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CROSS-BORDER REMOTE WORK FAQs

ROMANIA

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 foreign national from an EU or EEC country, who wishes to work remotely for a period of time in Romania for a foreign company does not require authorisation or even a visa.

A foreign national from a non-EU or non-EEC country, who wishes to work remotely for a period of time in Romania for a foreign company also does not need to have a work authorisation. However, his ability to stay in Romania is limited by the conditions of his visa.

The short term visa allows the foreign national of a non-EU or non-EEC to stay in Romania for up to 90 days over any period of 180 consecutive days. In order to

stay in Romania for more than 90 days, a long-term visa or a long-term stay permit is required; either of which can be granted to nationals from a non-EU or non-EEC country, if the foreign nationals can prove:

- they are performing economic activities in Romania;
- they are pursuing their profession (as independent entities, not as employees) in Romania;
- they are conducting commercial activities (as managing shareholders or managing directors of a Romanian entity);
- they are working for a Romanian employer; or
- they are engaged in other regulated activities such as studying, research projects, religious undertakings or volunteer work.

In order to obtain the long-term stay permit, the foreign national has to prove that he/she fits into one of the categories mentioned above. They must also provide a copy of their criminal record to the local immigration authorities, along with information about their living arrangements and proof of medical insurance.

A foreign national who is a family member of a Romanian citizen or a national from an EU or EEC country, is eligible for a long-term stay permit, subject to certain conditions.

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 the Romanian Fiscal Code, the ‘permanent establishment’ is a place through which the activity of a non-resident is carried out, in whole or in part, either directly or through a dependent agent. There are no express rules defining which type of activity performed in Romania by a dependent agent (employee) can lead to acquiring the permanent establishment status. However, reference is made to the existence, in Romania, of a place of management; a branch; office; factory; shop; workshop; mine; oil or gas well; quarry or other places where natural resources are extracted; and a location where certain activities involving the assets and liabilities of a Romanian legal entity entering into reorganisation, continue to be performed.

The methodological norms of the Fiscal Code tie the notion of a ‘permanent establishment’ to a fixed place of activity, which is maintained for a period of at least 6 months. Apart from buildings or segments of buildings, equipment and new construction, a computer or server can also be considered a fixed place of activity. In order to determine if a non-resident entity has a permanent establishment in Romania, the local tax authorities will take into account Art. 5 of the Model Tax Convention of Organisation for Economic Cooperation and Development.

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?

A foreign national is considered a non-resident for fiscal purposes in Romania: i) if he is not present in Romania for a period exceeding a total of 183 days, during any interval of 12 consecutive months, which ends in the calendar year concerned; or ii) if the centre of his vital interests is not located within Romania.

The ‘centre of vital interests’ is the place with which the individual’s personal and economic relations are the closest. In the analysis of personal relationships, attention will be paid to the family of the spouse, children, dependents and individuals arriving together in Romania, membership in a charitable or religious organisation, and participation in cultural or other similar activities. In the analysis of economic relations, attention will be paid to whether the individual is an employee of a Romanian employer, if he is involved in a business activity in Romania, if he owns real estate in Romania, if he has Romanian bank accounts, or if he has credit/debit cards associated with banks in Romania.

The foreign national who exceeds the time limit or has vital interests in Romania, shall be considered a resident for fiscal purposes and will be subject to taxation in Romania, including social security contributions. As a rule, an employee of a non-resident entity who acquires resident status, is responsible for declaring his income and paying the appropriate income tax and social contributions.

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 working for a foreign entity in Romania is subject to Romanian employment law, if the employee and employer agree to place the employment under Romanian jurisdiction.

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

Very general principles only, on remote work performed by Romanian employees or foreign employees of a Romanian entity, are applicable at the present time.

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?

Income tax in Romania is 10%. In addition to the income tax, the resident has to pay health contributions (an additional 10%) and social security contributions – for pension benefits (an additional 25%). As a rule, an employee of a non-resident entity who acquires resident status, is responsible for declaring his income and paying the appropriate income tax and social contributions.

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

If the Romanian employment law applies, the remote worker is entitled to bring a claim for workplace injury.

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

If the remote worker is qualified as a resident for fiscal purposes and pays the necessary health contributions, the foreign national will be covered under the local national healthcare system.

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?

While there are no specific rules on the protection of the employee's personal information in Romania, full compliance with Art. 3 of the GDPR will be strictly applied.

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

No, there has not been any significant litigation, legislation or directives specifically concerning foreign remote workers in Romania, at this time.

