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CROSS-BORDER REMOTE WORK FAQs

RUSSIA

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.

As a general rule, a foreign national needs to have a work visa and a work permit in order to work in the territory of Russia. Russian migration legislation does not make any exceptions for the case where a foreign national works in Russia remotely for a foreign company. However, a foreign company, technically, would not be able to obtain a work permit and invitation letter for a work visa for its foreign employee in Russia, if it does not have a registered presence in Russia (branch / representative office or a separate legal entity).

Assuming that a foreign employee has a valid contract for remote work with a foreign company, governed by

non-Russian legislation, and such employee does not interact with the Russian market and his/her work is not linked to Russia (i.e. a foreign national is not assigned to Russia and Russia is not specified as a territory of work), we believe that in this particular situation, it can be presumed that the foreign employee does not have an employment relationship in Russia governed by Russian employment law and, hence, would not be required to obtain a Russian work permit and work visa. The employee may stay in Russia based on any legal grounds, during the term that his/her visas are valid.

However, the above approach is not explicitly stated in the law and there is a risk that the migration authorities may consider that the foreign national actually works in Russia, without having obtained the necessary Russian work visa and work permit. In that case, the foreign national may face an administrative fine of up to RUB 7,000 (approximately USD 95) with possible deportation from Russia. It is unlikely that the migration authorities would be able to subject the foreign company to liability for using the services of a foreign employee in Russia without the required work permit, in the absence of its registered presence in Russia.

Typically, Russian employers apply for a work visa for highly qualified foreign specialists (HQS) as it is the most simple and efficient option to obtain a work visa. A foreign employee qualifies as an HQS, if the monthly salary which he/she earns is not less than RUB 167 000 (USD 2 290). An HQS visa may be issued for up to 3 years (a standard work visa is issued for up to 1 year) and may be obtained within 4-5 weeks (a standard work visa can require several months to acquire).

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.

Remote work of a foreign national in Russia, for a foreign company, does not automatically create its permanent establishment in Russia. The main factors determining the exposure of the risk of permanent establishment creation include:

- the foreign company conducts its activity in Russia through the remote worker, i.e. provides services, sells goods, etc. to its clients in Russia;
- the remote worker represents the foreign company’s interests in Russia, acts on its behalf in Russia, is authorised and regularly uses such powers to conclude or negotiate contracts on behalf of the foreign company (dependent agent).

If the above factors are absent, the permanent establishment of a foreign company in Russia should not arise.

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?

The social security and other payroll requirements apply only to individuals who work under Russian employment or civil law contracts. Therefore, the remote worker would become subject to Russian social security and other payroll requirements if his/

her relationship with the foreign company is qualified as an actual employment relationship, in the territory of Russia, subject to Russian employment law. This qualification may be implemented contractually or by court order, if the foreign national applies for relief with the court. However, in the situation where the foreign company does not have a registered presence in Russia and the foreign national works remotely in Russia based on a foreign law contract, we believe that the risk of qualification that the remote work performed in Russia would be considered as an actual Russian employment relationship, is quite low.

Also, it is important to note that it is not in the interests of the foreign national to claim that he/she has an employment relationship in Russia, as consequently, he/she would become subject to Russian migration law and may be fined and or deported from Russia, for not having a valid Russian work permit and work visa.

Please bear in mind that a foreign company would not be able to pay Russian social security contributions if it does not have a registered presence in Russia, as the company must be registered with the Russian social security funds, in order to pay the social security 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.

In case a foreign national has a contract for remote work with a foreign company, which is governed by foreign law and does not specify Russia as a place of work, and the foreign national entered Russia voluntarily (i.e. was not assigned by the foreign company), we believe that there is a very low risk that the remote worker would be subject to local employment law.

From a practical point of view, such governance can be confirmed only if the remote worker brings a claim before a Russian court, and the court confirms that the remote work in Russia constitutes an actual employment relationship, subject to Russian employment law (the Labour Code).

Also, as mentioned above, it is not in the interests of the foreign national to claim that he or she has an employment relationship in Russia, as he or she would become subject to Russian migration law and may be fined and or deported from Russia, for not having a valid Russian work permit and work visa.

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

The Labour Code has a section governing remote work of employees. However, it applies only to individuals working under Russian employment contracts and should not apply to the relations between the foreign company and the remote foreign worker, if they are not qualified as Russian employment relations (contractually or by court).

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?

Pursuant to Russian tax law, remuneration received for work performed in Russia is a Russia-sourced income, subject to personal income tax in Russia. The personal income tax rate depends on the individual's tax residency status (30% in the hands of a non-resident for Russian tax purposes and 13% in the hands of a resident for Russian tax purposes). To become a resident for Russian tax purposes, a foreign national shall spend 183 or more calendar days in Russia during the previous 12 calendar months and, finally, during a calendar year.

If the foreign company does not have a separate subdivision in Russia, which pays remuneration to the remote employee working in Russia, then the foreign company does not have income tax withholding obligations with respect to payments to the remote employee. The employee is personally responsible for income tax payments in Russia, by means of filing an annual tax return in Russia.

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

The remote worker may bring a claim for workplace injury, but this claim can be satisfied only if the relationship with the foreign company is qualified by a court as an employment relationship in Russia, subject to the Russian Labour Code.

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

No, unless his or her relationship with the foreign company is qualified by a court as an employment relationship in Russia, subject to the Russian Labour Code.

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?

Generally, no, unless the relationship with the foreign company is qualified by a court as an employment relationship in Russia, subject to the Russian Labour Code.

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

No. Although there is a chapter on remote work in the Labour Code, it only applies to remote employees who work under Russian employment contracts.

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 Russian citizen, he/she would not be required to obtain a Russian work visa for remote work in Russia. However, this may increase the risk that the remote worker would file a court claim to classify the relationship with the foreign company as Russian employment. Nevertheless, this risk should remain low as enforcing such a decision outside of Russia, would be problematic for a Russian national.

Also, the foreign company will be obliged to comply with the personal data requirements under Russian law; companies must store the personal data of Russian citizens on servers located in Russia.

b) If the remote worker engages in activities that involve interacting with the local market, this increases the risks of i) qualifying the work performed for the foreign company as a Russian employment relationship, subject to Russian employment law; and ii) creating a permanent establishment of the foreign company in Russia (depending on the types of activities).



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