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The cross-border pitfalls of 'working from anywhere'

Patrick Mulholland

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Surfing is a life-long passion for Leonie Eidt. Every year, the German art therapist sets aside three months to catch waves in sunnier climes, mostly Portugal. When she lost her job as a social worker at the beginning of the pandemic, Eidt decided to take the plunge and freelance as a "digital nomad", someone of no fixed abode who works remotely online.

Her first stop is Costa Rica in Central America, one of a number of idyllic nations now offering longer-stay remote work visas for foreign visitors. Similar programmes have recently been announced in other countries, such as Croatia, the UAE, and Mauritius.

About one in 16 people employed in the UK (1.9m workers) intend to work from abroad for at least part of this year, according to a survey by PagoFX, an international payments platform. Almost half of all respondents also said they could do their job just as well from another country.

However, for many people it remains complicated to work at a company based in one country and live in another. Payroll taxes, benefits and social security are just a few of the compliance headaches companies face when sending workers overseas or hiring from abroad.

Since the pandemic forced a worldwide remote working experiment where workers, unmoored from the office, have logged hours from home for weeks, months — even a year — should governments and companies now be rethinking how to ease work across borders?

Difficulties carry risk

For multinational companies, this is less of a problem, says Professor Mauro Guillen of the University of Pennsylvania's Wharton business school. If a business has an existing office in another country, they can second the employee and set them up with a local contract. Difficulties arise where companies do not have a permanent presence in that separate jurisdiction, opening them up to liabilities such as increased taxes and issues around labour laws and benefits.

"Telecommuting from abroad seems so easy, but you might be inadvertently positioning your company to commit a serious crime," says Don Dowling, an attorney at Littler Mendelson, an employment law firm. Overseas employees could create new tax obligations — after all, those individuals benefit from water use, waste disposal and myriad other public services.

According to EY, the professional services company, corporate tax and payroll risk — such as increased taxes on salary — were the two most frequently cited concerns among companies looking to hire abroad, at 39 per cent and 24 per cent, respectively.

Recommended

The 183-day rule is a commonly used threshold for determining whether someone ought to be considered a resident for tax purposes. Provided the employer is based overseas and the costs are not borne by a permanent establishment in the host country, workers can typically avoid creating taxable status for themselves within those six months.

During the pandemic, governments temporarily relaxed some of these rules to account for the near-total shutdown in international travel and the complex situations faced by stranded workers. However, this guidance is, as yet, untested, and some employers are navigating "an unclear environment for tax" as they seek to formalise remote work arrangements, says Richard Tonge, a principal at accounting firm Grant Thornton.

On the employee side, many countries already have bilateral agreements, such as double taxation treaties that prevent overseas workers from being taxed twice on the same income in different jurisdictions, and social security totalisation agreements that allow workers to continue paying into their home system over the host country. But such treaties can create their own problems.

The US, for example, has more than 50 double taxation treaties and only 30 social security totalisation agreements, which means in some countries, American workers will not have to pay tax on the same income twice but may be on the hook for additional social security charges. While these hurdles in part reflect outdated laws, complexities also exist by design: by making it harder to work remotely abroad, governments avoid offshoring jobs.

Talent shortage

But with immigration restrictions tightening across the developed world, including in the US during the Trump administration and the UK following its exit from the EU, companies' talent shortages are only getting worse.

Data analysis from the Cato Institute, a libertarian think-tank, shows that the rate of immigration to the US has fallen sharply since 2017, with pandemic-stricken 2020 the fifth lowest year on record for new arrivals since 1820.

In 2019, an annual report from recruitment agency Manpower Group found that 54 per cent of global employers struggled to fill job openings. Given the trend towards remote work, "filling these roles from abroad seems a viable alternative," says Prof Guillen, who calls this the first global market for talent.

And there are companies hoping to capitalise on it. Remote, an HR solutions start-up for distributed teams is looking to make life easier in this expanding market. The company was founded in 2019 by Job van der Voort and Marcelo Lebre as an employer of record (EOR) for companies wanting to hire overseas workers. EORs, or professional employer organisations (PEOs), build out networks across the world that absorb responsibility for international employees' payroll, benefits and other compliance matters. In effect, Remote becomes the de facto employer in that second country.

Van der Voort developed the idea during his five years at the software company GitLab, which operates on a work-from-anywhere policy and routinely encounters challenges setting up locally compliant work contracts.

While PEOs can make for effective staffing solutions, not all countries will recognise the relationship between the contracted parties. “From what I’ve seen, China would look through an agreement and say you’re working for this company, not that one, whereas other countries might not,” says Grant Thornton’s Tonge.

In addition, companies can expect to pay an average industry fee of 20 per cent over its wages and payroll contributions.

Remote acknowledges that some countries are trickier to operate in than others and publishes a guide on which jurisdictions are accommodating of PEOs. But the company’s services come at a cost. Its present roster of clients are mostly offering high-skilled technology jobs.

“If you look at the people we employ, they tend to be well compensated because our flat fee is anywhere between $299 to $599 per employee each month,” explains van der Voort.

Competitive edge

Among its users, Remote counts GitLab, as well as Loom, Cargo.One and Paystack. Loom’s remote work policy allows its employees to work overseas on condition that new hires can commit to 2-3 hours overlap in the working day with the US. At present, 13 per cent of the company’s 120-strong workforce lives abroad.

“Trying to figure out how to hire someone in another country, especially when you don’t already have any local operations there, is a huge burden on the people team,” says Meghana Reddy, vice-president of people at Loom. The partnership with Remote means the company can easily keep track of their employees’ compliance status through a portal and not rack up expensive legal fees consulting local lawyers.

Recently Paystack, a Lagos-based fintech platform, hired software engineers in India, while Cargo.One has sought to expand its online freight business by hiring teams in countries three hours either side of Berlin.

“Access to the best talent gives us a competitive edge,” says Moritz Claussen, Cargo.One’s founder. “And if the best product manager lives in Tel Aviv, we want to have that person work with us. It doesn’t really matter if they sit in Germany or Portugal.”

“As an employer, I want to be able to provide flexibility for employees as I think it’s a differentiator for us as a company,” says Reddy, who wishes there was more co-ordination between countries so that people could work remotely from wherever they are most comfortable.

The consensus among industry experts, however, is that any such agreements are a long way from being realised in law.

One thing is for certain: remote work is here to stay. And as more people — of varying incomes — embrace the freedom to live and work however they please, governments will have to get smarter about how they regulate labour markets and tax incomes.