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CROSS-BORDER REMOTE WORK FAQs

CZECH REPUBLIC

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.

Strictly speaking, legally, any non-EU national working in the Czech Republic (remotely or not) should have a work authorisation (work permit and/or employee card or blue card or other type of permit). Exceptions may apply, mainly to persons who are: i) a European Union national; ii) a national of a European Economic Area member state (Iceland, Liechtenstein, Norway); or iii) a national of Switzerland.

However, granting a permit would usually require an employer in the Czech Republic or a company in the Czech Republic to which the employee would be seconded, and that is not the case in the present situation. Should the worker, in performing carrying

out his professional activities, refrain from interacting with local clients and engaging the local market, a working permit might not be required. Nevertheless, the foreigner would have to prove some of the legally stated purposes for his/her stay in the Czech Republic, besides work, to be granted a residency permit.

Depending on the intended period of stay, citizenship and legal purpose of the stay, a visa/other type of residency card might be required. The processing time differs, but in general issuing a visa/residency card usually takes up to 2-3 months.

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 may arise a permanent establishment in the Czech Republic, if a foreign company contracts employees in the Czech Republic to perform activities for, generally, at least 6 months. The permanent establishment might also be created due to a fixed

place of business, with certain continuity in the Czech Republic. However, it is necessary to consider each situation individually, as it depends on additional factors, e.g. double tax treaty between the state of the foreign company and the Czech Republic; corporate structure; services performed and the period/frequency in which the services are performed; in cases involving a home-office it is necessary to assess whether the home office could be seen, in any way at all, as a fixed place of the foreign entity; etc.

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?

Generally, the foreign entity starts to be treated as a tax payer (withholding agent) in the Czech Republic with the obligation to calculate and withhold monthly payroll taxes if (i) there is a permanent establishment of the foreign company created in the Czech Republic (except for the permanent establishment of a service), or (ii) if the foreign entity employs the employee for more than 183 days.

Determining such obligations must be made on a case-by-case basis. If the foreign entity becomes a Czech tax payer (withholding agent), it must fulfill all the employer's standard obligations in the Czech Republic (e.g. register for payroll taxes, withhold monthly payroll taxes, file annual reports, keep Czech wage lists, etc.).

With regards to social security, the general rule for the EU countries and States with a bilateral social security agreement with the Czech Republic, is to contribute to the state where the work is performed, i.e. the Czech Republic in this case, unless any exemption (for assignment or the standard exemption) is applied, and a respective document confirming this status is obtained (i.e. A1 certificate for the EU, Certificate of Coverage for States with bilateral agreements).

If the foreign entity becomes a social security payer in the Czech Republic, the foreign entity must register and fulfill all the related obligations (e.g. calculate and settle the monthly contributions, file monthly reports, announce any changes, file an annual pension list, etc.). As the fulfilment of the necessary obligations

may be difficult for the foreign company, it might grant Power of Attorney to a Czech accounting company/ advisor to manage these responsibilities on its behalf. Furthermore, the foreign employer would also need to register for the mandatory employer's liability insurance and settle quarterly contributions.

For non-EU and non-agreement countries, special rules apply. As such, the situation with each employee should be considered individually.

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.

A remote foreign employee might not be subject to local employment law requirements if he/she performs services exclusively for a foreign company.

However, should the situation be considered as an employee posting, within the meaning of EU guidelines and the Czech Labour Code, some of the provisions of local employment law may apply (working hours, vacation, minimum wage, etc.).

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

There is a very brief regulation covering requirements for remote work of Czech employees, but a special directive that would cover the remote foreign worker does not exist, at this time.

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?

Provided that the employee would be treated, for Czech tax purposes, as a non-resident performing the activities for the foreign entity in the Czech Republic

for less than 183 days in any 12 month period (and provided there is no permanent establishment), his employment income would be exempt from taxes in the Czech Republic. If the abovementioned limit is exceeded, the employee's income will be subject to Czech taxation as of the first day of his/her presence in the Czech Republic, via filing the annual personal income tax return (see above regarding the potential payroll obligations of the foreign employer in the Czech Republic). If the employee is treated as a Czech resident for tax purposes, he/she will be subject to unlimited taxation in the Czech Republic.

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

If the remote worker performed services exclusively for a foreign company in the Czech Republic (from his/her home/Czech residence) and was not covered by Czech employment law, he/she would not be entitled to bring a claim for workplace injury according to Czech employment law.

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

Health insurance is determined together with the social security rules, as described above.

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?

There is only a general protection of data privacy and security of personal information. If the remote worker is not covered by Czech employment law, the foreign employer will not have duties according to the Czech employment/data protection laws.

