medical insurance coverage that operates here in Spain.*

These are the requirements that have to be met to be eligible for this type of authorisation:

- *in the event that the applicant is of the age of criminal responsibility (in Spain, this is 16 years old), he must not have a criminal record in Spain, or in any of the previous countries where he has resided for the last five years, for crimes stipulated in Spanish law.*
- *he has not engaged in illegal or irregular migration in Spanish territory (e.g. unlawfully enter, stay or transit through the territory).*
- *he must not be listed as objectionable in the territorial space of countries with which Spain has signed an agreement in this regard.*
- *he must have sufficient financial means to adequately support his maintenance costs and accommodation expenses, including, where appropriate, those of his family, during the period of time for which they wish to reside in Spain, and without the need carry out any work activity or otherwise engage in the practice of any profession, in accordance with the provisions of this section.*
- *he should have arranged for public or private health insurance with an insurance company authorised to operate in Spain.*
- *he should be where he is supposed to be (where appropriate), within the period of commitment not to return to Spain that he (the foreigner) has assumed when voluntarily returning to his country of origin.*
- *he should not suffer from any of the diseases that may have serious public health repercussions, in accordance with the provisions of the International Health Regulations of 2005.*
- *he should have paid the processing fee for his visa application.*

Regarding the appropriate way to proceed, most important of all, is that this process must be arranged from the country of origin, meaning wherever the employee resides before moving to Spain. Therefore, the employee in question must go to the Spanish Consular office in his area of residence, where he may ask for the authorisation.

The following documentation will be necessary to file a request for authorisation:

- *passport that is valid for a minimum of one year;*
- *criminal record certificate;*
- *documents that prove the two key requirements (financial means and health insurance) as previously stated;*
- *a medical certificate that proves that the foreign worker does not suffer from any of the diseases that may have serious public health repercussions.*

Once this has been completed, the authorities will decide, within the maximum period of one month, if the authorisation shall be granted or denied. From this point on, the only procedure left to do will be to expedite the actual authorisation once the foreign worker has entered Spain, which he/she will be able to do at the local police department.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Although it is quite difficult to completely avoid the risk of 'permanent establishment' the case in point is far removed from being labeled as such; this is largely due to the fact that if the employee proceeds as indicated, it is quite obvious that neither the company nor the employee will be tied to the Spanish Labour Law system, in any way. Therefore, if the employee only works from Spain for a foreign company and does not interact with the local market, the risk of potentially creating a permanent establishment is dramatically reduced.

The main factors to consider when determining if a situation constitutes a permanent establishment are:

- *the existence of a place of business – any premises or facilities that are used for carrying out the economic activity of the company, whether (or not) they are used exclusively for this end.*
- *the place of business must be "fixed" – although currently, a certain mobility of the place of business is admitted, the fact that a certain degree of permanence in time, in the territory of the State, becomes more relevant.*

- *the activities of the company are carried out through the fixed place of business – this requires that the physical space of the place of business is effectively used for the development of a business activity.*

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

As stated, the foreign employee is forbidden from working for any company here in Spain, while in possession of the non-profit temporary residence authorisation.

He will not therefore, be subject to social security or any other payroll checks, whilst he is allowed to work from Spain under this type of authorisation. The employee is strictly working for the foreign company; the only difference is that we will do it remotely from Spain, but the requirements regarding the present employment relationship will not be found in Spanish law, unless it is the one chosen by the parties in the employment contract.

It is important to recognise that Art. 8 of the Rome I Regulation specifies that the employment contract will be governed by the law chosen by the parties, which should be specified in the same employment contract.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

This answer does not differ from the previous one, according to the Rome I regulation and because the employee is not working for any company here in Spain, the local employment law requirements do not need to be met.

It is also important, despite what has been stated previously, to keep in mind that according to Art. 9 of the Rome I Regulation, if the application of rules of the state of the employer is contrary to the public order of the state where the employee is working from, a judge may determine that certain laws shall not be applied and may decide instead to utilise the 'police rules' of the state where the employee is working from (Spain).

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

There are some special requirements that need to be met by Spanish employers, or even employers who have employees working in Spain for their company, but once again, these do not affect the case at hand, since the foreign employee is working in Spain, but only for a foreign entity and in accordance with different legal and jurisdictional laws.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

The employee will be exposed to local income tax from the moment he is considered a Spanish resident. Under Spanish law and according to Art. 9 of the Spanish Personal Income Tax Act, a person becomes a Spanish resident regarding tax matters, in the event that he/she resides in Spain for more than 183 days a year.

It is understood that from the very moment the employee starts to pay taxes here in Spain, foreign business entity, as the employer, will need to arrange for the respective withholding tax. If this comes to play, then the company should start taking into consideration Art. 8.4 of the Rome I Regulation, which essentially may change the applicable law, "where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated [in paragraphs 2 or 3 (…)]".

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Even if he can bring a claim (which the employee is always permitted to do), as a rule, it should not succeed, generally. As stated in Art. 8 of the Rome I Regulation, the employment contract will be governed by the law chosen by the parties, which should be specified in the same employment contract.

If the employee was to requisition a Spanish Court when a dispute of this kind should arise, in principle, with a choice of law clause, the company should have a solid argument to prove that the competent court would not be the Spanish one, along with other important aspects of the employment relationship.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

No, because the employee will not, technically, be working in Spain, and most importantly, because he is actually forbidden to work in Spain with the type of authorisation that he will be obtaining. Consequently, he will not be registered with the Spanish Social Security system, and this is actually the reason why one of the requirements needed in order to obtain the authorisation is to prove that he has health insurance and through an insurer that is able to operate in Spain, considering the fact that he will not be registered in the national healthcare system.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

The analysis above applies to this question as well; the foreign employer should be subject to the law chosen by the parties and specified in the employment contract. Thus, if for example, the law chosen by the parties was that of a State in the USA, the company should not be concerned with the application of Spanish law, in regard to data protection.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

Despite the fact that regulations on remote workers currently exist, at this time however, there is no specific legislation that contemplates this particular case; a foreign worker, working for a foreign company, remotely in Spain.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) No, the fact that the remote worker is citizen of Spain does not determine the applicable legislation, per se, and therefore, nothing in this scenario would change the above analysis.

b) If the employee was to engage in activity with the local market, the first problem likely to arise would require a determination as to whether (or not) there is a permanent establishment here in Spain. Should any doubts or uncertainty surface as a result of this, employment rights could probably be requested by the employee although, theoretically, the company should be successful still in applying the legislation designated in the contract. With respect to social security payments, the employer would be able to defend his contention that the foreign legislation applies, considering that Royal Decree 1415/2004 on Social Security Contributions, states that natural or legal persons residing abroad, who carry out activities in Spain, will have their domicile in the place where the effective administrative management and direction of their business is located, and should be able to prove that this is not Spain.

