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# CROSS-BORDER REMOTE WORK FAQs

## JAPAN

**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.

*Whether or not a work permit is required and whether or not a work status of residence is required under Japanese law is determined by (i) where the employee is and (ii) what the employee does.*

*If the employee has a permanent resident status, such employee may be directly employed by a foreign entity outside Japan and may work exclusively for the benefit of such employer without work authorisation under Japanese law. The same logic applies to the case where an employee is temporarily located in Japan and working remotely for a foreign entity by carrying his/her laptop to Japan.*

*If the employee stays in Japan and works remotely for a foreign entity with a short stay visa without work authorisation, theoretically, it may lead to the revocation of his/her residence status. However, the authorities concern usually make the decision on a case-by-case basis considering all relevant facts.*

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 longer the employee stays in Japan while working remotely for the foreign entity, the higher the risk of such foreign entity being found to have Permanent Establishment in Japan. The authorities concerned also consider other various factors comprehensively when deciding whether a foreign entity has Permanent Establishment in Japan.*

*For example, if an employee is obliged to temporarily stay and work remotely in Japan due to the impact of COVID-19, such situation would be interpreted as*

*exceptional and temporary changes in the place where the employee works so that it is not likely that such employee is considered as Permanent Establishment in Japan.*

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?

*All the resident individuals in Japan, are obliged to join i) the national health insurance plan (or the industrial health insurance association, if any and applicable); and ii) the national pension plan.*

*As for social insurance (health insurance and employee pension) and labour insurance (employment insurance and industrial injury insurance), if the foreign employer does not have any Japanese entity and the employee is not regarded as Permanent Establishment in Japan, such foreign employer is not required to fulfill the social insurance and labour insurance while the employee is not able to enjoy the benefits of such insurance as an employee employed by a Japanese local entity may do.*

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 the Act on General Rules for Application of Law, in the absence of a choice of law in the labour contract, the law of the place where the work should be provided is presumed as the governing law. Therefore, if there is no governing laws agreed upon and if the employee conducts no activity in Japan while working remotely for the foreign employer, Japanese law basically does not apply to such labour contract and therefore Japanese labour law requirements and regulations are not applicable.*

*However, even if non-Japanese law is chosen as the governing law in the labour contract, if some part of the work is deemed to be performed in Japan, Japanese labour law requirements and regulations such as compulsory provisions could apply. Nevertheless, the terms and conditions of the contract will not be interpreted in accordance with the Japanese law.*

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

N/A.

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?

*Generally, if an employee is scheduled to move overseas from Japan for one year or more, he or she is deemed as a non-resident of Japan for tax purposes. Even if such employee temporarily returns to Japan during such relocation assignment, this employee will continue to be treated as a non-resident as far as such return is temporary such as not planning to reside in Japan for more than one year. Non-residents are taxed only on salaries for working in Japan.*

*Whether or not the salary is actually taxed in Japan depends on whether or not the short-term resident tax exemption under the tax treaty between Japan and the country of assignment is applicable. Taking the tax treaty between the United States and Japan as an example, even if the employee temporarily returns to Japan, income taxation in Japan is exempted and would not be levied on the salary paid by the employer in the United States, as long as the length of stay is 183 days or less.*

*Unless there is domestic-sourced income in Japan, the foreign employer, who does not have any Japanese entity and whose employee is not regarded as Permanent Establishment in Japan, is not required to arrange for withholding of income tax.*

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

*As stated above, for industrial injury insurance, if the foreign employer does not have any Japanese entity and the employee is not regarded as Permanent Establishment in Japan, the employee is not able to enjoy the benefits of such insurance as an employee employed by a Japanese local entity may do.*

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

*As stated above, all the resident individuals in Japan, are obliged to join i) the national health insurance plan (or the industrial health insurance association, if any and applicable); and ii) the national pension plan.*

*As for social insurance (health insurance and employee pension) and labour insurance (employment insurance and industrial injury insurance), if the foreign employer does not have any Japanese entity and the employee is not regarded as Permanent Establishment in Japan, the employee is not able to enjoy the benefits of these insurance as an employee employed by a Japanese local entity may do.*

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 employer does not have any Japanese entity and whose employee is not regarded as Permanent Establishment in Japan, such employer whose employee is working remotely from Japan is not subject to data privacy and security requirements regarding protection of employee personal information under the Act on the Protection of Personal Information in Japan.*

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

No.

**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) No except for the answer to the first question.

b) In the case of an employee who is a Japanese national, such employee may be directly employed by a foreign entity and may work exclusively for the benefit of such employer without work authorisation under Japanese law.



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