

Oury Clark Quick Guides:



Remote Working & the Digital Nomad



Employment: C21

The world has never had more "remote working" as a concept. Now more than ever, employees are not where their companies are. And indeed many companies are now not even buildings of bricks and mortar with clear unequivocal locations of trade.



Clearly Governments are not going to accept any large loss of tax revenue lying down, so expect this to become a much more investigated area.

Nor does a business want to expose themselves to complex risks in other territories for the sake of one employee who is keen to work on the beach.

So what are the implications for a company, and for the individual of working overseas?

Some common misunderstandings cause some confusion over this issue.

This "Quick" guide (which is really a "rule of thumb") should help you navigate this complex position.

But to clarify, these are just broad guidelines - we cannot possibly speak for all 300 countries on earth.

For the Individual

1. An employee is taxable in the country where they conduct their duties, and where they are tax resident. It is NOT based on WHO they work for. So, if Mrs X works in the UK, but her Employer is based in Singapore, It is the UK that have the right to tax that individual. Not Singapore (sadly..)
2. You are taxed on any activity in that country, you do NOT have to become a tax resident. You are taxable locally on your activity in that country technically even if you only work a week. However, there are often exemptions between countries for short term "temporary" work placements - but not always, and never for more than 183 days. And these often require you to claim the exemption.
3. You are also taxed in the country where you are "tax resident". This country can often tax all of your worldwide income, usually with a credit given for any tax suffered in another country.
4. An individual can be resident in two countries. If so, you need to refer to the tax treaty between those countries to see, under the tie breaker provisions, which country wins and has the right to tax you on your worldwide income. You can find tax treaties with the UK listed [here](#).

1. The country in which the employee is physically working is the country whose employment law applies. You cannot use a foreign employment contract to contract with them in that country unless it is very short term.

For the Company

1. A company is taxable where it carries out its activities, and where it is resident for tax.
2. A company's residence is often considered to be where it is "effectively managed from". There are many exceptions to this, but do appreciate that a company has residence just like a person does.
3. If a company does have activity in a country, then that country can tax that activity.

The Employer

The first question that needs to be answered is does the activity of the employee or employee(s) in a different country from the country that the company is incorporated in, and traditionally trading from, constitute a Permanent Establishment ("PE")?

The clue is in the name - It needs to be permanent - i.e. not temporary. Temporary, is often considered to be less than 6 months - although things like Covid allow you to increase this period.

It needs to be an "establishment". e.g. an office, a place of business... somewhere you can point to and say - that is where the business is.

OR

It could be that the activity of an individual ALONE, even if they are working from home, or variable locations, is substantial and significant enough that the country deems they can tax it regardless.

A particular issue is "sales activity". Someone generating sales in a country is likely to be considered creating value in that country and therefore it is a taxable activity on the company. A management team, or senior staff is also generally considered a PE.

But in truth anything can be considered a PE, if you CANNOT argue:

1. There is no address in this country, officially or otherwise. No office you can go to. Nothing listed on the website. The employee does not receive post or allow meetings at their home.
2. The staff that are in the country only work from home, and they only conduct activities that are "preparatory or auxiliary" in nature.

For example, you make farm equipment, and you have an individual who does some market research and occasionally helps with logistical matters when an order is placed in that country.

As opposed to you are a logistics company, and you have someone doing market research (okay) and helping with logistics matters (not okay - as not auxiliary to your primary business - it is your primary business).

If you do have a PE

Then depending on the country and how easy it is to form companies or register branches there, and being mindful of what you may wish to disclose there, you will need to register with the tax authority either by forming a company there, or registering your overseas company for tax there.

In the UK it is VERY easy to form a company, and hence that is often the sensible route when you have a UK PE.

The Employee

(the employer needs to ensure that the employee has):

1. A VISA and a right to work there - not to be forgotten.
2. An employment contract that is legally in line with the local laws of that country. Many EU Countries have very strong employment rights, and if you have allowed someone to work now in France rather than the UK - and you have not consistently said this is "temporary" due to Covid - then you may no longer have the flexibility of UK employment law. Plus, you might want to make it clear to the employee that the risks for tax and other matters are their own.

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Disclaimer: This note does not contain a full statement of the law and it does not constitute legal advice. Please contact us if you have any questions about the information set out above.

1. To pay tax there. How? Well it depends. If the company does NOT have a PE, then the matter is either:
 - a. dealt with via a special payroll scheme for the employee - and the company registers for employment taxes only (this is common in MOST EU countries): OR
 - b. it is the employee's responsibility and they will need to file a tax return in that country, or follow whatever rules there are there.

If the company DOES have a PE, then back to the above. The company needs to pay any corporate tax, you likely need to form a company, and employ them through that company.