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Global Guide on Overseas Remote Working

During the COVID-19 pandemic, a number of employers had staff who went "home" or simply relocated to a different country to continue working remotely during lockdown. Swift technological advances meant that these arrangements were, in many cases, successful, turning on its head the traditional approach of employees having to be in the workplace, or even in the same country, as their employer.

Fast forward to 2023, and many employers continue to allow, or are considering, overseas remote working arrangements (also referred to as "satellite" working). This is driven by a variety of factors, including:

- **The "war for talent"** – Employers around the world must find new and innovative ways to attract and retain talent in a highly competitive market. We have seen many examples of employees voting with their feet when employers have refused their requests to work remotely (including from abroad). In the same way, given the challenges of finding the right talent locally, more and more businesses are engaging talent from abroad to widen the pool.
- **The desire for fast expansion into new markets** – Technological advances (accelerated by the pandemic) have allowed businesses to expand quickly and enter new markets. To aid this, new business models, such as the Professional Employer Organisation (PEO) and Employer of Record (EOR), have sprung up as alternatives to setting up local subsidiaries or hiring staff directly.

The aim of this guide is to highlight the key issues for businesses to consider if they have staff living and working in one country for the benefit of a company in a different country, whether they are employed directly or via a PEO. It provides a high-level overview in relation to employment, immigration, tax and social security risks, as well as, where applicable, labour leasing restrictions and Posted Workers Directive obligations.

This guide should not be regarded as a substitute for legal advice. We recommend you always check the latest position with us. It sets out the position as of 1 September 2023.

Overview

For each country included in this guide, we have considered three potential scenarios that might apply when an individual is based in, or relocates to, one country as their "home country" and is living and working there for the benefit of a company in a different country.

We have identified five key issues of which businesses must be aware when considering overseas remote working arrangements. These can be summarised as follows:

Employment	Will the individual gain (potentially more generous) employment rights in the country in which they are actually working, and will the business be subject to additional obligations outside their jurisdiction? This could affect the employee's terms and conditions during the relationship, as well as the costs and obligations at termination.
Tax and Social Security	This is often the primary concern for businesses, as the cost implications and sanctions for getting it wrong can be severe. A thorough risk assessment will be needed, including payroll obligations, local registrations for tax and social security, employer and employee liabilities, double taxation relief and permanent establishment considerations.
Labour Leasing	Individuals who are employed by an entity operating in one jurisdiction (whether it be a subsidiary or a PEO) but, in practice, work for the economic benefit of, and are recharged to, an entity in another jurisdiction may be caught by "labour leasing" laws. In some jurisdictions, labour leasing is prohibited or highly regulated, and there are tough penalties for non-compliance.
Posted Workers Directive	The Posted Workers Directive can apply where a business in one EEA country sends a worker to another EEA country for a limited period to carry out work for its customers or clients or for a company in the same group. This can include assignments, secondments and intra-group transfers. So-called "posted workers" are entitled to certain minimum terms and conditions in line with those afforded to workers in the EEA country to which they are posted. The Posted Workers Enforcement Directive resulted in most EEA countries introducing national legislation requiring posting and host companies to comply with specific administrative and registration requirements. Furthermore, certain EEA countries have extended the relevant obligations to the posting companies of all posted workers, not just those being sent from other EEA countries. The Posted Workers Amendment Directive gives further protection to posted workers.
Immigration	Will the individual be allowed to live and work remotely from their chosen country for immigration purposes? In most countries, an individual will only be permitted to work remotely for an overseas entity if they are a citizen of the country in which they are living or if they hold the necessary visa permitting them to work from that country.

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We have assumed that if an individual is based in, or relocates to, Australia as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Australia ("Overseas Employer") and works for that company remotely from Australia.
- **Scenario 2** – The individual is an employee of an entity in Australia ("Home Employer") but is assigned to work remotely for an entity outside Australia ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Australia (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Australia ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The employee will be classified as an Australia-based employee of a non-Australian employer and some provisions of the Fair Work Act 2009 (Cth) will apply, requiring the Overseas Employer to comply with some aspects of Australian employment law despite its geographical location. **Scenario 2** – The employee will be classified as an Australia-based employee of an Australian employer (being the Home Employer). This means that the laws of Australia will apply, which includes all provisions of the Fair Work Act 2009 (Cth). It is not possible to "contract out" of the application of Australian employment laws, even if the employee's contract of employment specifies a foreign jurisdiction as being the applicable law. The Home Employer will also have a non-delegable duty of care for the safety of the employee living and working in Australia. **Scenario 3** – As in scenario 2, the employment laws of Australia will apply given the individual will be an Australia-based employee of an Australian employer (being the PEO). In all three scenarios, the employee may gain employment rights in the country in which the Overseas Employer/ Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Australian employment law purposes?	No, not under the laws of Australia. There is no concept of dual employment in Australia.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Australian employment law purposes?	No, not under the laws of Australia. There is no concept of dual employment in Australia.
If Australian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Australian employment laws do not require payment for such provisions. However, consideration (including by way of the individual's remuneration) will typically render non-competition clauses more reasonable.

Australia

Does Australia impose any additional obligations in relation to homeworking?	Yes. Australian work health and safety laws continue to apply when staff are working from home. Employers remain under a duty to eliminate or minimise the risk to workers' health and safety so far as is reasonably practicable, including the risk to workers' mental health. Employers must consult with workers and take all reasonable steps to ensure that their home workstations are set up correctly to minimise health and safety risks. This should include a risk assessment of the remote workspace. Australia's health and safety regulatory body, SafeWork Australia, provides further guidance on working from home arrangements on its website.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	While being useful in allowing Overseas End-Users to "quickly" engage individuals in Australia, these arrangements are more complicated than they might initially appear. Some key employment law issues to be aware of are set out below: • **Employment processes and procedures** – Overseas End-Users must remember that they are not the individual's employer for the purpose of any processes, e.g. performance/disciplinary/termination, and so will rely on the PEO to manage these (meaning it will be important that the contract with the PEO includes provisions to govern this). • **Australian work rights** – It would likely be difficult for a PEO to engage an individual who needs a visa to work in Australia.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Australia? Can an overseas employer operate a local payroll?	**Scenario 1** – A local payroll is not required. An Overseas Employer could facilitate the Australian payroll (whether dealing with this directly or via a payroll agent), provided it complies with Australian law. **Scenario 2** – A local payroll is not required but, most typically, the Home Employer would facilitate the payroll in this scenario. As the employer, the Home Employer would be required to keep employment records, including payroll records of employees, for a period of seven years to comply with obligations under Australian employment laws. **Scenario 3** – The PEO would typically operate a local payroll.

Australia

Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in Australia for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	**Scenario 1** – Potentially yes, for the Overseas Employer if there is an obligation to deduct or pay any Australian tax or superannuation (see below). **Scenario 2** – No, for the Overseas Entity. The Home Employer would have these obligations. **Scenario 3** – No, for the Overseas End-User. The PEO would have these obligations. **Criminal penalties** – None. **Financial sanctions** – There are significant penalties for failure to register, lodge and pay various employment taxes. For a significant global entity (revenue over AU$1 billion), the penalty for failure to lodge can be up to AU$782,500. There are also sanctions for breaching employee record obligations. If an employer's failure to meet its record-keeping obligations is found to be serious, wilful or repetitive, the maximum penalties a court may impose for record-keeping and pay slip contraventions are: • AU$18,780 per contravention for an individual • AU$93,900 per contravention for a corporation Further details can be found here.
Are there any potential Australian tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer would need to deduct PAYGW and pay any relevant superannuation, Fringe Benefits Tax (FBT) and payroll tax. • **Overseas Employer** – The Overseas Employer would be required to register and pay local taxes, including PAYGW, FBT, superannuation obligations and potentially state-based payroll tax if the group has total wages in Australia that exceed the relevant threshold (e.g. AU$1.2 million in NSW). However, if the employee was in Australia for less than 183 days and was a resident of a country that has a double tax treaty with Australia, the Overseas Employer may be exempt from Australian tax obligations unless it has a permanent establishment in Australia. • **Overseas Entity** – The Overseas Entity would not have any obligations in Australia unless it was regarded as the "employer" or was considered to have a permanent establishment in Australia. • **Overseas End-User** – The Overseas End-User would not have any obligations in Australia unless it was regarded as the "employer" or was considered to have a permanent establishment in Australia. • **Individual** – The employee would be required to lodge Australian tax returns and pay Australian tax unless they were in Australia for a period of less than 183 days, were a resident of a country that has a tax treaty with Australia and were paid by an offshore employer that did not have a permanent establishment in Australia.
If employment tax is payable in both Australia and another country, would double taxation relief be available?	A foreign tax offset can be claimed for offshore tax paid in respect of income that is taxable in Australia, although there may be limitations.

Australia

Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	In normal circumstances, the presence of employees in Australia for an extended period of time can result in a permanent establishment in Australia, depending on the activities and responsibilities of those employees.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Australia?	Labour leasing is not a term used in Australia – rather it is referred to as "labour hire". Labour hire is not prohibited. However, if the arrangement is characterised as a sham contracting arrangement, it is prohibited under Division 6 of The Fair Work Act 2009 (Cth). Labour hire is currently regulated in certain states, namely Queensland, South Australia and Victoria. The federal government has announced its plans to create a federal regulation, too.
Which rules governing labour leasing in Australia would apply to these scenarios?	• **Time limits** – None. • **Any exceptions for intra-group situations** – No. • **Formal registration requirements** – There are currently labour hire licensing requirements in Queensland, South Australia and Victoria. "A labour hire provider is a person who, as part of carrying on a business, supplies labour hire workers to do work for another person or business (the labour hire user)," but these are unlikely to apply in any of these scenarios.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions** – No, there are no criminal penalties for breaching the sham contracting provisions of the Fair Work Act. **Financial penalties** – Currently, the maximum penalty that can be enforced (per contravention) is: • AU$93,900 for corporations • AU$18,780 for individuals
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Australia in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Australia.

Australia

Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country) and/or the Overseas End-User (as applicable).
Are there any financial penalties/criminal sanctions for non-compliance?	Not in Australia.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Australia?	All employees must have a legal entitlement to work in Australia, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. This means that they must be an Australian citizen, permanent resident or otherwise hold a valid visa permitting them to work within Australia. The type of visa required depends on the length of the employee's stay and the work/role they will perform. Typically, a visa will only be granted in circumstances where the employer cannot find an Australian citizen or permanent resident to fill a particular job vacancy.
If the individual was working overseas for the benefit of a company based in Australia and travelled to Australia for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Australia)?	Business visitor visas do not allow an individual to perform substantive work in Australia. Generally, entitlements under this visa only extend to business activities such as attending meetings, attending conferences or to make general business or employment enquiries. See business stream visa requirements here.