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

No, there has not been any such litigation. Czech labour law, generally, stipulates certain rules that should reflect the requirements of the EU Posted Workers Directive.

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) Yes, the situation would be very different for Czech citizens due to the application of Czech law. Also, if the employee is a Czech citizen, he/she will most likely be treated as a Czech resident (for tax purposes) and subject to unlimited taxation in the Czech Republic. Methods to settle Czech employment taxes (i.e. via annual personal income tax return, or via monthly payroll tax withholdings, payable by the employer) depend greatly on the exact circumstances of the particular situation.

The employee will most likely be subject to the Czech social security and health insurance scheme also, which would result in the need for the foreign employer to register and fulfill the related obligations.

b) Yes, interaction with the local market would have a significant impact on the work permit requirement and application of Czech employment law, and, as a result, there is a greater risk of creating a permanent establishment ("dependent agent permanent establishment"); and so, it would largely depend on the exact nature, frequency, etc. of the "interaction".



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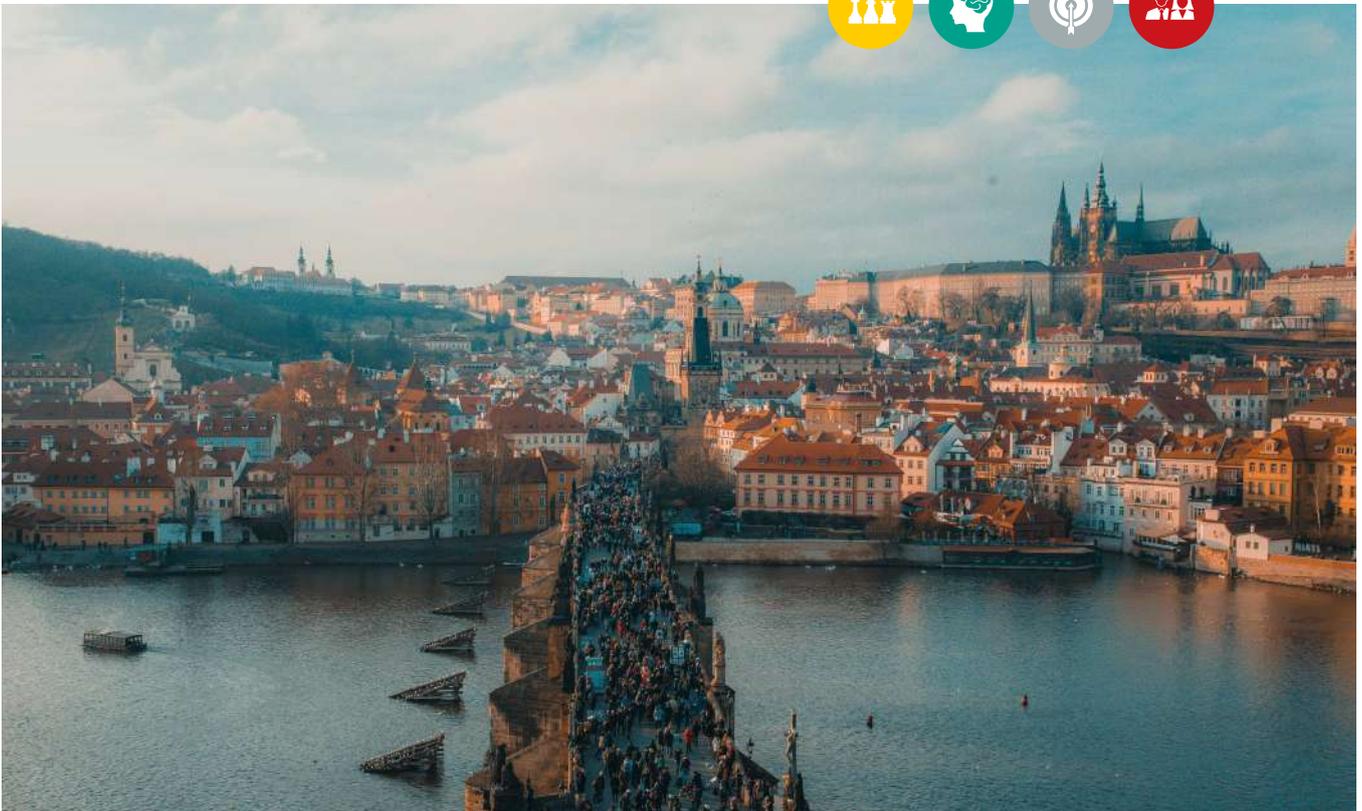
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