SQUIRE PATTON BOGGS

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The Future World of Work

Global Guide on Overseas Remote Working

At the start of the COVID-19 pandemic, a number of employers had staff who went "home" or simply relocated to a different country to continue working remotely during lockdown. Some of these individuals asked for these arrangements to continue on a more permanent basis beyond COVID-19 related lockdown measures and travel restrictions. In light of the ease with which many employees were able to work during lockdown measures without being in their usual workplace (or even the same country), we have seen an increasing number of requests from those wanting to live and work in one country for the benefit of a company in a different country.

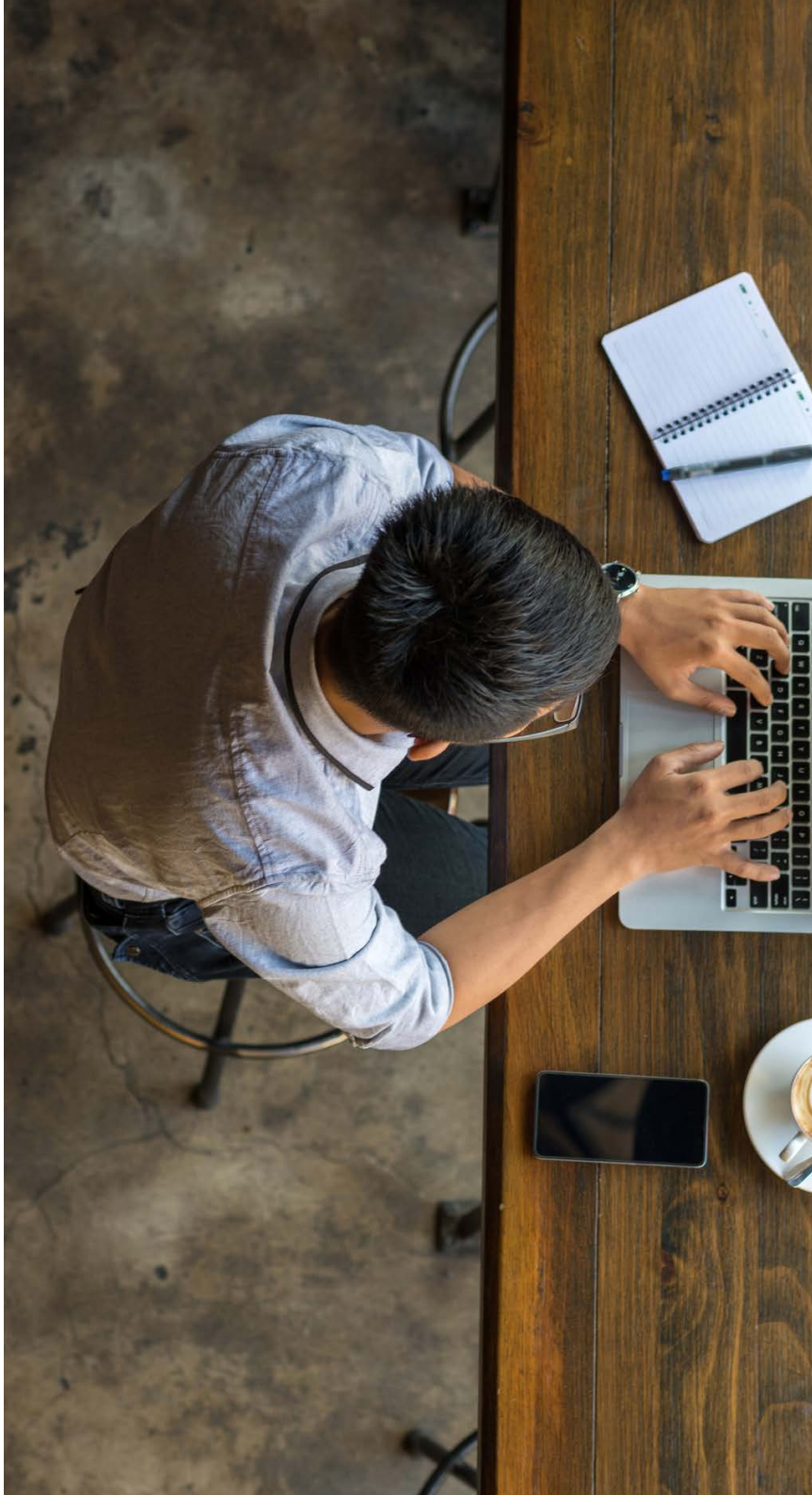
Regardless of the COVID-19 pandemic, many employers have agreed to, or are considering, overseas remote working arrangements (also referred to as 'satellite' working), primarily as a means of being able to hire or retain the talent they need to run their business.

The aim of this guide is to highlight the key issues for businesses to consider if they have employees living and working in one country for the benefit of a company in a different country. This guide provides a high-level overview in relation to employment, immigration, tax and social security risks as well as, where applicable, labour leasing restrictions and Posted Workers Directive obligations and should not be regarded as a substitute for legal advice. It sets out the position as at 1 December 2021. We recommend that you always check the latest position with your local Squire Patton Boggs lawyer.

Overview

For each country included in this guide, we have identified five key issues when considering overseas remote working arrangements, which can be summarised as follows:

1. Employment	Will the employee gain new (potentially more generous) employment rights in another country and will the employer be subject to additional obligations outside their jurisdiction? This could affect the employee's terms and conditions during the employment relationship as well as the employer costs and obligations on termination.
2. Tax and Social Security	This is often the primary concern for employers, as the cost implications and sanctions for getting it wrong can be severe. A thorough risk assessment will be needed, including payroll obligations, local registrations for tax and social security, employer and employee liabilities, double taxation relief and permanent establishment considerations.
3. Labour Leasing	Employees who are employed by an entity operating in one jurisdiction but, in practice, work for the economic benefit of, and are recharged to, an entity in another jurisdiction (either within or outside a group of companies) may be caught by "labour leasing" laws. In some jurisdictions, labour leasing is prohibited or highly regulated and there are tough penalties for non-compliance.
4. Posted Workers Directive	The Posted Workers Directive can apply where a business in one EEA country sends a worker to another EEA country for a limited period to carry out work for its customers or clients, or for a company in the same group. This can include assignments, secondments and intra-group transfers. So-called 'posted workers' are entitled to certain minimum terms and conditions in line with those afforded to workers in the EEA country to which they are posted. The Posted Workers Enforcement Directive has resulted in most EEA countries introducing national legislation requiring posting and host companies to comply with specific administrative and registration requirements. Furthermore, certain EEA countries have extended the relevant obligations to the posting companies of all posted workers (not just those being sent from other EEA countries). The Posted Workers Amendment Directive gives further protection to posted workers and should have been implemented by EEA countries by 30 July 2020.
5. Immigration	Will the employee be allowed to live and work remotely from their chosen country for immigration purposes? In most countries, an employee will only be permitted to work remotely for an overseas employer if they are a citizen of the country in which they are living or hold the necessary visa permitting them to work from that country.



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Australia

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We have assumed that if an employee relocates to Australia as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Australia ("Overseas Employer") and works for that employer remotely from Australia
- **Scenario 2:** The employee becomes an employee of an entity in Australia ("Home Employer") and is assigned to work remotely for an entity outside Australia ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** As Australia is the country where the employee lives and works, the Fair Work Act 2009 (Cth) will require the Overseas Employer to comply with Australian employment law despite its geographical location. **Scenario 2:** The laws of the Home Employer (Australia) will apply. It is not possible to 'contract out' of the application of Australian employment laws even if the employee's contract of employment specifies a foreign jurisdiction as being the applicable law. The Home Employer will have a non-delegable duty of care for the safety of the employee living and working in Australia. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Australian employment law purposes?	No, not under the laws of Australia.
If Australian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Australian employment laws do not require payment for such provisions.
Does Australia impose any additional obligations in relation to homeworking?	Yes. Australian workplace health and safety laws continue to apply when staff are working from home. Employers remain under a duty to eliminate or minimise the risk to workers' health and safety as far as is reasonably practicable, including the risk to workers' mental health. Employers must consult with workers and take all reasonable steps to ensure that their home workstations are set up correctly to minimise risks. This should include a safety assessment of the remote workspace. Australia's health and safety regulatory body, SafeWork Australia, provides further guidance on working from home arrangements on its website.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Australia? Can an overseas employer operate a local payroll?	**Scenario 1:** No. **Scenario 2:** Yes, the Home Employer would be required to keep employment records, including payroll records of employees for a period of seven years. An overseas employer can operate a local payroll in Australia, provided it complies with Australian law.

Australia

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Australia for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	**Scenario 1:** Potentially yes, for the Overseas Employer if there is an obligation to deduct or pay any Australian tax or superannuation (see below). **Scenario 2:** No, for the Overseas Entity. **Criminal penalties**: None. **Financial sanctions**: There are significant penalties for failure to register, lodge and pay various employment taxes. For a significant global entity (revenue over $1 billion) the penalty for failure to lodge can be up to $555,000. There are also sanctions for breaching employee record obligations. If an employer's failure to meet its record-keeping obligations is found to be serious, wilful or repetitive, the maximum penalties a court may impose for record-keeping and pay slip contraventions are: • $12,600 per contravention for an individual • $63,000 per contravention for a corporation. Further details can be found here.
Are there any potential Australian tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer**: The Home Employer would need to deduct Pay As You Go Withholding (PAYGW) and pay any relevant superannuation, Fringe Benefits Tax (FBT) and payroll tax. • **Overseas Employer**: The Overseas Employer would be required to register and pay local taxes including PAYGW, FBT, superannuation obligations and potentially state-based payroll tax if the group has total wages in Australia which exceed the relevant threshold (e.g. $1m in NSW). However, if the employee was in Australia for less than 183 days and was a resident of a country which has a double tax treaty with Australia, the Overseas Employer may be exempt from Australian tax obligations. • **Overseas Entity**: The Overseas Entity would not have any obligations in Australia unless it was regarded as the "employer." • **Employee**: The employee would be required to lodge Australian tax returns and pay Australian tax unless they were in Australia for a period of less than 183 days and were a resident of a country Australia has a treaty with and were paid by an offshore employer which did not have a permanent establishment in Australia.
If employment tax is payable in both Australia and another country, would double taxation relief be available?	A foreign tax offset can be claimed for offshore tax paid in respect of income which is taxable in Australia, although there may be limitations.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	In normal circumstances the presence of employees in Australia for an extended period of time can result in a permanent establishment in Australia, depending on the activities and responsibilities of those employees. However, the Australian Taxation Office has provided advice that if employees are temporarily relocated in Australia or are restricted in their travel as a consequence of Covid-19 this should not lead to the creation of a new permanent establishment in Australia. These concessions are only in place until 31 December 2021.

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Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Australia?	Yes, if the arrangement is characterised as a sham contracting arrangement it is prohibited under Division 6 of The Fair Work Act. Labour leasing is regulated in certain states namely Queensland, South Austraila and Victoria.
Which rules governing labour leasing in Australia would apply to either scenario?	• **Time limits:** None. • **Any exceptions for intra-group situations:** No. • **Formal registration requirements:** There are labour hire licensing requirements in Queensland, South Australia and Victoria. "*A labour hire provider is a person who, as part of carrying on a business, supplies labour hire workers to do work for another person or business (the labour hire user)*" but these are unlikely to apply in either scenario.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: No, there are no criminal penalties for breaching the sham contracting provisions of the Fair Work Act. **Financial penalties**: Currently, the maximum penalty that can be enforced (per contravention) is: • $63,000 for corporations; and • $12,600 for individuals.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Australia in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Australia.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
In scenario 1, would the employee be permitted to work remotely from Australia for the Overseas Employer if s/he did not have an existing right to work in Australia?	No, all employees must have a legal entitlement to work in Australia – this means that they must be an Australian citizen, permanent resident or otherwise hold a valid visa permitting them to work within Australia.

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If the Overseas Employer were based in Australia and the employee travelled to Australia for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Australia)?	No, business visitor visas do not allow an individual to work in Australia. Generally, entitlements under this visa only extend to business activities such as: attending meetings, conferences or to make general business or employment enquiries. See business stream visas requirements here.

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Belgium

Home

We have assumed that if an employee relocates to Belgium as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Belgium ("Overseas Employer") and works for that employer remotely from Belgium
- **Scenario 2:** The employee becomes an employee of an entity in Belgium ("Home Employer") and is assigned to work remotely for an entity outside Belgium ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** If the employee works from Belgium for more than a couple of months, Belgian employment laws may apply, even if the employment contract has a choice of law clause. **Scenario 2:** Generally, Belgian employment laws will apply. However, it depends on how the assignment is formalised. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Belgian employment law purposes?	If the Overseas Entity instructs the employee and his/her work is for the benefit of the Overseas Entity, the situation may qualify as labour leasing which, if not properly documented, may mean the Overseas Entity is treated as a second employer.
If Belgian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Payment is required for non-competition provisions under Belgian law, but not for confidentiality / non-solicitation provisions.
Does Belgium impose any additional obligations in relation to homeworking?	Homeworking must be formalised by means of an addendum to the standard employment contract, with certain specific provisions. The addendum should address how, if at all, expenses associated with working from home will be compensated. The employer should in any event make available the necessary equipment. The employee should follow the employer's policy on health and safety.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Belgium?	**Scenario 1:** No. **Scenario 2:** Yes, depending on how the assignment is formalised.
Can an overseas employer operate a local payroll?	An overseas employer can operate a local payroll.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Belgium for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Very likely for both scenarios, if Belgian social security and payroll tax are considered to apply. Criminal fines (rather exceptional) may range from €400 to €4,000 per employee for the company that is non-compliant. Administrative fines may range from €200 to €2,000 per employee.

