

Deloitte: Remote Working - What are your obligations?



Is the future of work confusing? Not remotely...

While organisations have focused on the immediate implications of remote working due to Covid-19 disruption, many are beginning to consider the future of work and reevaluate the location of their workforce more broadly, write **Aisléan Nicholson** and **Róisín Fitzpatrick**, Partners at Deloitte

Companies around the world are announcing their remote work strategies to attract key talent. These proposals are expansive in their ambitions – allowing for a mass global collaboration of workers without the hindrance of geographical locations or travel restrictions. This is the future of the workplace and it knows no boundaries. Countries are already taking steps to make remote working more attractive in their locations. Countries such as Barbados and Bermuda now allow remote work/digital nomad visas to be sought which allows foreign nationals to apply for immigration permission to work remotely and contribute to their economies.

Likewise, Italy has issued a special taxation regime that exempts up to 90 per cent of your income from taxation and which is applicable to employees who move their tax residency to Italy even if they continue to work for a non-Italian employer.

The Irish government recently published 'Making Remote Work', its National Remote Work Strategy aimed at normalising the new norm. The report focuses on the creation of an environment that supports the right to remote work, for both employers and employees.

In the report, it defines remote work as a broad concept – an arrangement where work is fully or partially carried out of an alternative worksite other than the default place of work. The definition does not define geographical boundaries on remote work, nor does it refer to the emergence of remote work/digital nomad

visas mentioned above. If there is a legal right to request remote work and with 94 per cent of employees in a recent study indicating that they would seek to request right to work remotely, employers are reviewing their policies for remote working, including what the implications may be where employees work internationally from another country. Let us examine these in greater detail.

Immigration and remote working

There are immigration considerations when reviewing remote work. We recommend reviewing remote working requests into separate categories:

- immigration-required employees in country of employment and/or country of remote work, and
- non-immigration-required employees in country of employment and/or country of remote work.

For immigration-required employees in country of employment (Ireland in this case), employers are required to notify the Department of Enterprise, Trade and Employment (DETE) of employees on employment permits who are no longer working at the location listed on their employment permit. Most employees in Ireland are no longer working at their place of work, so the DETE accepted blanket notifications of employment permit holders currently working remotely.

In the future, if employers are considering regional hubs/offices for employees, these locations should be added

to the employment permit or trusted partner. If an employee holds a Stamp 4 Irish Residence Permit, there is no need to notify DETE, but the employee has an obligation to notify Immigration Service Delivery of any change of their residency address – for example, if the employee employed by an Irish company seeks to remotely work from Achill, they will need to notify their local registration office.

An immigration-required employee seeking to remote work in an overseas country (for example, an Irish national seeking to work in 'Ruritania') is likely to require work permission to enter, reside and carry out productive work in that country. Their dependants may also require immigration permission.

Likewise, if that employee required immigration permission in Ireland, their permission in Ireland must be reviewed to ensure that the employee does not lose their immigration permission in Ireland. If the employee holds an employment permit, the employer should notify DETE.

Some groups may accept the additional cost and complexity as the price for achieving a truly flexible, global workforce

It has been confirmed that frequent absences or an extended absence which constitute part of an employment permit holder's employment are not considered grounds for revocation of the permit. Generally, an employment permit holder must work at least 183 days in a full calendar year in the state to be considered employed in the state.

If the employee holds an Irish Residence Permit (Stamp 4 etc), the employee must ensure that they take all the necessary steps to maintain and renew that permission. The employer should regularly review that their foreign national employee population retains the right to work and that they can support this population with this.

If an employee is non-immigration-required in their country of employment or country of remote work (because they are an Irish national working for the Irish HQ or a Ruritania national working in Ruritania), then no action is needed by the employer, but the remote work request should be reviewed regularly to confirm that there is no change.

