

What are the tax implications of remote working... across the border?

By [Aneria Bouwer](#)

20 Jul 2022

Remote working from foreign jurisdictions has become increasingly popular during the Covid-19 pandemic. Despite the lockdown rules being relaxed in most jurisdictions, it appears that employers should not expect the workplace to return to the way it was before the pandemic.



Image source: [lassedesignen – 123RF.com](#)

For example, Microsoft 365 corporate vice-president Jared Spataro said: "As organisations around the world make the definitive shift from remote to hybrid work, one thing is clear: the people who went home to work in 2020 are not the same people returning to the office in 2022."

Relocation

For personal reasons, growing numbers of employees are choosing to relocate to other jurisdictions while remaining with their current employers. In many instances, the employers will go along with these arrangements, sometimes as a continuation of remote working during lockdown and in other instances in order to attract valuable employees.

But there are risks involved – risks of which many South African employers may not be aware.

In the past, employers would establish a presence in other jurisdictions; now it is employees who want to work from foreign jurisdictions. Often, these employees will argue that they can be as productive working remotely as from the office, and that this should make no difference to the employer. However, the situation may not be as straightforward as it seems.

New tax laws: What are SA expats' options?

JontyLeon 3 May 2018





Watch out for creating a permanent establishment

The risks for South African employers include the possibility that an employee's presence in another country may amount to creating a permanent establishment for the employer, thus creating a tax presence for the employer in the foreign jurisdiction.

The interest of a foreign tax authority may be triggered by something as apparently harmless as the employee having business cards bearing the South African company's name and the address of his or her home office in the host country.

Although unusual, where the executives of a business work remotely, this could even create a risk of changing a company's place of effective management (POEM) and thus the company's corporate tax residence.

Other tax considerations include the risk that the South African employer may be obliged to register as an employer in the foreign jurisdiction and pay employees' tax and social security in the foreign jurisdiction. South African employers also sometimes fail to realise that they could still have an employees' tax withholding obligation in South Africa.

It all depends...

However, it is difficult to say definitively if and when such risks will actually materialise without taking the specific facts into account. It all depends; there is no one-size-fit-all answer. What works for one does not necessarily work for the other. Thus, the best course of action for an employer considering an employee's request to work for the company from a foreign jurisdiction, is to seek expert local advice.



Cross-border tax regulations can be costly

18 Jun 2021



When doing so, some of the questions employers should be asking are: Is there a risk that the employee could create a taxable presence for the employer in the foreign jurisdiction? Which country has the right to tax the employee's remuneration? Would the employer still be obliged to withhold employees' tax in the country where the employer is tax resident and/or is there a risk that it would also have to register as an employer in the foreign jurisdiction?

Relaxed stance may not last

During April 2020, the Secretariat of the Organisation for Economic Cooperation and Development (OECD) issued guidance regarding the interpretation of tax treaty concepts such as POEM and permanent establishments during the Covid-19 pandemic, when people were literally stranded overseas.

However, employers should keep in mind that the relatively relaxed stance many foreign jurisdictions and regulators adopted to remote working during the Covid-19 pandemic will not last. A return to 'normality' also means a return to normal tax rules. While there does seem to be a realisation that the world of work is very different to the pre-pandemic world, the tax rules are still the ones that were created for such 'old' world.

While a remote working arrangement could offer exciting opportunities for employers and employees alike, it is crucial for employers to carefully consider the risks that a more permanent cross-border remote working arrangement could have for the employer, before agreeing thereto.

ABOUT THE AUTHOR

Aneria Bower is a Senior Consultant in the Tax Practice at Bowmans South Africa.

For more, visit: <https://www.bizcommunity.com>