Belgium

Are there any potential Belgian tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer**: The Home Employer will usually be required to operate a Belgian payroll and withhold payroll tax. It may also need to consider whether it has any employment tax obligations in the country of the Overseas Entity. • **Overseas Employer**: The Overseas Employer will usually be required to operate a Belgian payroll and withhold payroll tax. It will also need to consider the Permanent Establishment (PE) position. • **Overseas Entity**: The Overseas Entity should not have local payroll obligations, provided that formalities have been complied with to avoid unlawful labour leasing. It will need to consider the PE position and the employment tax obligations in its own country. • **Employee:** In scenario 1, the employee may be taxed in both countries, in which case they will need to consider whether they can claim double taxation relief.
If employment tax is payable in both Belgium and another country, would double taxation relief be available?	It depends on the bilateral tax agreement between the relevant countries.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	In both scenarios, this would depend on the position/job content of the employee and on the laws of the Overseas Entity or Overseas Employer respectively.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Belgium?	Labour leasing and agency work is forbidden subject to certain exceptions. These exceptions are strictly regulated.
Which rules governing labour leasing in Belgium would apply to either scenario?	• **Time limits:** Depends on the reason for the leasing of personnel. • **Any exceptions for intra-group situations:** Yes, potentially, although notification to the social inspectorate would still be required. • **Formal registration requirements:** A tripartite agreement should be notified to/approved by the social inspectorate, depending on the circumstances.
Are there any financial penalties/criminal sanctions for non-compliance?	Unlawful labour leasing is punishable by law, both for the leasing company and the user company. Breach leads to civil joint liability. **Criminal sanctions:** Criminal fines (rather exceptional) may range from €800 to €8,000 per employee for the company that is non-compliant. **Financial penalties:** Administrative fines may range from €400 to €4,000 per employee.

Belgium

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Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Belgium in either of these scenarios?	**Scenario 1**: Yes. The Belgian legislation implementing the PWD applies as soon as an employee is sent to work in Belgium, regardless of whether the employee is providing those services to an establishment or undertaking in Belgium. **Scenario 2**: Not if the transfer to Belgium is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the 'posting' company.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1:** No. **Scenario 2:** Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	Criminal sanctions (although these are exceptional) may range from €400 to €4,000 per employee for the company that is non-compliant. Administrative fines may range from €200 to €2,000 per employee. In each case, however, the sanctions only apply in the event of non-compliance with regard to specific provisions.
Immigration	
In scenario 1, would the employee be permitted to work remotely from Belgium for the Overseas Employer if s/he did not have an existing right to work in Belgium?	If the employee does not have an existing right to work in Belgium, a permit should be obtained, although if the employee is only working in Belgium for a couple of months or less, this is not often sought in practice.
If the Overseas Employer were based in Belgium and the employee travelled to Belgium for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Belgium)?	Yes, but the visit may have to be reported to Social Security Service through a LIMOSA declaration.

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China

Home

We have assumed that if an employee relocates to China as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside China ("Overseas Employer") and works for that employer remotely from China
- **Scenario 2:** The employee becomes an employee of an entity in China ("Home Employer") and is assigned to work remotely for an entity outside China ("Overseas Entity")

General observations on the position in mainland China: In principle, a company incorporated outside of mainland China must establish a presence (e.g. a limited liability company, a representative office) in mainland China in order to lawfully conduct business operations and/or liaison activities within mainland China. An arrangement whereby a person is employed by the "Overseas Employer" outside of mainland China and is working from mainland China may be considered a violation of such requirements, especially if such arrangements continue after Covid-19 lockdowns. As such, we would not recommend scenario 1 from the perspective of mainland Chinese law.

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The employment laws of the jurisdiction where the Overseas Employer sits will apply. Also note our general comments above on the presence requirement in connection with this scenario. **Scenario 2:** The employment laws of the Home Employer will apply, i.e. Chinese labour laws. The employment laws of the country in which the Overseas Entity is situated could also apply depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Chinese employment law purposes?	No.
If Chinese employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Under mainland Chinese law, no compensation is required for confidentiality obligations on employees, but compensation must be paid to employees in order for their non-competition obligations during the relevant post-termination period to be enforceable. The maximum post-termination non-competition period is two years.
Does China impose any additional obligations in relation to homeworking?	No.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in China? Can an overseas employer operate a local payroll?	**Scenario 1:** If the employee remains employed by the Overseas Employer, local payroll is not required in China. Also note our general comments above on the requirement to have a presence in China in connection with scenario 1. **Scenario 2:** The Home Employer will be required to set up a local payroll for the employee in China. An overseas employer cannot operate a local payroll.

China

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in China for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	There is no registration requirement on the Overseas Employer or Overseas Entity specifically for tax, social security or other benefits, but please note our general comments above on the requirement to have a presence in China in connection with scenario 1. **Financial penalties/criminal sanctions**: N/A.
Are there any potential Chinese tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer:** The Home Employer is obliged to withhold mainland Chinese Individual Income Tax ("IIT") on behalf of the employee. As the employee works for the Overseas Entity, the Home Employer would likely be deemed to have provided services to the Overseas Entity through this employee and service income would be deemed to be charged. Such service income of the Home Employer will trigger Value Added Tax ("VAT") and Corporate Income Tax ("CIT") in mainland China. • **Overseas Employer:** The Overseas Employer may be exposed to the risk of establishing a Permanent Establishment ("PE") in mainland China, as further discussed below. • **Overseas Entity:** No potential local tax implications for the Overseas Entity. • **Employee:** In scenario 1, if the employee is a mainland China citizen, his/her global income is subject to mainland China IIT; if the employee is not a mainland China citizen, there is no local tax implications for the employee provided that the Overseas Employer is not deemed to have established a PE in mainland China and the employee is only paid by the Overseas Employer. • **Employee:** In scenario 2, the employee is liable for mainland China IIT arising from the compensation paid by the Home Employer. The Home Employer is responsible for withholding the same on behalf of the employee.
If employment tax is payable in both China and another country, would double taxation relief be available?	It depends on whether there is an applicable double tax treaty.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	**Scenario 1:** The Overseas Employer may create a PE in mainland China if (a) the employee continues to work in a fixed place such as the employee's home; (b) the employee is acting on behalf of the Overseas Employer and routinely exercises the authority to conclude contracts in mainland China that bind the Overseas Employer; and (c) the Overseas Employer provides services through the employee and such service activities continue (for the same or a connected project) in mainland China for a period or periods aggregating more than 183 days within any 12-month period. There is no exception under current mainland Chinese laws for PEs created by arrangements in response to the Covid-19 lockdowns. **Scenario 2:** The PE risk is remote as the employee remains employed by the Home Employer and should be deemed to act on behalf of the Home Employer instead of the Overseas Entity.

China

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Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in China?	Mainland Chinese law is silent on cross-border labour leasing. In practice, instead of labour leasing, such a cross-border arrangement may take the form of a service agreement whereby the service provider provides the services through its employees to the service recipient for a service fee.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to China in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in China.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
In scenario 1, would the employee be permitted to work remotely from China for the Overseas Employer if s/he did not have an existing right to work in China?	There is no restriction from an immigration law perspective, but please note our general comments above on the requirement to have a presence in China in connection with scenario 1.
If the Overseas Employer were based in China and the employee travelled to China for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in China)?	Yes, subject to conditions and restrictions applicable to such visitor visa.

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Czech Republic

Home

We have assumed that if an employee relocates to the Czech Republic as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside the Czech Republic ("Overseas Employer") and works for that employer remotely from the Czech Republic
- **Scenario 2:** The employee becomes an employee of an entity in the Czech Republic ("Home Employer") and is assigned to work remotely for an entity outside the Czech Republic ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The Overseas Employer's employment laws will apply, and workers posted from other EEA countries will be partially covered by Czech legislation, unless the legislation of the Overseas Employer´s state is more favourable for the employee. **Scenario 2:** Czech laws (and Home Employer's terms) will apply. The employment laws of the country in which the Overseas Entity is situated could also apply depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Czech employment law purposes?	No.
If Czech employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Under Czech law, an employer is obliged to provide monetary consideration of at least one half of the employee's average monthly earnings for each month the non-competition obligation is fulfilled by the employee.
Does the Czech Republic impose any additional obligations in relation to homeworking?	Employers are obliged to create a working environment and working conditions that are safe and do not endanger employees' health by taking measures aimed at risk prevention. These risks cannot be removed when home working but the employer should document any risks, their assessment and any measures taken. Internal policies and training are measures generally expected.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the Czech Republic? Can an overseas employer operate a local payroll?	**Scenario 1:** Not necessarily, but highly recommended in cases where the employee is subject to tax and social security contributions in the Czech Republic. **Scenario 2:** Yes, the Home Employer has obligations towards their employees' salaries during the payroll process. An overseas employer can operate a local payroll.

Czech Republic

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in the Czech Republic for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes, in both scenarios provided that the employee is subject to Czech tax and/or social security legislation. There are sanctions for breach of any registration requirements up to CZK 1,000,000. Sanctions for failure to pay tax, social security contributions, contributions to the state employment policy or health insurance premiums on behalf of the employee or its evasion include: • imprisonment for up to three years; • disqualification order.
Are there any potential Czech tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	Potential tax implications depend on the tax residency of the respective entity and the respective employee. Czech tax residents are persons who are domiciled or habitually resident (at least 183 days/year) in the Czech Republic. Tax obligation of Czech tax residents applies both to income arising from sources in the Czech Republic as well as income from abroad sources. Tax obligation of Czech tax non-residents applies only to income arising from sources in the Czech Republic. **Scenario 1:** The employee is likely to be a Czech tax resident who is, therefore, subject to Czech Natural Persons Income Tax. The Overseas Employer is not subject to Czech Legal Persons Income Tax. **Scenario 2**: The employee is likely to be a Czech tax resident and is, therefore, subject to Czech Natural Persons Income Tax. The Home Employer is subject to Czech Legal Persons Income Tax. The Overseas Entity is not subject to Czech Legal Persons Income Tax.
If employment tax is payable in both the Czech Republic and another country, would double taxation relief be available?	Double taxation relief is available where another country is a member state of the European Union or a contracting party to the double taxation treaty with the Czech Republic.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	A corporation's place for carrying out business activities is deemed to become a 'permanent establishment' once it operates for more than six months in any 12 consecutive calendar months in the Czech Republic, or, once a dependent agent acts on behalf of such corporation in the Czech Republic. A double taxation treaty may, however, stipulate otherwise
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the Czech Republic?	Prohibited, unless it is a temporary assignment, in which case it is regulated.

Czech Republic

Home

Which rules governing labour leasing in the Czech Republic would apply to either scenario?	**Any time limits:** **Scenario 1**: No time limits. **Scenario 2**: The assignment to the Overseas Entity must be temporary, i.e. for a fixed term, albeit there is no maximum duration and it may only be entered into after the employee has been employed for 6 months and no consideration must be payable by the Overseas Entity for the assignment. In practice, a service agreement between the Home Employer and the Overseas Entity is often entered into for the first 6 months to circumvent this requirement. **Exceptions for intra-group situations:** No. **Formal registration requirements**: **Scenario 1**: No registration requirements. **Scenario 2**: No registration requirements.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: None. **Financial penalties**: For illegitimate labour leasing or breach of registration requirements: • Fines ranging from CZK1,000,000- 2,000,000. • Illegal work – CZK10,000,000 – of €60 per day of work per worker plus a lump sum of €500-7,5000.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to the Czech Republic in either of these scenarios?	**Scenario 1:** The Czech legislation implementing the PWD applies when an employee relocates to the Czech Republic, regardless of whether or not the employee is providing those services to an establishment or undertaking in the Czech Republic. **Scenario 2:** Not if the transfer to the Czech Republic is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the 'posting' company.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1:** No. **Scenario 2:** Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.

Czech Republic

Home

Are there any financial penalties/criminal sanctions for non-compliance?	**Financial penalties**: • Fines ranging from CZK1,000,000- 2,000,000. • Illegal work – CZK10,000,000 – of €60 per day of work per worker plus a lump sum of €500-7,5000. **Criminal sanctions**: None.
Immigration	
In scenario 1, would the employee be permitted to work remotely from the Czech Republic for the Overseas Employer if s/he did not have an existing right to work in the Czech Republic?	No, they are not permitted to perform work in the Czech Republic without a work permit.
If the Overseas Employer were based in the Czech Republic and the employee travelled to the Czech Republic for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in the Czech Republic)?	If the employment relationship is directly between the Overseas Employer in the Czech Republic and a foreign based employee, the employee would be obliged to obtain a work visa. The only exceptions to this rule are short trips for the purpose of attending a business meeting, negotiating, concluding a business contract, visiting a trade fair or pursuing other similar business activities which may be carried out with a short term Schengen business visa.

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France

Home

We have assumed that if an employee relocates to France as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside France ("Overseas Employer") and works for that employer remotely from France
- **Scenario 2:** The employee becomes an employee of an entity in France ("Home Employer") and is assigned to work remotely for an entity outside France ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** Under French labour law, the employee would benefit from a limited number of core principles of French employment law ('*Lois de police*'). **Scenario 2:** As an employee of the Home Employer working from France, the employee would benefit from French labour law. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for French employment law purposes?	If the employee's actual work is clearly dedicated to the Home Employer and he/she does not receive instructions from the Overseas Entity, this risk should not arise. The situation would be different if de facto the employee reports to management of the Overseas Entity ("co-employment" situation).
If French employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Yes. Any non-compete obligation enforceable after the termination of the contract requires a monthly payment (at least 1/3 of the average monthly gross salary) for the duration of the restrictive covenant. Principles are provided by French case law and, potentially, the collective bargaining agreement applicable within the other jurisdiction in scenario 2.
Does France impose any additional obligations in relation to homeworking?	The home civil liability insurance of the employee must cover professional activity from home. Regulations relating to occupational accidents would apply as well in case of any accident at home whilst working. Homeworking employees are also entitled to an indemnity for the use of their home for professional purposes, when professional premises are not effectively made available to them.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in France? Can an overseas employer operate a local payroll?	**Scenario 1:** If the employee is subject to French social security, yes, it is highly recommended. **Scenario 2:** Yes, as the employee will be subject to French social security. An overseas employer can operate a French payroll. This is operated through the mechanism of "isolated employees": in such circumstances, these employees are registered with the National Insurance (URSSAF) of Strasbourg, which has dedicated services.