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Belgium

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We have assumed that if an individual is based in, or relocates to, Belgium as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Belgium ("Overseas Employer") and works for that company remotely from Belgium.
- **Scenario 2** – The individual is an employee of an entity in Belgium ("Home Employer") but is assigned to work remotely for an entity outside Belgium ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Belgium (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Belgium ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – If the employee works from Belgium for more than a couple of months, Belgian employment laws may apply, even if the employment contract has a choice of law clause. **Scenario 2** – Generally, Belgian employment laws will apply. However, it depends on how the assignment is formalised. **Scenario 3** – Belgian employment laws will apply. In all three scenarios, the employee may gain employment rights in the country in which the Overseas Employer/ Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Belgian employment law purposes?	If the Overseas Entity instructs the employee and their work is for the benefit of the Overseas Entity, the situation may qualify as labour leasing, which, if not properly documented, may mean the Overseas Entity is treated as a second employer.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Belgian employment law purposes?	Yes, if the Overseas End-User gives direct instructions to the employee, and these instructions have not been properly formalised in an agreement between the Overseas End-User and the PEO, or if the instructions exceed the instruction rights of the Overseas End-User, the latter may be considered a second employer in the employment relationship.
If Belgian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Payment is required for non-competition provisions under Belgian law, but not for confidentiality/non-solicitation provisions.
Does Belgium impose any additional obligations in relation to homeworking?	Homeworking must be formalised by means of an addendum to the standard employment contract, with certain specific provisions. The addendum should address how, if at all, expenses associated with working from home will be compensated. The employer should, in any event, make available the necessary equipment. The employee should follow the employer's policy on health and safety.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	It is important, in this scenario, to properly document the instruction rights of the Overseas End-User in a service agreement with the PEO and to remain within the limits of the instruction rights as allowed by the law.

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Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Belgium? Can an overseas employer operate a local payroll?	**Scenario 1** – Yes, due to the fact the employee will be subject to Belgian social security. **Scenario 2** – Yes, depending on how the assignment is formalised. An overseas employer can operate a local payroll. **Scenario 3** – The PEO will pay the employee directly.
Do any of these scenarios require the Overseas Employer/ Overseas Entity/Overseas End-User to register in Belgium for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Very likely for scenarios 1 and 2, if Belgian social security and payroll tax are considered to apply. Criminal fines (rather exceptional) may range from €400 to €4,000 per employee for the company that is non-compliant. Administrative fines may range from €200 to €2,000 per employee. Not in scenario 3, assuming the Overseas End-User remains within the limits of the allowed instruction rights.
Are there any potential Belgian tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer will usually be required to operate a Belgian payroll and withhold payroll tax. It may also need to consider whether it has any employment tax obligations in the country of the Overseas Entity. • **Overseas Employer** – The Overseas Employer will usually be required to operate a Belgian payroll and withhold payroll tax. It will also need to consider the permanent establishment (PE) position. • **Overseas Entity** – The Overseas Entity should not have local payroll obligations, provided that formalities have been complied with to avoid unlawful labour leasing. It will need to consider the PE position and the employment tax obligations in its own country. • **Overseas End-User** – The Overseas End-User should not have local payroll obligations, provided that limits on instruction rights have been complied with. • **Individual** – In scenario 1, the employee may be taxed in both countries, in which case they will need to consider whether they can claim double taxation relief.
If employment tax is payable in both Belgium and another country, would double taxation relief be available?	It depends on the bilateral tax agreement between the relevant countries.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	In all three scenarios, this would depend on the position/job content of the employee and on the laws of the Overseas Entity/Overseas Employer/Overseas End-User, respectively.

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Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Belgium?	Labour leasing and agency work is forbidden subject to certain exceptions. These exceptions are strictly regulated.
Which rules governing labour leasing in Belgium would apply to these scenarios?	• **Time limits** – Depends on the reason for the leasing of personnel. • **Any exceptions for intra-group situations –** Yes, potentially, although notification to the social inspectorate would still be required. • **Formal registration requirements** – A tripartite agreement should be notified to/approved by the social inspectorate, depending on the circumstances. Scenario 3 would require a service agreement (with documented instruction rights) between the PEO and the Overseas End-User.
Are there any financial penalties/criminal sanctions for non-compliance?	Unlawful labour leasing is punishable by law, both for the leasing company and the user company. Breach leads to civil joint liability. **Criminal sanctions** – Criminal fines (rather exceptional) may range from €800 to €8,000 per employee for the company that is non-compliant. **Financial penalties** – Administrative fines may range from €400 to €4,000 per employee.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Belgium in any of these scenarios?	**Scenario 1** – Yes. The Belgian legislation implementing the PWD applies as soon as an employee is sent to work in Belgium, regardless of whether the employee is providing those services to an establishment or undertaking in Belgium. **Scenario 2** – Not if the transfer to Belgium is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the "posting" company. **Scenario 3** – No, in the sense that the PEO is also established in Belgium.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No. **Scenario 2** – Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered. **Scenario 3** – Same as under scenario 2.

Belgium

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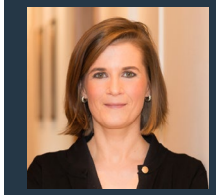
Are there any financial penalties/criminal sanctions for non-compliance?	Criminal sanctions (although these are exceptional) may range from €400 to €4,000 per employee for the company that is non-compliant. Administrative fines may range from €200 to €2,000 per employee. In each case, however, the sanctions only apply in the event of non-compliance with regard to specific provisions.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Belgium?	All employees must have a legal entitlement to work in Belgium, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. This means that they must be a Belgian citizen, permanent resident or otherwise hold a valid permit permitting them to work in Belgium.
If the individual was working overseas for the benefit of a company based in Belgium and travelled to Belgium for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Belgium)?	Yes, but the visit may have to be reported to Social Security Service through a LIMOSA declaration.

Contact



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China

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We have assumed that if an individual is based in, or relocates to, China as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside China ("Overseas Employer") and works for that company remotely from China.
- **Scenario 2** – The individual is an employee of an entity in China ("Home Employer") but is assigned to work remotely for an entity outside China ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in China (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside China ("Overseas End-User").

General observations on the position in mainland China – In principle, a company incorporated outside of mainland China must establish a presence (e.g. a limited liability company or a representative office) in mainland China in order to lawfully conduct business operations and/or liaison activities within mainland China. An arrangement whereby a person is employed by the "Overseas Employer" outside of mainland China and is working from mainland China may be considered a violation of such requirements. As such, we would not recommend scenario 1 from the perspective of mainland Chinese law.

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The employment laws of the jurisdiction where the Overseas Employer sits will apply. Also note our general comments above on the presence requirement in connection with this scenario. **Scenario 2** – The employment laws of the Home Employer will apply, i.e. Chinese labour laws. The employment laws of the country in which the Overseas Entity is situated could also apply depending on the laws of that jurisdiction. **Scenario 3** – The employment laws of the PEO will govern the employment relationship between the PEO and the individual; the governing law specified in the service agreement between the PEO and the Overseas End-User will govern the contractual relationship between the PEO and the Overseas End-User.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Chinese employment law purposes?	No.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Chinese employment law purposes?	No. The employer will be the PEO, which assumes all the responsibilities of an employer under PRC employment law. However, the PEO will normally pass whatever liabilities it has taken on to the Overseas End-User through the contract between the PEO and the Overseas End-User.
If Chinese employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Under mainland Chinese law, no compensation is required for confidentiality obligations on employees, but compensation must be paid to employees in order for their non-competition obligations during the relevant post-termination period to be enforceable. The maximum post-termination non-competition period is two years.

China

Does China impose any additional obligations in relation to homeworking?	No.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	No. The PEO will be the employer under Chinese employment law and will take full responsibilities as an employer, including obligations to pay salary, withhold tax, pay social security contributions, etc.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in China? Can an overseas employer operate a local payroll?	**Scenario 1** – If the employee remains employed by the Overseas Employer, local payroll is not required in China. Also note our general comments above on the requirement to have a presence in China in connection with scenario 1. **Scenario 2** – The Home Employer will be required to set up a local payroll for the employee in China. An overseas employer cannot operate a local payroll. **Scenario 3** – The PEO will pay the employee directly.
Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in China for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	There is no registration requirement on the Overseas Employer/Overseas Entity/Overseas End-User specifically for tax, social security or other benefits, but please note our general comments above on the requirement to have a presence in China in connection with scenario 1. **Financial penalties/criminal sanctions** – N/A.
Are there any potential Chinese tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer is obliged to withhold mainland Chinese Individual Income Tax (IIT) on behalf of the employee. As the individual works for the Overseas Entity, the Home Employer would likely be deemed to have provided services to the Overseas Entity through this individual and service income would be deemed to be charged. Such service income of the Home Employer will trigger Value Added Tax (VAT) and Corporate Income Tax (CIT) in mainland China. • **Overseas Employer** – The Overseas Employer may be exposed to the risk of establishing a permanent establishment (PE) in mainland China, as further discussed below. • **Overseas Entity** – No potential local tax implications for the Overseas Entity. • **Overseas End-User –** No potential local tax implications for the Overseas End-User. • **Individual** – In scenario 1, if the individual is a mainland China citizen, their global income is subject to mainland China IIT. If the individual is not a mainland China citizen, there are no local tax implications for the employee, provided that the Overseas Employer is not deemed to have established a PE in mainland China and the employee is only paid by the Overseas Employer. • **Individual** – In scenario 2, the individual is liable for mainland China IIT arising from the compensation paid by the Home Employer. The Home Employer is responsible for withholding the same on behalf of the individual. • **Individual** – In scenario 3, the individual is liable for mainland China IIT arising from the compensation paid through the PEO. The PEO is responsible for withholding the same on behalf of the individual.

