

10<sup>TH</sup>  
ANNIVERSARY  
IN 2021

# CROSS-BORDER REMOTE WORK FAQs

## BRAZIL

**1. Assume that a foreign national employee of a foreign company wishes to work remotely for a period of time in your country performing services exclusively for the foreign company and not interacting with the local market in your country.**

IS WORK AUTHORIZATION REQUIRED? IF SO, PLEASE PROVIDE A BRIEF DESCRIPTION OF THE TYPE OF VISA, PROCEDURE, PROCESSING TIME, ETC.

*Although several companies and employees are interested in adopting cross-border remote work, up to now there is no specific provision in the Brazilian migratory or labour legislation regulating this situation. Therefore, the general rules shall apply.*

*Whenever a foreigner wants to live and render services in the Brazilian territory, a work visa/residence authorisation must be previously requested. Selection of the proper work visa depends on the activities that will be executed in Brazil by the foreigner. The Brazilian company for which the foreigner will work, should request the work visa on his/her behalf.*

*Considering that in the situation described above (e.g., the foreigner will not work for a Brazilian company and will continue to work exclusively for the foreign company) it will not be possible to apply for a work visa under the terms of the Brazilian migratory law, primarily if the foreign company does not have a subsidiary (i.e., company of the same economic group) in Brazil.*

*Hence, the situation involving a foreigner in Brazil working for a foreign company and not interacting with the local market, will only be possible in the following alternatives:*

- i. **Visitor Visa:** Foreigner will come and stay in Brazil for a short period with a visitor visa. Visitor visas are valid for a period of up to 90 days, which can be extended for another 90 days, depending on the foreigner's citizenship.*

*A visitor visa is usually for tourism or business activities and thus to perform activities other than work (i.e., tourism or to participate in meetings, become aware of the Brazilian company' practices and policies, obtain information about the market, perform independent*

market research, meet with clients and potential clients, come to know the Brazilian employees, set up investments, negotiate contracts, purchase orders or statements of work to be performed in a foreign country, look for real estate and attend professional conferences, lectures or conventions, among other activities that do not involve assuming responsibilities and obligations on behalf of the Brazilian company nor receiving any type of compensation in Brazil). Hence, this type of visa is not the ideal visa to perform work from Brazil, nor is it a risk-free situation. Nevertheless, it is an alternative that some foreigners/companies are adopting due to a lack of any specific legislation.

Since the foreigner is not in Brazil for tourism purposes or for business activities, the foreigner may be subject to penalties from the immigration authorities, if the immigration authorities are able to verify the situation, which, although very unlikely to happen, this may in fact take place. The penalty for the foreigner corresponds to BRL 100 per each irregular day in Brazil, capped at BRL 10,000.

The procedure to apply for a visitor visa depends on the nationality of the foreigner. Foreigners from countries that have treaties with Brazil (i.e., countries from the European Union, Mercosur, among others) do not need to obtain a prior visitor visa to travel, enter and stay in Brazil as visitors. Foreigners from countries that do not have treaties with Brazil however, will need to apply for the visitor visa at the Brazilian Consulate abroad (the one closest to the current residence of the foreigner) before travelling to Brazil.

ii. **Family Reunion Visa:** Foreigner will come and stay in Brazil linked to a family reunion visa, because his/her partner/spouse has a Brazilian work visa, or is a Brazilian national, or they have a Brazilian child. Usually, the family reunion visa by itself, linked to the work visa of the partner/spouse, does not allow the foreigner to work in Brazil for a Brazilian company, although some exceptions apply. Moreover, it does not have a clear prohibition on the situation described (foreigner working for a foreign company).

The family reunion visa linked to a formal relationship with a Brazilian national or linked to a Brazilian child, allows the foreigner to work in Brazil.

iii. **Visa linked to the Foreigner's Citizenship:** Applicable to foreigners from countries that have specific treaties with Brazil (i.e., Mercosur countries) and allow foreigners to enter, stay and work in Brazil for up to 2 years. Since such visa is only linked to the foreigner's citizenship, it does not require a relationship with a Brazilian company or with a Brazilian national.

Therefore, the foreigner is legally able to work from Brazil and the risk related to inspections and administrative penalties from the immigration authorities mentioned above (penalty for the foreigner) will not apply.