France

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in France for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	If the employee has to be registered for French social security, yes, in both scenarios. **Criminal sanction**: « travail dissimulé »: €45,000 and up to 3 years' prison for individuals; €225,000 for legal entities. If the employer is found not to have correctly paid all social security contributions, it would be required to pay any unpaid contributions for the ongoing year and the past three years plus penalties.
Are there any potential French tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer:** The Home Employer will be required to withhold French income tax on the remuneration paid to the employee. • **Overseas Employer:** The Overseas Employer will be required to withhold French income tax on the remuneration paid to the employee. The Overseas Employer can file the so called DSN / PASRAU return or ask a payroll provider to do so on its behalf. It will also need to consider the Permanent Establishment (PE) position. • **Overseas Entity:** The Overseas Entity should not have local French obligations. • **Employee:** If the employee is a resident of France and has his tax domicile in France, he will be subject to French personal income tax on his worldwide income (with a tax credit in most cases in respect of foreign source income earned by the employee).
If employment tax is payable in both France and another country, would double taxation relief be available?	Double tax treaties only provide for measures in order to avoid double taxation on income tax and corporate income tax, and will depend on the overseas jurisdiction. Social contributions do not fall within the scope of double tax treaties.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	Yes, possibly. Please note that the criteria defining a permanent establishment must be reviewed in light of the French domestic provisions first and if that company is a resident of a country which has signed a tax treaty with France, by reference to the provisions of the tax treaty which supersede French domestic law. **Scenario 1:** In summary, tax liability in France is triggered by the nature of the activity carried out in France. Therefore, if the employee of the Overseas Employer is not involved in preparatory or auxiliary activities for the company – for instance advertising or supply of information – but has an activity the general purpose of which is identical to the general purpose of the whole enterprise, the Overseas Employer may be considered as having a permanent establishment in France. Other relevant criteria include the way in which the activity in France is carried out. If the employee is carrying out commercial functions, he/she could be considered as a dependent agent of the Overseas Employer acting in its name and on its behalf if he/she is empowered to conclude contracts or negotiate them without approval from the Overseas Employer. From a tax standpoint, this criterion must not only be complied with formally in the employment contract, it must also be supported by factual elements resulting from the day-to-day activity of the employee in France such as emails with clients and management from the Overseas Employer. **Scenario 2:** This is a risk as the employee's actual work is not dedicated to the Home Employer and he/she receives instructions from the Overseas Entity. This is particularly the case if the employee carries out a commercial activity other than one which is preparatory or auxiliary for the Overseas Entity.

France

Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in France?	Labour leasing is strictly regulated under French law. In particular, it is unlawful to make profit on the leasing of employees, even within the same group of companies. Only temporary work agencies ("*sociétés de travail temporaire*") have the right to make profit on the leasing of employees: these are registered as such, and insured for the activity. Not-for-profit leasing of employees is permitted.
Which rules governing labour leasing in France would apply to either scenario?	• **Time limits:** None. • **Any exceptions for intra-group situations:** Not specifically. • **Formal registration requirements:** None.
Are there any financial penalties/criminal sanctions for non-compliance?	Yes. Prison sentences and financial fines (including financial sanctions for the legal entity and additional penalties, such as being prohibited from participating in public bids).
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to France in either of these scenarios?	**Scenario 1:** No. **Scenario 2**: Not if the transfer to France is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the 'posting' company.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1:** No. **Scenario 2:** Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.

France

Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: • "*Délit de marchandage*" : €30,000 and up to 2 years' prison for individuals; €150,000 for legal entities • "*Prêt de main d'oeuvre illicite*" : €30,000 and up to 2 years' prison for individuals; €150,000 for legal entities • « *Travail dissimulé* » : €45,000 and up to 3 years' prison for individuals; €225,000 for legal entities **Accessory penalties**: Potential publication of the criminal sentences on a "blacklist" (government website): https://liste-noire.travail-emploi.gouv.fr/personnes-morales.html Enhanced powers of the French administration with the possibility for the French authorities to suspend the provision of services in France. **Financial penalties**: On top of other (criminal) sanctions, potential administrative sanctions (art. L.8115-3 of the French Labour Code) of €4,000 (€8,000 in cases of repetition of the offence) per employee.
Immigration	
In scenario 1, would the employee be permitted to work remotely from France for the Overseas Employer if s/he did not have an existing right to work in France?	Yes, a person working remotely from France, for an employer in another jurisdiction, may do so without a work permit. However, we recommend that the labour authorities be informed of such work and their confirmation be obtained before the employee starts working from home. In this case, the work must not produce value for a French entity or be part of a service delivered to a business in France.
If the Overseas Employer were based in France and the employee travelled to France for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in France)?	Business visitor tasks (defined as those performed over a short period and not amounting to hands on operational work) do not require a work permit. The nature of the tasks, frequency and length of visit should be examined to determine if a work permit is required.

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Germany

Home

We have assumed that if an employee relocates to Germany as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Germany ("Overseas Employer") and works for that employer remotely from Germany
- **Scenario 2:** The employee becomes an employee of an entity in Germany ("Home Employer") and is assigned to work remotely for an entity outside Germany ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The Overseas Employer and the employee can agree on the law that governs their employment relationship and therefore it depends on the terms of the employment contract. **Scenario 2:** As an employee of the Home Employer working in Germany, German labour law would generally apply unless agreed otherwise between the Home Employer, or Overseas Entity, and the employee. However, in both scenarios, the agreed choice of law must not exclude certain mandatory provisions under German law if they are more favourable to the employee than the agreed laws for example in relation to termination protection, collective bargaining agreements and annual leave. In addition, certain German statutory protections will apply if it is considered public order law, including but not limited to provisions on: maternity and sick pay, working time and minimum wage. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for German employment law purposes?	Yes, if the employee is assigned to the Overseas Entity for more than 18 months, the Overseas Entity would be deemed an employer for German law purposes. Even within the first 18 months, the employee could be deemed to be an employee of the Overseas Entity, if he/she is treated and behaves as such.
If German employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Not for confidentiality restrictions. Other post-contractual restrictive covenants require compensation of at least 50% of total remuneration in order to be valid.
Does Germany impose any additional obligations in relation to homeworking?	Working from home requires an agreement between the parties. Where the parties fail to agree on compensation, employees will be able to claim for reimbursement of expenses for their home office space (partial rent, heating, internet, etc.) German workplace health and safety regulations apply equally to workplaces and private homes. Employers are therefore required to carry out a risk assessment of any home working arrangements.

Germany

Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Germany? Can an overseas employer operate a local payroll?	**Scenario 1:** If the employee works in Germany and German social security contributions are payable this will often be the case, otherwise no. **Scenario 2:** If the employee works in Germany and German social security contributions are payable this will often be the case, otherwise no. An overseas employer can operate a local payroll but this usually requires service providers to help with mandatory requirements and social security contribution payments.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Germany for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes, in both scenarios tax and social security and other employer duties are required. Employees in Germany will also need to be covered by insurance. Any employer/business (even those based outside Germany) with employees in Germany mandatorily becomes a member of certain bodies and insurances and has to pay contributions. The social security obligations of the employee also result in duties for the employer/business. **Criminal penalties:** Failing to oversee and implement a proper business in Germany can be subject to a fine and criminal prosecution. Breaching tax laws and social security laws is subject to additional fines and criminal prosecutions. **Financial sanctions**: Potentially, up to one million Euros for failing to take relevant supervisory measures required to prevent certain infringements. Additional retroactive payment of taxes and social security contributions in cases of breach plus fines can also be imposed.
Are there any potential German tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer**: The Home Employer would need to withhold German wage tax ("*Lohnsteuer*") on the salary paid to the employee. Permanent establishment issues outside Germany would also need to be considered. • **Overseas Employer**: The Overseas Employer must withhold German wage tax ("*Lohnsteuer*") only if the employee establishes a German permanent establishment or will be considered as a permanent representative of the Overseas Employer in Germany. • **Overseas Entity**: There are no obligations for the Overseas Entity to withhold wage tax in Germany. • **Employee**: A person who has a domicile or their habitual residence (at least 183 days per annum) in Germany, is subject to so-called "German unlimited tax liability", which means that this person is obliged to tax all their worldwide income in Germany, including wages from a foreign employer. However, tax exemptions or tax credits may be applicable due to double tax treaties.
If employment tax is payable in both Germany and another country, would double taxation relief be available?	It depends on the bilateral tax agreement between the countries.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	**Scenario 1**: Yes. **Scenario 2**: It depends on the laws of the country in which the Overseas Entity is located.

Germany

Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Germany?	Strictly regulated, and prohibited without a licence except intra-group leasing for 18 months.
Which rules governing labour leasing in Germany would apply to either scenario?	• **Time limits:** 18 months. • **Any exceptions for intra-group situations:** Yes, but only where the employees are not employed solely to be leased which could be the case in scenario 2. • **Formal registration requirements:** None for intra-group leasing.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal penalties** for: • Illegitimate labour leasing. • Breach of registration requirements. **Financial sanctions**: • Illegitimate labour leasing: Fines of up to €30,000 for each affected employee. • Breach of registration requirements: Fines of up to €30,000 for each affected employee.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Germany in either of these scenarios?	This depends primarily on the type of work being carried out in Germany. The Posted Workers Directive as incorporated into German law does not apply to all posted workers, but *only* to workers that specifically require protection and work in sectors prone to exploitation such as construction and meat processing. **Scenario 1**: It could, as the German legislation implementing the PWD applies to employees in certain sectors as soon as they are sent to work in Germany, regardless of whether the employee is providing those services to an establishment or undertaking in Germany. **Scenario 2**: No, as in this scenario the employee is employed by the Home Employer and is therefore protected by German labour law in any event.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1**: No. **Scenario 2**: Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.

Germany

Home

Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: In repeated or very severe cases. **Financial penalties**: The administrative offence may be punishable by a fine of up to €500,000 in severe cases and by a fine of up to €30,000 in other cases.
Immigration	
In scenario 1, would the employee be permitted to work remotely from Germany for the Overseas Employer if s/he did not have an existing right to work in Germany?	Entry, residence and any work in Germany requires a valid and corresponding residence / work permit. This applies to any work for any company from any country.
If the Overseas Employer were based in Germany and the employee travelled to Germany for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Germany)?	Entry, residence and any work in Germany requires a valid and corresponding residence / work permit. Any work under a tourist visa is illegal and subject to fines and the employee risks being banned. Only short business (non-work) trips for meetings, etc. can be made with a short time tourist/visit visa, otherwise a work visa is required.

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Hong Kong

Home

We have assumed that if an employee relocates to Hong Kong as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Hong Kong ("Overseas Employer") and works for that employer remotely from Hong Kong
- **Scenario 2:** The employee becomes an employee of an entity in Hong Kong ("Home Employer") and is assigned to work remotely for an entity outside Hong Kong ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	In both scenarios, if the employee works in Hong Kong, the mandatory requirements of the Hong Kong Employment Ordinance would apply. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Hong Kong employment law purposes?	The risk is limited unless the Overseas Entity acts as if it were the employer.
If Hong Kong employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	No. The general contractual requirement that such obligations should be supported by consideration, or entered into by way of deed, applies.
Does Hong Kong impose any additional obligations in relation to homeworking?	No.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Hong Kong? Can an overseas employer operate a local payroll?	The employer (overseas or otherwise) can determine its own payroll procedures so long as the following requirements are satisfied: • Under the Hong Kong Employment Ordinance, wages shall be paid directly to employees in legal tender at their place of employment or at any office or other place customarily used by the employer for the purpose of payment of wages or at any other place mutually agreed. • With the consent of an employee, wages may be paid (a) by cheque, money order or postal order; (b) into an account in their name with any bank licensed in Hong Kong; or (c) to their duly appointed agent.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Hong Kong for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	The relevant employer should purchase the mandatory employees' compensation insurance, enrol in the MPF retirement scheme and make necessary tax reporting in respect of the employee. Yes. An employer who fails to purchase the insurance is liable to prosecution and, upon conviction, to a maximum fine of HK$100,000 and imprisonment for two years, and an employer who fails to enrol employees in an MPF scheme is liable to a maximum penalty of a HK$350,000 fine and imprisonment for three years.

Hong Kong

Are there any potential Hong Kong tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Employee**: The employee may be subject to salary tax, depending on their length of stay in Hong Kong and their immigration status. • **Others**: The employment of the employee does not necessarily mean that the Home Employer, the Overseas Employer or the Overseas Entity would be subject to Hong Kong profit tax. Ultimately, Hong Kong generally adopts the territoriality basis of taxation, whereby only profit sourced in Hong Kong is subject to Hong Kong tax.
If employment tax is payable in both Hong Kong and another country, would double taxation relief be available?	Potentially, yes. Hong Kong has entered into double taxation agreements / arrangements with a number of jurisdictions.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	Potentially, yes – it depends on the exact arrangement. Having said that, even if a permanent establishment is found, it does not necessarily mean that profit tax will be payable. This is because taxability of profits in Hong Kong is generally determined based on the source principle of taxation. After the attribution of profits to the permanent establishment in Hong Kong, the source rule would be applied to determine whether and, if so, to the extent such profits should be taxed.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Hong Kong?	Permitted without restriction.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Hong Kong in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Hong Kong.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
In scenario 1, would the employee be permitted to work remotely from Hong Kong for the Overseas Employer if s/he did not have an existing right to work in Hong Kong?	The employee would not be permitted to work remotely from Hong Kong if s/he did not have an existing right to work in Hong Kong.