China

If employment tax is payable in both China and another country, would double taxation relief be available?	It depends on whether there is an applicable double tax treaty.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	**Scenario 1** – The Overseas Employer may create a PE in mainland China if (a) the employee continues to work in a fixed place, such as the employee's home; (b) the employee is acting on behalf of the Overseas Employer and routinely exercises the authority to conclude contracts in mainland China that bind the Overseas Employer; and (c) the Overseas Employer provides services through the employee and such service activities continue (for the same or a connected project) in mainland China for a period or periods aggregating more than 183 days within any 12-month period. **Scenario 2** – The PE risk is remote, as the employee remains employed by the Home Employer and should be deemed to act on behalf of the Home Employer instead of the Overseas Entity. **Scenario 3** – The PE risk is remote. But individuals should not sign any contracts in China on behalf of the Overseas End-User.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in China?	Mainland Chinese law is silent on cross-border labour leasing. In practice, instead of labour leasing, such a cross-border arrangement may take the form of a service agreement whereby the service provider provides the services through its employees to the service recipient for a service fee.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to China in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in China.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer or PEO and the Overseas Entity/ Overseas End-User (even if the Home Employer/PEO is not located in an EEA country).
Are there any financial penalties/criminal sanctions for non-compliance?	Not in China.

China

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Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in China?	All employees must have a legal entitlement to work in China, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. This means that they must be a Chinese citizen, permanent resident or otherwise hold a valid visa allowing them to work in China. A foreign citizen would not be granted with a PRC work visa, work permit and a required residence permit if the individual is not filling a genuine role for a China-based entity.
If the individual was working overseas for the benefit of a company based in China and travelled to China for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in China)?	This would depend on the scope of work the employee will be doing in China. Activities such as attending short-term seminars, business meetings and conferences do not require work-related visa/permits, but a work visa would be required to carry out substantive work for a China-based entity.

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Czech Republic

Home

We have assumed that if an individual is based in, or relocates to, the Czech Republic as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside the Czech Republic ("Overseas Employer") and works for that company remotely from the Czech Republic.
- **Scenario 2** – The individual is an employee of an entity in the Czech Republic ("Home Employer") but is assigned to work remotely for an entity outside the Czech Republic ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in the Czech Republic (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside the Czech Republic ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The Overseas Employer's employment laws will apply, and workers posted from other EEA countries will be partially covered by Czech legislation, unless the legislation of the Overseas Employer's state is more favourable for the employee. **Scenario 2** – Czech laws (and Home Employer's terms) will apply. The employment laws of the country in which the Overseas Entity is situated could also apply depending on the laws of that jurisdiction. **Scenario 3** – Between the employee and the PEO, Czech laws will apply. The employment laws of the country in which the Overseas End-User is situated could also apply depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Czech employment law purposes?	No.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Czech employment law purposes?	No.
If Czech employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Under Czech law, an employer is obliged to provide monetary consideration of at least one half of the employee's average monthly earnings for each month the non-competition obligation is fulfilled by the employee.
Does the Czech Republic impose any additional obligations in relation to homeworking?	Employers are obliged to create a working environment and working conditions that are safe and do not endanger employees' health by taking measures aimed at risk prevention. These risks cannot be removed when home working, but the employer should document any risks, their assessment and any measures taken. Internal policies and training are measures generally expected. A new law is due to come into force in the next few months regulating homeworking. Homeworking will only be possible by written agreement, except where the obligation to work remotely is imposed by an act of a public authority. The employer will be obliged to reimburse employees for the costs of homeworking in the form of proven costs or a lump sum, unless otherwise agreed.

Czech Republic

Are there any other employment law-related issues to be aware of in relation to scenario 3?	**Worker rights** – In some cases, when the individual has a claim against the PEO, the PEO can have a redress claim against the Overseas End-User, e.g. the individual would be entitled to the same pay and other "basic working conditions" as equivalent permanent staff. The individual would also be entitled to be given access to collective facilities and to information about employment vacancies from day one of their assignment. **Employment processes and procedures** – Overseas End-Users must remember that they are not the individual's employer for the purposes of any processes, e.g. performance/disciplinary/termination, and so will rely on the PEO to manage these (meaning it will be important that the contract with the PEO includes provisions to govern this).
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the Czech Republic? Can an overseas employer operate a local payroll?	**Scenario 1** – Not necessarily, but highly recommended in cases where the employee is subject to tax and social security contributions in the Czech Republic. **Scenario 2** – Yes, the Home Employer has obligations towards their employees' salaries during the payroll process. An overseas employer can operate a local payroll. **Scenario 3** – No, the employee is formally employed by the PEO and it is the PEO's responsibility to administer the payroll.
Would any of these scenarios require the Overseas Employer/ Overseas Entity/Overseas End-User to register in the Czech Republic for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes, in scenarios 1 and 2, provided that the employee is subject to Czech tax and/or social security legislation. There are sanctions for breach of any registration requirements up to CZK1 million. Sanctions for failure to pay tax, social security contributions, contributions to the state employment policy or health insurance premiums on behalf of the employee or its evasion include: • Imprisonment for up to three years • Disqualification order
Are there any potential Czech tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	Potential tax implications depend on the tax residency of the respective entity and the respective employee. Czech tax residents are persons who are domiciled or habitually resident (at least 183 days/year) in the Czech Republic. The tax obligation of Czech tax residents applies to both income arising from sources in the Czech Republic and income from abroad sources. The tax obligation of Czech tax non-residents applies only to income arising from sources in the Czech Republic. **Scenario 1** – The employee is likely to be a Czech tax resident who is, therefore, subject to Czech Natural Persons Income Tax. The Overseas Employer is not subject to Czech Legal Persons Income Tax. **Scenario 2** – The employee is likely to be a Czech tax resident and is, therefore, subject to Czech Natural Persons Income Tax. The Home Employer is subject to Czech Legal Persons Income Tax. The Overseas Entity is not subject to Czech Legal Persons Income Tax. **Scenario 3** – The individual is subject to Czech Natural Persons Income Tax, as they are a Czech-based employee of a Czech PEO.

Czech Republic

If employment tax is payable in both the Czech Republic and another country, would double taxation relief be available?	Double taxation relief is available where another country is a member state of the EU or a contracting party to the double taxation treaty with the Czech Republic.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	A corporation's place for carrying out business activities is deemed to become a permanent establishment once it operates for more than six months in any 12 consecutive calendar months in the Czech Republic, or once a dependent agent acts on behalf of such a corporation in the Czech Republic. A double taxation treaty may, however, stipulate otherwise.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the Czech Republic?	Prohibited, unless it is a temporary assignment, in which case it is regulated.
Which rules governing labour leasing in the Czech Republic would apply to these scenarios?	**Any time limits:** **Scenario 1** – No time limits. **Scenario 2** – The assignment to the Overseas Entity must be temporary, i.e. for a fixed term, albeit there is no maximum stated duration and it may only be entered into after the employee has been employed for six months and no consideration must be payable by the Overseas Entity for the assignment. In practice, a service agreement between the Home Employer and the Overseas Entity is often entered into for the first six months to circumvent this requirement. **Exceptions for intra-group situations –** No. **Formal registration requirements**: **Scenario 1** – No registration requirements. **Scenario 2** – No registration requirements. **Scenario 3** – The arrangement does not trigger general labour leasing provisions, but there is a special regulation on agency working. The main restrictions would be: (i) the assignment cannot exceed 12 months unless requested by the employee or in the case of maternity/parental leave replacement; (ii) work and salary conditions of the assigned employee must be comparable with the conditions of the Overseas End-User's other employees.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions** – None. **Financial penalties** – For illegitimate labour leasing or breach of registration requirements: • Fines ranging from CZK1 million to CZK2 million • Illegal work – CZK10 million – of €60 per day of work per worker plus a lump sum of €500 to 7,500

Czech Republic

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Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to the Czech Republic in any of these scenarios?	**Scenario 1** – The Czech legislation implementing the PWD applies when an employee relocates to the Czech Republic, regardless of whether or not the employee is providing those services to an establishment or undertaking in the Czech Republic. **Scenario 2** – Not if the transfer to the Czech Republic is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the "posting" company. **Scenario 3** – No, because the individual is formally employed by the Czech PEO and, therefore, this would fall outside the PWD.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No. **Scenario 2** – Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered. **Scenario 3** – No (see answer to question above).
Are there any financial penalties/criminal sanctions for non-compliance?	**Financial penalties**: • Fines ranging from CZK1 million to CZK2 million. • Illegal work – CZK10 million – of €60 per day of work per worker plus a lump sum of €500 to €7,500. **Criminal sanctions** – None.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in the Czech Republic?	Individuals from third countries are not permitted to perform work in the Czech Republic without a work permit, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. It is always the responsibility of the formal employer to facilitate and participate in the procedure of obtaining the aforementioned work permit. It would likely be difficult to obtain a work permit if the individual is not filling a genuine role for a Czech-based entity. There is a new draft law on a programme for digital nomads, but the details are not yet set. The programme will apply to citizens of Australia, Japan, the UK, the US and Taiwan. The individual will always remain in an employment relationship with their foreign business company and will not have to enter into any employment relationship in the Czech Republic. Applications for inclusion in the programme will be processed by the Ministry of Industry and Trade.

Czech Republic

Home

If the individual was working overseas for the benefit of a company based in the Czech Republic and travelled to the Czech Republic for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in the Czech Republic)?	If the employment relationship is directly between the employer in the Czech Republic and a foreign-based employee, the employee would be obliged to obtain a work visa. The only exceptions to this rule are short trips for the purpose of attending a business meeting, negotiating, concluding a business contract, visiting a trade fair or pursuing other similar business activities that may be carried out with a short-term Schengen business visa.

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France

Home

We have assumed that if an individual is based in, or relocates to, France as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside France ("Overseas Employer") and works for that company remotely from France.
- **Scenario 2** – The individual is an employee of an entity in France ("Home Employer") but is assigned to work remotely for an entity outside France ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in France (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside France ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – Under French labour law, the employee would benefit from a limited number of core principles of French employment law (*Lois de police*). **Scenario 2** – As an employee of the Home Employer working from France, the employee would benefit from French labour law. **Scenario 3** – As the individual is employed by a PEO in France, the employee would benefit from French labour law. In all scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for French employment law purposes?	If the employee's actual work is clearly dedicated to the Home Employer and they do not receive instructions from the Overseas Entity, this risk should not arise. The situation would be different if, *de facto*, the employee reports to management of the Overseas Entity ("co-employment" situation).
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for French employment law purposes?	Yes, the hypothetical risk exists if the individual is able to demonstrate the subordination link between them and the Overseas End-User.
If French employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Yes. Any non-compete obligation enforceable after the termination of the contract requires a monthly payment (at least one-third of the average monthly gross salary) for the duration of the restrictive covenant. Principles are provided by French case law and, potentially, the collective bargaining agreement applicable.
Does France impose any additional obligations in relation to homeworking?	The home civil liability insurance of the employee must cover professional activity from home. Regulations relating to occupational accidents would apply, including in the case of any accident at home while working. Homeworking employees are also entitled to an indemnity for the use of their home for professional purposes, when professional premises are not effectively made available to them.

