



*The beneficiary must have the qualifying immigration status or the permission to sign contracts, at the time of signing the company's incorporation. This migratory status does not authorise the foreign employee to work for a local company.*

*The term "permanence" refers to a period of three hundred and sixty-five (365) days, extendable for the same term.*

## 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.

*Article 14-B of the Peruvian Income Tax Law stipulates that a permanent establishment in Peru is deemed to exist, among others, when any of the following situations occur:*

- 1. the provision of services, when those are carried out in the country for the same project, service or for one related, for a period or periods that exceed one hundred and eighty-three (183) calendar days within a period of twelve (12) months, unless a minor term is established in a Double Taxation Treaty (in this case, such term will be applicable).*
- 2. when a person acts in the country, on behalf of a company incorporated abroad and as such, habitually concludes contracts or habitually exercises the main role in the conclusion of routine contracts without substantial modification by the sole proprietorship, partnership or entity, of any nature, incorporated abroad and those contracts are concluded on their behalf; or for the transfer of property rights, or the right to use property owned by them, or over which they have the right to use; or for the provision of services by them.*

*For these purposes, the time period under point 1) is determined by adding the period in which the company performs the aforementioned activities, the period or periods in which related parties carry out identical, substantially similar or related activities.*

*Likewise, Article 3 of the Peruvian Income Tax Regulations establishes that, for the purposes of point 2), it is further required that the person acting*

*on behalf of the company also habitually exercises powers to conclude contracts on behalf of the company, or habitually maintains the stock of goods or merchandise to be negotiated in the country on behalf of the company.*

*Be advised that if a permanent establishment is deemed to exist, it will have the status of a legal entity domiciled in Peru as established by Articles 7 and 14 of the Peruvian Income Tax Law; however, said permanent establishment will only be taxed on its Peruvian source of income. Consequently, the permanent establishment must comply with the payment of taxes (such as the Value Added Tax) and with the other formal obligations required of domiciled entities, such as:*

- registering with the Taxpayer Registry (RUC);*
- issuing invoices and payment vouchers in compliance with the Payment Vouchers Regulations;*
- retain (have in their possession) and update accounting books and records;*
- determine and pay monthly and annual tax obligations.*

*It is important to bear in mind however, that the Peruvian Income Tax Law identifies certain scenarios that do not constitute the existence of a permanent establishment, including – and with particular significance to the present case – the following:*

*"When a company incorporated abroad carries out commercial operations in the country through a broker, a general commission agent or any other independent representative, provided that the broker, general commission agent or independent representative acts as such in the usual performance of their activities. However, when that representative performs more than 80% of his activities on behalf of such company, he will not be considered an independent representative in the sense of this numeral."*

*Therefore, it is recommendable to evaluate the operations that said individual would carry out in the country, the contractual conditions and the powers granted to him, in order to identify if such activities would effectively constitute a permanent establishment of the company in Peru. Additionally, it is important to consider how long the operation will last.*

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?

*Pursuant to Article 9 of Supreme Decree No. 003-97-TR, if an individual renders subordinated personal services for remuneration in favour of another party, such relationship should have an employment nature. Said conclusion applies, regardless of whether the employer is domiciled outside Peru.*

*To that end, if the activities that the remote worker performs on behalf of the foreign company qualify as subordinate services, for instance if they are normally part of the regular duties of an employee, the remote worker should be considered as an employee of the foreign entity, which will act as the remote worker's employer (i.e., will issue instructions to him/her, supervise him/her and even punish any breach of commandments by him/her). Such a labour relationship could be subject to foreign regulations; thus the remote worker would be included in the foreign company payroll and he/she would earn the corresponding labour benefits.*

*Another alternative is to choose Peruvian Law; however, such choice requires the employer to register with the Peruvian Taxpayer Registry (RUC); to implement an electronic payroll; and to enroll the remote worker, accordingly. Under such a scenario, the remote worker will be entitled to receive Peruvian labour benefits and to register with the national social security system (health assistance provision and pension). Unfortunately, in the present case, this alternative is not possible from a practical perspective, since the foreign company is not domiciled in Peru; consequently, there is no possibility to generate a local payroll in order to register the employee.*

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 Peruvian company, the remote worker would not be subject to local employment law requirements.*

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

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

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 accordance with the provisions of Article 9 of the Peruvian Income Tax Law, income that originates from work performed in Peru is deemed as a Peruvian source of income; therefore, the remote worker will be taxed on said income, as such. Furthermore, under Article 6 of the Income Tax Law, persons who are domiciled in Peruvian territory are subject to taxation on their income source worldwide (e.g. from wherever the source of the income originates). Conversely, non-domiciled individuals are only taxed on their Peruvian source of income. In both scenarios, the remote worker would be responsible for paying the income tax directly, since his employer is not a Peruvian-domiciled company.*

*Significantly, the income that an individual earns for his work performed within the Peruvian territory could be classified, according to the Peruvian Income Tax Law, as fifth category income. Article 34 of the Peruvian Income Tax Law establishes that fifth category income includes, among others, income earned from the personal work carried out in a working relationship with an employer, regardless of the name given to the payment (e.g. wages, salaries, allowances, bonuses, commissions, etc.).*