Hong Kong

Home

If the Overseas Employer were based in Hong Kong and the employee travelled to Hong Kong for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Hong Kong)?	It depends on what exactly the employee will be doing in Hong Kong. For example, it is not necessary to obtain a work visa if the employee enters Hong Kong to attend short-term seminars or other business meetings.

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India

We have assumed that if an employee relocates to India as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside India ("Overseas Employer") and works for that employer remotely from India
- **Scenario 2:** The employee becomes an employee of an entity in India ("Home Employer") and is assigned to work remotely for an entity outside India ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The employment laws of the foreign country where the Overseas Employer is situated will apply. The employees will also be subject to the terms of their employment agreement with the Overseas Employer. **Scenario 2**: Indian employment laws will apply. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Indian employment law purposes?	There is no risk of the Overseas Entity being considered as the employer of the affected employee for the purposes of Indian labour laws, as there is no employer-employee relationship between the Overseas Entity and the employee. It should be ensured that: (i) salary to the affected employee is remitted by the Home Employer (and not by the Overseas Entity) and that the Home Employer is complying with the applicable labour laws in India (such as social security contributions, gratuity payments, etc.) and other aspects such as working hours, leave, overtime payments, etc. (ii) services are provided by the Home Employer to the Overseas Entity on a principal-to-principal basis for arms' length consideration; and (ii) the individual provides services to the Overseas Entity under the control and supervision of the Home Employer and is subject to the employment policies of the Home Employer.
If Indian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	No.
Does India impose any additional obligations in relation to homeworking?	No.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in India? Can an overseas employer operate a local payroll?	Depending on the nature of the arrangement and length of stay of the employee, there may be tax withholding obligations on the Overseas Entity/Home Employer on salary payments made to employees during their stay in India. Accordingly, for practical purposes, a local payroll provider may be required. Overseas employers may not operate a local payroll.

India

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in India for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	**Scenario 1**: Depending on the nature of the arrangement and length of stay of the employee, there may be tax withholding obligations on the Overseas Employer on salary payments made to employees during their stay in India. In such cases, tax registrations will be required. No benefits are required to be provided to such employees under any Indian labour laws since they will be engaged by the Overseas Employer. **Scenario 2**: Since the Home Employer would be an Indian entity, it is assumed that the Home Employer will already have tax registrations in place. The Home Employer will have to ensure compliance with the necessary tax withholding obligations and applicable Indian labour and employment laws in terms of social security contributions, gratuity, and other benefits prescribed for eligible employees. **Penalties**: Yes, there will be tax implications and financial/criminal penalties for non-compliance with the requirements under Indian employment and taxation laws. With respect to non-compliance of withholding tax obligations, the law levies financial penalties which include recovery of tax, 100% penalty amount equivalent to the tax amount, and interest payment. Penalties under Indian labour laws vary according to the applicable legislation and the nature of non-compliance.
Are there any potential Indian tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	Depending on the duration of arrangement: • **Home Employer**: The Home Employer would need to deduct and withhold income tax at source and pay it to the Indian tax authorities. • **Overseas Employer**: The Overseas Employer would be required to register and pay the withheld tax of the employee to the Indian tax authorities. Further, depending upon the nature of the arrangement and length of stay of the employee in India, the Overseas Employer may run the risk of having a taxable presence in India. A taxable presence (i.e. business connection/permanent establishment) leads to taxation of profits which are attributable to such presence in India. • **Overseas Entity**: The arrangement between the Home Employer and the Overseas Entity will have to be structured appropriately in order to mitigate any kind of taxable presence risk of the Overseas Entity in India. Employee: The employee would be required to lodge Indian tax returns and pay Indian tax.
If employment tax is payable in both India and another country, would double taxation relief be available?	In **Scenario 1** there would be no employment tax payable in India since the employee will be engaged with the Overseas Employer. In **Scenario 2**, the employee will only be required to make payment of professional tax (which varies from state to state in India) as per the prescribed qualifying criteria, which shall not be covered under any Double Taxation Avoidance Agreement between India and a foreign country.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	**Scenario 1:** Potentially, yes. **Scenario 2:** The risk of this is likely to be low, although it is still possible.

India

Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in India?	Labour leasing (i.e. the arrangement where a manpower service provider / labour contractor hired by an entity (principal employer) acts as an independent agent (contractor) to employ workers (contract labour) to render services to the company (principal employer) at its premises, thereby obviating the need for a direct employer-employee relationship between the company and the workers) is not uncommon in India and is governed by the Contract Labour (Regulation and Abolition) Act, 1970 ("Contract Labour Act"), subject to the thresholds prescribed therein (which vary from state to state) The Contract Labour Act regulates the engagement of contract labour in certain establishments and to provide for its abolition in certain circumstances (such as in core activities of an establishment).
Which rules governing labour leasing in India would apply to either scenario?	**Scenario 1**: The Contract Labour Act will not apply in Scenario 1 since the employees are directly employed by the Overseas Employer without an intervening contractor. **Scenario 2**: The Contract Labour Act will apply when the contract labour (employed by the contractor) are rendering services on the premises of the principal employer situated in India. In Scenario 2, where the employee is employed by the Home Employer and rendering services to the Overseas Entity from India (and not on the premises of the Overseas Entity), the Contract Labour Act will not apply since the employees are not engaged through a third party agency.
Are there any financial penalties/criminal sanctions for non-compliance?	Not applicable, since the Contract Labour Act would not be applicable in either scenario.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to India in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply to employees in India.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).

Immigration	
In scenario 1, would the employee be permitted to work remotely in India for the Overseas Employer if s/he did not have an existing right to work in India?	There is no specific work permit / work authorization required to be obtained by Indian employees to render services in / from India. Foreign nationals entering India would be required to obtain the appropriate visa.
If the Overseas Employer were based in India and the employee travelled to India for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in India)?	Yes, subject to the activities that the employee will be performing in India. Business visas are granted for limited purposes in India and the activity of the employee must fall within such purpose.

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Italy

We have assumed that if an employee relocates to Italy as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Italy ("Overseas Employer") and works for that employer remotely from Italy
- **Scenario 2:** The employee becomes an employee of an entity in Italy ("Home Employer") and is assigned to work remotely for an entity outside Italy ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** Italy's laws would apply, being the country in which the employee habitually carries out his/her work. The country where the work is habitually carried out shall not be deemed to have changed if the employee is temporarily employed in another country. **Scenario 2:** The Home Employer's laws would apply, i.e. Italy's. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Italian employment law purposes?	The risk of the Overseas Entity being deemed to be the employer or co-employer cannot be excluded.
If Italian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	A non-competition obligation would require specific compensation in order to be enforceable. As far as consideration is concerned, it must meet a proportionality test, i.e. it should include proper economic compensation and should be in proportion to the reduction of the employee's earning capacity. A confidentiality undertaking would not require specific compensation.
Does Italy impose any additional obligations in relation to homeworking?	In the case of homeworking ('*telelavoro*'), employers must organize and install employees' workstations and inform employees about the company's policies on health and safety at work and about the requirements related to video terminals. Subject to notice and the employee's previous consent, employers may access the employee's home to verify compliance with health and safety regulations. The relevant health and safety provisions set out in legislative decree no. 81/2008 on health and safety protection in the workplace apply to homeworking.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Italy? Can an overseas employer operate a local payroll?	Whether or not a local payroll is required depends on how the work relationship is structured, how long it lasts and in particular on whether social contributions obligations arise vis-à-vis Italian tax authorities. In any case, it is advisable to engage a local payroll agent in order to coordinate multijurisdictional issues on tax and social security matters. **Scenario 1:** There is no restriction on an overseas employer operating as a local payroll agent for its employees. In any case, it is advisable to engage a local payroll agent. **Scenario 2:** Assuming that the employee is employed by an Italian employer, the Overseas Entity would not be responsible for local payroll administration.

Italy

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Italy for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Assuming that the Overseas Employer or the Overseas Entity has no permanent establishment in Italy, no registration should, in principle, be required for taxation purposes. With reference to social security contributions, in general and without prejudice to bilateral social security agreements and posted workers regulations, the Overseas Employer or the Overseas Entity conducting its business in Italy may be required to pay social contributions on the basis of the territoriality principle (i.e. where the employee works, regardless of the employee's residence). **Criminal penalties**: None. **Financial penalties**: A wide range of penalties, depending on the specific circumstances, could be applied. The factual background may affect the quantum of applicable penalties.
Are there any potential Italian tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer**: Yes, the Home Employer as tax resident, would, in principle, be required to pay taxes in Italy. • **Overseas Employer**: If the Overseas Employer is not resident in Italy, it would not be required to pay taxes in Italy. However, the Overseas Employer should consider whether it has a permanent establishment in Italy, in which case tax implications may arise. Due consideration should also be given to any bilateral tax treaties signed by the relevant countries. • **Overseas Entity**: The Overseas Entity should not have tax implications in Italy. However, tax implications cannot be excluded if the Overseas Entity has a permanent establishment in Italy. Specifically, if the assigned employee contributes to the stable organization of the company in Italy, Italian authorities may consider the employee as an element in support of the existence of a permanent establishment and consequently request the Overseas Entity to pay taxes in Italy on profits generated therein. • **Employee**: The employee would pay taxes in Italy if he/she is resident in Italy or if he/she is considered as tax resident (*i.e.*, among others, if the permanence in Italy lasts more than 183 days in a year). Due consideration should also be given to any bilateral tax treaties signed by the relevant countries.
If employment tax is payable in both Italy and another country, would double taxation relief be available?	In principle, the tax rules of the employee's country of residence should apply. There is a possibility that the employee and the Home Employer or Overseas Employer may also have to pay taxes in another country. In addition to its domestic arrangements providing relief from international double taxation, Italy has entered into double taxation treaties with a number of countries/jurisdictions to prevent double taxation.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	Yes. In some situations, there may be a risk that the employee's activities or presence in Italy could create a permanent establishment for the employer in that country. This would be the case if, for example, the employee has a sales or business development role and is habitually exercising an authority to conclude contracts in the name of the employer while in Italy.

Italy

Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Italy?	Labour leasing (except by work agencies) and hidden employment are prohibited. Secondments and service agreements ("*appalto*") are regulated.
Which rules governing labour leasing in Italy would apply to either scenario?	• **Any time limits:** Secondments must be "temporary" (i.e. time limited). Service agreements are not time limited, but these should ideally be genuine agreements for services managed by the Home Employer. • **Any exceptions for intra-group situations:** No. • **Formal registration requirements**: For secondments, registration requirements apply.
Are there any financial penalties/criminal sanctions for non-compliance?	In the case of fraudulent labour leasing, the Overseas and Home Employers would be liable for criminal fines of €20 per employee per day. Financial penalties for illegitimate labour leasing: • Employee can claim an employment relationship with the Overseas Entity, plus damages of up to 12 months' salary; • Unauthorised supply of employees: €60 per day of work per employee; and • Other potential financial penalties may be applied up to €1,250. Breach of mandatory communication of the hiring of an employee: €100-500 per employee.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Italy in either of these scenarios?	**Scenario 1:** Assuming that the employee simply moves to Italy without working for an entity in Italy, the PWD should not apply. **Scenario 2:** Not if the transfer to Italy is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the 'posting' company.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1**: No. **Scenario 2**: Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	There are various financial penalties payable, depending on the nature of the breach. Penalties range from €180-600 for failing to make the advanced declaration within 24 hours of the start of the posting up to €50,000 for irregular postings. Irregular posting may be criminally sanctioned as fraudulent labour leasing, if the posting is not genuine and it is aimed at violating internal legislation or the provisions of a National Collective Bargaining Agreement.

Italy

Home

Immigration	
In scenario 1, would the employee be permitted to work remotely in Italy for the Overseas Employer if s/he did not have an existing right to work in Italy?	If the employee does not have an existing right to work in Italy, in order to be able to work from Italy for an Overseas Employer, they must hold an Italian Residence Permit allowing them to work.
If the Overseas Employer were based in Italy and the employee travelled to Italy for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Italy)?	Generally, if an employee does not have an existing right to work in Italy, for occasional work-related visits to Italy they will be required to obtain a business visa. In order to obtain the business visa, the employee must be travelling to Italy for economic or commercial purposes which means that their permitted activities in Italy would be limited to business meetings and conferences, undertaking negotiations, conducting on-site visits and promotional activities.

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Poland

Home

We have assumed that if an employee relocates to Poland as their "home country" and is living and working there for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Poland ("Overseas Employer") and works for that employer from Poland
- **Scenario 2:** The employee becomes an employee of an entity in Poland ("Home Employer") and is assigned to work for an entity outside Poland ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The Overseas Employer's employment laws will apply, and workers posted from other EEA and non-EEA countries will be partially covered by Polish legislation, unless the legislation of the Overseas Employer´s state is more favourable for the employee. **Scenario 2:** The laws of the Home Employer would apply (i.e. Poland). In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Polish employment law purposes?	This scenario may constitute prohibited labour leasing. It may also create a risk of the Overseas Entity being deemed to be the employer for Polish employment law purposes.
If Polish employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Restrictive covenants are allowed. Post-termination non-competition provisions must be paid for.
Does Poland impose any additional obligations in relation to homeworking?	There are different forms of homeworking available in Poland (remote work, teleworking, and home office). Remote work is allowed at the instruction of the employer during the COVID-19 pandemic and for up to three months afterwards. Teleworking is allowed on the basis of an agreement with the employee and internal regulations. Home office working is not regulated but is used in practice and regulated in individual employment agreements. For all forms, the Labour Code imposes an overall duty to ensure the health and safety of employees. Employers should carry out a risk assessment of the work activities to be carried out at home to ensure appropriate measures are taken to reduce any associated risks. Employers should regularly check and review these to ensure nothing has changed. In a telework arrangement, the employer is responsible for providing equipment for teleworking (e.g. a computer and printer), their insurance, installation and maintenance. In a remote work arrangement, the employer must arrange for tools and materials required for remote working as well as logistical support for the same.