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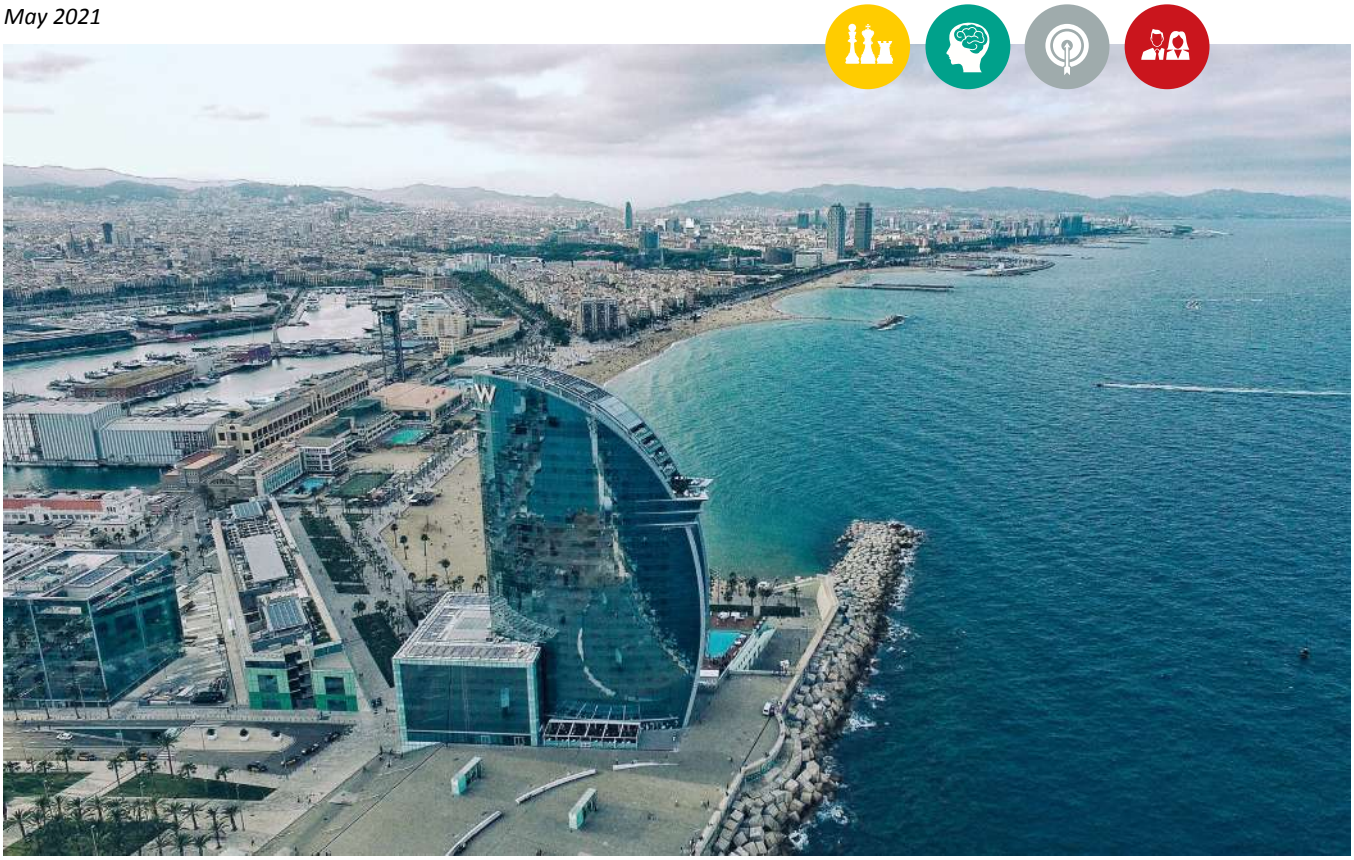

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CEDERQUIST

10TH ANNIVERSARY IN 2021

CROSS-BORDER REMOTE WORK FAQS

SWEDEN

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

If the remote worker is an EU/EEA citizen, they can work in Sweden without any work authorisation. For non-EU/EEA citizens, it is possible to work remotely in Sweden under the 90-day visitor visa. A non-EU/EEA citizen staying longer than 90 days, is required to have both a work permit and a residence permit, before entering Sweden. Certain requirements must be met for the permits. The salary and other employment conditions must be at market levels in Sweden, and the relevant Swedish union must be given the opportunity to assess whether the terms of employment are indeed at market levels. The processing time for the permits can vary, but a minimum of three months should be expected. Further, the company would have to be registered as an employer with the Swedish Tax Agency.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Yes, there could be such risk. According to the general rules on what constitutes a permanent establishment, it is "a permanent location for business activities, from which the business is entirely or partly run". Three criteria denote a permanent establishment:

- *there must be a fixed place of business;*
- *the place of business must have a certain degree of permanence; and*
- *the business must be entirely or partly run from this location.*

Thus, if the remote worker remains in Sweden long enough that there exists a certain degree of permanence to the stay, the company may be considered to have a permanent establishment in Sweden.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

If the employee is staying in Sweden long enough to be considered a foreign employee in Sweden, but the company is not considered to have a permanent establishment in the country, the company must still pay Swedish social security contributions for locally employed personnel. The contributions are somewhat less than for employers who have a permanent establishment in Sweden. In order to declare social security contributions, the company must register as an employer with the Swedish Tax Agency. However, instead of the employer paying social security contributions, the employer and the employee may agree to have the employee report and pay the contributions. There are no other payroll requirements beyond social security as long as the company is not considered to have a permanent establishment in Sweden. A foreign company may register to pay social security contributions.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

The Rome I regulations govern the choice of law on contractual obligations in Sweden. According to the regulations, the parties of an employment agreement may choose the applicable law for the agreement. If no choice is made, the law of the country in which the employee normally performs their duties shall apply to the agreement. Thus, in most situations of a temporary stay in Sweden, Swedish employment laws will not be applicable, unless the parties have agreed that they should apply. However, if the Swedish employment laws have mandatory minimum protections which are more advantageous for the remote worker than the laws chosen by the parties, and the employee is considered to normally perform their duties in Sweden, then Swedish legislation will be applicable.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

There are no special requirements governing remote work in Sweden; the same employment laws are applicable for remote work as for work performed at the employer's workplace.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

A foreign employer who does not have a permanent establishment in Sweden, should not withhold taxes for the Swedish preliminary tax on wages paid to an employee. This applies even if the employee is liable to pay taxes in Sweden. The employer should inform the employee that it is the employee's personal responsibility to ensure that the preliminary tax is paid. The employee must therefore, investigate whether they have any liability to pay taxes in Sweden. The liability to pay taxes depends on the status under which they are staying in Sweden.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

If Swedish law is applicable for the employment agreement, the remote worker would be entitled to bring a claim for workplace injury in Sweden.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

If the remote worker holds a European health insurance card, they will be covered under the Swedish healthcare system, regardless of the length of their stay. If not, it depends on whether the remote worker is staying in Sweden on a temporary visa or if they have status as a resident in Sweden.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

The GDPR is applicable for the processing of personal data in Sweden. According to the GDPR, the regulations are applicable to the processing of personal data by a controller not established in the EU, but in a place where the law of a member state applies by virtue of public international law. Thus, if Swedish law is applicable to the processing of personal data, e.g. under the Rome I regulations, the GDPR will be applicable for any processing of employee personal data, regardless of whether (or not) the company is established within the EU.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

To date, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Sweden.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) If the remote worker is a Swedish citizen, they are covered under the healthcare system and have the right to work in Sweden. Depending on whether they have status as a resident in Sweden, they may become liable to pay income tax, even if the period in which they work in Sweden is short.

b) If the remote worker engages in activity that causes him/her to interact with the local market, they will need to have a work permit or be eligible to work in Sweden as an EU/EEA citizen. Further, the risk that the company is considered to have a permanent establishment in Sweden increases and the company may have to register as an employer in Sweden. There may also be implications on the choice of law, and as a result, Swedish employment law could be applicable.