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 Romanian citizen he is considered a resident (if not otherwise declared by fiscal authorities as being a resident of a different country) and is subject to taxation under the Romanian Fiscal Code. Romanian employment law also applies to Romanian citizens working for foreign entities, if they perform their activities in Romania, meaning that rules on minimum wage, local holidays, annual leave, childcare leave, disability leave and protections against unfair dismissals, must be observed.

b) If the remote worker is actively interacting with the local market, the risk of creating a permanent establishment in Romania increases significantly. According to the Fiscal Code, a non-resident is considered to have a permanent establishment in Romania, with respect to the activities that an individual (other than an agent with independent status) undertakes in Romania on behalf of the non-resident and if one of the following conditions are met: i) the individual is authorised and exercises the authority to conclude contracts on behalf of the non-resident in Romania; or ii) the individual maintains a stock of products or goods in Romania, from which he delivers such products or goods on behalf of the non-resident.



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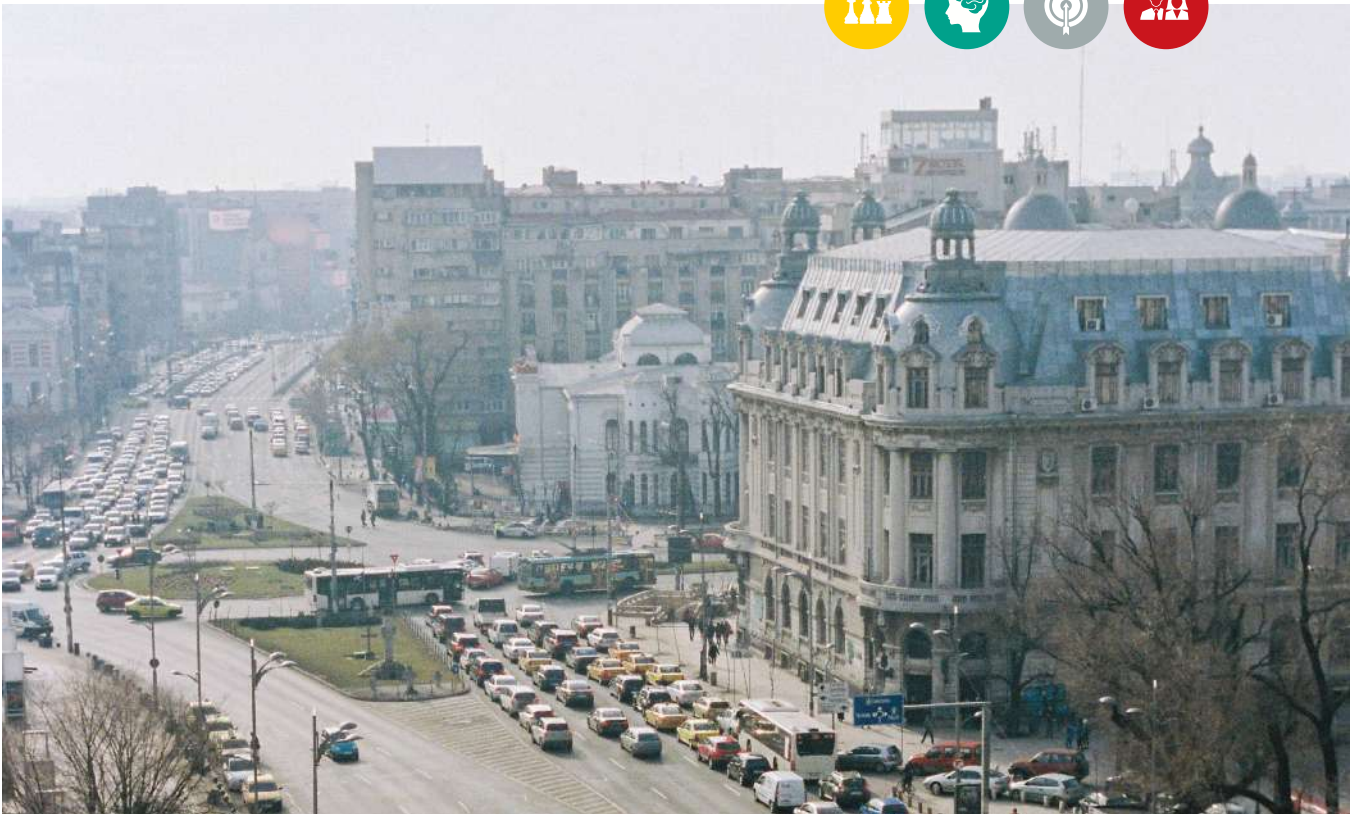
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