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# CROSS-BORDER REMOTE WORK FAQs

## LUXEMBOURG

**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.

*First, please note that in Luxembourg, what we call a “residence permit” covers both residence and work permits. In only a few cases, are the “work” and “residence” permits considered separately (e.g. for cross-border workers). In the context described above, a work permit will not be required. However, a stay permit may be required:*

- for a stay of less than 3 months, no stay permit is required of EU citizens and third-country nationals, subject to visa requirements; they must hold a visa C (short-term visa).
- for a stay of more than 3 months, EU citizens as well as third-country nationals, must have a “residence” permit.

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.

*Matters of this kind typically fall within the purview and expertise of tax advisors, and largely depend on the location where the company was established and on the provisions which, if any, are specified in the tax agreement between Luxembourg and the country concerned.*

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?

*If the employee is an EU citizen, and if Luxembourg becomes the country of residence, the employee will*

*be subject to Luxembourg law and must be affiliated with the local social security regime, if the employee performs more than 25% of his/her activity in Luxembourg.*

*If the employee is a third-country national, the implications for social security will be contingent upon the social security agreement between Luxembourg and the country in question.*

*Concerning payroll requirements: employees working in Luxembourg are immediately subject to the Luxembourg provisions of public order, this includes the respect by the employer to the payment of the social minimum wage and the automatic adjustment of remuneration to changes in the cost of living.*

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.

*Employees working in Luxembourg are immediately subject to the Luxembourg provisions of public order.*

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

*From a tax and social security perspective, any specific requirements that exist will be determined by the provisions of the applicable agreements between Luxembourg and the respective country.*

*From a labour law perspective, the provisions related to telework are provided for by the **Convention of 20 October 2020** on teleworking, which has been declared mandatory and therefore applicable by the Grand Ducal Regulation of 22 January 2021 (hereinafter the "Convention of Telework").*

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?

*The income tax modalities will depend on the double tax treaty agreement between Luxembourg and the country concerned; also within the purview of tax professionals.*

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

*Concerning the claim itself in the event of a work related accident, much will depend on what has been foreseen between the employee and the employer, from a social security point of view, to safeguard the employee in case of a work accident.*

*If the employee is in Luxembourg for a short term for private reasons (secondary residence or to visit a relative, for example), he should keep an official residence in his country of origin, so that such an action could be considered in his country of residence.*

*On the other hand, if he really intends to establish his residence in Luxembourg, and officially resides in Luxembourg, then he should, in principle, be affiliated with the Luxembourg social security regime. In the event of a work accident not covered by the competent authority in Luxembourg, he would have to take action against his employer before the courts, as provided for under the EU Regulation of 12 December 2012. According to Article 21 of this Regulation, the employee may act:*

- *before the courts of the Member State where the employer is domiciled, or*
- *before the courts of the place where, or from which, the employee habitually carries out his work, or the courts of the last place where he habitually carried out his work, or before the courts in the place where the business, which had engaged the employee, is or was situated, if the employee does not, or did not, habitually carry out his work in any one country.*

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

*This will also depend on the law applicable to the contract, from a social security point of view, and the social security agreement between both countries.*

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?

*Regarding data protection, the Convention on Telework provides, in particular, that the employer is responsible for taking the measures required by law and by the General Data Protection Regulation (GDPR), to ensure the protection of data, including personal data, used and processed by the teleworker for business purposes.*

*The employer is obliged to inform the teleworker about data protection and to train the employee (to the extent necessary). The information and training obligation includes all legislation that is pertinent to the company, in addition to the rules on data protection.*

*The employer shall inform the teleworker in particular, of any restrictions on the use of IT equipment or tools such as the Internet, e-mail or mobile phones and the sanctions applicable in case of non-compliance.*

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

*As previously mentioned, the provisions for telework are provided for by the **Convention of 20 October 2020**.*

**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, the above hypotheses would not change.*

*b) Yes, changes would be necessary, particularly regarding the risk of “permanent establishment” and the work permit requirement.*



Christian Jungers  
Partner,  
**KLEYR | GRASSO**  
christian.jungers@kleyrgrasso.com  
+352 227 330

## 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.

**KLEYR | GRASSO**  
7, rue des Primeurs  
L-2361 Luxembourg  
+352 227 3301  
[www.kleyrgrasso.com](http://www.kleyrgrasso.com)

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

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