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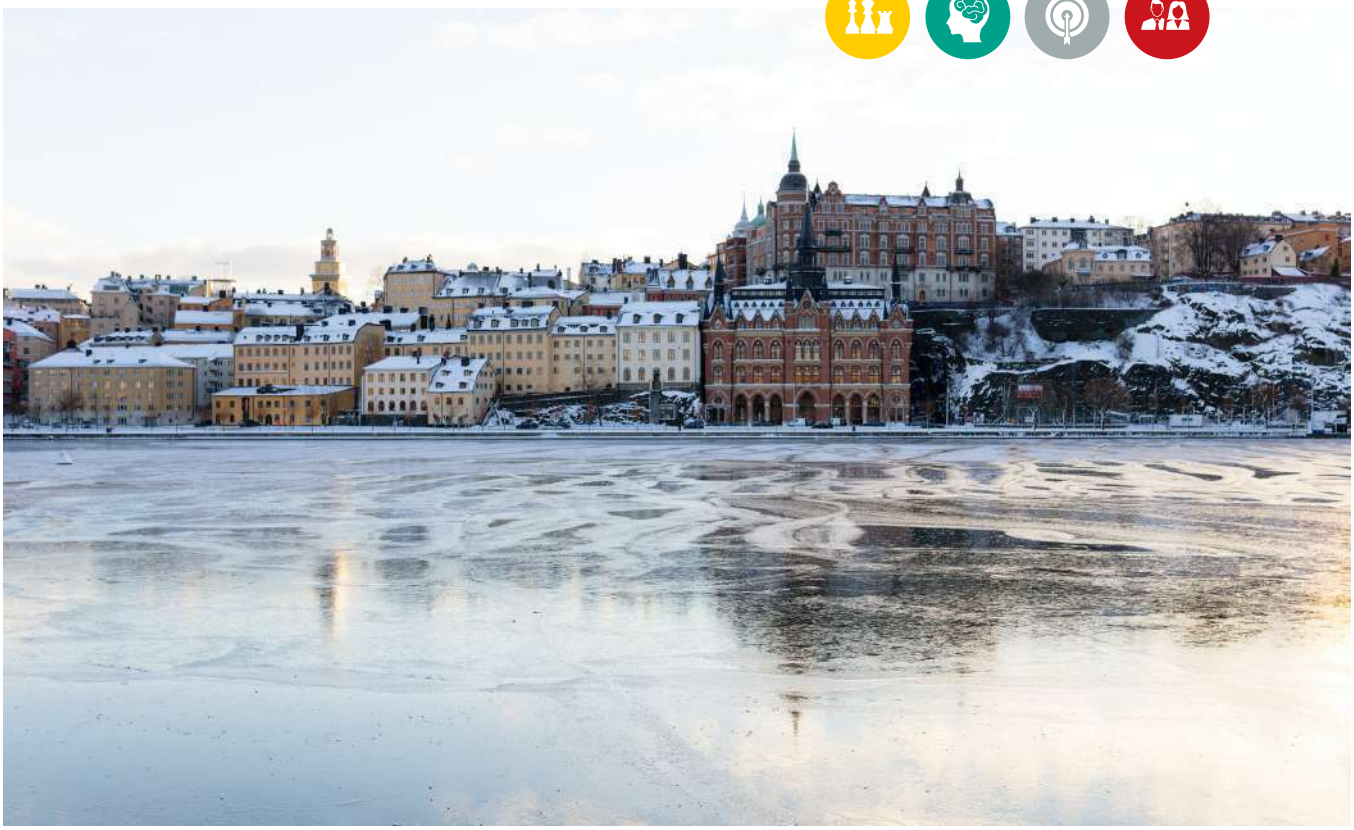

CROSS-BORDER REMOTE WORK FAQS

SWITZERLAND

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

According to Swiss Law it is not entirely clear whether remote work for a foreign company without interacting with the local Swiss market qualifies as gainful occupation in Switzerland which is subject to resident and work permits. Residents and work permits are granted by Cantonal authorities which handle the cases of remote work differently. We therefore advise to approach the competent Cantonal migration offices with regards to each specific case.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES?

IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

If the remote work does not have a permanent character, the risk is rather low but needs to be assessed based on the specific circumstances of each case. For Swiss tax law purposes, the term 'permanent establishment' means a fixed place of business through which the business activity of an enterprise is wholly or partly carried on. In particular, PEs are branches, factories, workshops, sales agencies, permanent representations, mines and other places of extraction of natural resources, as well as building or construction sites that are maintained for at least 12 months. This definition is generally in line with the criteria according to the current Article 5 paragraph 2 of the OECD Model Tax Convention on Income and Capital.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

The answer to the question depends on whether Switzerland has entered into a treaty on social security with the state where the employee usually performs his work duties. Many treaties (in particular The Agreement on the Free Movement of Persons between the European Community (EC) and Switzerland) provide that the employees may remain insured for the duration of the relocation in the state where they usually perform the work for a certain period of time.

If a remote worker becomes subject to local social security in Switzerland, the following applies: If the employer is domiciled outside the EU/EFTA, the social security contributions are settled via the employee or a payroll provider. If the employer is domiciled in the EU/EFTA, the employer can choose to pay the social security contributions itself, via his employee or a payroll provider.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

Regarding the applicable law in an international employment context, the Swiss Federal Act on Private International Law provides that employment contracts are governed by the law of the state in which the employee habitually performs her/his work. If the employee habitually performs her/his work in several states, the employment contract is governed by the law of the state of the establishment or, in the absence of an establishment, of the domicile or habitual residence of the employer. The parties may submit the employment contract to the law of the state in which the employee has her/his habitual residence or in which the employer has its establishment, domicile or habitual residence.

Thus, from a Swiss conflict of law rules perspective, the applicable private employment law to the employment contract of the remote worker does not change to Swiss Law unless there is no choice of law clause and the remote workplace in Switzerland becomes the place where the employee habitually performs her/his work.

An exception has to be made with regard to public law. Even if the employment law contract is subject to foreign private employment law, the Swiss Labor Law Act, which forms part of public law, applies to employees working on Swiss territory for a foreign company "as far as this is possible under the circumstances"(art 1 para 3 Swiss Labour Law Act). The Act contains provisions on health protection as well as provisions on working hours and rest periods.

Furthermore, Switzerland has a special public law that applies to workers posted to Switzerland. The Federal Act on Posted Workers sets out minimum working and wage conditions that must be granted to posted workers. The Act only applies to employees whom an employer domiciled abroad sends to Switzerland to perform work for a certain period of time (a) on the employer's account and under the employer's direction within the framework of a contractual relationship between the employer and a third party or (b) in a branch or a company that is part of the employer's group of companies.

We are of the opinion that if the remote worker does not interfere with the Swiss market and does not perform her/his work in a branch of the employer in Switzerland, the Federal Act on Posted Workers does not apply.

Last but not least, in case an employee has jurisdiction for an employment law dispute in Switzerland, Swiss Courts will despite the applicability of a foreign private employment law also consider mandatory provisions of Swiss law which, by reason of their special purpose, are applicable regardless of the private law governing the employment contract.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Provisions of the Swiss Labour Law Act on health and safety requirements for the remote workplace need to be recognized as far as possibe in the given circumstances. Furthermore, if private Swiss Employment Law applies (see question on applicable law) the employee needs to be reimbursed for costs occurred in connection with remote work if the remote work is not voluntary and the employer does not offer the employee working space at its premises.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Employees are exposed to full tax liability in Switzerland if, among other things, they stay for at least 30 days and engage in gainful employment in Switzerland. This is subject to any double taxation agreement that Switzerland may have concluded with the individual's country of residence. Residence in accordance with the double taxation treaty can reduce unlimited tax liability in Switzerland on the basis of tax residence, so that the person only has limited or no tax liability in Switzerland.

In principle, employees who work in Switzerland but do not have a permanent residence permit are subject to withholding tax for income generated in Switzerland unless any double taxation agreement provides for different rules.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

The answer to the question on whether courts in Switzerland have jurisdiction regarding a workplace injury depends on the fact in which state the employer as defendant is domiciled.