Poland

Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Poland? Can an overseas employer operate a local payroll?	Possibly in both scenarios, but it would depend on a number of factors. There is no prohibition on overseas employers operating a local payroll, however, in practice they would need to speak Polish and have operational knowledge of the Polish system.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Poland for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes, for the Overseas Employer if the employee would be subject to Polish social security. **Criminal sanctions**: Yes. In the Criminal Code there are provisions related to social insurance. Whoever violates the social insurance provisions is subject to a fine and potentially imprisonment of up to two years. In the Penal and Fiscal Code there are also provisions relating to taxes. A taxpayer who, by evading taxation, fails to disclose to the competent authority the subject matter or the taxable amount, or fails to submit a tax return, thereby resulting in a loss, is subject to a fine of up to 720 times the daily rate or to imprisonment, or both. **Financial penalties:** In cases of breaches of social security regulations, the Criminal Code provides that the fine shall not amount to less than 10 times or more than 540 times the daily rate. The daily rate may not amount to less than PLN 10 or more than PLN 2,000. In cases of breaches of tax regulations, the Penal and Fiscal Code provides that a taxpayer is subject to a fine of up to 720 times the daily rate. The daily rate may not be less than one-third of the minimum wage or exceed 400 times the minimum wage.
Are there any potential Polish tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer:** The Home Employer will usually be required to register the employee for social security and withhold personal income tax advances. It may also need to consider whether it has any employment tax obligations in the Overseas Entity country. • **Overseas Employer:** The Overseas Employer will need to consider whether it is required to register the employee for social security in Poland and operate a local payroll. It will also need to consider the Permanent Establishment (PE) position and whether it has any employment tax obligations in its own country. • **Overseas Entity:** The Overseas Entity should not have local obligations (unless it may be considered a hidden employment /co-employment). It will need to consider the PE position and whether it has any employment tax obligations in its own country. • **Employee**: In scenario 1, if the Overseas Employer does not operate a local payroll then the employee will need to deal with paying income tax/social security based on agreement with the employer. They will need to check their personal income tax position. If the employee is taxed in both countries, they will need to consider whether they can claim double taxation relief.
If employment tax is payable in both Poland and another country, would double taxation relief be available?	This needs to be checked on a country by country basis, but in general yes.

Poland

Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	Yes, they may, mostly depending on the employee's role.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Poland?	Labour leasing is prohibited. Only registered temporary employment agencies may employ employees for the purpose of working for end-user clients.
Which rules governing labour leasing in Poland would apply to either scenario?	• **Time limits**: For intra-group secondments outside of Poland, the Polish law does not define maximum duration of such secondment, however, different rules may apply during first 12/18 months of such secondment and in further periods depending on the laws of Overseas Entity country. • **Any exceptions for intra-group situations**: Not for intra-group secondments within Poland. Intra-group secondments outside of Poland are permitted provided that they meet requirements for a secondment defined in Polish law implementing Posted Workers' Directive and not constitute prohibited labour leasing. • **Formal registration requirements**: There are no registration requirements in Poland for intra-group secondments outside Poland.
Are there any financial penalties/criminal sanctions for non-compliance?	• **Criminal sanctions**: Yes, criminal fines may be applicable. • **Financial penalties**: 30.000 PLN per person per breach.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Poland in either of these scenarios?	**Scenario 1:** No. **Scenario 2:** Not if the transfer and employment in Poland is permanent, as this would fall outside the PWD. Furthermore, the PWD only apply to a posting where the employee remains employed by the 'posting' company. It could apply to the posting by the Home Employer to the Overseas Entity, if the conditions for posting are met.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1:** No. **Scenario 2:** Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.

Poland

Home

Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: Yes. Whoever, while performing actions related to labour law and social insurance, maliciously or persistently infringes the rights of an employee arising from employment or social insurance, is subject to a fine and potentially imprisonment of up to two years. **Financial penalties**: 30.000 PLN per person per breach.
Immigration	
In scenario 1 would the employee be permitted to work remotely from Poland for the Overseas Employer if s/he did not have an existing right to work in Poland?	No, he/she would need a valid work visa.
If the Overseas Employer were based in Poland and the employee travelled to Poland for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Poland)?	If the employee does not already have the right to work in Poland, he/she may need a work visa depending on the exact nature of the work they will be doing when visiting Poland.

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Qatar

Home

We have assumed that if an employee relocates to Qatar as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Qatar ("Overseas Employer") and works for that employer remotely from Qatar
- **Scenario 2:** The employee becomes an employee of an entity in Qatar ("Home Employer") and is assigned to work remotely for an entity outside Qatar ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** It is not possible for an employee to live and work in Qatar without a valid work visa and residency permit. Therefore, if the employee is living and working in Qatar, the laws of Qatar will apply. **Scenario 2:** It is not possible for an employee to live and work in Qatar without a valid work visa and residency permit, unless they are a Qatari national. Therefore, if the employee is living and working in Qatar, the laws of Qatar will apply. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Qatar employment law purposes?	From a Qatar law perspective, the employer is the Qatar entity which sponsors the employee for their work visa and residency permit.
If Qatar employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	There is no prohibition on confidentiality or non-competition provisions (in fact breach of confidentiality can be a criminal offence) and there is no requirement to provide a payment for the same. However, a company is limited to relief under the Civil Code to claim damages for a breach of a non-competition provision.
Does Qatar impose any additional obligations in relation to homeworking?	No, there are no specific additional obligations. However, an employer is obligated by law to provide a safe working environment.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Qatar? Can an overseas employer operate a local payroll?	Yes, it is a requirement of the Qatar Labour Law that salary should be paid in local currency (Qatar Riyals – QR). In practice, some employers choose to pay part of an employee's salary in another jurisdiction (e.g. for U.S. nationals to pay a percentage of their salary in the U.S.). A reasonable amount depending on title and market practice should be paid locally in order to satisfy the requirements of the wage protection system (WPS) in Qatar. The WPS does not apply to companies licensed in the Qatar Financial Centre. An overseas employer cannot operate a local payroll.

Qatar

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Qatar for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	There is no personal income tax in Qatar. An entity with a permanent establishment is required to register for the corporate income tax in Qatar. **Financial penalties**: Income Tax Law No. 24 of 2018 provides for a range of financial penalties depending on the nature of the breach. The penalty is US$ 137,000 for not disclosing any information that might be requested by the Tax Department based on international treaties for the purpose of the international exchange of information for the avoidance of double taxation survey.
Are there any potential Qatar tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	No, there is no personal income tax in Qatar.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	Qatar has a flat rate corporate income tax and a withholding tax regime. Qatar imposes the flat rate corporate tax on those entities with a permanent establishment in Qatar. Those foreign entities deriving revenue from Qatar without a permanent establishment will be subject to a withholding tax by an entity in Qatar deriving the benefit of the services of the foreign entity.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Qatar?	While the concept of labour leasing is not technically recognised in Qatar, the authorities permit the practice of labour leasing by contract between entities legally established in Qatar. An entity may also second employees to another entity under the Labour Law. The practice of a Qatari company or individual hiding or covering up the business of a foreign entity or employment of a foreign worker is illegal and violates the Proxy Law.
Which rules governing labour leasing in Qatar would apply to either scenario?	• **Any time limits:** In practice, secondments must be temporary and should only last between one month and one year. However, the duration of the labour leasing arrangement is subject to the agreement between the lessor and the lessee. • **Any exceptions for intra-group situations:** No, but intra-group secondments are permitted. • **Formal registration requirements:** No, unless the lessor would like to submit a copy of the lease agreement to the Ministry of Labour or the Immigration Department in order to be able to obtain more visa approvals to bring in more expat workers.
Are there any financial penalties/criminal sanctions for non-compliance?	No.

Qatar

Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Qatar in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Qatar.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
In scenario 1, would the employee be permitted to work remotely from Qatar for the Overseas Employer if s/he did not have an existing right to work in Qatar?	No. In order to lawfully reside and work in Qatar, all expatriate employees must be sponsored by a locally licensed entity for Qatar work residency permit purposes. The work residency permit should include residency visa + Qatari ID Card (WRP). Sponsorship is employer-specific, permitting the individual to work only for the employer through whom they have obtained their WRP. Women living in Qatar on family residency permit (FRP) should obtain a separate work permit from the Ministry of Labour. Qatar nationals do not require sponsorship or WRP. GCC nationals (namely, citizens of Bahrain, Kuwait, Oman, UAE and Saudi Arabia) are treated slightly differently in that there is no requirement to procure and obtain a Qatar WRP for them due to the concept of freedom of movement across the GCC member states. However, they should obtain a separate work permit similar to the permits issued to women living in Qatar on FRP.
If the Overseas Employer were based in Qatar and the employee travelled to Qatar for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Qatar)?	If the Overseas Employer is located in Qatar and the employment relationship is established between a Qatar entity and an individual who does not have an existing right to work in Qatar, the employee will be required to obtain a work visa and residence permit for the benefit of the Qatar entity.

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Russia

Home

We have assumed that if an employee relocates to Russia as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Russia ("Overseas Employer") and works for that employer remotely from Russia
- **Scenario 2:** The employee becomes an employee of an entity in Russia ("Home Employer") and is assigned to work remotely for an entity outside Russia ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** Russian employment laws would not apply. **Scenario 2:** As a general rule, Russian employment laws would apply, but it would depend on how the assignment is formalised. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Russian employment law purposes?	No.
If Russian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Restrictive covenants (non-competition, non-solicitation, etc.) are void under Russian law. Confidentiality provisions – no requirement for payment.
Does Russia impose any additional obligations in relation to homeworking?	Remote working must be formalised by means of a remote employment contract (or an addendum to the standard employment contract, if the employee has been transferred to remote working). A remote employment contract must contain certain specific provisions, including, but not limited to: • health & safety requirements; • reporting requirements; • special rules governing exchange of documents; • use of encrypted digital signatures; • working hours; • reimbursement of expenses associated with remote work; and • special grounds for termination.

Russia

Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Russia? Can an overseas employer operate a local payroll?	**Scenario 1:** No. **Scenario 2:** Yes, depending on how the assignment is formalised. An overseas employer cannot operate a local payroll.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Russia for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Very likely, if the tax authorities consider such employment arrangements as establishing a tax presence in the territory of Russia. **Criminal sanctions**: The maximum criminal liability for carrying out business activities without registration is: • a fine of up to RUR 500,000; • a fine representing the wages or other income of the convicted person for a period of between 1-3 years; • forced labour for up to five years; or • imprisonment for up to five years, depending on the amount of damage. **Financial penalties**: From RUR 10,000 up to the percentage of income received during the specified time as a result of such activities, but not less than RUR 40,000 in cases of administrative liability.
Are there any potential Russian tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer**: The Home Employer will usually be required to deduct personal income tax (PIT) which amount may depend on the tax residency status of the employee. It may also need to consider whether it has any employment tax obligations in the Overseas Entity country. • **Overseas Employer**: The Overseas Employer will need to consider whether it is required to operate PIT via a local payroll. It will also need to consider the Permanent Establishment (PE) position and whether it has any employment tax obligations in its own country. • **Overseas Entity:** The Overseas Entity should not have local PIT obligations. It will need to consider the PE position and whether it has any employment tax obligations in its own country. • **Employee:** In scenario 1, if the Overseas Employer does not operate a local payroll then the employee will need to deal with paying PIT. In scenario 2, the Home Employer deducts PIT. If the employee is taxed in both countries, s/he will need to consider whether s/he can claim double taxation relief. It will need to consider the PE position and whether it has any employment tax obligations in its own country.
If employment tax is payable in both Russia and another country, would double taxation relief be available?	It depends on the bilateral tax agreement between the relevant countries.

Russia

Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	**Scenario 1:** Yes. **Scenario 2**: It depends on the laws of the Overseas Entity.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Russia?	Labour leasing and agency work is forbidden subject to certain limited exceptions. These exceptions are strictly regulated.
Which rules governing labour leasing in Russia would apply to either scenario?	• **Time limits:** It depends on the reason for the leasing of personnel in both scenarios. • **Any exceptions for intra-group situations:** Accreditation is not required.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: The maximum criminal fine for carrying out business activities without registration is RUR 500,000. **Financial penalties**: A breach leads to administrative liability. The administrative fines for labour law violations range from RUR 1,000 to RUR 5,000 for officers; from RUR 30,000 to RUR 50,000 for legal entities; and from RUR 10,000 to RUR 20,000 and from RUR 50,000 to RUR 70,000 for repeated offences, respectively.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Russia in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Russia.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
In scenario 1, would the employee be permitted to work remotely from Russia for the Overseas Employer if s/he did not have an existing right to work in Russia?	Generally, yes, however, it is necessary to take into consideration: • the type of visa the employee holds; • the purpose of their staying in Russia; and • their tax residency.

Russia

Home

If the Overseas Employer were based in Russia and the employee travelled to Russia for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Russia)?	If the Overseas Employer is located in Russia and the employment relationship is established between a Russian entity and an individual who does not have an existing right to work in Russia, such an employee must have a work visa and a valid work permit regardless of the place from where s/he is performing their job duties for the benefit of the Russian entity and regardless of the nature of the work being carried out when visiting Russia.