France

Are there any other employment law-related issues to be aware of in relation to scenario 3?	In order to mitigate the above-mentioned risk of co-employment claims, the PEO in France must keep control over the employment relationship with the employee. Overseas End-Users must be aware they are not the individual's employer for the purposes of any processes, e.g. performance/disciplinary/termination, and so must rely on the PEO to manage these.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in France? Can an overseas employer operate a local payroll?	**Scenario 1** – If the employee is subject to French social security, yes, it is highly recommended. **Scenario 2** – Yes, as the employee will be subject to French social security. **Scenario 3** – Yes, as the employee will be subject to French social security. An overseas employer can operate a French payroll. This is operated through the mechanism of "isolated employees": in such circumstances, these employees are registered with the National Insurance (URSSAF) of Strasbourg, which has dedicated services.
Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in France for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	If the employee has to be registered for French social security, yes, in scenarios 1 and 2. **Criminal sanction**: "*Travail dissimulé*" - €45,000 and up to three years' imprisonment for individuals; €225,000 for legal entities. If the employer is found not to have correctly paid all social security contributions, it would be required to pay any unpaid contributions for the ongoing year and the past three years plus penalties. This is not the case in scenario 3, as the individual is the PEO's employee.
Are there any potential French tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer will be required to withhold French income tax on the remuneration paid to the employee. • **Overseas Employer** – The Overseas Employer will be required to withhold French income tax on the remuneration paid to the employee. The Overseas Employer can file the so-called DSN/PASRAU return or ask a payroll provider to do so on its behalf. It will also need to consider the permanent establishment (PE) position. • **Overseas Entity** – The Overseas Entity should not have local French obligations. • **Overseas End-User** – The Overseas End-User should not have local tax obligations, as the individual is the employee of the PEO. • **Individual** – If the employee is a resident of France and has their tax domicile in France, they will be subject to French personal income tax on their worldwide income (with a tax credit in most cases in respect of foreign source income earned by the employee).
If employment tax is payable in both France and another country, would double taxation relief be available?	Double tax treaties only provide for measures in order to avoid double taxation on income tax and corporate income tax and will depend on the overseas jurisdiction. Social contributions do not fall within the scope of double tax treaties.

France

Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	Yes, possibly. Please note that the criteria defining a PE must be reviewed in light of the French domestic provisions first and if that company is a resident of a country that has signed a tax treaty with France, by reference to the provisions of the tax treaty that supersedes French domestic law. **Scenario 1** – In summary, tax liability in France is triggered by the nature of the activity carried out in France. Therefore, if the employee of the Overseas Employer is not involved in preparatory or auxiliary activities for the company – for instance advertising or supply of information – but has an activity the general purpose of which is identical to the general purpose of the whole enterprise, the Overseas Employer may be considered as having a PE in France. Other relevant criteria include the way in which the activity in France is carried out. If the employee is carrying out commercial functions, they could be considered as a dependent agent of the Overseas Employer, acting in its name and on its behalf if they are empowered to conclude contracts or negotiate them without approval from the Overseas Employer. From a tax standpoint, this criterion must not only be complied with formally in the employment contract, but it must also be supported by factual elements resulting from the day-to-day activity of the employee in France, such as emails with clients and management from the Overseas Employer. **Scenario 2** – This is a risk, as the employee's actual work is not dedicated to the Home Employer and they receive instructions from the Overseas Entity. This is particularly the case if the employee carries out a commercial activity other than one that is preparatory or auxiliary for the Overseas Entity. **Scenario 3** – There is a hypothetical risk where an individual is working for an Overseas End-User via a PEO, although that risk is generally considered to be very low on the basis that the PEO is simply a service provider and the individual is not the Overseas End-User's employee.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in France?	Labour leasing is strictly regulated under French law. In particular, it is unlawful to make a profit on the leasing of employees, even within the same group of companies. Only temporary work agencies (*sociétés de travail temporaire*) have the right to make a profit on the leasing of employees: these are registered as such and insured for the activity. Not-for-profit leasing of employees is permitted.
Which rules governing labour leasing in France would apply to any of these scenarios?	• **Time limits** – None. • **Any exceptions for intra-group situations** – Not specifically. • **Formal registration requirements** – None.
Are there any financial penalties/criminal sanctions for non-compliance?	Yes. Prison sentences and financial fines (including financial sanctions for the legal entity and additional penalties, such as being prohibited from participating in public bids).

France

Home

Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to France in any of these scenarios?	**Scenario 1** – No. **Scenario 2** – Not if the transfer to France is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the "posting" company. **Scenario 3** – No, assuming that, in this scenario, the employee is already based in France.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No. **Scenario 2** – Potentially. **Scenario 3** – Potentially. This will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions**: • Délit de marchandage – €30,000 and up to two years' imprisonment for individuals; €150,000 for legal entities. • Prêt de main d'oeuvre illicite – €30,000 and up to two years' imprisonment for individuals; €150,000 for legal entities. • Travail dissimulé – €45,000 and up to three years' imprisonment for individuals; €225,000 for legal entities. **Accessory penalties**: Potential publication of the criminal sentences on a "blacklist" (government website). Enhanced powers of the French administration with the possibility for the French authorities to suspend the provision of services in France. **Financial penalties** – On top of other (criminal) sanctions, potential administrative sanctions (art. L.8115-3 of the French Labour Code) of €4,000 (€8,000 in cases of repetition of the offence) per employee.

France

Home

Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in France?	Individuals without an existing right to work in France must present the work permit required by French law before beginning their work, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. In scenario 1, France does not have a specific visa for digital nomads. The implications will depend on the situation of the individual. We would therefore recommend informing the labour authorities of such work and obtaining confirmation before the employee starts working from home in France. In this case, the work must not produce value for a French entity or be part of a service delivered to a business in France.
If the individual was working overseas for the benefit of a company based in France and travelled to France for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in France)?	Business visitor tasks (defined as those performed over a short period and not amounting to hands-on operational work) do not require a work permit. The nature of the tasks, frequency and length of visit should be examined to determine if a work permit is required.

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Germany

Home

We have assumed that if an individual is based in, or relocates to, Germany as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Germany ("Overseas Employer") and works for that company remotely from Germany.
- **Scenario 2** – The employee becomes an employee of an entity in Germany ("Home Employer") and is assigned to work remotely for an entity outside Germany ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Germany (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Germany ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The Overseas Employer and the employee can agree on the law that governs their employment relationship and, therefore, it depends on the terms of the employment contract. **Scenario 2** – As an employee of the Home Employer working in Germany, German labour law would generally apply unless agreed otherwise between the Home Employer or Overseas Entity, and the employee. **Scenario 3** – As an employee of the PEO working in Germany, German labour law would generally apply unless agreed otherwise between the PEO or Overseas End-User, and the employee. However, in all scenarios, the agreed choice of law must not exclude certain mandatory provisions under German law if they are more favourable to the employee than the agreed laws, for example in relation to termination protection, collective bargaining agreements and annual leave. In addition, certain German statutory protections will apply if it is considered public order law, including, but not limited to, provisions on maternity and sick pay, working time and minimum wage. In all scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for German employment law purposes?	Yes, if the employee is assigned to the Overseas Entity for more than 18 months, the Overseas Entity would be deemed an employer for German law purposes. Even within the first 18 months, the employee could be deemed to be an employee of the Overseas Entity, if they are treated and behave as such.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for German employment law purposes?	Yes, if the employee is assigned to the Overseas End-User for more than 18 months, the Overseas End-User would be deemed to be an employer for German law purposes.
If German employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Not for confidentiality restrictions. Other post-contractual restrictive covenants require compensation of at least 50% of total remuneration in order to be valid.

Germany

Does Germany impose any additional obligations in relation to homeworking?	Working from home requires an agreement between the parties. Where the parties fail to agree on compensation, employees will be able to claim for reimbursement of expenses for their home office space (partial rent, heating, internet, etc.) German workplace health and safety regulations apply equally to workplaces and private homes. Employers are, therefore, required to carry out a risk assessment of any home working arrangements.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	A PEO requires an AUG licence in Germany for labour leasing (please see below). The PEO is the legal employer of the employee in Germany. As such, the PEO takes care of all German compliance aspects of employment, including payroll, taxes, statutory benefits, employment contracts, etc.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Germany? Can an overseas employer operate a local payroll?	For all scenarios, if the employee works in Germany and German social security contributions are payable, this will often be the case – otherwise, no. An overseas employer can operate a local payroll, but this usually requires service providers to help with mandatory requirements and social security contribution payments.
Would any of these scenarios require the Overseas Employer/ Overseas Entity/Overseas End-User to register in Germany for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Employees in Germany need to be covered by insurance. Any employer/business (even those based outside Germany) with employees in Germany mandatorily becomes a member of certain bodies and insurances and has to pay contributions. The social security obligations of the employee also result in duties for the employer/business. **Criminal penalties** – Failing to oversee and implement a proper business in Germany can be subject to a fine and criminal prosecution. Breaching tax laws and social security laws is subject to additional fines and criminal prosecutions. **Financial sanctions** – Potentially, up to €1 million for failing to take relevant supervisory measures required to prevent certain infringements. Additional retroactive payment of taxes and social security contributions in cases of breach, plus fines, can also be imposed.
Are there any potential German tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer would need to withhold German wage tax (*Lohnsteuer*) on the salary paid to the employee. Permanent establishment issues outside Germany would also need to be considered. • **Overseas Employer** – The Overseas Employer must withhold German wage tax (*Lohnsteuer*) only if the employee establishes a German permanent establishment or will be considered as a permanent representative of the Overseas Employer in Germany. • **Overseas Entity** – There are no obligations for the Overseas Entity to withhold wage tax in Germany. • **Overseas End-User** – There are no obligations on the Overseas End-User to withhold wage tax in Germany. • **Individual** – A person who has a domicile or their habitual residence (at least 183 days per annum) in Germany is subject to so-called "German unlimited tax liability", which means that this person is obliged to tax all their worldwide income in Germany, including wages from a foreign employer. However, tax exemptions or tax credits may be applicable due to double tax treaties.