To obtain such visa, the foreigner may come to Brazil as a visitor and needs to schedule an appointment at the Federal Police to register and obtain their authorisation to stay in Brazil (i.e., Brazilian ID for foreigners - "CRNM number/card"). We recommend checking the Federal Police agenda before coming to Brazil.

IS THERE RISK OF "PERMANENT ESTABLISHMENT" CONSEQUENCES FOR THE FOREIGN COMPANY BY VIRTUE OF THE REMOTE WORKER'S ACTIVITIES? IF SO, WHAT ARE THE MAIN FACTORS DETERMINING THE EXPOSURE.

Brazilian law does not provide for specific internal rules regarding taxation or the definition of a "permanent establishment" (PE). The doctrine debates whether national legislation should define and tax the PE, while only Double Taxation Agreements (DTA) could restrict this right to tax.

As a general rule, Article 7 of the DTA states that a company's profits will be subject to taxation only in the jurisdiction of residence, unless they are attributable to a PE, which is defined by Article 5 of the DTA as the fixed place of business where the company develops all or part of its activities, especially, among others: (i) the registered office of the company; (ii) subsidiaries; (iii) offices; and (iv) manufacturing facilities.

*A person who acts in a contracting state on behalf of a company established in the other contracting state is also considered a PE, if this person has and exercises the power to conclude agreements on behalf of the company of the other contracting state; an exception is made if the person is acting as an independent agent.*

*Thus, if the foreigner is in Brazil for a short term, performing services exclusively for the foreign company, and he/she does not have the power to conclude agreements on behalf of the foreign company, then an argument could be made defending the lack of a permanent establishment.*

*Nevertheless, Double Taxation Agreements do not expressly address the impact of the remote worker's activities. However, we recognise that several remote activities have replaced the need for physical presence; thus, although not expressly provided for in the DTAs, one could argue that depending on the activities developed by the remote workers, a permanent establishment could be characterised.*

*There are few administrative decisions regarding a permanent establishment. In at least two cases, the characterisation of a permanent establishment was recognised, thus allowing the income tax charge. To recognise the permanent establishment in such decisions, it was considered that the activities of such foreigner in Brazil (in view of the circumstances analysed in each case) corresponded to the existence of a material installation, on a permanent basis in Brazil, which allowed the foreign company to perform activities in such installation or through it.*

**AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES WOULD THE REMOTE WORKER BECOME SUBJECT TO LOCAL SOCIAL SECURITY AND OTHER PAYROLL REQUIREMENTS? CAN SUCH REQUIREMENTS BE FULFILLED BY A FOREIGN COMPANY, AND IF SO BY WHAT MECHANISMS?**

*First, considering that the foreigner will be employed by the foreign company and will not be employed by any Brazilian company or interact with the local market, it is possible to propose that the applicable labour law should be that from the country of the foreign company and therefore, no social security and labour charges should be paid in Brazil. Nevertheless,*

*this is not a risk-free situation and there is no case law concerning the matter.*

*In Brazil, the current understanding, for labour purposes, is still that the law which should govern the relationship between the parties is the applicable law in the location where the services are rendered. Thus, considering that the services will be rendered in Brazil, the foreigner may file a labour claim requesting to be entitled to Brazilian employment and social security rights (pursuant to such risks associated therewith).*

*Finally, only Brazilian companies are able to comply with the payment of Brazilian social security charges and payroll requirements. Therefore, to be able to pay labour and social security charges linked to an employee working in Brazil, a foreign company would have to: (i) have a Brazilian subsidiary/affiliated company, and the foreigner would be considered an employee of such company; or (ii) contract a human resources company (like a PEO or employer of records) to hire the foreigner on its behalf and comply with all labour and social security obligations; under in this alternative however, it would no longer be a foreigner employed by a company abroad, but a foreigner employed by a Brazilian company, subject to all Brazilian employment rights. For a foreigner in Brazil for a short term and not performing any activity with the local market, this alternative is unlikely to be adopted.*

**AT WHAT POINT AND UNDER WHAT CIRCUMSTANCES DOES THE REMOTE WORKER BECOME SUBJECT TO LOCAL EMPLOYMENT LAW REQUIREMENTS SUCH AS IS WAGE-HOUR, LOCAL HOLIDAYS, ANNUAL LEAVE, MATERNITY LEAVE, DISABILITY LEAVE, PROTECTION AGAINST UNFAIR DISMISSAL, ETC.**