An employer domiciled in the territory of a state bound by the Lugano Convention may be sued: In the courts of the state in which the employer is domiciled; or in another state bound by the Lugano Convention in the courts for the place where the employee habitually carries out her/his work or last habitually carried out his work; or b)if the employee does not habitually carry out or did not habitually carry out her/his work in the same state, in the courts for the place where the establishment which engaged the employee is or was situated.

Thus, a remote worker employed by a company having its seat in a state bound by the Lugano Convention may only be entitled to bring a claim for workplace injury in Switzerland if the employee habitually carries or has carried out her/his work in Switzerland.

If the employer has its seat in state not bound by the Lugano Convention, Swiss courts decide on their jurisdiction in international disputes based on the Federal Act on Privat International Law. The applicable provision provides: The Swiss courts at the defendant's domicile or at the place where the employee habitually performs her/his work have jurisdiction to hear actions relating to an employment contract. An action initiated by an employee may also be brought before the courts at her/his domicile or habitual residence in Switzerland.

A habitual residence in Switzerland is given if a person lives for a longer time period in Switzerland, even if the time period is limited from the outset. When the criteria of a "longer stay" is fulfilled, needs to be assessed given the specific circumstances of each case.

Thus, if a remote worker is employed by an employer not domiciled in a state to the Lugano Convention and if this remote worker habitually performs her/his work in Switzerland or if the remote worker establishes a habitual residence in Switzerland, the remote worker can bring a claim for workplace insury against the employer in Switzerland (although the risk for a workplace insury will be very small in case of remote work).

Regardless of the country in which the employer is domiciled, the employee may sue the employer for compliance with the terms and conditions of work and wages in the context of a posting within the meaning of the Swiss Federal Act on Posted Workers.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

See answer on social security.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

The Swiss Data Protection Act only applies to the processing of data of natural and legal persons on the

territory of Switzerland and in particular with regards to the export of data from Switzerland to a foreign country. Consequently, if the data of the employee is not processed in Switzerland, the Swiss Data Protection Act does not apply.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

No, there is no specific law on foreign remote work and we are not aware of any case law.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

a) Yes, in particular a Swiss citizen does not need a resident and work permit in order to live and work in Switzerland.

b) Yes, if the remote worker engages with the local market in a sense that he/she works for an employer domiciled abroad and is sent to Switzerland to perform work for a certain period of time (a) on the employer's account and under its direction within the framework of a contractual relationship between the employer and a third party, the Swiss Federal Act on Posted Workers, that contains work and wage requirements, applies.

Furthermore, with regards to the posting of workers the following rules on work permits and registration process apply:

Postings by EU/EFTA employers of EU/EFTA employees for up to 90 days per calendar year are only subject to reporting obligations and in most industries a reporting duty only exists if the posting last for more than 8 days per calendar year. In certain industries (such as construction), the obligation to report already exists from the first day on. The same regulation applies to third-country nationals who are resident in an EU/EFTA member state and have been admitted to the regular labor market of an EU/EFTA member state on a permanent basis, i.e. for at least 12 months, prior to the posting.

If the posting lasts longer than 90 days, a work and/or residence permit for Switzerland is required.

In case of posting by employers from third countries, a work and/or residence permit is required in most sectors from the 8th day onwards.

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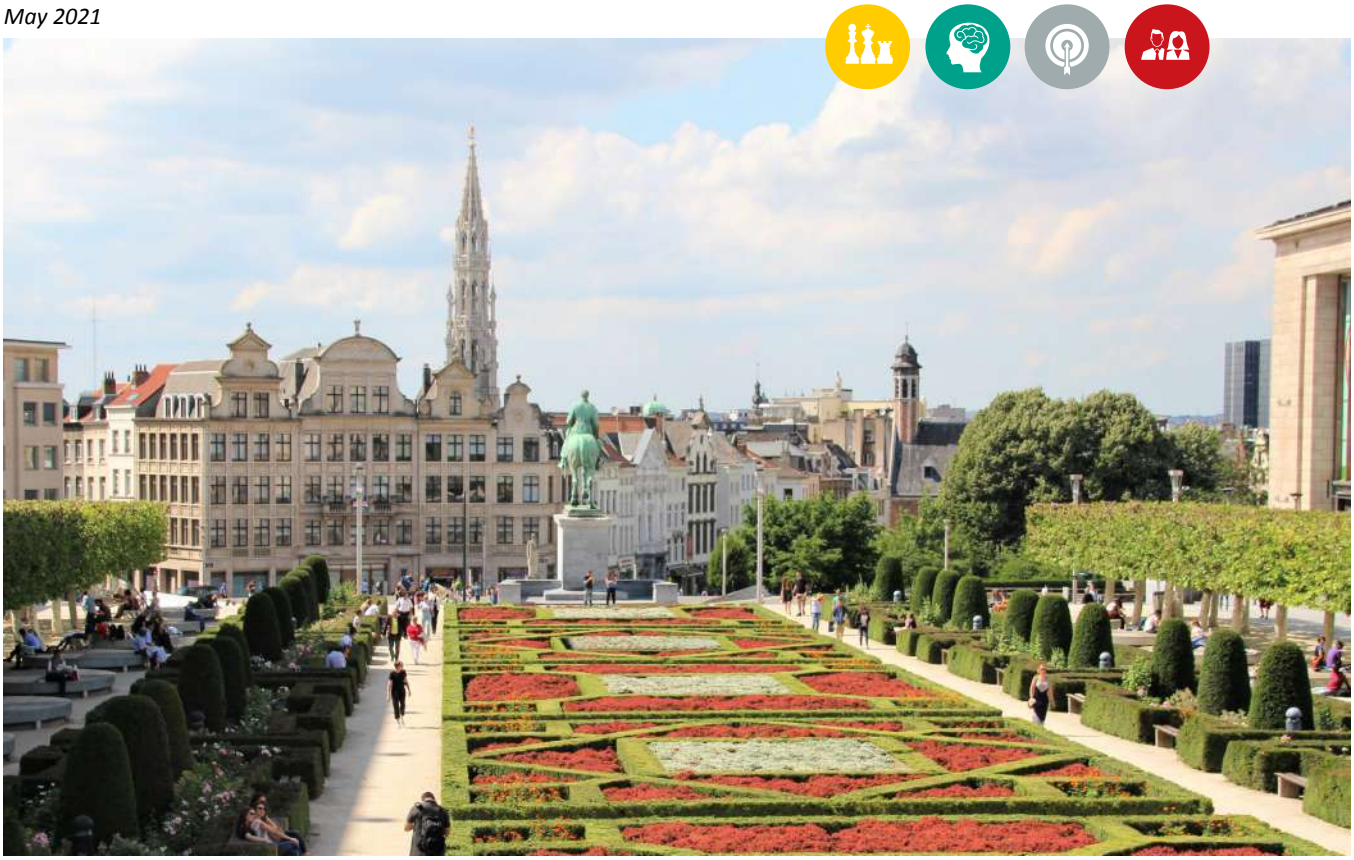

CROSS-BORDER REMOTE WORK FAQS

UNITED KINGDOM

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

EU nationals have previously had the right to enter, remain in and work in the UK without a UK visa. This right ended on 31 December 2020 and EU nationals arriving in the UK after this date are subject to the same immigration requirements as non-EU nationals. Any EU nationals living and working in the UK before this date must make an application under the EU Settlement Scheme by 30 June 2021. They should register for Settled Status (if they have been in the UK for 5 continuous years) or Pre-Settled Status (if they have been in the UK for less than 5 years).

As matters stand, from 1 January 2021 in most cases non-UK nationals seeking entry into or permission to remain in the UK for the purpose of employment will need to apply under the new Sponsored Skilled Workers ("SSW") framework of the Points Based System ("PBS"), which replaces the Tier 2 (General) route.

