

10<sup>TH</sup>  
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IN 2021

# CROSS-BORDER REMOTE WORK FAQs

## INDIA

**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.

*While several countries have begun experimenting with remote work visas, India has not explored this option yet. If the foreign national already has an existing and valid business visa, then he/she may work remotely for the foreign company in India. The foreign national holding a business visa enjoys a multiple entry facility for as long as the visa is granted, however, each visit must be limited to a maximum period of 6 (six) months. As of 30 March 2021, the Indian Government has restored the issuance of fresh business e-visas, which had earlier been suspended due to the COVID-19 pandemic. Please note that business activities are prohibited while a foreign national is on a tourist visa; hence we do not advise that foreign nationals work remotely in India on tourist visas.*

*In order to obtain a business visa, a foreign national should be of assured financial standing, with sufficient proof to substantiate their financial status. While assessing the eligibility of business visas, the expertise of the person in the intended field of business and their business purpose will be thoroughly evaluated.*

*Depending on the citizenship of the foreign national, a business visa may be granted for either 10 years or 5 years. For foreign nationals from Bangladesh, China, and Pakistan, provisions in the bilateral agreements/policy guidelines will be applicable.*

*Do note that the Indian Government has recently revoked its suspension of e-business visas. However, only foreign nationals of certain countries may apply for e-business visas, and such visas can only be granted for a period of up to 60 days.*

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, the foreign national's remote working activities in India could potentially lead to a Permanent Establishment ("PE") risk for the foreign company in India. Typically, the PE risk is significantly higher if the foreign national has the ability to conclude contracts on behalf of the foreign company, or if the foreign national habitually plays the principal role leading to the conclusion of contracts for the foreign company, or provides services to third-parties in India, or habitually secures orders in India for the foreign company. Furthermore, it would be necessary to examine any tax treaty that India may have entered into with the foreign country, where the company is situated.*

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?

*Social security contributions in India arise only for those foreign nationals working in establishments in India to which the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act") are applicable, unless specifically exempted. Since the foreign national in this situation will be working remotely from India, exclusively for a foreign company, EPF and other such statutory deductions under Indian law, will not apply to the foreign national in question.*

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.

*The foreign national would typically not be subject to Indian employment law requirements, since he is not employed in India and has privity of contract with a foreign company that would not be subject to local employment laws. It is likely that the foreign national will remain subject to the employment law requirements of the employer's home country.*

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

*Currently, there are no special requirement provisions governing remote foreign workers in India, which continues to remain under the discretion of the employer's company policies.*

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 India, an individual's tax liability would depend on their tax residency during a fiscal year. The tax residency of an individual is dependent on the duration of stay of the individual in India, irrespective of the purpose of such stay. There are three recognised categories for tax residency under the taxation legislation in India, based on duration of stay:*

- Resident Ordinarily Resident (ROR);
- Resident but not Ordinarily Resident (RNOR); and
- Non-Resident (NR).

*The tax residency of an individual determines the scope of income liable to be taxed in India. If the foreign national is staying in India for more than 182 (one hundred eighty-two) days, the foreign company may be required to arrange for withholding taxation of the foreign employee(s).*

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

*Given that the foreign company is not governed by Indian employment laws, the foreign national employee working remotely from India, would most likely not be able to bring such a claim against the foreign company within India.*

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

*Currently, India does not have a national healthcare system that would provide protection to foreign workers, working remotely in India for a foreign employer. However, the foreign national may be covered by the extant laws (i.e. laws that are still in use, often despite being very old) of the country in which the foreign company is situated, or by the foreign company's insurance policies.*

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?