*As mentioned, the Brazilian labour authorities currently recognise that the law which should govern the relationship between the parties is the applicable law in the location where the services are rendered. Moreover, the court that would be responsible for rendering a ruling in the case, would be the labour court in such location. Based on these concepts, the foreigner may argue that because he is rendering services in Brazil, he should be entitled to the rights provided under Brazilian labour and social security law, including the rights established by collective*

*bargaining agreements applicable to his category, and from the time since of his entry into Brazil.*

*If the foreign company does not have a subsidiary in Brazil, and the foreigner will stay in Brazil for a short term, this risk is unlikely to materialise. The risk increases if the foreign company has a subsidiary/affiliated company in Brazil (because the foreigner may, more easily, file a claim against the Brazilian company) and if the foreigner stays in Brazil for a long period and interacts with the Brazilian market.*

*In summary, if the foreigner will stay for a short period, will work exclusively for the foreign company and the foreign company does not have a subsidiary/affiliated company in Brazil, the labour and social security risks are remote and a strong argument may exist proposing that the Brazilian labour and social security law does not apply to the foreigner. Nevertheless, due to a lack of specific legislation and because this is a fairly new discussion, it is not possible to confirm that this is a risk-free situation altogether.*

## ARE THERE SPECIAL REQUIREMENTS GOVERNING REMOTE WORK IN YOUR COUNTRY WHICH WOULD COVER THE REMOTE FOREIGN WORKER?

*Sections “75-A to 75-E” of the Brazilian Labour Code establish specific rules regulating remote work/teleworking system. As per section 75-B of the law, remote work /teleworking system is that which is performed primarily outside the employer’s premises, using information and communication technologies.*

*The law states, in summary, that there should be an agreement between employee and employer related to the remote work including, among others, provisions regarding (i) the activities that will be performed remotely; (ii) acquisition, maintenance or supply of technological equipment and necessary infrastructure; and (iii) reimbursement of expenses incurred by the employee. The employer must also provide, in an express and ostensive manner, the health and safety guidelines to avoid work-related illness and accidents in the remote working system. The employee should sign a responsibility clause stating that he/she has received the guidelines and will comply with them.*

*The employee who works in the remote working system may be classified as an exempt employee (section 62, III, of the Brazilian labour law) if, in fact, the company will not control his/her working hours.*

*Although it is possible to argue that the rights set forth in the Brazilian labour law do not apply to a foreigner who comes to Brazil and works only for a foreign company, in order to reduce risks, employers are recommended to observe the rules related to the remote working system, mainly those regarding the health and safety aspects.*

## WHAT IS THE EMPLOYEE’S EXPOSURE TO LOCAL INCOME TAX, AND UNDER WHAT CIRCUMSTANCES IS THE FOREIGN EMPLOYER REQUIRED TO ARRANGE FOR WITHHOLDING OF INCOME TAX?

*As a rule, resident individuals are subject to taxation on a worldwide basis, meaning that all income (both active and passive) derived from Brazilian and foreign sources is subject to income tax in Brazil.*

*Foreigners will be considered residents in Brazil for tax purposes if they: (i) stay in Brazil for a period longer than 183 days within a period of 12 months or (ii) obtain a work visa/permit (depending on the type of the work visa/permit, the foreigner will be considered a tax resident as from his/her arrival in Brazil and the 183-day rule will not apply). Therefore, they will have to pay income tax over the total amounts received on a worldwide basis.*

*For instance, a foreigner with a visitor visa is not considered a Brazilian tax resident, except if he/she stays in Brazil for a period longer than 183 days. On the other hand, a foreigner with a family reunion visa or a visa linked to his/her citizenship is considered a Brazilian tax resident as from his/her arrival in Brazil (though some exceptions apply).*

*It is necessary to analyse whether there is a bilateral income tax treaty between Brazil and the country where the foreigner is from, in order to verify alternatives related to the income tax that would be due in Brazil.*

## WOULD THE REMOTE WORKER BE ENTITLED TO BRING A CLAIM FOR WORKPLACE INJURY IN YOUR COUNTRY?

*In accordance with Brazilian law, an accident that takes place during working hours and/or at the workplace is considered a work-related accident. In this case, since the foreigner's workplace would be his/her residence in Brazil, in the event of an accident at his/her residence during working hours, this may be classified as a work-related accident. In addition, as we mentioned above: (i) it is understood that the law that should govern the relationship between the parties is the applicable law in the location where the services are rendered and (ii) the rules regarding remote working systems establish that an employer has the obligation of providing, in an express and ostensive manner, health and safety guidelines to its employees to avoid work-related illnesses and accidents.*

