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# CROSS-BORDER REMOTE WORK FAQs

## ARGENTINA

**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.

*If the worker becomes subject to local employment law requirements, he/she must apply for a work visa. Unlike other countries, in Argentina, it is not possible to apply for a remote work visa. Due to this, a foreign employee working for a foreign company, is not able to obtain a work permit in Argentina, unless, a local company requests it. Furthermore, it is important to consider that a person is not able to work in our country as a tourist.*

*Depending on the length of the stay, the applicant should obtain a transitory work visa or a temporary work visa, at the corresponding Argentine Consulates from abroad or through the National Migration Office in Argentina.*

*Through the Mercosur Agreement, foreigners from Uruguay, Paraguay, Brazil, Bolivia, Chile, Peru, Colombia, Ecuador, Guyana, Surinam and Venezuela may request their temporary visas at the Argentine Consulate or at the Argentine Migration Office, providing evidence of their nationality, among other documents. This temporary visa will be entitled to such foreign individuals to work in Argentina for a two-year period. After the first two-year period, the employee will be able to request a permanent residence.*

*Argentine companies should request to the Argentine Migration Office temporary work visas for Non-Mercosur employees. For this purpose, the Argentine company must submit: (i) a labor agreement entered into between the Argentine company and the foreign employee; (ii) evidences that the Argentine company has no outstanding obligations vis-à-vis the tax and social security authorities; (iii) proof of employer's registration with the National Registry of Foreign Applicants (RENURE); (iv) a good conduct certificate issued by the police (both Argentine and from the country where the foreign employee has resided in the preceding three years, for at least one year), certificate of domicile, among others. In case of applying for a temporary visa for the employee's family members, the*

*corresponding family ties should be proven. This visa has a validity of one year and grants multiple entries. All documents must be duly legalized in the jurisdiction of origin, as well as a consular legalization (or the Apostille). Documents in a foreign language must be then translated by a public translator in Argentina.*

*The processing time of the visas will depend in each case in particular. In normal circumstances, the Argentine Consulates from abroad could issue the visas in five business day, after the presentation of all the required documents. The National Migration Office will issue a provisory work permit the same day of the application, until the approval of the Immigration file.*

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.

*From 2018 onwards Argentina incorporated into domestic Argentine Income Tax Law (“ITL”)’s Section 22 permanent establishment provisions defining this concept as a “fixed place of business”. A typical example of what is understood as a fixed place of business is a dependent agent of a foreign company acting in Argentina.*

*Argentine Income Tax Law defines a dependent agent as an individual that (i) has the authority or habitually exercises an authority to conclude contracts in the name of the foreign entity, or has a relevant role to celebrate those contracts (ii) maintains a deposit of goods from which they regularly deliver those goods (iii) undertakes risks on behalf of the foreign entity (iv) acts under the orders of the foreign entity or under dispositions arising from a contract relationship with it (v) exercises activities which corresponded economically to the foreign entity and (vi) is paid independently from the result of their activities.*

*These provisions shall apply when these activities are carried out for more than six months. Pursuant to Implementation Decree’s Section 62, the six-month period shall be computed as from the day in which the services or activities are effectively rendered or carried out. Please note that the Implementation Decree does not provide with cases under which the six-month period shall be suspended or reinitiated.*

*Considering the above, the Argentine Tax Authority may conclude that a foreign national employee constitutes a permanent establishment if the abovementioned requirements are met, and the six-month threshold is surpassed. If that were the case, then the foreign entity shall have to assess and pay Income Tax for their Argentine-sourced income (i.e., effectively connected income of the foreign entity to the foreign national employee’s activities in Argentina).*

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 worker is considered subject to local employment law requirements, such requirements cannot be fulfilled by a foreign company. The foreign company must incorporate a local company to register the worker and be able to pay local taxes and social security.*

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.

*If the worker performs work in Argentina, even if employed by a foreign company that 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 Argentina, the worker becomes subject to local employment law requirements.*

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

Yes, *Teleworking Law 27,555 and Decree 27/2021* provides that the worker must voluntarily agree in writing to work remotely, the right to digital disconnection, that the worker can interrupt the work day to take care of any of the following dependents of the worker: (i) persons under thirteen (13) years old; (ii) persons with disabilities; or (iii) elderly adults who live with the worker and require specific assistance. The remote worker may revoke the consent given to work remotely at any time during the employment relationship. The employer must provide the worker with the necessary equipment to perform tasks, as well as assume the costs of installation, maintenance and repair of such devices. The worker shall have the right to compensation for the higher connectivity and/or service consumption expenses incurred within the performance of tasks. The Ministry of Labor will keep a register of the companies that implement a telework modality, where the employer must present the software or platform to be used and the list of the employees under this working modality.

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 foreign employee will be subject to Income Tax only to the extent of their Argentine-sourced income, since foreign tax residents are liable to pay Income Tax in Argentina on their Argentine-sourced income only.*

*However, if the foreign employee acquired Argentine tax residency (i.e., acquiring a permanent residency in Argentina or staying in Argentina for more than 180 days within a 12-month period willing to remain in the country) then they would be subject to Income Tax in Argentina on their foreign-sourced income as well.*

*In both cases, since there would be no local employer, the individual shall assess and pay for their own Income Tax in Argentina, as applicable.*

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

*Yes, if he is subject to local employment law requirements.*

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

*No, unless he is registered as an employee of a local employer, in accordance with applicable local employment law requirements.*

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?

*Argentine Data Protection Act ("PDPA") has no extraterritorial scope. In this regard, the PDPA applies whenever personal data is processed within the Argentine territory. Consequently, a foreign employer will be subject to the Argentine Data Protection Act regarding the protection of employee personal information for a foreign employer working remotely in Argentina.*

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

*No specific litigation or law, besides the Teleworking Law 27,555 and Decree 27/2021 mentioned above.*

**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.**

*No from a labor law perspective.*

*From an Argentine tax perspective, if the remote worker was an Argentine citizen then the answers to the questions above might change considering that Argentine citizens are deemed Argentine tax residents (unless they meet criteria to lose their tax residency).*

*Because of that, Argentine tax resident individuals shall pay Income Tax in Argentina on their Argentine and foreign sourced income (e.g., income arising from a local or foreign labor relationship).*

*However, this circumstance should not affect the individual's foreign employer since the individual would be liable to assess and pay for their own taxes in Argentina. Please bear in mind that if the employer was an Argentine entity then they shall withhold and remit income tax arising from the local labor relationship to the Argentine Tax Authority.*

*If the foreign national employee engages in activity interacting with the local market then it might be construed by the Argentine Tax Authority that such engagement constitutes a permanent establishment under ITL's provisions, and that such income is effectively connected to the foreign entity by the foreign national employee's activities in Argentina. In this case the foreign entity should assess Income Tax in Argentina for its Argentine-sourced income.*



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