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Saudi Arabia

Home

We have assumed that if an employee relocates to Saudi Arabia as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Saudi Arabia ("Overseas Employer") and works for that employer remotely from Saudi Arabia
- **Scenario 2:** The employee becomes an employee of an entity in Saudi Arabia ("Home Employer") and is assigned to work remotely for an entity outside Saudi Arabia ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** It is not possible for an employee to live and work in Saudi Arabia ("KSA") without a valid work permit and residence visa, therefore, if the employee is living and working in the KSA, local KSA laws will apply. **Scenario 2:** It is not possible for an employee to live and work in the KSA without a valid work permit and residence visa, therefore, if the employee is living and working in the KSA, local KSA laws will apply. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for KSA employment law purposes?	From a KSA law perspective, the employer is the KSA entity which sponsors the employee for their work visa and residency permit.
If KSA employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	No. There is no prohibition on confidentiality or non-competition provisions and there is no requirement to provide a payment for the same. Breaching non-competition or confidentiality provisions gives grounds for a claim by the employer for breach of contract.
Does Saudi Arabia impose any additional obligations in relation to homeworking?	No, there are no specific additional obligations. However, an employer is obligated by law to provide a safe working environment.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Saudi Arabia? Can an overseas employer operate a local payroll?	Yes. The KSA implemented the Wage Protection System which requires employers to file their payroll with the Ministry of Human Resources and Social Development. The Wage Protection System currently applies to entities with 11 employees or more. No, it is not possible for an overseas employer to operate a local payroll.

Saudi Arabia

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Saudi Arabia for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes. Employers within the KSA must register themselves with the General Authority for Zakat and Tax, and register themselves and their employees with the General Organization for Social Insurance. Social insurance contributions for foreign employees are 2% of the wage (paid by the employer), and 22% of the wage for Saudi nationals (10% paid by the employee and 12% paid by the employer). **Financial penalties**: SAR 10,000 and SAR 20,000 on reoccurrence of the violation. Additionally, every violation shall be multiplied with the number of contributors to which the violations relates, or multiplied by the number of misstatements or information withheld.
Are there any potential KSA tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	No, there is no income tax in Saudi Arabia.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	**Scenario 1:** No. **Scenario 2:** This will depend on the laws of the Overseas Entity.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Saudi Arabia?	There is no concept of labour leasing in the KSA. The Labor Law prohibits an employer from allowing its employee to work for another employer. However, an exception to that is if the employee was bona fide seconded to another entity through the "Ajeer" system, however, that only applies to local secondments between local entities in KSA.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Saudi Arabia in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Saudi Arabia.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).

Saudi Arabia

Home

Immigration	
In scenario 1, would the employee be permitted to work remotely from Saudi Arabia for the Overseas Employer if s/he did not have an existing right to work in Saudi Arabia?	No. In order to lawfully reside and work in the KSA, all expatriate employees must be sponsored by a locally licensed entity for KSA work permit and residency visa purposes. Such sponsorship is both employer-specific and location-specific, permitting the individual to work only for the employer through whom they have obtained their visa and at the location specified in the visa.
If the Overseas Employer were based in Saudi Arabia and the employee travelled to Saudi Arabia for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Saudi Arabia)?	If the Overseas Employer is located in the KSA and employment relations are established between a KSA entity and an individual who does not have an existing right to work in the KSA, the employee will require a work permit and residence visa regardless of the place from where he/she is performing his/her job duties for the benefit of the KSA entity, unless s/he is visiting simply to attend a business meeting. An assessment of this will depend on whether the individual will be performing revenue generating work in the KSA. Please note, however, that the Saudi government has recently announced a new short-term work visa for certain foreign nationals. Further details about these new visas are expected in the near future.

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Singapore

Home

We have assumed that if an employee relocates to Singapore as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Singapore ("Overseas Employer") and works for that employer remotely from Singapore
- **Scenario 2:** The employee becomes an employee of an entity in Singapore ("Home Employer") and is assigned to work remotely for an entity outside Singapore ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The employment laws of Singapore as the home country will likely apply here. **Scenario 2:** The employment laws of Singapore as the Home Employer will apply. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Singaporean employment law purposes?	Under certain laws, the rightful employer is dependent on the factual circumstances, i.e. who has control over the employee. Accordingly, there is a risk that the Overseas Entity may be determined to be the rightful employer of the employee. However, such a risk is very low as long as there is a clear contractual relationship between the employee and the Home Employer.
If Singaporean employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	No payment is required for confidentiality or non-competition provisions. However, non-competition provisions are generally invalid as being against public policy unless there are legitimate business interests to be protected and the provisions are drafted no wider than is necessary to protect those interests. Payment is not required in order to enforce such provisions. Confidentiality provisions are enforceable under Singapore law and do not require payment for enforcement.
Does Singapore impose any additional obligations in relation to homeworking?	There are no additional obligations imposed on employers when employees work from home in Singapore. Employees working from home have the same rights as those working on site.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Singapore? Can an overseas employer operate a local payroll?	**Scenario 1:** If the employee remains employed by the Overseas Employer, local payroll is not required in Singapore. **Scenario 2:** Yes, local payroll would be required. If an overseas employer does not have a local entity in Singapore, it would be difficult for such an employer to operate a local payroll.

Singapore

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Singapore for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	There is no requirement for the Overseas Employer or Overseas Entity to register locally for tax, social security or other benefits. It is possible for the Overseas Employer/Overseas Entity to pay Central Provident Fund contributions for employees who are Singapore citizens or permanent residents and working in Singapore. However, in scenario 2, the Home Employer would have an obligation to pay Central Provident Fund contributions for such employees and as such the Overseas Entity would not need to do the same. No financial penalties/criminal sanctions are applicable.
Are there any potential Singapore tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer**: While there is no requirement to withhold monthly taxes, the Home Employer is required to complete a return of remuneration form setting out the various payments in relation to the employment for the year. In the case of departing employees who are non-Singapore citizens, written notice (Form IR21 – Notice of Cessation of Employment of non-Singapore Citizens) must be given to the Inland Revenue Authority of Singapore (IRAS) at least one month prior to the date on which the person ceases employment or leaves Singapore permanently, or for a period exceeding three months. In addition, the Home Employer must retain any money that is due to the employee until IRAS grants tax clearance. Where required, the Home Employer is to pay the employee's tax from the retained sum(s). Form IR21 tax clearance is, however, not required for short-term visiting employees working for no more than 60 days in a calendar year or employees who worked for more than 183 days in Singapore but earned less than S$21,000 annually. • **Overseas Employer**: The Overseas Employer may be exposed to the risk of establishing a Permanent Establishment in Singapore, as discussed below. • **Overseas Entity**: No potential tax implications foreseeable. • **Employee**: The employee's income attributable to services rendered in Singapore is subject to tax in Singapore if employment is exercised in Singapore for more than 60 days in a calendar year.
If employment tax is payable in both Singapore and another country, would double taxation relief be available?	Whether or not tax is payable in another country would depend on the tax laws of that other country. Whether double taxation relief is available will depend on whether there is an applicable Double Tax Agreement ("DTA") between Singapore and that other country.

Singapore

Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	**Scenario 1**: The risk of creating a permanent establishment ("PE") is higher. Whether a PE exists or otherwise is largely a question of fact and would entail a consideration of, amongst other things, the nature of the activities or work scope in Singapore and any DTA between Singapore and the other country. The general position is that a foreign entity shall be deemed to have a PE in Singapore if the person acting on behalf of that foreign entity: • has and habitually exercises an authority to conclude contracts; • maintains a stock of goods and merchandise for the purpose of delivery on behalf of that foreign entity; or • habitually secures orders wholly or almost wholly for that foreign entity or for such other enterprises as are controlled by that foreign entity. A foreign entity is not deemed to have a PE merely because that enterprise carries on business through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of their business. **Scenario 2**: The risk of creating a PE is low, as there is an employment relationship between the employee and the Home Employer.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Singapore?	In general, there are no express prohibitions or regulations in Singapore against these suggested scenarios.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Singapore in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Singapore.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).

Singapore

Home

Immigration	
In scenario 1, would the employee be permitted to work remotely from Singapore for the Overseas Employer if s/he did not have an existing right to work in Singapore?	Only if a valid work pass is obtained from the Ministry of Manpower. Generally, to apply for a work pass for a foreign employee (i.e. someone who is neither a Singapore citizen nor a Singapore Permanent Resident), the employing entity must establish a presence, in the form of a subsidiary company or a branch office in Singapore. In scenario 1, the Overseas Employer may obtain a work pass provided there is a local sponsor company willing to be responsible for the foreigner.
If the Overseas Employer were based in Singapore and the employee travelled to Singapore for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Singapore)?	This would depend on the work scope expected of the employee when s/he is in Singapore. Activities such as attending seminars and conferences, providing expertise to transfer knowledge on process of new operations in Singapore and participating in an exhibition as an exhibitor would be eligible for work pass exemption. In addition, the employee will be entitled to attend company meetings, corporate retreats or meetings with business partners without a work visa or a work pass exemption.

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Slovak Republic

Home

We have assumed that if an employee relocates to the Slovak Republic as their "home country" and is living and working there for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside the Slovak Republic ("Overseas Employer") and works for that employer from the Slovak Republic
- **Scenario 2:** The employee becomes an employee of an entity in the Slovak Republic ("Home Employer") and is assigned to work for an entity outside the Slovak Republic ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The laws of the Slovak Republic would apply, unless the Overseas Employer's labour regulations are more beneficial for the employee (and the relationship is deemed a posting). **Scenario 2:** The Home Employer's laws would apply (i.e. the Slovak Republic's), unless the Overseas Employer's labour regulations are more beneficial for the employee. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Slovakian employment law purposes?	Yes.
If Slovak Republic employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	There is no statutory requirement for compensation for confidentiality clauses. However, it is not permissible to require confidentiality regarding an employee's working conditions, including salary, benefits, bonuses, etc. Any such agreements or clauses in employment contracts would be deemed void. As regards non-competition clauses: • during the employment relationship – there is no need to compensate the employee and the employee may carry out such competitive activities only subject to the employer's consent; or • after the relationship – if the employer and employee agree on a post-termination non-competition clause, the employer would be legally required to compensate the employee. Maximum one year in duration, at least 50% in average monthly wages, in monthly recurring payments.

Slovak Republic

Does the Slovak Republic impose any additional obligations in relation to homeworking?	Under normal circumstances, employment agreements need to contain a specific clause that stipulates an agreement between the employer and the employee on working from home. Under COVID-19 emergency legislation, employers are permitted to unilaterally order employees to work from home, if the nature of their work permits so. Furthermore, under the same legislation, employees have an entitlement to work from home during the emergency situation, if the nature of their work permits so. The employer is obliged to provide for any technical equipment necessary for the performance of work at home (or ensure the technical means for connection, if the employee uses personal equipment). The employer must ensure it adheres to the applicable health and safety legislation while the employee works from home. The list of requirements is rather extensive, but was partially waived during the emergency situation caused by the COVID-19 pandemic. Nevertheless, the employer remains liable for any health & safety legislation violations.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the Slovak Republic? Can an overseas employer operate a local payroll?	**Scenario 1:** Yes, a local payroll is required. **Scenario 2:** Yes, a local payroll is required. An overseas employer can operate a local payroll.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in the Slovak Republic for tax, social security, other benefits, etc.?	Yes, the Overseas Employer or Overseas Entity would be required to register locally for tax and social security, if the employee's place of work is in Slovakia, and have statutory social and health insurance for the locally based employee. However, due to EU social security regulations, exceptions can apply. Therefore, situations should be analysed on a case by case basis.
Are there any financial penalties/criminal sanctions for failing to do so?	Yes, non-payment of mandatory social security, health insurance deductions and payroll taxes is a criminal offence (if they are payable). There may be criminal lability of up to 12 years' imprisonment, and/or other criminal sanctions may apply. The maximum administrative penalty is €200,000.00. Criminal courts can also issue financial sanctions.
Are there any potential Slovakian tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer:** The Home Employer will most likely be required to operate a local payroll and comply with and perform all standard statutory tax/social security deductions. However, the answer to this question might be different based on the location of the Overseas Entity (e.g. whether EU social security coordination regulations apply), the nationality of the employee and other factors pertaining to the employee (e.g. where is the tax residency of the employee); • **Overseas Employer:** The Overseas Employer would need to consider whether it is under obligations from a Slovak law perspective to register as an employer in Slovakia (to a large extent this depends on the formal place of work of the employee). Moreover, depending on the location of the Overseas Employer, it would be necessary to analyse whether EU social security regulation coordination rules apply (this would determine the obligations from a social security perspective and the competent authority). In respect of taxation issues, it would be necessary to analyse whether there are any bilateral tax treaties in place and what is the habitual tax residency of the employee. Nevertheless, generally speaking it is very likely that payroll tax deductions would be performed in the country where the salary is paid (but this depends on the applicable law in the concerned jurisdiction);

Slovak Republic

	• **Overseas Entity:** It is unlikely that the Overseas Entity would need to register as an employer in the Slovak Republic. However, depending on the location of the Overseas Entity it would be necessary to analyse whether EU social security regulation coordination rules apply (this would determine the obligations from a social security perspective and the competent authority). In respect of taxation issues, it would be necessary to analyse whether there are any bilateral tax treaties between the countries where the Home Employer and the Overseas Entity are located and what is the habitual tax residency of the employee. Nevertheless, generally speaking it is very likely that payroll tax deductions would be performed in the country where the salary is paid (but this depends on the applicable law in the concerned jurisdiction). • **Employee:** The primary responsibility for compliance with tax and social security provisions rests with the employer. Nevertheless, depending on any other activities performed by the employee and their location, this would have an impact on the employee's habitual tax residency. It would be necessary to analyse whether any double taxation international treaties are applicable in the situation or not. From a social security perspective the set-up with the employer as per above would need to be considered.
If employment tax is payable in both the Slovak Republic and another country, would double taxation relief be available?	It depends whether it is an intra-EU relationship and whether there is a treaty on the abolition of double taxation between the other relevant country and the Slovak Republic.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	Generally speaking, it does not for either the Overseas Employer or the Overseas Entity, if the employer does not provide services aimed at the Slovak Republic. However, the situation would need to be analysed on a case by case basis.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the Slovak Republic?	Labour leasing is regulated whereas hidden employment is prohibited.
Which rules governing labour leasing in the Slovak Republic would apply to either scenario?	**Time limits:** Labour leasing is permitted for a maximum duration of 24 months (or for a shorter period of time, but can be extended a maximum of four times for a total combined duration of up to 24 months). In scenario 1, if there is absolutely no relation to any employer or any entity in Slovakia, then this would be not considered labour leasing. However, it would be necessary to confirm that the employee is not, for example, working out of the office of a Slovak affiliate of the Overseas Employer. In scenario 2, if the assignment is not temporary, but rather of a permanent nature, then labour leasing regulations would not be applicable and the situation would most likely result in a new employment relationship. **Any exceptions for intra-group situations:** Yes, but only in respect of performance of certain types of temporary work. **Formal registration requirements:** If labour leasing is performed between entities that are not temporary employment agencies, then certain registration requirements are applicable (especially in cross border leasing), however, no license is required for this purpose. In these scenarios, registration should not be required unless the labour leasing was being performed as a regulated main business activity of any of the concerned entities.