*In view of the above, the foreigner could file a claim requesting the recognition of a work-related accident and the payment of indemnification in Brazil. For that, he/she would have to file a claim in Brazil against the foreign company (or its Brazilian subsidiary/affiliated company, if any) claiming to be entitled to the Brazilian labour and social security law and therefore, entitled as well to have the work-related accident recognised with the consequent payment of an indemnification and/or other related rights (i.e., job stability). This risk may increase if she is able to prove that she was not provided with the guidelines regarding health and safety when working remotely. That said, it is not very common for there to be a labour claim in Brazil from a foreigner against its foreign employer, especially if the foreigner will stay in Brazil for a short term. The risk would increase if the accident results in severe consequences for the employee. In a worst-case scenario, it could also harm the reputation of the company.*

## WOULD THE REMOTE WORKER BE COVERED UNDER THE LOCAL NATIONAL HEALTHCARE SYSTEM OR INSURANCE?

*In Brazil, there is a national healthcare system, which is known as "SUS". Foreigners who live in Brazil are covered by SUS. However, despite the fact that this is a universal system, due to the large number of*

*users, which results in an overload of the system, several companies provide healthcare plans for their employees.*

*Additionally, in order to have access to SUS services, it is necessary to obtain the SUS card. To receive this card, the foreigner is required to have the Brazilian ID ("CRNM") and also the National Registry of Individual Taxpayers (CPF). Thus, if the foreigner is in Brazil under the circumstances of a visitor, she will not have such documents and, consequently, she will not be able to obtain the SUS card.*

*Therefore, we recommend reaching an agreement on this matter with the foreigner, before allowing him/her to come to Brazil. Some companies provide private international health plans to foreigners working from Brazil to reduce the risks, while others agree to reimburse medical expenses, and still others agree not to provide any reimbursement or international health insurance plan, especially when the foreigner is the one who initiates the request to work from Brazil.*

## IS A FOREIGN EMPLOYER SUBJECT TO DATA PRIVACY AND SECURITY REQUIREMENTS REGARDING PROTECTION OF EMPLOYEE PERSONAL INFORMATION FOR A FOREIGN EMPLOYEE WORKING REMOTELY IN YOUR COUNTRY?

*Yes, the Brazilian data privacy law ("LGPD") applies to any operation(s) that involves the processing of personal data, carried out by an individual or legal entity, governed by public or private law, and regardless of the country where its corporate headquarters are located or the country where such data is located, provided that:*

- the processing operation is carried out in the national territory; or*
- the purpose of the processing activity is to offer or provide goods or services or the processing of data of individuals who are located in the national territory; or*
- the personal data being processed was collected in the Brazilian territory. For this rule, personal data collected in the national territory is understood as those personal data whose data subject is in the Brazilian territory at the time of the collection.*

HAS THERE BEEN ANY LITIGATION  
OR SPECIFIC LAW OR REGULATION  
REGARDING THE FOREIGN REMOTE  
WORKER IN YOUR COUNTRY?

*Although remote work existed prior to the COVID-19 pandemic, it has become much more popular since the worldwide outbreak of the coronavirus. However, as this situation is a rather new one, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Brazil.*

**2. Would any of the above answers change if the remote worker (a) is a citizen of your country, or (b) engages in activity interacting with the local market.**

*Yes. First, the worker will not need any visa to enter and work from Brazil. In addition, the interaction with the local market increases the risks of labor and social security inspections and the risk of labor claims. Considering he/she will be rendering services from Brazil to Brazilian market, the Brazilian labor law will apply to the situation in the event of questionings.*

*Moreover, the interaction with the local market, depending on the activities developed by the remote worker, also increases the risk of permanent establishment.*



Mihoko Sirley Kimura  
Partner, **TozziniFreire Advogados**  
mkimura@tozzinifreire.com.br  
+55 11 508 652 62



Gabriela Lima Arantes  
Partner, **TozziniFreire Advogados**  
glima@tozzinifreire.com.br  
+55 11 508 655 06