Germany

If employment tax is payable in both Germany and another country, would double taxation relief be available?	It depends on the bilateral tax agreement between the countries.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	**Scenario 1** – Yes. **Scenario 2** – It depends on the laws of the country in which the Overseas Entity is located. **Scenario 3** – It depends on the laws of the country in which the Overseas End-User is located.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Germany?	Strictly regulated and prohibited without a licence, except intra-group leasing for 18 months.
Which rules governing labour leasing in Germany would apply to these scenarios?	• **Time limits** – 18 months. • **Any exceptions for intra-group situations** – Yes, but only where the employees are not employed solely to be leased, which could be the case in scenario 2. • **Formal registration requirements –** None for intra-group leasing.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal penalties for**: • Illegitimate labour leasing • Breach of registration requirements **Financial sanctions**: • **Illegitimate labour leasing** – Fines of up to €30,000 for each affected employee. • **Breach of registration requirements** – Fines of up to €30,000 for each affected employee.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Germany in any of these scenarios?	This depends primarily on the type of work being carried out in Germany. The Posted Workers Directive, as incorporated into German law, does not apply to all posted workers, but only to workers that specifically require protection and work in sectors prone to exploitation, such as construction and meat processing. **Scenario 1** – It could, as the German legislation implementing the PWD applies to employees in certain sectors as soon as they are sent to work in Germany, regardless of whether the employee is providing those services to an establishment or undertaking in Germany. **Scenarios 2 and 3** – No, as in these scenarios, the employee is employed by the Home Employer/PEO and is, therefore, protected by German labour law in any event.

Germany

Home

Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No. **Scenarios 2 and 3** – Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions** – In repeated or very severe cases. **Financial penalties** – The administrative offence may be punishable by a fine of up to €500,000 in severe cases and by a fine of up to €30,000 in other cases.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Germany?	Entry, residence and any work in Germany requires a valid and corresponding residence/work permit, even if the individual is working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. This applies to any work for any company from any country.
If the individual was working overseas for the benefit of a company based in Germany and travelled to Germany for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Germany)?	Entry, residence and any work in Germany requires a valid and corresponding residence/work permit. Any work under a tourist visa is illegal and subject to fines and the employee risks being banned. Only short business (non-work) trips for meetings, etc., can be made with a short-term tourist/visit visa, otherwise a work visa is required.

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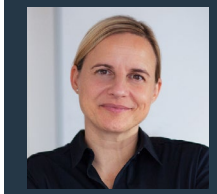

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Hong Kong

Home

We have assumed that if an individual is based in, or relocates to, Hong Kong as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Hong Kong ("Overseas Employer") and works for that company remotely from Hong Kong.
- **Scenario 2** – The individual is an employee of an entity in Hong Kong ("Home Employer") but is assigned to work remotely for an entity outside Hong Kong ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Hong Kong (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Hong Kong ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	In all scenarios, if the employee works in Hong Kong, the mandatory requirements of the Hong Kong Employment Ordinance would apply. In all scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Hong Kong employment law purposes?	The risk is limited if the relevant contract is well drafted and the Overseas Entity does not act as if it were the employer.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Hong Kong employment law purposes?	The risk is limited if the relevant contract is well drafted and the Overseas End-User does not act as if it were the employer.
If Hong Kong employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	No. The general contractual requirement that such obligations should be supported by consideration, or entered into by way of deed, applies.
Does Hong Kong impose any additional obligations in relation to homeworking?	No.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	No, save the PEO would need to comply with its obligations as the employer of the individual. In scenario 3, the Overseas End-User will need to consider carefully how to protect its business interests once its engagement of the individual via the PEO has ended. While it will not be the individual's employer, and so will not have a direct contractual relationship with the individual, it is its business (not the PEO's) that may be at risk if its interests are not adequately protected.

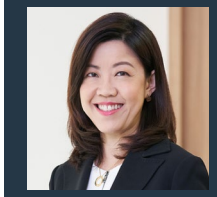
Hong Kong

Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Hong Kong? Can an overseas employer operate a local payroll?	The employer (overseas or otherwise) can determine its own payroll procedures so long as the following requirements are satisfied: • Under the Hong Kong Employment Ordinance, wages shall be paid directly to employees in legal tender at their place of employment or at any office or other place customarily used by the employer for the purpose of payment of wages or at any other place mutually agreed • With the consent of an employee, wages may be paid (a) by cheque, money order or postal order; (b) into an account in their name with any bank licensed in Hong Kong; or (c) to their duly appointed agent
Would any of these scenarios require the Overseas Employer/ Overseas Entity/Overseas End-User to register in Hong Kong for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	The relevant employer should purchase the mandatory employees' compensation insurance, enrol in the MPF retirement scheme and make necessary tax reporting in respect of the employee. Yes. An employer that fails to purchase the insurance is liable to prosecution and, upon conviction, to a maximum fine of HK$100,000 and imprisonment for two years, and an employer that fails to enrol employees in an MPF scheme is liable to a maximum penalty of a HK$350,000 fine and imprisonment for three years. For completeness, if the employer carries on business in Hong Kong or otherwise establishes a place of business in Hong Kong, it may need to apply for a business registration certificate and/or register with the Hong Kong Companies Registry.
Are there any potential Hong Kong tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	**Individual** – The employee may be subject to salary tax, depending on their length of stay in Hong Kong and their immigration status. **Others** – The employment of the employee does not necessarily mean that the Home Employer, the Overseas Employer, the Overseas Entity or the Overseas End-User would be subject to Hong Kong profit tax. Ultimately, Hong Kong generally adopts the territoriality basis of taxation, whereby only profit sourced in Hong Kong is subject to Hong Kong tax.
If employment tax is payable in both Hong Kong and another country, would double taxation relief be available?	Potentially, yes. Hong Kong has entered into double taxation agreements/arrangements with a number of jurisdictions.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	Potentially, yes – it depends on the exact arrangement. Having said that, even if a permanent establishment is found, it does not necessarily mean that profit tax will be payable. This is because taxability of profits in Hong Kong is generally determined based on the source principle of taxation. After the attribution of profits to the permanent establishment in Hong Kong, the source rule would be applied to determine whether and, if so, to the extent such profits should be taxed.

Hong Kong

Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Hong Kong?	Permitted without restriction.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Hong Kong in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Hong Kong.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenario 2, for example, if the Overseas Entity is located in an EEA country, depending on the nature of the visit and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Hong Kong?	The individual would not be permitted to generally work remotely from Hong Kong if they do not have an existing right to work in Hong Kong (e.g. being a permanent Hong Kong resident or in possession of an appropriate work visa), even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. It would likely be difficult to obtain a work visa if there is no Hong Kong-based entity willing to act as a sponsor for the visa.
If the individual was working overseas for the benefit of a company based in Hong Kong and travelled to Hong Kong for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Hong Kong)?	It depends on what exactly the employee will be doing in Hong Kong. For example, it is not necessary to obtain a work visa if the employee enters Hong Kong to attend short-term seminars or other business meetings, but a work visa would be required to carry out substantive work for a Hong Kong-based entity.

Contact



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India

Home

We have assumed that if an individual is based in, or relocates to, India as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside India ("Overseas Employer") and works for that company remotely from India.
- **Scenario 2** – The individual is an employee of an entity in India ("Home Employer") but is assigned to work remotely for an entity outside India ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in India (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside India ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The employment laws of the foreign country where the Overseas Employer is situated will apply. The employees will also be subject to the terms of their employment agreement with the Overseas Employer. **Scenario 2** – Indian employment laws will apply. **Scenario 3** – Indian employment laws will apply.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Indian employment law purposes?	There is no risk of the Overseas Entity being considered as the employer of the affected employee for the purposes of Indian labour laws, as there is no employer-employee relationship between the Overseas Entity/Overseas End-User and the employee. It should be ensured that: • Salary to the affected employee is remitted by the Home Employer/PEO (and not by the Overseas Entity/Overseas End-User) and that the Home Employer/PEO complies with the applicable labour laws in India (such as social security contributions, gratuity payments, etc.) and other aspects such as working hours, leave, overtime payments, etc. • Services are provided by the Home Employer/PEO to the Overseas Entity/Overseas End-User on a principal-to-principal basis for arms' length consideration • The individual provides services to the Overseas Entity/Overseas End-User under the control and supervision of the Home Employer/PEO and is subject to the employment policies of the Home Employer/PEO
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Indian employment law purposes?	No. Please refer to our response to the question above.

India

If Indian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	No.
Does India impose any additional obligations in relation to homeworking?	No. However, certain additional compliance requirements will be triggered if the Home Employer or PEO operates in a Special Economic Zone.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	No.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in India? Can an overseas employer operate a local payroll?	Most Home Employers/PEOs typically engage local payroll providers for disbursing salary to the employee and to comply with their social security and tax withholding obligations. Overseas employers may not operate a local payroll.
Would any of these scenarios require the Overseas Employer/ Overseas Entity/Overseas End-User to register in India for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	**Scenario 1** – Depending on the nature of the arrangement and length of stay of the employee, there may be tax withholding obligations on the Overseas Employer on salary payments made to employees during their stay in India. In such cases, tax registrations will be required. No benefits are required to be provided to such employees under any Indian labour laws since they will be engaged by the Overseas Employer. **Scenarios 2 and 3** – Since the Home Employer and PEO would be Indian entities, it is assumed that the Home Employer/PEO will already have tax registrations in place. The Home Employer/PEO will have to ensure compliance with the necessary tax withholding obligations and applicable Indian labour and employment laws in terms of social security contributions, gratuity and other benefits prescribed for eligible employees. **Penalties** – Yes, there will be tax implications and financial/criminal penalties for non-compliance with the requirements under Indian employment and taxation laws. With respect to non-compliance of withholding tax obligations, the law levies financial penalties, which include recovery of tax, 100% penalty amount equivalent to the tax amount and interest payment. Penalties under Indian labour laws vary according to the applicable legislation and the nature of non-compliance.

