ECOVIS Global

https://www.ecovis.com/global/cross-border-remote-work-considerations/

Cross Border Remote Work Considerations outside the US

7. October 2021

If employers send employees abroad, or if they wish to work in a country other than the USA, various tax and non-tax details, such as health insurance or social benefit programmes, must be checked. In addition, the employer must pay close attention that the work of the employee does not become a permanent establishment and thus create tax liability for the company.

In workplace environments that must now include COVID-19 remote work arrangements as well as specific employee's alternative work arrangements, employers need to understand the tax consequences of employees working in another state or a foreign country. The remote work arrangements may be requested by the employee for personal reasons, where the employee will be responsible for his/her personal tax requirements. Where the relocation is for the benefit of the employer, the employer will accept the consequences and costs of the assignment. However, the employer must be aware of the potential additional obligations and costs it may face when approving an employee-requested remote workplace outside the US, explain the consultants from Marcum LLP*.

The Tax and Non-Tax Consequences of Relocation

While the foreign remote work location places additional tax burdens and costs on employees, most of these will not affect the employer (as would be the case if the employer required relocation). The employer may still be subject to additional requirements and costs to comply with local country rules for having their employee working in the foreign country, including income tax withholding requirements, employer payroll taxes, and registration requirements (for withholding and remitting taxes under the local country rules). Non-tax considerations may include the provision of health coverage outside the United States, immigration requirements, or other employee benefit programs in the affected countries.

In the case of relocation, check carefully whether this involves the setting up of a permanent establishment.
Douglas Nakajima, International Tax Co-Leader, Marcum LLP*, Philadelphia, USA

Avoiding a Permanent Establishment

The employer should ensure that the employee working outside of the US does not raise Permanent Establishment (PE) exposure for the employer. Generally, the PE standard is what allows the foreign country to impose income taxes on any business profits asserted to be associated with the US employer's business activity in that country. A PE may be a fixed place of business or a place of management, an office, or an employee with the authority to conclude contracts. If the employee serves as an officer of the company, performing his/her designated management duties, there is a stronger argument for the finding of a PE in that country.

As the employer will not provide the employee with an office in the employee-requested arrangement, the place of business is unlikely to be an issue, However, as the employee may be a company officer with the authority to conclude contracts, and he/she may be expected to continue to exercise authority on a regular basis, a PE exposure may be raised. Removing or limiting the employee's title and role can strengthen a position that there is no PE. Tax treaties with the US may provide exceptions where, despite the maintenance of a fixed place of business, there is no PE. This exposure needs to be reviewed.

Although employers may want to retain employees seeking a foreign remote workplace, before approving the arrangement, the potential tax consequences must be understood, and a clear written understanding of the respective costs and obligations raised

For further information please contact:

Douglas Nakajima, International Tax Co-Leader, Marcum LLP*, Philadelphia, USA
Email: douglas.nakajima@marcumllp.com

* Marcum LLP is the exclusive associated partner of ECOVIS International for accounting, tax and audit in the United States of America.