**TozziniFreire Advogados**

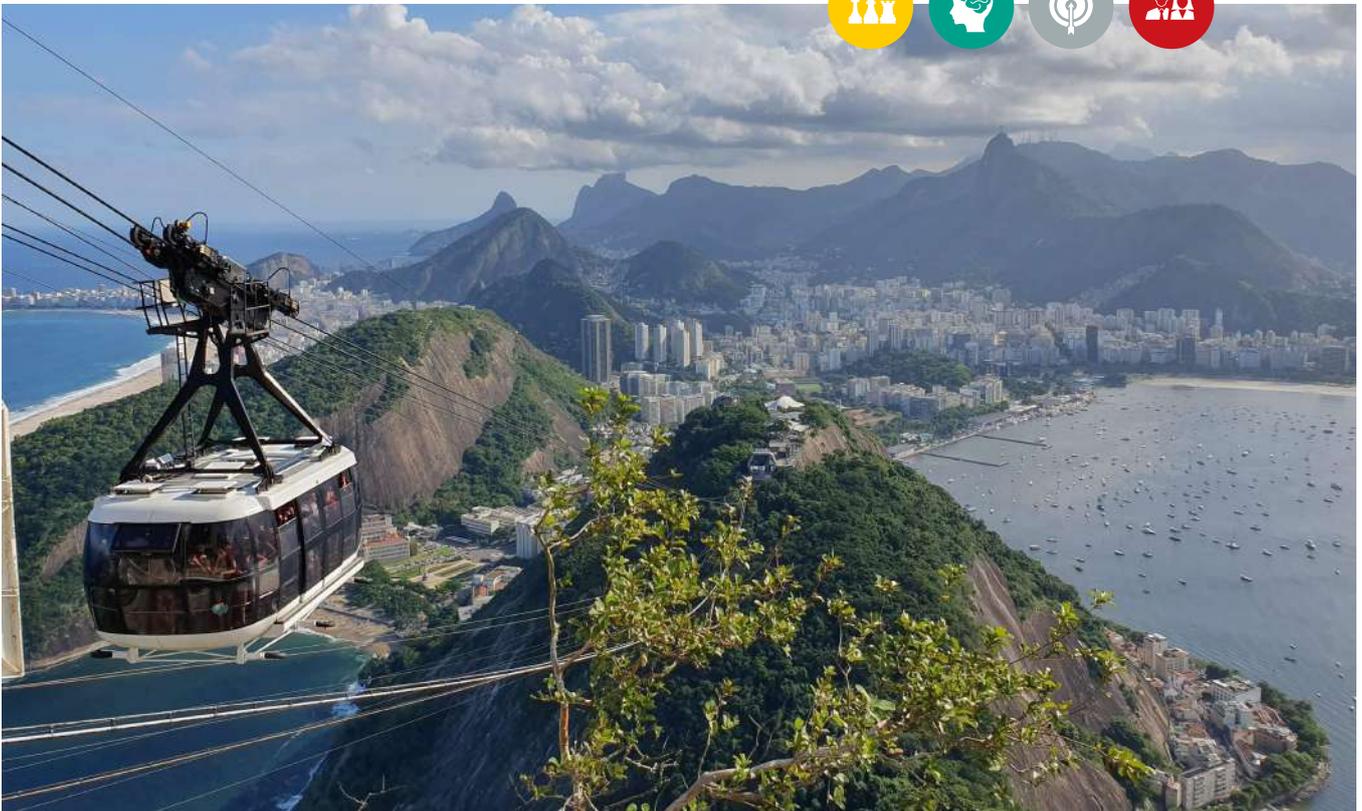
Rua Borges Lagoa, 1328  
04038-904, São Paulo, SP, Brazil  
P +55 11 508 650 00  
[www.tozzinifreire.com.br](http://www.tozzinifreire.com.br)

**CONTACT US**

For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

**L&E Global**  
Avenue Louise 221  
B-1050, Brussels  
Belgium  
+32 2 64 32 633  
[www.leglobal.org](http://www.leglobal.org)

May 2021



This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice, please contact a specialist at one of our member firms or the firm that authored this publication.

L&E Global CVBA is a civil company under Belgian law that coordinates an alliance of independent member firms. L&E Global does not provide client services of any kind. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, L&E Global is used as a brand or business name in relation to and by some or all of the member firms. L&E Global CVBA and its member firms are legally distinct and separate entities. They do not have, and nothing contained herein, shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm, nor the firm which authored this publication, has any authority (actual, apparent, implied or otherwise) to bind L&E Global CVBA or any member firm, in any manner whatsoever.