India

Are there any potential Indian tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	Depending on the duration of the arrangement: • **Home Employer and PEO** – The Home Employer and PEO would need to deduct and withhold income tax at source and pay it to the Indian tax authorities. • **Overseas Employer** – The Overseas Employer would be required to register and pay the withheld tax of the employee to the Indian tax authorities. Further, depending upon the nature of the arrangement and length of stay of the employee in India, the Overseas Employer may run the risk of having a taxable presence in India. A taxable presence (i.e. business connection/permanent establishment) leads to taxation of profits that are attributable to such presence in India. • **Overseas Entity and Overseas End-User** – The arrangement between the Home Employer and the Overseas Entity or PEO and Overseas End-User will have to be structured appropriately in order to mitigate any kind of taxable presence risk of the Overseas Entity in India. • **Individual** – The employee would be required to lodge Indian tax returns and pay Indian tax.
If employment tax is payable in both India and another country, would double taxation relief be available?	**Scenario 1** – There would be no employment tax payable in India since the employee will be engaged with the Overseas Employer. **Scenarios 2 and 3** – The employee will only be required to make payment of professional tax (which varies from state to state in India) as per the prescribed qualifying criteria, which shall not be covered under any Double Taxation Avoidance Agreement between India and a foreign country.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	**Scenario 1** – Potentially, yes. **Scenarios 2 and 3** – The risk of this is likely to be low, although it is still possible.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in India?	Labour leasing (i.e. the arrangement where a PEO/manpower service provider/labour contractor hired by an Indian entity (principal employer) acts as an independent agent (contractor) to employ workers (contract labour) to render services to the principal employer at its premises, thereby obviating the need for a direct employer-employee relationship between the principal employer and the workers) is not uncommon in India and is governed by the Contract Labour (Regulation and Abolition) Act 1970 (Contract Labour Act), subject to the thresholds prescribed therein (which vary from state to state). The Contract Labour Act regulates the engagement of contract labour in certain establishments and provides for its abolition in certain circumstances (such as in core activities of an establishment).

India

Which rules governing labour leasing in India would apply to these scenarios?	**Scenario 1** – The Contract Labour Act will not apply in scenario 1 since the employees are directly employed by the Overseas Employer without an intervening contractor. **Scenarios 2 and 3** – The Contract Labour Act will apply when the contract labour (employed by the contractor) are rendering services on the premises of the principal employer situated in India. In scenarios 2 and 3, where the employee is employed by the Home Employer/PEO and rendering services to the Overseas Entity/Overseas End-User from India (and not on the premises of the Overseas Entity/Overseas End-User), the Contract Labour Act will not apply.
Are there any financial penalties/criminal sanctions for non-compliance?	Not applicable, since the Contract Labour Act would not be applicable in all three scenarios.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to India in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply to employees in India.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer/PEO and the Overseas Entity/Overseas End-User (even if the Home Employer/PEO is not located in an EEA country).
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in India?	Foreign nationals entering India would be required to obtain the appropriate work visa, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. Grant of an employment visa would be subject to certain conditions, such as (i) the applicant's salary in India for the entire duration of the stay in India being US$25,000 or more per annum; and (ii) the applicant being a highly skilled and/or qualified professional and not seeking to work in India on routine, ordinary or secretarial/clerical jobs for which qualified Indians are available.

India

Home

If the individual was working overseas for the benefit of a company based in India and travelled to India for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in India)?	Yes, subject to the activities that the employee will be performing in India. Business visas are granted for limited purposes in India and the activity of the employee must fall within such purpose.

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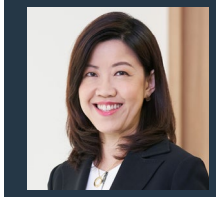

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Italy

Home

We have assumed that if an individual is based in, or relocates to, Italy as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Italy ("Overseas Employer") and works for that company remotely from Italy.
- **Scenario 2** – The individual is an employee of an entity in Italy ("Home Employer") but is assigned to work remotely for an entity outside Italy ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Italy (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Italy ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – Italy's laws would apply, being the country in which the employee habitually carries out their work. The country where the work is habitually carried out shall not be deemed to have changed if the employee is temporarily employed in another country. **Scenario 2** – The Home Employer's laws would apply, i.e. Italy's. **Scenario 3** – Assuming that the employee would carry out their work remotely in Italy, i.e. where the PEO is located, Italy's employment laws would apply, being the country in which the employee habitually carries out their work. In all scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Italian employment law purposes?	The risk of the Overseas Entity being deemed to be the employer or co-employer cannot be excluded.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Italian employment law purposes?	The risk of the Overseas End-User being deemed to be the employer for employment law purposes cannot be excluded.
If Italian employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	A non-competition obligation would require specific compensation in order to be enforceable. As far as consideration is concerned, it must meet a proportionality test, i.e. it should include proper economic compensation and should be in proportion to the reduction of the employee's earning capacity. A confidentiality undertaking would not require specific compensation.

Italy

Does Italy impose any additional obligations in relation to homeworking?	In the case of homeworking (*telelavoro*, meaning a means of work performance, regulated by contract, which provides for the regular performance of ordinary work from home), employers must organise and install employees' workstations and inform employees about the company's policies on health and safety at work and about the requirements related to video terminals. Subject to notice and the employee's prior consent, employers may access the employee's home to verify compliance with health and safety regulations. The relevant health and safety provisions set out in legislative decree no. 81/2008 on health and safety protection in the workplace apply to homeworking.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	The engagement (by an Overseas End-User) of an employee through a third-party PEO is not specifically regulated under Italian law to date. Although not identical, engaging an employee through a PEO presents similarities with labour leasing. In light of the absence of specific legislation for PEOs under Italian law, it cannot be excluded that scenario 3 may give rise to potential challenges by employees and/or labour authorities on the grounds of irregular labour leasing (see section below for consequences/financial penalties/criminal sanctions for non-compliance).
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Italy? Can an overseas employer operate a local payroll?	Whether or not a local payroll is required depends on how the work relationship is structured, how long it lasts and, in particular, on whether social contributions obligations arise *vis-à-vis* the Italian tax authorities. In any case, it is advisable to engage a local payroll agent in order to coordinate multijurisdictional issues on tax and social security matters. **Scenario 1** – There is no restriction on an overseas employer operating as a local payroll agent for its employees. In any case, it is advisable to engage a local payroll agent. **Scenario 2** – Assuming that the employee is employed by an Italian employer, the Overseas Entity would not be responsible for local payroll administration. **Scenario 3** – The PEO will pay the employee directly.

Italy

Would any of these scenarios require the Overseas Employer/ Overseas Entity/Overseas End-User to register in Italy for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Assuming that the Overseas Employer/Overseas Entity/Overseas End-User has no permanent establishment in Italy, no registration should, in principle, be required for taxation purposes. With reference to social security contributions, in general and without prejudice to bilateral social security agreements and Posted Workers Regulations, in scenarios 1, 2 and 3, social security contributions should be paid to the Italian authorities, on the basis of the territoriality principle (i.e. where the employee works, regardless of the employee's residence). For such purposes: • **Scenario 1** – The Overseas Employer may appoint a payroll service agent for the payment of social security contributions due to the Italian authorities. • **Scenarios 2 and 3** – The Home Employer and the PEO based in the Italian territory would usually take care of payment of social security contributions due to the Italian authorities. Therefore, the Overseas Entity and the Overseas End-User should not have any obligations to register in Italy for social security purposes. All the foregoing applies provided that no irregular labour leasing occurs. **Criminal penalties** – None. **Financial penalties** – A wide range of penalties, depending on the specific circumstances, could be applied. The factual background may affect the quantum of applicable penalties.
Are there any potential Italian tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – Yes, the Home Employer, as a tax resident, would, in principle, be required to pay taxes in Italy. • **Overseas Employer** – If the Overseas Employer is not resident in Italy, it would not be required to pay taxes in Italy. However, the Overseas Employer should consider whether it has a permanent establishment in Italy, in which case tax implications may arise. Due consideration should also be given to any bilateral tax treaties signed by the relevant countries. • **Overseas Entity** – The Overseas Entity should not have tax implications in Italy. However, tax implications cannot be excluded if the Overseas Entity has a permanent establishment in Italy. Specifically, if the assigned employee contributes to the stable organisation of the company in Italy, Italian authorities may consider the employee as an element in support of the existence of a permanent establishment and consequently request the Overseas Entity to pay taxes in Italy on profits generated therein. • **Overseas End-User** – The Overseas End-User should not have tax implications in Italy. However, tax implications may not be excluded if the Overseas End-User is deemed to have a permanent establishment in Italy, despite the presence of a PEO in the Italian territory. • **Individual** – The employee would pay taxes in Italy if they are resident in Italy or if they are considered as a tax resident (i.e., among others, if the permanence in Italy lasts more than 183 days in a year). Due consideration should also be given to any bilateral tax treaties signed by the relevant countries.
If employment tax is payable in both Italy and another country, would double taxation relief be available?	In principle, the tax rules of the employee's country of residence should apply. There is a possibility that the employee and the Home Employer or Overseas Employer may also have to pay taxes in another country. In addition to its domestic arrangements providing relief from international double taxation, Italy has entered into double taxation treaties with a number of countries/jurisdictions to prevent double taxation.

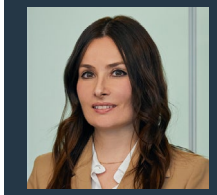
Italy

Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	Yes. In some situations, there may be a risk that the employee's activities or presence in Italy could create a permanent establishment for the employer in that country. This would be the case if, for example, the employee has a sales or business development role and is habitually exercising an authority to conclude contracts in the name of the employer while in Italy.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Italy?	Labour leasing (except by work agencies) and hidden employment are prohibited. Secondments and service agreements (*appalto*) are regulated.
Which rules governing labour leasing in Italy would apply to these scenarios?	• **Any time limits** – Secondments must be "temporary" (i.e. time limited). Service agreements are not time limited, but these should ideally be genuine agreements for services managed by the Home Employer. • **Any exceptions for intra-group situations** – No. • **Formal registration requirements** – For secondments, registration requirements apply.
Are there any financial penalties/criminal sanctions for non-compliance?	In the case of fraudulent labour leasing, the Overseas Employer and Home Employer could be liable for criminal fines of €20 per employee per day. Financial penalties for illegitimate labour leasing: • The employee could claim an employment relationship with the Overseas Entity, plus damages of up to 12 months' salary • Unauthorised supply of employees: €60 per day of work per employee • Other potential financial penalties may be applied up to €1,250 Breach of mandatory communication of the hiring of an employee: €100 to €500 per employee.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Italy in any of these scenarios?	**Scenario 1** – Assuming that the employee simply moves to Italy without working for an entity in Italy, the PWD should not apply. **Scenario 2** – Not if the transfer to Italy is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the "posting" company. **Scenario 3** – No, assuming that, in this scenario, the employee is already based in Italy.

