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CROSS-BORDER REMOTE WORK FAQs

CHINA

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.

Work authorization is required for foreign nationals to work in China. In specific, foreign nationals need to obtain both the work permit and the residence permit of work category to legitimately work in China. However, foreign nationals are unable to obtain these two permits without endorsement by a local company in China. As the hypothetical scenario is that the foreign company does not have a local presence, the foreign nationals are unable to work legitimately in China.

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.

(a) If the remote worker is a foreign national and engages in activity interacting with the local market, the above answer will be the same.

(b) If the remote worker is a Chinese citizen, the answers will be as follows:

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

Chinese citizens do not need work authorization to work in China.

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.

Yes, there is risk for the remote worker to be determined as a permanent establishment of the foreign company. The main factors to determine a permanent establishment include: (1) the period for the individual to provide service; and (2) whether the individual’s activity can be deemed as conducting business in China.

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? AND

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.

Pursuant to PRC Employment Contract Law, only entities registered in mainland China are qualified to establish employment relationship with individuals. Therefore, the relationship between the foreign company and the remote worker is civil relationship rather than employment relationship.

Under the civil relationship, the rights and obligations between the foreign company and the remote worker will be mainly determined by mutual agreement. The local employment laws and regulations will not be applicable to remote workers under civil relationship.

Thus, such remote workers are unable to participate in local social security scheme as employee and payroll requirements imposed by local employment laws are also not applicable.

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

There is no such special requirements for the moment.

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?

In most cases, such remote workers with Chinese citizenship will be found as resident taxpayer and are obligated to declare and pay individual income tax for their globally sourced income on their own. The foreign company will not be deemed as a withholder under Chinese tax laws.

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

No. Because the remote worker is not under an employment relationship.

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

No. Because the remote worker is not under an employment relationship.

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?

Foreign company's collection and transmission of personal information inside China shall be governed by the PRC Civil Code. Therefore, we consider the foreign company is subjected to personal information protection requirements prescribed by the PRC Civil Code and other applicable Chinese laws and regulations.

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

There is no such special law for the moment.



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