Applications under SSW can only be sponsored by Home Office approved UK-based employers on behalf of the person they wish to employ. Employers must ensure that the role for which they are recruiting is sufficiently skilled and meets the minimum salary threshold requirement, and that anyone coming to the UK speaks English to the required standard. All applicants must also meet the new Good Character requirements which means, for example, that they do not have a custodial sentence of at least 12 months.

The previously applicable Tier 2 (General) route could lead to Indefinite Leave to Remain ("ILR") after five years' lawful residence in the UK, and the SSW will also be a route to ILR. Alternatively, UK employers can use the Tier 2 Intra Company Transfer ("ICT") route for temporary transfers of those already employed by a group company outside the UK. Tier 2 ICT visas do not lead to Indefinite Leave to Remain.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

There is a risk that the employee's activities or presence in the UK will create a permanent establishment for their employer in the UK.

Under UK law, a foreign company can become subject to UK corporation tax if:

(i) it has a fixed place of business (such as a place of management, branch, or office) through which the business of the company is carried on, or
(ii) an agent acting on behalf of the company habitually exercises authority to do business on behalf of the company.

This definition is like the OECD model treaty Article 5 definition of permanent establishment. As the definition of "permanent establishment" in UK domestic law is based on that in the OECD model treaty, HMRC states that where the wording of the UK domestic legislation is the same as that of the OECD model treaty, the OECD commentary on that wording will apply.

According to that commentary, whether a home office constitutes a location at the disposal of the enterprise will depend on the facts and circumstances of each case. In many cases, the carrying on of business activities at the home of an individual (e.g. an employee) will be so intermittent or incidental that the home will not be considered a location at the disposal of the enterprise. Where, however, a home office is used on a continuous basis for carrying on business activities for an enterprise and it is clear from the facts and circumstances that the enterprise has required the individual to use that location to carry on the enterprise's business (e.g. by not providing an office to an employee in circumstances where the nature of the employment clearly requires an office), the home office may be considered to be at the disposal of the enterprise.

A remote worker could also create a permanent establishment in the UK if the worker is deemed to be a dependent agent who regularly conducts business in the UK on the company's behalf, and particularly if the worker concludes contracts with customers in the UK.

There is an exemption for activities that are preparatory or auxiliary in nature. However, sales or other customer-facing activities and management of the business would almost certainly not fall within this exemption. The benchmark to gauge the activities are those of the trade as a whole entity. So if, for example, the UK employee collects market research information and the non-resident company's main trade is concerned with market research, then the activities in the UK would not be preparatory or auxiliary and there could be a permanent establishment in the UK. This exemption has recently been tightened to exclude activities that are part of a fragmented business operation. These are activities that constitute complementary functions that are part of a cohesive business operation and the overall activity is not just of a preparatory or auxiliary character or the company has a permanent establishment in the territory because of carrying on those functions.

If a foreign company does have a permanent establishment, then the profits of the business attributable to that permanent establishment are chargeable to UK corporation tax. The profits attributable to the permanent establishment are the profits it would have made if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

An overseas employer could be liable for National Insurance contributions if they are resident, present or have a place of business in Great Britain. Generally, an employer is said to be resident or present if the registered office of the company is in the UK, even if no actual business is carried on there.

Place of business is not defined in social security legislation but some factors that commonly indicate a place of business include fixed premises, headed letter paper, a lease or rent agreement, delivery of supplies to the company in the UK or a UK bank account. Whether an employer satisfies the tests will be a matter of fact. It is therefore possible that an employee's home could constitute a place of business.

The remote worker could be liable for National Insurance contributions if they are resident or present or ordinarily resident in Great Britain. An individual will normally be treated as resident for these purposes if they spend 183 days or more in this country in the tax year (6 April–5 April). 'Ordinary residence' is equivalent to 'habitual' and 'normal' residence, disregarding absences, whether long or short, which are merely temporary. The maintenance of a home indicates residence in Great Britain.

If the foreign company becomes liable to National Insurance contributions, it can choose to appoint a local agent to discharge its responsibilities.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

If the employee is physically present and working in the UK for any length of time except for a fleeting visit (the test is that the employee is "ordinarily working in Great Britain"), it should be assumed that all UK standards will need to be met. As such, the employee will benefit from minimum wage, statutory holiday entitlement, health and safety, discrimination and dismissal protections. The fact that the employer does not have a formal presence in the UK is irrelevant to the employee's employment rights. The employee's presence in the UK while working for their foreign employer will likely be enough to establish territorial jurisdiction for the employee to make employment claims in the UK employment tribunals.

An employment tribunal is the forum which hears most employment related claims such as discrimination, working time, minimum wage and dismissal protection. Working in the UK is also likely to be sufficient to establish jurisdiction for the employee to bring a claim in the UK Courts. The UK courts (including the county court and high court) provide the forum in which an employee may bring a personal injury claim or a large claim (over £25,000) for breach of contract. Working in the UK may possibly enable the employee to argue that English law applies to their contract of employment.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

No, unlike most other EU Member States, there are no specific employment related rules which apply to foreign workers such as those posted from another EU Member State. So, for example, foreign workers who work remotely in the UK (such as from their home) would be entitled to the same health and safety protections as UK citizens working from home in the UK.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

An employee who is resident in the UK in the relevant tax year will be liable to UK tax on their worldwide earnings. An employee will be resident if they are physically present in the UK for 183 days or more in a tax year. Even if they are physically present in the UK for fewer than 183 days in a tax year, it is still possible to be resident in the UK. This could be because the employee has a home in the UK or because the employee works full-time in the UK.

However, if the employee is not resident in the UK for tax purposes, there could still be a liability to UK tax on general earnings for duties performed in the UK, unless the duties are "merely incidental" to duties performed overseas. HMRC applies a strict definition so only very few activities, such as arranging meetings, giving staff feed-back and reading generic business emails are likely to be incidental.

The Pay As You Earn scheme (PAYE) is the UK mechanism for employers deducting and collecting tax from the pay of employees. The obligation to operate the PAYE system arises if the employer has a sufficient tax presence in the UK. An overseas employer does not necessarily have a tax presence in the UK simply because there are employees in the UK. However, a branch, agency or representative office in the UK, or something similar, will usually be regarded as establishing a tax presence for these purposes.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

Potentially yes, depending on the circumstances. In the UK, employers have a duty to take reasonable care of the health and safety of their employees and to take reasonable steps to provide a safe workplace and a safe system of work. These duties also extend to employees who are working remotely, including those from abroad. The employer should carry out a risk assessment in relation to an employee who will be working remotely in the UK in order to identify risks and hazards. This should include any risks associated with working remotely. Public health advice must also be adhered to.

An employer who breaches health and safety requirements commits a criminal offence and may face a fine. Employees who suffer personal injury as a result of their employer's breach of the duty of care may bring a claim for compensation in the UK courts. In addition, employees who raise concerns about their working environment are also protected under UK law and are entitled to make a claim in the UK employment tribunal if they suffer a detriment, and/or are unfairly dismissed as a result of raising a health and safety concern.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

The Immigration Health Surcharge (IHS) is a fee levied on the majority of UK visa applications. An annual charge of GBP 624 or in some cases GBP 470 per year, the IHS provides non-visitor migrants access to the National Health Service and medical treatment free at the point of use. The HIS is payable even for those holding Private Healthcare Insurance.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Yes. Various data protection issues may arise when an employee works remotely from overseas and where personal data is transferred between the employer and employee.

Organisations that have an establishment in the UK will need to comply with UK data protection law. The GDPR has been implement into UK data protection law as the Data Protection Act 2018 (DPA) but it needs to be read with the GDPR. In practice, there is little change in the core data protection principles, rights and obligations found in the GDPR.