Italy

Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No. **Scenarios 2 and 3** – Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the PWD with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	There are various financial penalties payable, depending on the nature of the breach. Penalties range from €180 to €600 for failing to make the advance declaration within 24 hours of the start of the posting and up to €50,000 for irregular postings. Irregular posting may be criminally sanctioned as fraudulent labour leasing, if the posting is not genuine and is aimed at violating internal legislation or the provisions of a National Collective Bargaining Agreement.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Italy?	If the employee does not have an existing right to work in Italy, in order to be able to work from Italy, they must hold an Italian Residence Permit allowing them to work, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. It would likely be difficult to obtain a work visa if the individual is not filling a genuine role for an Italy-based entity.
If the individual was working overseas for the benefit of a company based in Italy and travelled to Italy for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Italy)?	Generally, if an employee does not have an existing right to work in Italy, for occasional work-related visits to Italy, they will be required to obtain a business visa. In order to obtain the business visa, the employee must be travelling to Italy for economic or commercial purposes, which means that their permitted activities in Italy would be limited to business meetings and conferences, undertaking negotiations, conducting on-site visits and promotional activities. However, a work permit would be required to carry out substantive work for an Italy-based entity.

Contact



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Poland

Home

We have assumed that if an individual is based in, or relocates to, Poland as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Poland ("Overseas Employer") and works for that company remotely from Poland.
- **Scenario 2** – The individual is an employee of an entity in Poland ("Home Employer") but is assigned to work remotely for an entity outside Poland ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Poland (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Poland ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The Overseas Employer's employment laws will apply, and workers posted from other EEA and non-EEA countries will be partially covered by Polish legislation, unless the legislation of the Overseas Employer's state is more favourable for the employee. **Scenario 2** –The laws of the Home Employer would apply (i.e. Poland). **Scenario 3** – The laws of the PEO would apply (i.e. Poland). The employee may gain employment rights in the country in which the Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Polish employment law purposes?	This scenario may constitute prohibited labour leasing. It may also create a risk of the Overseas Entity being deemed to be the employer for Polish employment law purposes.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Polish employment law purposes?	This situation will likely constitute prohibited labour leasing. It may also create a risk of the Overseas End-User being deemed to be the employer for Polish employment law purposes.
If Polish employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Restrictive covenants are allowed. Post-termination non-competition provisions must be paid for to former employees.

Poland

Does Poland impose any additional obligations in relation to homeworking?	Since 7 April 2023, remote working has been formally regulated under the Labour Code. Special rules pertaining to remote working during the COVID-19 pandemic were cancelled from this date. Existing teleworking arrangements will continue to be allowed for another six months, but no new arrangements on teleworking can be made. The Labour Code will require either a remote working policy or an agreement on remote working with the employee. Employers should carry out a risk assessment of the work activities to be carried out remotely to ensure appropriate measures are taken to reduce any associated risks. Employers should regularly check and review these to ensure nothing has changed. Further, they will be obliged to provide work tools for remote working (e.g. a computer and printer) and cover the costs of their installation and maintenance. The employer will be obliged to cover the costs of telecommunication and energy consumption while working remotely, usually as a lump sum allowance.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	It may constitute prohibited labour leasing where the formal employer does not, in fact, have and exercise attributes of the employer (i.e. it is not managing and supervising the employee's work, not deciding on the terms of employment or its termination). The employee is, *de facto*, an employee of the Overseas End-User and the employment contract entered into in Poland is for false appearances.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Poland? Can an overseas employer operate a local payroll?	Possibly in all scenarios, but it would depend on a number of factors. There is no prohibition on overseas employers operating a local payroll. However, in practice, they would need to speak Polish and have operational knowledge of the Polish system.

Poland

Would any of these scenarios require the Overseas Employer/ Overseas Entity/Overseas End-User to register in Poland for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes, for the Overseas Employer if the employee would be subject to Polish social security. Same for the Overseas Entity or Overseas End-User if they were found to be the actual employer. **Criminal sanctions** – Yes. In the Criminal Code, there are provisions related to social insurance. Whoever violates the social insurance provisions is subject to a fine and potentially imprisonment of up to two years. In the Penal and Fiscal Code there are also provisions relating to taxes. A taxpayer who, by evading taxation, fails to disclose to the competent authority the subject matter or the taxable amount, or fails to submit a tax return, thereby resulting in a loss, is subject to a fine of up to 720 times the daily rate or to imprisonment, or both. **Financial penalties** – In cases of breaches of social security regulations, the Criminal Code provides that the fine shall not amount to less than 10 times or more than 540 times the daily rate. The daily rate may not amount to less than PLN10 or more than PLN2,000. In cases of breaches of tax regulations, the Penal and Fiscal Code provides that a taxpayer is subject to a fine of up to 720 times the daily rate. The daily rate may not be less than one-third of the minimum wage or exceed 400 times the minimum wage. Administrative fines under the Act on Social Security of up to PLN5,000 for a failure to register or to pay social security premiums. In some cases, a lack of registration and payment of social security may constitute illegal employment for tax purposes. In such circumstances, the consequences may be more severe and the employer may be obliged to cover the personal income tax and social security premiums of the employee. Note should be taken of the EU Framework Agreement regarding remote workers, which may allow the employee to stay in the employer's home country social security regime when working remotely from their country of residence.

Poland

Are there any potential Polish tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer will usually be required to register the employee for social security and withhold personal income tax advances. It may also need to consider whether it has any employment tax obligations in the Overseas Entity country. • **Overseas Employer** – The Overseas Employer will need to consider whether it is required to register the employee for social security in Poland and operate a local payroll. It will also need to consider the permanent establishment (PE) position and whether it has any employment tax obligations in its own country. • **Overseas Entity** – The Overseas Entity should not have local obligations (unless it may be considered a hidden employment/co-employment). It will need to consider the PE position and whether it has any employment tax obligations in its own country. • **Overseas End-User** – The Overseas End-User should not have local obligations (unless it may be considered a hidden employment/co-employment arrangement). It will need to consider the PE position and whether it has any employment tax obligations in its own country. • **Individual** – In scenario 1, if the Overseas Employer does not operate a local payroll, then the employee will need to deal with paying income tax/social security based on agreement with the employer. They will need to check their personal income tax position. If the employee is taxed in both countries, they will need to consider whether they can claim double taxation relief. In scenarios 2 and 3, the individual will be fully covered by the Polish social security and tax regime and reporting will be done by their formal employers (Home Employer or PEO, respectively).
If employment tax is payable in both Poland and another country, would double taxation relief be available?	This needs to be checked on a country-by-country basis, but, in general, yes.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	Yes, they may, mostly depending on the employee's role.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Poland?	Labour leasing is prohibited. Only registered temporary employment agencies may employ employees for the purpose of working for end-user clients.

Poland

Which rules governing labour leasing in Poland would apply to these scenarios?	**Time limits** – For intra-group secondments outside of Poland, Polish law does not define the maximum duration of such secondment. However, different rules may apply during the first 12 to 18 months of such secondment and in further periods depending on the laws of the Overseas Entity country. **Any exceptions for intra-group situations** – Not for intra-group secondments within Poland. Intra-group secondments outside of Poland are permitted provided that they meet the requirements for a secondment defined in Polish law implementing the Posted Workers Directive and do not constitute prohibited labour leasing. **Formal registration requirements** – There are no registration requirements in Poland for intra-group secondments outside Poland.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions** – Yes, criminal fines may be applicable. **Financial penalties** – PLN30,000 per person per breach.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Poland in any of these scenarios?	**Scenario 1** – No, if their permanent contractual place of work is defined as Poland. **Scenario 2** – Not if the transfer and employment in Poland is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies to a posting where the employee remains employed by the "posting" company. It could apply to the posting by the Home Employer to the Overseas Entity, if the conditions for posting are met. **Scenario 3** – No, but it could apply to the posting by the PEO to the Overseas End-User, if the conditions for posting are met.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No. **Scenario 2** – Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered. **Scenario 3** – Same as for scenario 2.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions** – Yes. Whoever, while performing actions related to labour law and social insurance, maliciously or persistently infringes the rights of an employee arising from employment or social insurance is subject to a fine and potentially imprisonment of up to two years. **Financial penalties** – PLN30,000 per person per breach.

Poland

Home

Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Poland?	For non-EU citizens, a work permit will usually be required unless covered by one of the possible exceptions, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. It would likely be difficult to obtain a work visa if the individual is not filling a genuine role for a Poland-based entity, but there is no established practice yet in Poland. There is no digital nomad visa in Poland.
If the individual was working overseas for the benefit of a company based in Poland and travelled to Poland for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Poland)?	If the employee does not already have the right to work in Poland, they may need a work visa, depending on the exact nature of their visit.

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Saudi Arabia

Home

We have assumed that if an individual is based in, or relocates to, Saudi Arabia as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Saudi Arabia ("Overseas Employer") and works for that company remotely from Saudi Arabia.
- **Scenario 2** – The individual is an employee of an entity in Saudi Arabia ("Home Employer") but is assigned to work remotely for an entity outside Saudi Arabia ("Overseas Entity").
- **Scenario** 3 – The individual is solely employed by a third-party Professional Employer Organisation in Saudi Arabia (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Saudi Arabia ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – It is not possible for an employee to live and work in Saudi Arabia (KSA) without a valid work permit and residence visa. Therefore, if the employee is living and working in the KSA, local KSA laws will apply. **Scenario 2** – It is not possible for an employee to live and work in the KSA without a valid work permit and residence visa. Therefore, if the employee is living and working in the KSA, local KSA laws will apply. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated, depending on the laws of that jurisdiction. **Scenario 3** – The employee and the PEO/Employer of Record would need to enter into a local prescribed form employment contract and, therefore, strictly speaking, the PEO will be considered the employer and the applicable Saudi employment laws would apply.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for KSA employment law purposes?	From a KSA law perspective, the employer is the KSA entity that sponsors the employee for their work visa and residency permit.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for KSA employment law purposes?	The risk of the Overseas End-User being deemed to be an employer for KSA employment law purposes is remote in practice on the basis that the strict legal position is that only local entities established in the KSA may formally employ and sponsor individuals (as they are the entity ultimately responsible for procuring the employee's work permit and employment visa). Notwithstanding this, and in order to reduce/eliminate such risk on the Overseas End-User of the individual eventually claiming dual employment benefits from the Overseas End-User and the PEO, it is common and, indeed, recommended that the Overseas End-User enters into a form of agreement whereby it is confirmed that the employer's obligations in this scenario shall be discharged and settled directly by the PEO. Any such agreement would also confirm that the corresponding employee waives any and all claims or rights of action whatsoever that they may have in the future against the Overseas End-User and that the Overseas End-User has no obligation to pay any sums or benefits due to the employee, whether during the employee's employment or following its termination.