Tax and other considerations

Other compliance risks should also inform the employer's strategy, namely in an international context, for example,

- whether the Irish HQ now has a payroll obligation in Ruritania and the associated impact on Irish payroll reporting;
 - employment law issues, such as which country now has jurisdiction over any dispute that may arise, and
 - whether there are additional employer responsibilities in Ruritania.
- A review of social security will be required to confirm where it should be paid – noting that employer costs may increase if employer social security rates are higher in Ruritania. Employees' personal tax returns and tax residence are also likely to be impacted and need to be flagged. Companies should also review their reward strategy as employees continuing to place increased value on the holistic work experience in addition



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to the monetary reward. In creating a forward-looking reward experience, this will involve companies assessing the effectiveness and impact of their offerings with their remote work strategy, defining what their workers want and need and designing and communicating solutions to meet those needs.

A critical area will be to understand the corporate tax implications that might arise for an Irish HQ from having employees working overseas. Will the employee's presence outside Ireland create a taxable presence known as a "permanent establishment" (PE) in Ruritania?

A "fixed place of business" PE can be created by the agreement of the Irish HQ and the employee that they will work from a designated location in Ruritania. This could be the employee's home office, a rental office or an office of an affiliated entity, so long as it is "at the disposal of" the business" and has "a degree of permanence".

While businesses may have recently had employees working from home offices overseas, the operation of Ireland's tax treaty network and/or concessions by local tax authorities due to the pandemic, means thus far, they may not have caused a fixed place of business PE.

However, the more permanent location of an employee working from a de facto/designated place overseas, could be sufficient to trigger a PE. While the Irish tax treaties may give some relief, this tends to be limited and even stipulated exclusions need to

separate PE and the associated compliance burden depends on several factors, including inter alia:

- whether the activity to be performed by the individual can constitute a service between the entities;
- whether the price paid for such services constitutes an "arm's length" price;
- what other activity the Irish HQ performs, directly or indirectly, in the jurisdiction;
- whether other individuals working for the Irish HQ also work from Ruritania.

In assessing the factors which could lead to the establishment of a PE, some overseas tax authorities will take the view that where there is appropriate remuneration for the service provided by the local subsidiary, there is no merit in pursuing a separate PE of the Irish HQ, especially where the individual performs a more administrative or "low-value" role.

However, other territories may aggressively pursue a separate PE in all circumstances, which could result in additional tax and penalties if one has not been declared. As already noted, the receipt of local tax advice based on facts and circumstances is critical to fully understanding the corporate tax position.

There could also be wider tax implications for the Irish HQ, if the individual in question is senior/a key decision-maker in the organisation. The location, for example, of a head of "brand strategy" overseas, where the group's intellectual property is owned in Ireland, could impact the group's transfer pricing arrangements and operating model.

If several board members live in Ruritania, it could even lead to Ruritanian tax residency, should it tax entities on the basis of "central management and control".

Regulated roles are another area that may need careful consideration.

Some groups may accept the additional tax cost and complexity of registering PEs in multiple jurisdictions as the price for achieving a truly flexible, global workforce; others may assess that additional burden as too high, strictly limiting roles and jurisdictions to avoid the creation of overseas PEs entirely.

Many groups will find themselves somewhere in between. Wherever they may lie on the spectrum, early consideration of the employer's appetite for tax complexity is best considered against the overall objective when setting the remote working policy, to ensure that the potential corporate and other tax implications are fully evaluated.

In addition to the immigration and tax issues, there is a need to understand what the preferences of their workforce are and to then assess the cost to the company of supporting remote work. It is challenging for employers to strike a balance between unknown implications (such as impact on gender equality in the workforce), compliance burden and flexibility, so careful and strategic planning in advance is critical.

With the move towards re-

Corporate tax implications might arise for an Irish HQ from having employees working overseas

remote working underpinned by legislative change in Ireland and an employee-centric approach, employers do need to focus on their remote working strategies and internal systems to assess, manage and monitor their remote working population. This is important to ensure tax, immigration and legal compliance in Ireland and foreign jurisdictions.

Information and guidance from governments is constantly changing, so regular reviews are essential. Using technology will significantly streamline the administrative burden and compliance risk that employers will face.

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