For an EU based employer it will have to comply with the GDPR and any local implementation. In addition, if it has a UK establishment, it will also have to comply with the DPA.

Non-EU employers will have to comply with any of their own data privacy rules and if they have a UK establishment, they will also have to comply with the DPA. If they do not have a UK establishment they will still have to comply if the processing involves monitoring their employees' behaviour within the UK.

Employers should ensure appropriate safeguards are in place in respect of the transfer of any personal data and should ensure compliance with the GDPR and DPA where this applies.

Employees working remotely may also give rise to data security issues, such as increased risk of hacking. Organisations should consider their security measures to deal with these risks.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

There may be regulatory or other compliance requirements to comply with in relation to certain occupations or types of work, e.g. financial services or insurance.

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

Citizenship is not a relevant consideration for UK tax. The two principal UK concepts that determine liability of an individual to taxation are residence and domicile. If an individual is resident in the UK, but not domiciled within the UK, they may be able to use the so-called remittance basis of taxation that restricts their liability on foreign income to income brought in or "remitted" to the UK.

From the employer's perspective, if the employee is engaging with the UK market, this clearly increases the risk of creating a permanent establishment for the overseas company.

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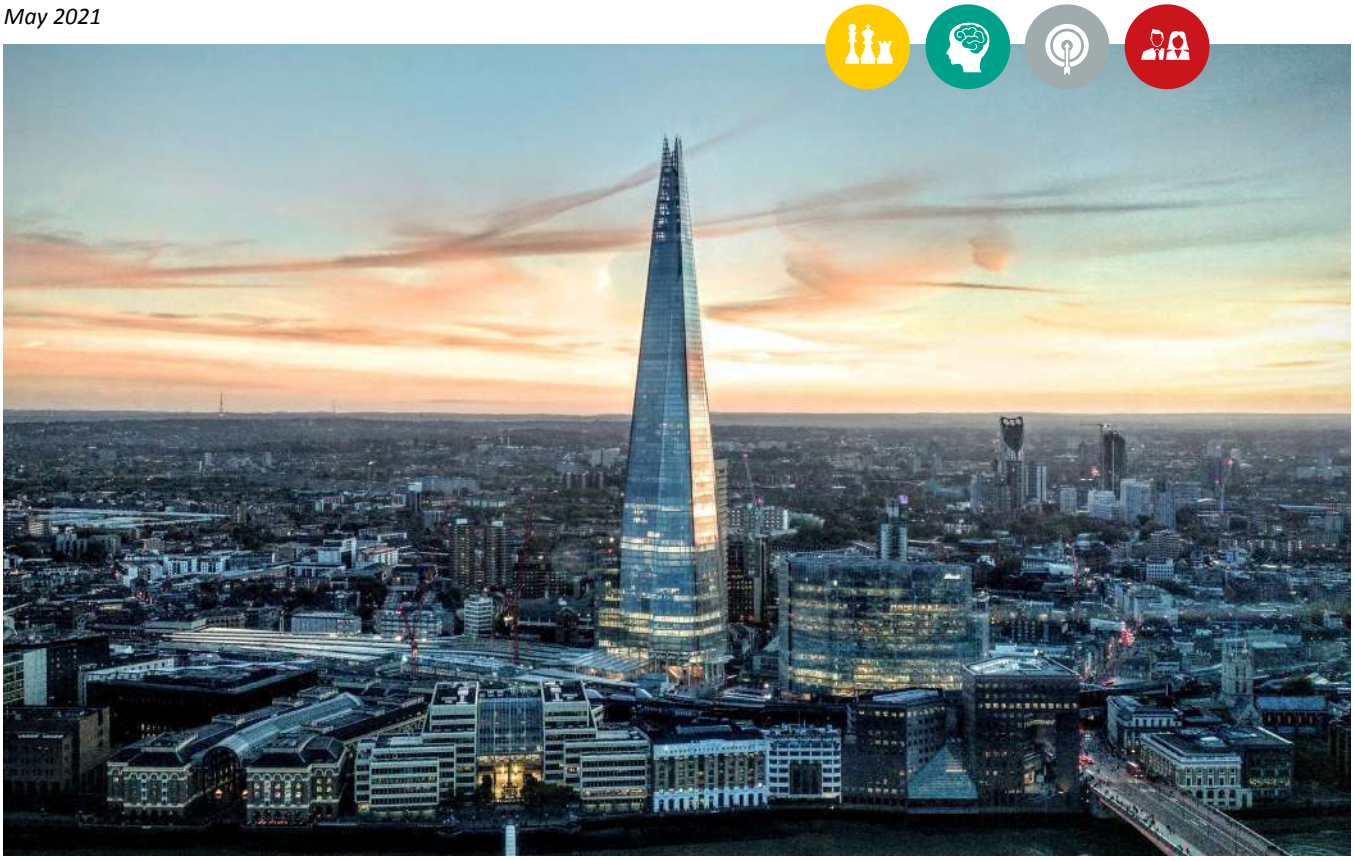

