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# CROSS-BORDER REMOTE WORK FAQs

## MEXICO

**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.

*A temporary residence visa is required for economic solvency. This type of visa is applicable for the foreigner who intends to reside in Mexico for more than 180 days and up to 4 years, without permission to receive income in Mexico.*

*The requirements are: Copy of valid passport; photograph with visible face; Copy of the employment contract; Copy of payroll receipts for the last six months and Copy of bank statements that prove monthly income for the amount of at least \$ 2,200, during the last six months.*

*Once the visa is granted and stamped by the Mexican Consulate, immigration agents will grant an FM-M*

*immigration document (Multiple Migration Form), in which they will check the box corresponding to the redemption and seal the day of entry to the country, from now, there are 30 calendar days to apply for the corresponding redemption with the National Institute of Migration, this process costs 44 USD for government rights.*

*The process of exchange and issuance of the immigration document will be resolved within a period of 1 to 5 business days, subsequently, the foreigner will have to stamp their fingerprints and sign the exchange authorization. That same day they will give the applicant their temporary resident card valid for one year, after by which the temporary resident immigration condition may be renewed annually, up until the 4-year maximum period. The foreigner national must provide evidence that the activity authorized subsists to obtain the renewal of his/her immigration condition.*

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.

*According to Mexican Income Tax Law (MITL), a non-resident corporation, although legally incorporated abroad, may be considered an income taxpayer in Mexico. Whether this is according to Mexican law, it is considered a tax resident in the country or it is subject to taxation by virtue of the business activities it carries on in the country. Under the first assumption (tax residence in Mexico result of having its place of management in the country), the legal entity will be subject to taxation in Mexico as a regular corporate taxpayer. Under the second assumption (business activities in Mexico), the legal foreign entity is deemed to have a Permanent Establishment (PE) in Mexico and therefore, subject to taxation in the country with respect to the income attributable to such establishment.*

*In particular, the first section of the MITL establishes that all non-Mexican residents are subject to Mexican income tax, to the extent the non-resident has a PE in Mexico. All activities attributable to such PE will be subject to Mexican income tax. Unless the non-resident can prove which activities are attributable to the PE and which are not, the non-resident will be subject to tax in Mexico for all its activities. According to the MITL, a Mexican PE is subject to the same general income tax rates and obligations as a domestic Mexican corporation.*

*For these purposes, Section 2 of the MITL defines a PE as any place of business in which business activities are conducted, either in whole or in part, or independent personal services are provided. First, it states that, among others that a PE shall be deemed to be, among others, branches, agencies, offices, factories, workshops, facilities, mines, quarries, or any place for exploring, extracting, or exploiting natural resources.*

*When a non-resident acts through an individual or an entity (dependent status), the non-resident will be deemed to have a PE in Mexico with respect to all the activities that such individual or entity carries out for the non-resident, even if such individual or entity does not have a place of business in Mexico. For these purposes, if an individual or entity has or exercises the authority to conclude contracts on behalf of the non-resident related to its activities in Mexico, the non-resident will be deemed to have a PE in Mexico. Certain limited exceptions related to preparatory or auxiliary services apply.*

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?

*As long as there is no employment relationship between the remote worker and a legally established Mexican company, the remote worker would not be subject to local social security or payroll requirement. Such requirements cannot be fulfilled by a foreign company.*

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.

*Given that there is no employment relationship between the remote worker and a legally established Mexican company, the remote worker would not be subject local employment law requirements.*

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

*The Mexican Labor Law does analyze telework in Chapter XII Bis, but given the circumstances there is no employment relationship between the worker and a legally established Mexican company.*

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?

*Since the remote worker will be paid by a foreign and non-Mexican entity, they will not be subject to tax regulations in Mexican territory.*

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

*The remote worker would not be entitled to a claim for workplace injury, as there is no employment relationship between them and a legally established Mexican company.*

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

*The remote worker would not be covered under the local national healthcare system or insurance, as there is no employment relationship between them and a legally established Mexican company.*

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?

*No, a foreign employer would not be subject to data privacy and security requirements regarding protection of employee personal information for a foreign employee working remotely in Mexico.*

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

*The Mexican Labor Law does analyze telework in Chapter XII Bis, but given that there is no employment relationship between the remote worker and a legally established Mexican company, those telework provisions are not applicable.*

**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)** *The citizenship is not relevant as long as the labour relationship is based in a foreign country and no wages are paid in Mexico; however, from a tax standpoint, the worker will be responsible for declaring his/her income received in a foreign country.*

**(b)** *If the employee interacts with local market, then a risk of creating a Permanent Establishment (discussed above) would arise, since he/she will be performing business activity on behalf of the foreign company.*



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