

The Future World of Work

Global Guide on Overseas Remote Working

Sample Guide



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.

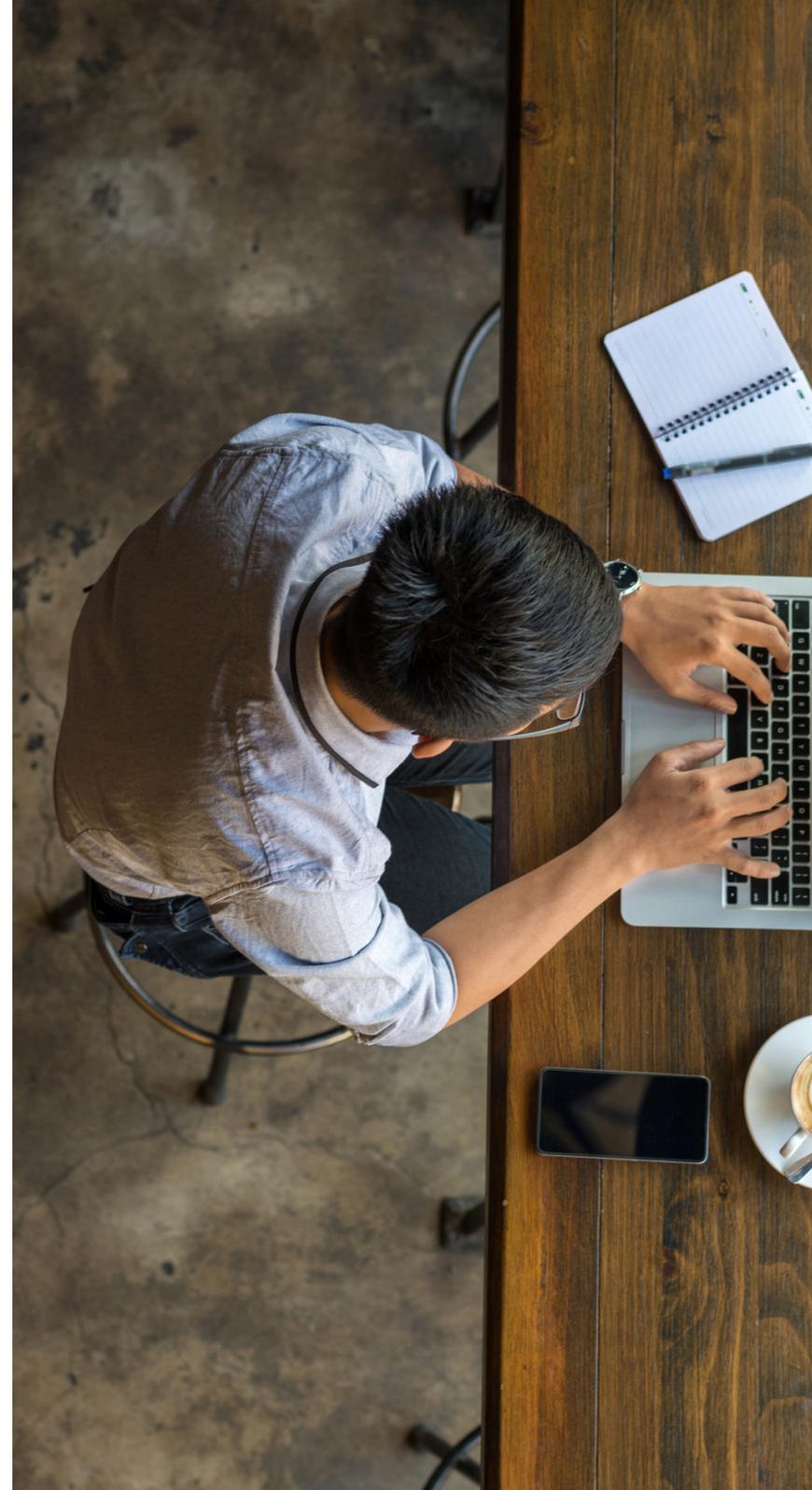
Regardless of the COVID-19 pandemic, many employers have agreed to, or are considering, overseas remote working arrangements (also referred to as ‘satellite’ working), primarily as a means of being able to hire or retain the talent they need to run their business.

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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