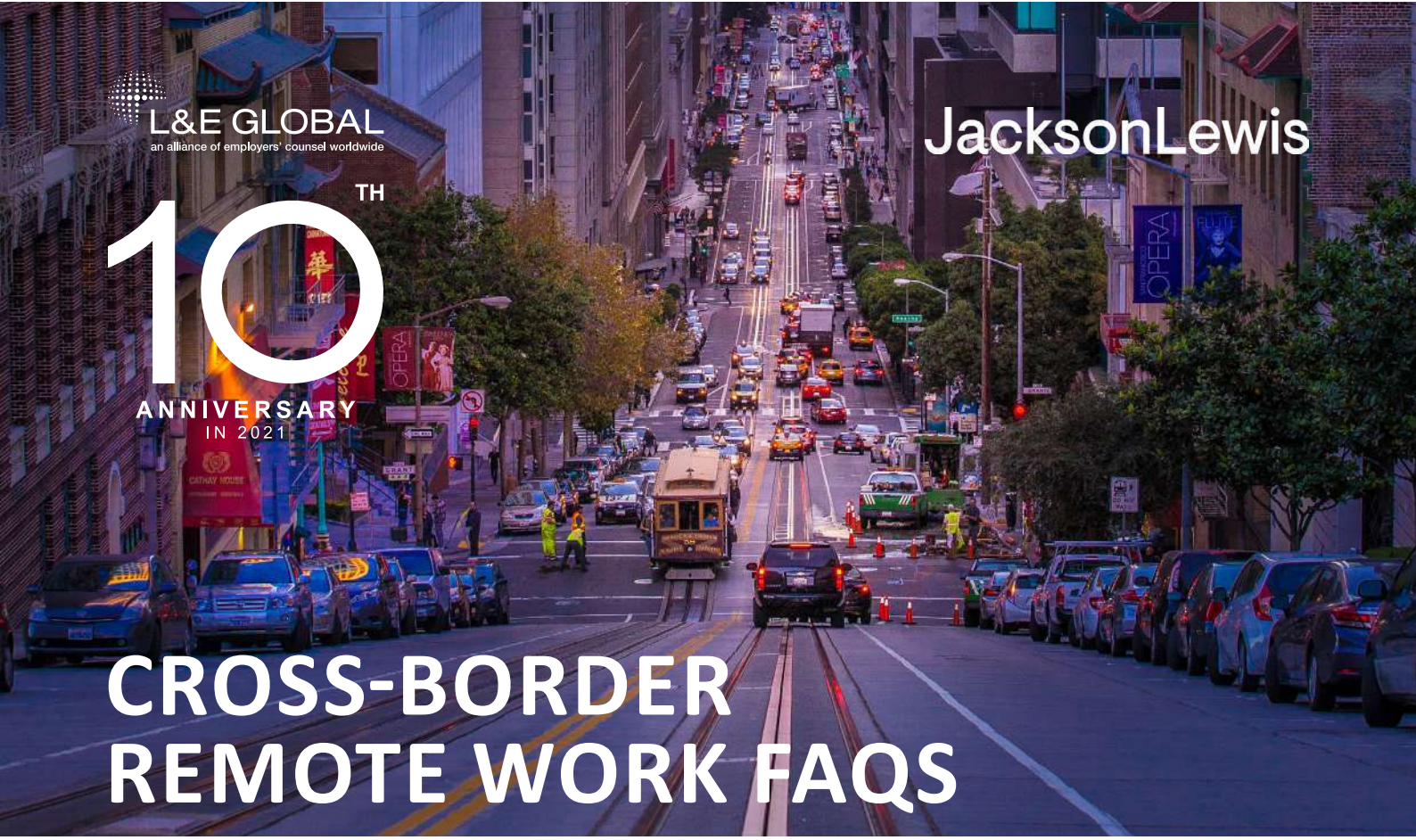

CROSS-BORDER REMOTE WORK FAQS

USA

1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

There is not a remote work/digital nomad type visa for the U.S. Work authorization (probably in the form of a nonimmigrant visa) would be required and that requires the sponsorship of a U.S. employer. If, however, the employee validly enters the US as a tourist or business visitor and the primary purpose of the visit is consistent with that entry, the individual would be able to do some work such as checking emails without additional authorization.

In addition, several Presidential proclamations have established restrictions on the entry of certain travelers into the United States in an effort to help slow the spread of coronavirus disease 2019 (COVID-19).

*Updates on U.S. travel restrictions are available **here**.*

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

This depends on the employee's activities. In general, U.S. income tax treaties define a U.S. permanent establishment to include a fixed place of business in the United States through which the foreign enterprise carries on its business. However, a foreign enterprise will not be deemed to have a U.S. permanent establishment if its activities in the United States are limited to certain activities -- generally those of a preparatory or auxiliary nature. A foreign enterprise will also be considered to have a U.S. permanent establishment in respect of activities undertaken on its behalf by a dependent agent who has and habitually exercises in the United States an authority to conclude contracts that are binding on the foreign enterprise and related to its essential business operations.

A foreign enterprise will not be deemed to have a permanent establishment in the United States merely because it carries on business in the United States through a broker, general commission agent, or any other agent of an independent status, provided that such person is acting in the ordinary course of his business as an independent agent.

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?

Resident and nonresident aliens employed within the United States by a foreign employer are generally subject to Social Security and Medicare tax withholding by the foreign employer. Revenue Ruling 92-106, 1992-2 C.B. 258 provides detailed information on this subject. Certain exceptions to mandatory Social Security and Medicare tax coverage are listed in IRS Publication 15, Circular E, ***Employer's Tax Guide****. However, individuals employed in the United States by a foreign employer may be exempt from U.S. Social Security and Medicare taxes under the terms of a* ***Totalization Agreement.***

AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.

While generally foreign entities with foreign nationals working in the US are subject to U.S. employment law, the threshold for coverage under US federal anti-discrimination laws is at least 15 employees. This includes both employees (foreign and U.S. citizens) present in the U.S. as well as U.S. citizens working for the foreign entity abroad. Likewise, the threshold for coverage under the American Disabilities Act is at least 25 employees, and for the Family and Medical Leave Act the threshold is at least 50 employees. State employment laws frequently have lower thresholds for discrimination claims and may apply across the board to areas such as wage/hour regulation.

ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

Generally, the U.S. does not have specific requirements governing remote work. In California, employers are required to reimburse employees for all necessary business expenses. Before the pandemic, business expenses were usually limited to costs such as business travel or personal car mileage because workforces were operating within offices. Now, employers in California must consider an expanded view of business expenses (such as, for example, reimbursement for cell phone or home internet use) as employees remain at home.

WHAT IS THE EMPLOYEE'S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

Wages paid to a nonresident alien employee with respect to services performed in the US are generally subject to federal, state and local income taxes, and to withholding. There is an exception for federal income tax purposes for services performed within the US for a foreign corporation by a nonresident alien individual temporarily present in the US for 90 days or less during the taxable year and whose compensation is $3,000 or less in the aggregate. Treaty exceptions may also apply to change tax treatment.

WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

No, while in most states worker's compensation is available to non-U.S. citizens, the worker must be employed by a U.S. company to be entitled to coverage.

WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

While a foreign remote worker would not be covered by a U.S. government health plan, a foreign remote worker with proper work authorization qualifies as a "lawfully present immigrant" (which includes an individual who has obtained a "valid non-immigrant visa") and therefore eligible for coverage through the Health Insurance Marketplace. A lawfully present immigrant can purchase private health insurance on the Marketplace.

IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

Generally, state and federal U.S. data privacy and security laws only provide protection for personal information of residents of the particular U.S. jurisdiction. If a worker were eligible to domicile in the U.S. they would be able to receive the same rights and privileges for applying for residency as U.S. citizens or permanent residents, however generally the type of visa which a remote worker would qualify for, would not make the individual eligible to domicile.

That said, the Health Insurance Portability and Accountability Act (HIPAA) which is a federal law that creates national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge, applies to any patient treated in a healthcare facility in the U.S., regardless of nationality or residence status.

HAS THERE BEEN ANY LITIGATION OR SPECIFIC LAW OR REGULATION REGARDING THE FOREIGN REMOTE WORKER IN YOUR COUNTRY?

During the COVID-19 pandemic the Internal Revenue Service (IRS) and U.S. Treasury Department issued guidance and relief relating to U.S. federal income tax liability and related reporting requirements for foreigners unable to return to their country of residence, and foreign companies that may inadvertently experience "permanent establishment" consequences due to the inability of their employees to return home. Eligible individuals present in the U.S. for an extended time period due to COVID-19 were entitled to exclude up to 60 days of presence in the U.S. for federal income tax purposes, deemed a "COVID-19 Emergency Period", that started anytime between February 1 and April 1 2020. "Eligible individual" is defined as an individual 1) who was not a U.S. resident at the close of the 2019 tax year, 2) who is not a lawful permanent resident at any point in 2020, 3) who is present in the U.S. (without regard to this revenue procedure) on each of the days of the individual's COVID-19 Emergency Period, and 4) who does not become a U.S. resident in 2020 due to days of presence in the U.S. outside of the individual's COVID-19 Emergency Period. (See Rev. Procedure 2020-20.)

2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.

If a remote worker is a U.S. citizen, then no work authorization would be needed for the remote work. If the employee (whether US citizen or foreign national) engages in activity in the local market, then special attention needs to be given to avoiding "permanent establishment" exposure as discussed above.