Slovak Republic

Home

Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: Yes, non-payment of wages in accordance with applicable law (when hidden employment is uncovered by the authorities) and non-payment of mandatory social security, health insurance deductions and payroll taxes are criminal offences, the sanction for which is up to 12 years' imprisonment and/or other criminal sanctions. **Financial penalties:** There can be administrative liability of up to €200,000.00 for illegal employment and up to €100,000 for carrying out temporary employment agency activities without a license.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to the Slovakia Republic in either of these scenarios?	**Scenario 1:** There is a risk that the PWD would apply in scenario 1 because the definition of establishment/undertaking is not that firmly established in Slovakia. Hence, should the worker visit or spend time in an office of an affiliated company of the Overseas Employer, this might be interpreted as a posting. However, if it is envisioned that the employee will work from home in Slovakia and will have no contact or connection to any other employer than the Overseas Employer, then the risk of this arrangement being deemed to be a posting is rather low. **Scenario 2:** Not if the transfer to the Home Employer in Slovakia is permanent, as this would fall outside the PWD and a new employment relationship would be established. Furthermore, the PWD only applies where the employee remains employed by the 'posting' company.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1:** No, if such visits are of an occasional business trip nature. **Scenario 2:** Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	The maximum penalty is €200,000.00 in the Slovak Republic. An additional fine may be issued in the other relevant jurisdiction. There are only potential criminal sanctions if a non-payment of wages/ non-payment of applicable mandatory social, health and tax deductions breach occurs – if they are payable.
Immigration	
In scenario 1, would the employee be permitted to work remotely from the Slovak Republic for the Overseas Employer if s/he did not have an existing right to work in the Slovak Republic?	No, they would not permitted to perform work in Slovakia. If the employee lives in Slovakia and performs work in Slovakia, even for the Overseas Employer outside Slovakia, both the employee and employer need to comply with applicable immigration requirements. There is a risk that any work performed by anybody in Slovakia without the right to work in Slovakia could be identified as illegal employment or a breach of immigration laws.

Slovak Republic

Home

If the Overseas Employer were based in the Slovak Republic and the employee travelled to the Slovak Republic for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in the Slovak Republic)?	If the employment relationship is directly between the Overseas Employer in Slovakia and a foreign based employee, then this would constitute illegal employment if the applicable Slovak immigration requirements are not adhered to depending on the immigration status of the employee and the type of activities performed by the employee in Slovakia. Therefore, it would be necessary to analyse the situation on a case by case basis in order to provide an accurate response.

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Spain

Home

We have assumed that if an employee relocates to Spain as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside Spain ("Overseas Employer") and works for that employer remotely from Spain
- **Scenario 2:** The employee becomes an employee of an entity in Spain ("Home Employer") and is assigned to work remotely for an entity outside Spain ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** Spanish employment laws would apply, being the country in which the employee habitually carries out his/her work. **Scenario 2:** Spanish employment laws would be applicable. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Spanish employment law purposes?	Yes. In intra-group scenarios a "labour group of companies" may arise. In that case, all of the companies in the labour group would be jointly and severally liable for all obligations in respect of the employee. Therefore, the Overseas Entity may be jointly and severally liable for all the employment and social security obligations of the Home Employer. An employee in this scenario may have the right to claim the status of being a permanent employee in the company of their choice.
If Spanish employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	Confidentiality or non-competition provisions are not prohibited in Spain. However, post-termination non-competition provisions should, amongst other things, meet the following requirements to be valid and enforceable: • Adequate compensation: Between 40-50% of the employee's remuneration is a good general guide. • Duration: A maximum period of two years for senior executives, managers and technical employees and six months for all other employees.
Does Spain impose any additional obligations in relation to homeworking?	Homeworking is a voluntary arrangement between employee and employer. It cannot therefore be insisted upon unilaterally by the employee. The parties must enter into an individual homeworking agreement establishing the conditions governing homeworking. It is compulsory to reimburse for any costs incurred by employees in working from home. The reimbursement of any costs should be regulated in the applicable collective bargaining agreement and, if not, the parties must agree an adequate amount (around €50 per month is common practice in Spain for employees working remotely full-time) in the individual homeworking agreement. Employees who work from home are entitled to adequate health and safety protection, and the provisions of Law 31/1995 of 8 November on the Prevention of Occupational Risk and its implementing regulations will apply in all cases.

Spain

Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Spain? Can an overseas employer operate a local payroll?	**Scenario 1:** A local payroll is not required but it is advisable in order to be sure the employer complies with social security and tax obligations. **Scenario 2:** The Home Employer (but not the Overseas Entity) would be required to operate a local payroll. An overseas employer can operate a local payroll.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in Spain for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	The Overseas Employer or Overseas Entity would be required to apply for a tax ID for a non-resident company without permanent establishment. After registering the company in Spain, the company will receive a non-resident tax ID and an employer social security number. Both numbers are required to be able to hire any employee and process the payroll. From a social security perspective, in order to continue to be covered by the social security system of the Home Employer, the Home Employer must request an A1 form from the social security institution (INSS). **Criminal penalties**: For serious breaches of these provisions, employers could be punished by imprisonment for six months to six years and a fine of six to twelve months. **Financial penalties**: These range from: • Minor breaches: Fines of €60-625. • Serious breaches: Fines of €626- €6,250. • Very serious breaches: Fines of €6,251- €187,515.
Are there any potential Spanish tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer**: The Home Employer will continue to be obliged to withhold taxes from the salary of its employee on account of its Spanish Personal Income Tax (PIT). • **Overseas Employer**: The Overseas Employer may be deemed to have a permanent establishment (PE) in Spain if certain conditions are met (see below for further details). If so, the Overseas Employer will be subject to the Spanish Corporate Income Tax (CIT) and will be obliged to withhold taxes from the salary of its employee on account of their PIT. • If no permanent establishment is deemed to exist, and the Overseas Employer does not develop any economic activity in Spain, the Overseas Employer will not be subject to taxes in Spain nor to withhold taxes on the salaries of its employees. This has been confirmed by the Spanish Directorate of Taxes though its tax ruling V3286-17. • **Overseas Entity**: There would be no tax implications in Spain. • **Employee**: The employee will be considered as a tax resident in Spain and will have to pay taxes on their worldwide income through the Spanish PIT.
If employment tax is payable in both Spain and another country, would double taxation relief be available?	Double taxation relief depends on the other jurisdiction and any Double Tax Agreements in place.

Spain

Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	In general, the Overseas Employer will be deemed to have a PE in Spanish territory if it holds in any way installations, work premises of any kind or acts through an agent authorized to hire, in the name and on account of the Overseas Employer, using these powers regularly. Therefore, this will depend on the powers to be granted to the employee in Spain. In this regard, the Double Tax Agreements signed by Spain usually set forth that where a person (individual, a trust, a company, and any other body of persons) – other than an agent of an independent status- is acting on behalf of a company and has, and habitually exercises, in Spain an authority to conclude contracts on behalf of that company, it shall be deemed to have a PE in Spain in respect of any activities which that person undertakes for that company. Based on the above, provided the employee does not have any binding power with respect to the Overseas Employer, and the Overseas Employer does not develop any economic activity in Spain, in principle, no PE risk in Spain should arise.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Spain?	Prohibited, except in intra-group scenarios or through temporary work agencies.
Which rules governing labour leasing in Spain apply to either scenario?	None, although in scenario 2, the Overseas Entity would be jointly and severally liable for all the employment and social security obligations of the Home Employer.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to Spain in either of these scenarios?	**Scenario 1**: No- because the employee would not be posted to provide services to an establishment or undertaking in Spain. **Scenario 2**: Not if the transfer to the Home Employer in Spain is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the 'posting' company.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	**Scenario 1**: No. **Scenario 2**: Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is 'posted' to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	• Minor breaches: Fines of €60- €625. • Serious breaches: Fines of €626- €6,250. • Very serious breaches: Fines of €6,251- €187,515. • There are no criminal sanctions for non-compliance.

Spain

Home

Immigration	
In scenario 1, would the employee be permitted to work remotely from Spain for the Overseas Employer if s/he did not have an existing right to work in Spain?	No, an employee cannot provide services from Spain if s/he does not have an existing right to work in Spain.
If the Overseas Employer were based in Spain and the employee travelled to Spain for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in Spain)?	If the Overseas Employer is located in Spain and the employment relationship is established between a Spanish entity and an individual who does not have an existing right to work in Spain, such an employee must have a work visa and valid work permit regardless of the place from where they are performing their job duties for the benefit of the Spanish entity and regardless of the nature of the work being carried out when visiting Spain (with the exception of short trips for business meetings, etc.).

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United Arab Emirates

Home

We have assumed that if an employee relocates to the United Arab Emirates as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside the United Arab Emirates ("Overseas Employer") and works for that employer remotely from the United Arab Emirates
- **Scenario 2:** The employee becomes an employee of an entity in the United Arab Emirates ("Home Employer") and is assigned to work remotely for an entity outside the United Arab Emirates ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	In Dubai only, individuals can apply for a one-year remote working visa which allows them to work remotely from Dubai. For individuals working "virtually" from Dubai under this type of visa, the employment laws of the country in which the Overseas Employer/Overseas Entity is situated would apply. In the absence of working under the remote-working visa, or where the employee would be carrying out work for a local UAE entity or where the individual is looking to work from the UAE (other than from Dubai), it is not possible for an employee to live and work without a valid work permit and residence visa, and therefore in this instance, if the employee is living and working in the UAE, local UAE laws will apply. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for UAE employment law purposes?	From a UAE perspective, the employer is the UAE entity which sponsors the employee for their work permit and residence visa. However, if payments are also made to the employee in the Overseas Entity jurisdiction, there is always a risk that the employee could try and include such payments in the calculation of benefits such as end of service gratuity.
If UAE employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	There is no prohibition on confidentiality or non-competition provisions (in fact, breach of confidentiality can be a criminal offence) and there is no requirement to provide a payment for the same. However, for the most part, across the UAE (outside of the ADGM or the DIFC), for a breach of a non-competition provision, the company is limited to a claim in damages.
Does the UAE impose any additional obligations in relation to homeworking?	No, there are no specific additional obligations, however, an employer is obligated by law to provide a safe working environment.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the UAE? Can an overseas employer operate a local payroll?	Yes, it is a requirement of the UAE Labour Law that salary should be paid in local currency (UAE Dirhams). In practice, some employers choose to pay part of an employee's salary in another jurisdiction (e.g. for U.S. nationals to pay a percentage of their salary in the U.S.), however, this is not recommended and, at the very least, the amount specified in the employee's contract filed with the authorities for immigration purposes should be paid locally in the UAE in Dirhams. An overseas employer cannot operate a local payroll.

United Arab Emirates

Home

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in the UAE for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes although there is no income tax in the UAE, in both scenarios there would be a requirement to register for social security. Social security contributions are applicable in the UAE only for UAE nationals, and nationals of the Gulf Corporation Council countries ("GCC") which are the UAE, Saudi Arabia, Bahrain, Oman, Kuwait and Qatar. **Criminal sanction**: Yes, the General Manager named on the company's trade license could be criminally liable and may face imprisonment in the event he/she deliberately provides false data or refrains from providing data to the GPSSA to avoid paying the relevant entitlements due to the General Pension and Social Security Authority ("GPSSA"). Article 59 of the UAE Pensions Law states that the General Manager may "be sentenced to imprisonment and a fine not exceeding AED 5,000 or to either penalties". **Financial penalty**: A failure to register local or GCC Nationals for pension entitlements is also likely to attract fines or penalties including a risk that the authorities could impose a requirement on the Overseas Employer or Overseas Entity to pay the employee's percentage contribution in addition to the employer contribution for the period that the employer was in breach. • A fine of AED 5,000 can be imposed on a private sector employer by the GPSSA for every eligible employee who has not been registered with the authority for the pension scheme. • Where there is a delay in the payments of the contribution amounts, an additional sum amounting to 0.1% of the due subscriptions shall be imposed on the employer for every day of delay without a need for a warning or notification. • Additionally, employers who have not deducted the subscriptions of all or some of the employees, or who have not paid the subscriptions based on the real salaries, shall be ordered to pay an additional sum amounting to 10% of the value of the due subscription without any warning or notification.
Are there any potential UAE tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	No, there is no income tax payable in the UAE.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	**Scenario 1:** No, when registering an establishment or subsidiary in the UAE no risks arise in terms of tax consequences, since the UAE system of taxation exempts virtually all types of business from taxes, regardless of their status. **Scenario 2:** This will depend on the laws of the Overseas Employer or the Overseas Entity.