*Assuming that the sensitive personal data or information for the foreign company has already been collected, received and stored in the foreign country, then no additional compliance requirements would be imposed on the foreign employer, under India's extant data privacy laws.*

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

*Thus far, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in India.*

**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 citizen of India, he would not need a visa to enter India. However, at present, the Indian Government is only allowing citizens to return to India under specific circumstances.*

*b) If the remote worker's activities lead him to interact with the local market, and depending on the nature of the interactions, it is quite possible that tax liabilities could be imposed on the foreign company/employer. If personal information or sensitive personal data is collected from third-parties by the foreign national, then this will likely attract provisions of extant data privacy laws in India, as well.*



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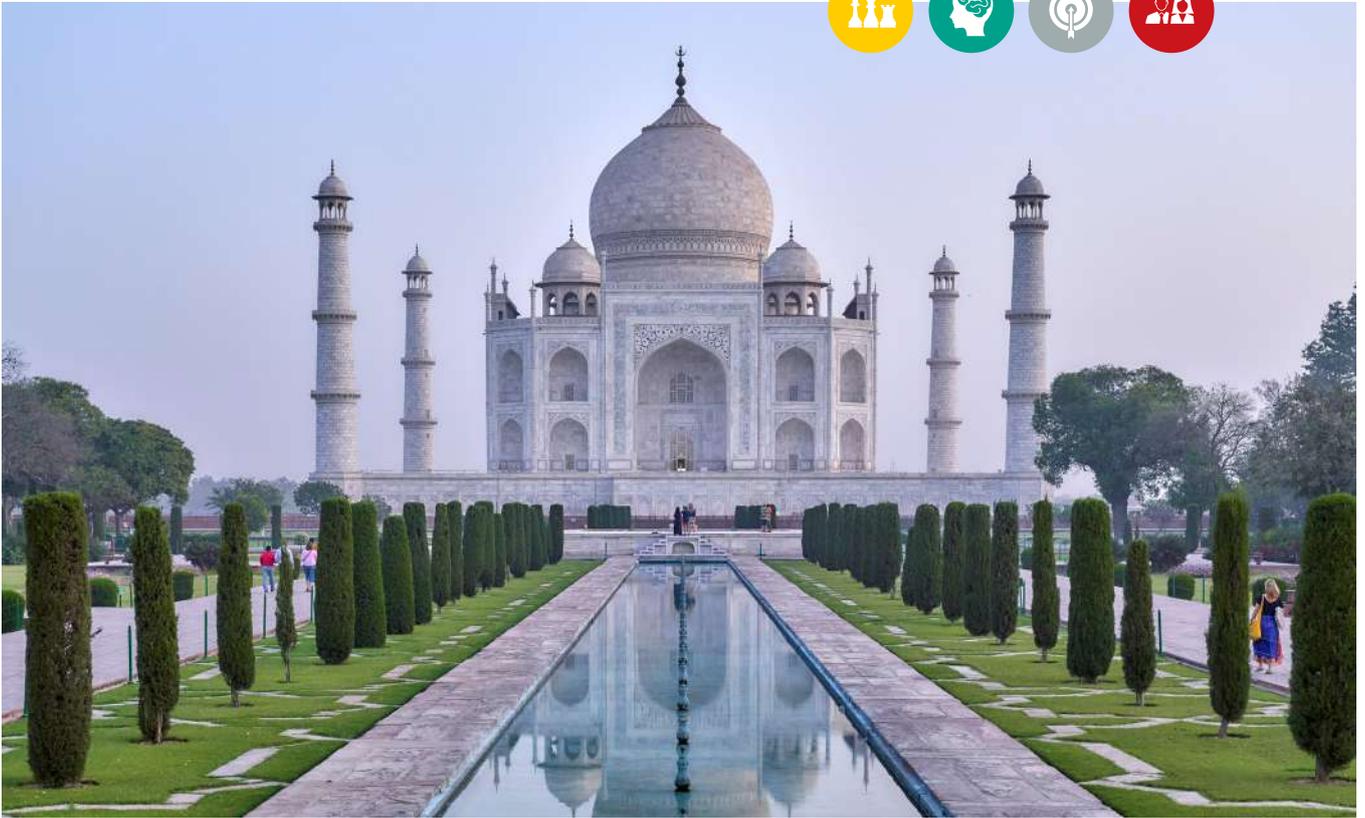
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