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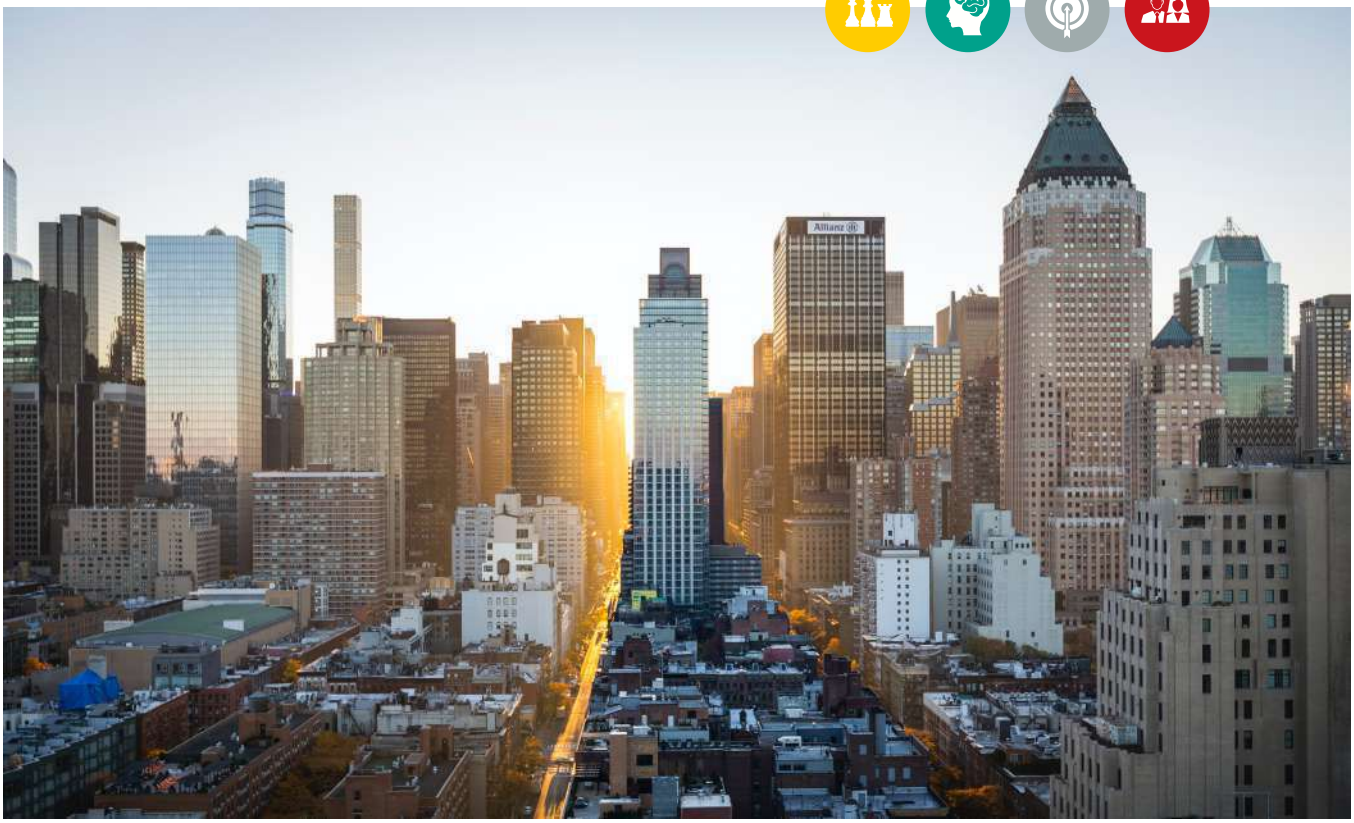

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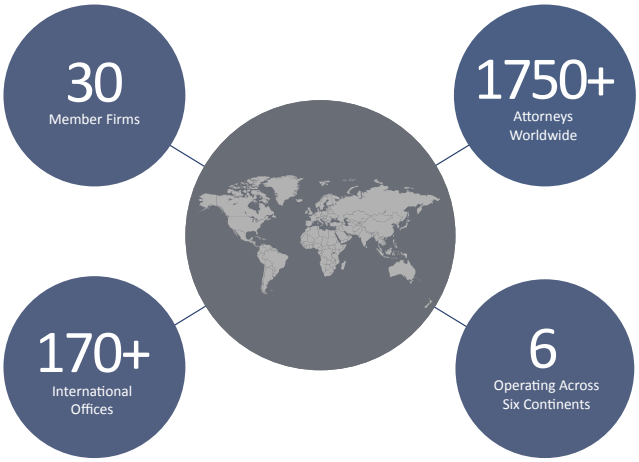

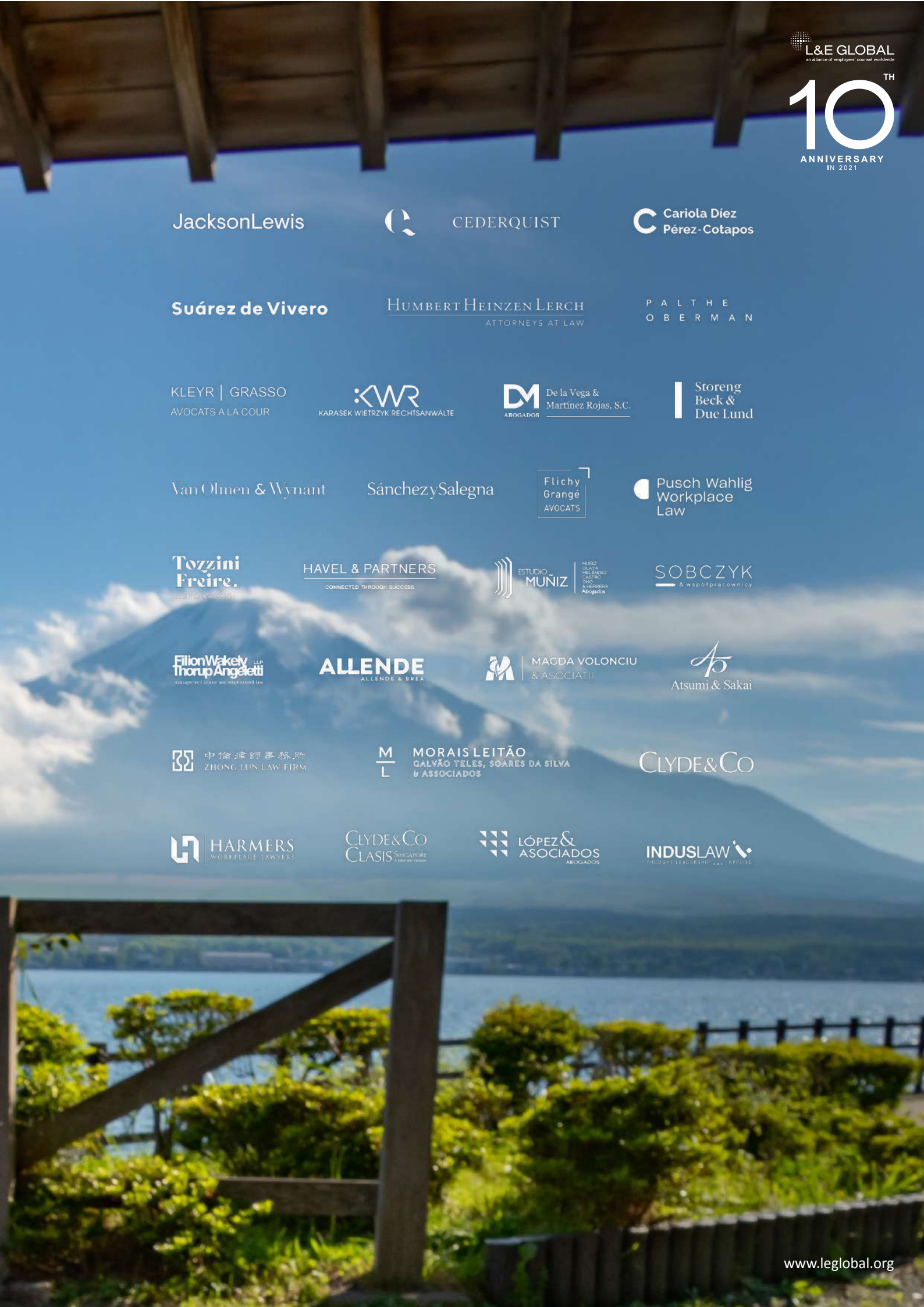
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