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

*Given that there is no employment relationship between the remote worker and a legally established Peruvian company, the remote worker would not be subject to local employment law requirements. Therefore, Peruvian regulations regarding health and safety will not be applicable.*

#### 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 the worker and a legally established Peruvian 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 aimed at the protection of employees' personal information, in the event of a foreign employee working remotely in Peru.*

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

*Since 2015, teleworking in Peru has been regulated by Law No. 30036 and Supreme Decree No. 017-2015-TR. There is also a specific regulation on remote work in force until 31 July 2021; however, in the case at hand, given that there is no employment relationship between the remote worker and a legally established Peruvian company, such 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) In the present case, citizenship is not relevant, as the labour relationship is based in a foreign country and so Peruvian law is not applicable. However, from an immigration perspective, if the remote worker is a Peruvian citizen, there is no need to acquire a visa of any kind. From a tax standpoint, since the income is paid by a non-Peruvian-domiciled company, the worker will be responsible for declaring his/her income received from an entity in a foreign country.*

*b) If the foreign remote worker interacts with the local market, then as a result, there is a greater risk of creating a permanent establishment, since he/she will be engaging in business activities on behalf of the foreign company. However, a specific analysis of the "interaction" would be necessary.*



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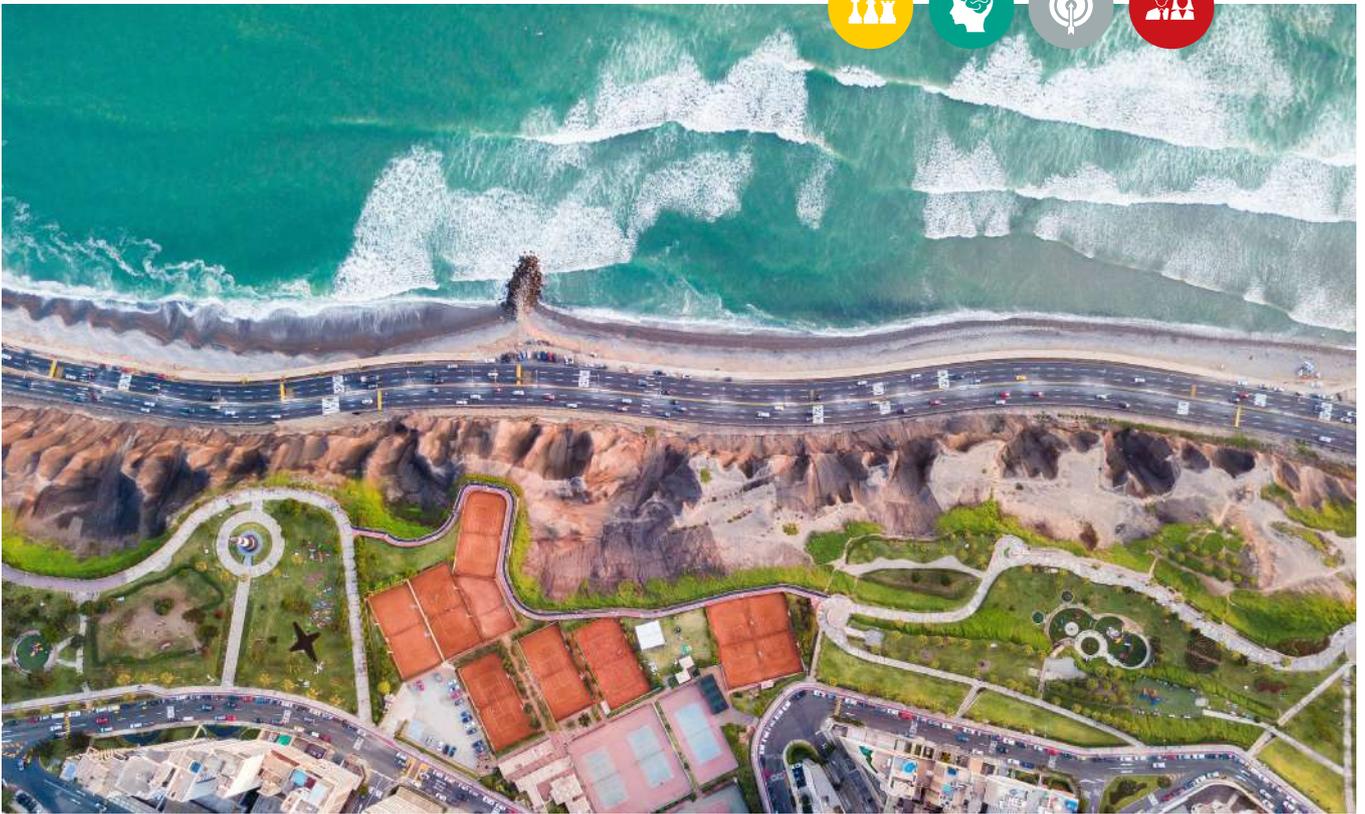
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