United Arab Emirates

Home

Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the UAE?	There is no concept of labour leasing in the UAE.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to the UAE in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in the UAE.
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
In scenario 1, would the employee be permitted to work remotely from the UAE for the Overseas Employer if s/he did not have an existing right to work in the UAE?	Yes, this is possible if the employee applies for a remote working visa to live in Dubai (and please note this applies to Dubai only in the UAE) while remaining employed with an Overseas Entity abroad. This visa is for one year only and, therefore, individuals will need to re-apply as per the standard application process. Individuals under an active remote working visa will be able to leave and enter the UAE during the term of the visa, but if the individual is outside the UAE for more than 6 months continuously, their respective visa will be nullified. The visa can be obtained for a fee (USD 611) plus a processing fee and medical insurance (with valid UAE coverage) and requires the individual to have a passport that does not expire for at least another six months at the time of applying. Employee applicants will only be approved if they earn a monthly salary of US$5,000 (Dhs18,365) per month, and can prove this with their most recent payslip and three months' bank statements. For business owners, applicants will only be approved if they can provide the authorities with proof of ownership of the company for one year or more, with an average monthly income of US$5,000 per month and three preceding months' bank statements. In the absence of obtaining a remote-working visa, no, in order to lawfully reside and work in the UAE, all expatriate employees must be sponsored by a locally licensed entity for UAE work permit and residency visa purposes. Such sponsorship is both employer-specific and location-specific, permitting the individual to work only for the employer through whom they have obtained their visa and at the location specified in the visa. UAE and other GCC nationals (namely, citizens of Bahrain, Kuwait, Oman, Qatar and Saudi Arabia) are treated slightly differently in that there is no requirement to procure and obtain a UAE residence visa for them due to the concept of freedom of movement across the GCC member states. However, a requirement to obtain a UAE work permit still exists.

If the Overseas Employer were based in the UAE and the employee travelled to the UAE for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in the UAE)?	Yes (in respect of Dubai only) this would be possible for up to one year if the employee is able to obtain a remote working visa. If the employee cannot obtain this visa, if the Overseas Employer is located in the UAE and the employment relationship is established between a UAE entity and an individual who does not have an existing right to work in the UAE, the employee will require a work permit and residence visa regardless of the place from where he/she is performing his/her job duties for the benefit of the UAE entity, unless s/he is visiting simply to attend a business meeting. An assessment of this will depend on whether the individual will be performing revenue-generating work in the UAE.

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UK

We have assumed that if an employee relocates to the UK as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside the UK ("Overseas Employer") and works for that employer remotely from the UK
- **Scenario 2:** The employee becomes an employee of an entity in the UK ("Home Employer") and is assigned to work remotely for an entity outside the UK ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	In both scenarios, if the employee is living and working in the UK they are likely to gain UK statutory employment rights. Whether the employee also gains employment rights in a different jurisdiction will depend on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for UK employment law purposes?	From a UK perspective, the starting point would be that the Home Employer is the employer for employment law purposes.
If UK employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	No – there is no requirement for payment to be made for such restrictions at the moment. However, the UK government has consulted on proposals to make non-competition clauses enforceable only when the employer provides compensation during the term of the restriction. The consultation closed on 26 February 2021 and we await the government's response.
Does the UK impose any additional obligations in relation to homeworking?	Employees who work from home in the UK have all the same rights and obligations as workers on site. The Health and Safety at Work Act 1974 imposes an overall duty to ensure, so far as reasonably practicable, the health and safety of employees. Employers should carry out a risk assessment of the work activities to be carried out at home to ensure appropriate measures are taken to reduce any associated risks.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the UK? Can an overseas employer operate a local payroll?	**Scenario 1:** The Overseas Employer would generally only be required to operate PAYE via a local payroll (whether dealing with this directly or via a payroll agent) if it has a place of business in the UK. However, it may be required to account for National Insurance contributions if it is resident in an EU state. **Scenario 2:** The Home Employer (not the Overseas Entity) would be required to operate PAYE via a local payroll.
Would either of these scenarios require the Overseas Employer/Overseas Entity to register in the UK for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	**Scenario 1:** The Overseas Employer may be required to register for PAYE and National Insurance (NI). **Scenario 2:** The Overseas Entity should not be required to register for PAYE/NI. Financial penalties apply for failing to register for and pay PAYE/NI on time. Various penalty regimes can potentially apply and the amount and frequency of the penalty can vary depending upon the number of employees, the amount of time that has passed since the relevant deadline, the number of failures and the amount(s) involved.

Are there any potential UK tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	• **Home Employer:** The Home Employer will usually be required to operate PAYE/NI. It may also need to consider whether it has any employment tax obligations in the Overseas Entity country. • **Overseas Employer:** The Overseas Employer will need to consider whether it is required to operate PAYE/NI via a local payroll. It will also need to consider the Permanent Establishment (PE) position and whether it has any employment tax obligations in its own country. • **Overseas Entity:** The Overseas Entity should not have local PAYE/NI obligations. It will need to consider the PE position and whether it has any employment tax obligations in its own country. • **Employee:** In scenario 1, if the Overseas Employer does not operate a local payroll then the employee will need to deal with paying income tax/NI. If the employee is taxed in both countries, they will need to consider whether they can claim double taxation relief.
If employment tax is payable in both the UK and another country, would double taxation relief be available?	Double taxation relief is usually available but this is subject to certain conditions and can depend upon the exact circumstances and other country involved.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	If the Overseas Employer/Overseas Entity has an office or other premises in the country where the employee is living (which could include the employee's place of residence in certain circumstances, although this would be unusual), this would typically be a PE. A PE can also arise where the employee is involved in entering into contracts on behalf of the Overseas Employer/Overseas Entity. The PE position should be considered taking into account the particular circumstances.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the UK?	The concept of labour leasing does not exist under UK employment law.
Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to the UK in either of these scenarios?	The UK has now left the EU and therefore the PWD no longer applies to workers being posted into the UK.
Would the legislation governing posted workers apply: in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Are there any financial penalties/criminal sanctions for non-compliance?	Not in the UK.

UK

Immigration	
In scenario 1, would the employee be permitted to work remotely from the UK for the Overseas Employer if s/he did not have an existing right to work in the UK?	Only under limited circumstances. Those without an existing right to work in the UK (and without a UK sponsor willing to sponsor them in a UK based role) must comply with the UK's visitor rules which include not living in the UK for extended periods through frequent or successive visits. Visitors to the UK are permitted to undertake activities relating to their employment overseas remotely whilst they are in the UK, such as responding to emails or answering phone calls. However, the visitor's main purpose for coming to the UK must not be to work remotely from the UK. Visitors to the UK must only stay in the UK for up to six months at a time and must not make the UK their main home.
If the Overseas Employer were based in the UK and the employee travelled to the UK for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in the UK)?	Those without an existing right to work in the UK would not be permitted to work or provide services to the Overseas Employer whilst visiting the UK and may have difficulty persuading an Immigration Officer on entry to the UK that that is not their intention. Any activity during such visits must be limited to those permitted under the UK visitor rules e.g. attending meetings and conferences.

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US

For the purposes of this guide, we have assumed that if an employee relocates to the US as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of two forms:

- **Scenario 1:** The employee remains employed by their original employer based outside the US ("Overseas Employer") and works for that employer remotely from the US
- **Scenario 2:** The employee becomes an employee of an entity in the US ("Home Employer") and is assigned to work remotely for an entity outside the US ("Overseas Entity")

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1:** The employee working in the US will generally be covered by US employment law protections. **Scenario 2:** The employee working in the US will generally be covered by US employment law protections. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for US employment law purposes?	No. The Home Employer would be the employer for US employment law purposes.
If US employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the employee?	It depends. US non-competition and confidentiality provisions are governed by state laws, not federal. Some states require additional consideration for restrictive covenants, some do not beyond at-will employment. Individual state law in the location where the employee will work would need to be considered in each case.
Does the US impose any additional obligations in relation to homeworking?	Yes. The general duty to provide a safe working space under US health and safety law applies to home-based office environments. State workers' compensation laws also apply to home-based or remote workers. A remote working agreement with guidelines and employee confirmations regarding safety of space is therefore recommended.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the US? Can an overseas employer operate a local payroll?	No, although US local, state and federal taxes (income and employment) must be withheld and paid to US government agencies. Many foreign companies use Professional Employer Organizations (PEOs) to serve as the payroll co-employer if there is no local entity. An overseas employer can operate a local payroll, but it is complicated. As above, use of a PEO may be helpful.

US

Would either of these scenarios require the Overseas Employer/Overseas Entity to register in the US for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes. They generally will be required to obtain a federal Employer Identification Number (EIN), to pay applicable payroll taxes and withhold certain tax contributions from their employees. Employers may be required to register employees with the specific state in which they are employed (regulations vary from state to state). US citizens, resident aliens, and non-resident aliens employed within the US by a foreign employer are generally subject to Social Security and Medicare tax withholding by the foreign employer. Some individuals employed in the US by a foreign employer may be exempt from US Social Security and Medicare taxes under the terms of a social security totalization agreement. **Financial penalties/criminal sanctions**: A failure to withhold, deposit, report, or pay employment taxes can result in fines (up to 100 percent of the taxes owed) and, potentially, criminal liability (for wilful failure or evasion).
Are there any potential US tax implications for: • the Home Employer; • the Overseas Employer; • the Overseas Entity; or • the employee?	Yes, see comments above.
If employment tax is payable in both the US and another country, would double taxation relief be available?	US citizens, resident aliens, and non-resident aliens employed within the US by a foreign employer are generally subject to Social Security and Medicare tax withholding by the foreign employer. To prevent double taxation, some individuals employed in the US by a foreign employer may be exempt from US Social Security and Medicare taxes under the terms of a social security totalization agreement. In addition, depending on the particular facts and particular countries, relief from double taxation may be available under the US foreign income tax credit or deduction provisions or bilateral US Income Tax Treaty provisions with the home country.
Do either of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer or the Overseas Entity?	Having an employee in the US can, depending on facts and circumstances such as the employee's authority and activities, constitute a permanent establishment in the US for US income tax purposes. Bilateral income tax treaties can affect the result but it is important to note that US states, generally, are not bound by such income tax treaties and may assert taxing authority over a non-US employer even where a treaty would not. In addition, an income tax treaty generally will not apply if business is conducted through a permanent establishment in the US such as an office or other fixed base or a dependent agent. However, the IRS has provided some relief with respect to the permanent establishment rules where services or other activities are conducted by individuals temporarily in the US due to COVID-19 emergency travel disruptions.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the US?	Permitted without restriction.

US

Posted Workers Directive	
Would legislation governing posted workers apply when the employee relocates to the US in either of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive ("PWDs") govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in the US
Would the legislation governing posted workers apply: • in scenario 1, when the employee returns to the Overseas Employer for occasional work-related visits? • in scenario 2, when the employee returns to the Overseas Entity for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, if the Overseas Entity is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
In scenario 1, would the employee be permitted to work remotely from the US for the Overseas Employer if s/he did not have an existing right to work in the US?	Remote working for an overseas (non-US) employer for more than a very short period is not permitted. A foreign national who will be in the US for an extended period should seek an alternate visa classification or work authorization to continue to work remotely. Options may be limited.
If the Overseas Employer were based in the US and the employee travelled to the US for occasional work-related visits, could s/he do this as a business visitor without obtaining a work visa (assuming s/he does not have an existing right to work in the US)?	Travelers under the Visa Waiver Program must first register under the Electronic System for Travel Authorization (ESTA). Anyone who does not qualify under the VWP must first obtain a B1 business visitor visa prior to travel. B1 business visitors and VWP entrants can only conduct permissible business activities that do not accrue to the benefit of the US entity and should never receive any remuneration from a US source. Permissible activities include business meetings, attending conferences, and seeking US clients, but do not include "actual work" in the US

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Further Resources

Global Edge

As businesses become more global, in-house lawyers and HR professionals are finding it increasingly difficult to keep on top of key employment laws and developments in the countries where they do business. In collaboration with our global network of preferred specialist labour and employment lawyers, we developed Global Edge. Global Edge is the next level of legal innovation, where design, technology and legal knowledge merge into one, helping multinational companies save time and money when researching foreign employment law requirements.

- 39 countries
- Up to 29 key topics per country
- Tailored notifications covering countries and topics of interest
- Horizon tracker and interactive map
- Create your own newsletter feature
- Legal summaries, horizons, "At a Glance" charts and articles
- Webinar and podcast player
- Special features covering COVID-19
- Intelligent search functionality
- Live news feed
- Mobile compatible

Watch the Global Edge video

Global HR Audit

Global HR Audit is a free, simple to use, innovative tool that helps employers determine the HR documents and policies they should have in 29 countries around the world as well as any they should consider having on a global basis. It enables businesses to pinpoint quickly the documents and policies they need in each jurisdiction of operation, as well as those they may wish to consider if they are aiming to go beyond just compliance. The list of mandatory, strongly recommended and 'nice to have' HR documents and policies contains further links to Global Edge where further information on the topics can be found.

Employment Law Worldview

Our Employment Law Worldview blog aims to interest and educate, stimulate discussion, provoke and sometimes just amuse, with global insight into practical and legal issues relevant to employers everywhere.

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