Saudi Arabia

If KSA employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	No. There is no prohibition on confidentiality or non-competition provisions and there is no requirement to provide a payment for the same. Breaching non-competition or confidentiality provisions gives grounds for a claim by the employer for breach of contract. Breach of confidentiality provisions may also carry the following risks under KSA laws: • Article 5 of the KSA Penal Law on Dissemination and Disclosure of Classified Information and Documents provides that where classified information or documents have been disseminated or disclosed, any such acts shall be punished by imprisonment for a period not exceeding 20 years or a fine not exceeding SAR1 million (or both penalties). • The Indicative Guide to the Rules of Business Ethics (IGRBE) in the KSA states that "the employee must keep the technical, commercial and industrial secrets of the materials it produces, or which he contributed directly or indirectly to its production, and all professional secrets related to the work or facility, the disclosure of which would harm the interest of the business owner." No specific penalties are referred to in the IGRBE, although criminal sanctions may be possible (e.g. imprisonment) with reference to this, provided it can be shown the former employee has disclosed confidential information and such disclosure has harmed the interest of the business. • Article 3 of the KSA Anti-Cyber Crime Law states: An individual who is found to undertake spying on, or interception or reception of data transmitted through an information network or a computer without legitimate authorisation shall be subject to imprisonment for a period not exceeding one year and/or a fine not exceeding SAR500,000.
Does Saudi Arabia impose any additional obligations in relation to homeworking?	No, there are no specific additional obligations. However, an employer is obligated by law to provide a safe working environment.

Saudi Arabia

Are there any other employment law-related issues to be aware of in relation to scenario 3?	While this scenario is commonly seen as an interim solution for Overseas End-Users to engage individuals in the KSA without having a legal presence, these arrangements can be onerous from a costs and timing perspective (PEOs often charge high premiums in the KSA). Notwithstanding this, we have set out the key employment law issues to be aware of below: • The PEO regime is heavily regulated and there are a limited number of licensed manpower providers (due to the stringent requirement for a company to obtain a manpower activities licence). The Overseas End-User must, therefore, ensure that the entity it engages is a licensed manpower service provider in the KSA that is permitted to sponsor individuals' residency visas and work permits and has all the requisite approvals/authorisations from local licensing authorities in the KSA. • Overseas End-Users must carefully consider their liability *vis-à-vis* the PEOs and carefully review the manpower services agreement to be entered into to ensure that their financial liability/exposure is limited to the extent possible. For this arrangement, the services agreement put in place between the Overseas End-User and the PEO should document arrangements with respect to the payment of the relevant individual's salary, the level of control to be exercised over the individual, obligations with respect to complying with the Overseas End-User's policies and provisions with respect to liability for any breaches of local laws, etc. As part of this arrangement with a local sponsor/manpower provider, the corresponding services agreement would also include provision that the Overseas End-User would be obligated to indemnify the PEO (as the local employer of record) for any liabilities arising out of a potential labour claim to the extent the losses were not as a direct result of the PEO's acts or omissions. • Overseas End-Users should familiarise themselves with the applicable local employment laws to the extent that statutory benefits (such as end of service gratuity, accrued annual leave, overtime pay, etc.) automatically apply in the context of a full-time employment engagement in the KSA for which they would be ultimately liable for. In addition, while the engagement of a local manpower provider/sponsor is generally permissible in practice for temporary engagements, from a corporate/regulatory perspective, depending on the activities being undertaken by the individual, there could potentially be corporate/anti-fronting law issues, as, strictly speaking, a company should not be operating or generating revenue in the KSA without a valid trade licence.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Saudi Arabia? Can an overseas employer operate a local payroll?	Yes. The KSA implemented the Wage Protection System, which requires employers to file their payroll with the Ministry of Human Resources and Social Development. The Wage Protection System currently applies to entities with 11 employees or more. No, it is not possible for an overseas employer to operate a local payroll.

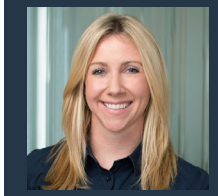
Saudi Arabia

Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in Saudi Arabia for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes. Employers within the KSA must register themselves with the General Authority for Zakat and Tax, and register themselves and their employees with the General Organisation for Social Insurance. Social insurance contributions for foreign employees are 2% of the wage (paid by the employer) and 22% of the wage for Saudi nationals (10% paid by the employee and 12% paid by the employer). **Financial penalties** – SAR10,000 and SAR20,000 on reoccurrence of the violation. Additionally, every violation shall be multiplied with the number of contributors to which the violations relate or multiplied by the number of misstatements or information withheld. However, the general rule is that entities incorporated outside the KSA (i.e. such as the Overseas End-User) would not be required to register themselves. We recommend seeking specific legal advice on this element depending on the scenario in question and applicable legal entity.
Are there any potential KSA tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	No, there is no income tax in Saudi Arabia.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	**Scenario 1** – No. **Scenarios 2 and 3** – This will depend on the laws of the Overseas Entity and Overseas End-User, as applicable.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Saudi Arabia?	There is no concept of labour leasing in the KSA. The Labour Law prohibits an employer from allowing its employee to work for another employer. However, an exception to that is if the employee was *bona fide* seconded to another entity through the "Ajeer" system. However, that only applies to local secondments between local entities in the KSA. Notwithstanding the above, businesses may (and commonly, in practice) engage expatriate individuals through a licensed manpower service provider, whereby such provider would sponsor the individuals and ensure that local law requirements are met. In this scenario, depending on how the arrangement is structured, the PEO would be the employer of record. However, the Overseas End-User/Overseas Entity would remain the ultimate employer from a liability perspective (as liability would likely pass to the Overseas End-User/Overseas Entity through its agreement with the manpower provider) and would be required to pay the manpower entity's fees and all financial entitlements due to such employees (including their monthly salary, post-termination entitlements, etc.).
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Saudi Arabia in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Saudi Arabia.

Saudi Arabia

Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer, Overseas Entity and/or the Overseas End-User (even if the Home Employer is not located in an EEA country).
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in the KSA?	In order to lawfully reside and work in the KSA, all expatriate employees must be sponsored by a locally licensed entity for KSA work permit and residency visa purposes, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. Such sponsorship is both employer-specific and location-specific, permitting the individual to work only for the employer through whom they have obtained their visa and at the location specified in the visa. It would likely be difficult to obtain a work visa if the individual is not filling a genuine role for a KSA-based entity, but the Saudi government has announced a new short-term work visa for certain foreign nationals. These permits are available at the discretion of the corresponding immigration authority.
If the individual was working overseas for the benefit of a company based in the KSA and travelled to the KSA for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in the KSA)?	If employment relations are established between a KSA entity and an individual who does not have an existing right to work in the KSA, the employee will require a work permit and residence visa regardless of the place from where they usually perform their job duties for the benefit of the KSA entity, unless they are visiting simply to attend a business meeting. An assessment of this will depend on whether the individual will be performing revenue-generating work in the KSA. Please note, however, that the Saudi government has announced a new short-term work visa for certain foreign nationals. These permits are available at the discretion of the corresponding immigration authority.

Contact



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Singapore

Home

We have assumed that if an individual is based in, or relocates to, Singapore as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Singapore ("Overseas Employer") and works for that company remotely from Singapore.
- **Scenario 2** – The individual is an employee of an entity in Singapore ("Home Employer") but is assigned to work remotely for an entity outside Singapore ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Singapore (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Australia ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The employment laws of Singapore as the home country will likely apply here. **Scenario 2** – The employment laws of Singapore as the Home Employer will apply. **Scenario 3** – The employment laws of Singapore as the home country will apply. In these scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Singaporean employment law purposes?	Under certain laws, the rightful employer is dependent on the factual circumstances, i.e. who has control over the employee. Accordingly, there is a risk that the Overseas Entity may be determined to be the rightful employer of the employee. However, such a risk is very low as long as there is a clear contractual relationship between the employee and the Home Employer.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Singapore employment law purposes?	Under certain laws, the rightful employer is dependent on the factual circumstances, i.e. who has control over the employee. Accordingly, there is a risk that the Overseas End-User may be determined to be the rightful employer of the employee. However, such a risk is very low as long as there is a clear contractual relationship between the employee and the PEO.
If Singaporean employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	No payment is required for confidentiality or non-competition provisions. However, non-competition provisions are generally invalid as being against public policy unless there are legitimate business interests to be protected and the provisions are drafted no wider than is necessary to protect those interests. Payment is not required in order to enforce such provisions. Confidentiality provisions are enforceable under Singapore law and do not require payment for enforcement.
Does Singapore impose any additional obligations in relation to homeworking?	There are no additional obligations imposed on employers when employees work from home in Singapore. Employees working from home have the same rights as those working on-site.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	Generally, the PEO will assume the responsibilities as the employer. The Overseas End-User should take care not to appear to take on the role of the employer in its interactions with the individual so as to mitigate the risk of claims that the Overseas End-User is the employer instead of the PEO.

Singapore

Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Singapore? Can an overseas employer operate a local payroll?	**Scenario 1** – If the employee remains employed by the Overseas Employer, local payroll is not required in Singapore. **Scenario 2** – Yes, local payroll would be required. **Scenario 3** – Yes, the PEO will usually manage the local payroll. If an overseas employer does not have a local entity in Singapore, it would be difficult for such an employer to operate a local payroll.
Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in Singapore for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	There is no requirement for the Overseas Employer/Overseas Entity/Overseas End-User to register locally for tax, social security or other benefits. It is possible for the Overseas Employer/Overseas Entity to pay Central Provident Fund contributions for employees who are Singapore citizens or permanent residents and working in Singapore. However, in scenarios 2 and 3, the Home Employer and the PEO, respectively, would have an obligation to pay Central Provident Fund contributions for such employees and, as such, the Overseas Entity and Overseas End-User would not need to do the same. No financial penalties/criminal sanctions are applicable.
Are there any potential Singapore tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – While there is no requirement to withhold monthly taxes, the Home Employer is required to complete a return of remuneration form setting out the various payments in relation to the employment for the year. In the case of departing employees who are non-Singapore citizens, written notice (Form IR21 – Notice of Cessation of Employment of non-Singapore Citizens) must be given to the Inland Revenue Authority of Singapore (IRAS) at least one month prior to the date on which the person ceases employment or leaves Singapore permanently, or for a period exceeding three months. In addition, the Home Employer must retain any money that is due to the employee until IRAS grants tax clearance. Where required, the Home Employer is to pay the employee's tax from the retained sum(s). Form IR21 tax clearance is, however, not required for short-term visiting employees working for no more than 60 days in a calendar year or employees who worked for more than 183 days in Singapore but earned less than S$21,000 annually. • **Overseas Employer** – The Overseas Employer may be exposed to the risk of establishing a permanent establishment (PE) in Singapore, as discussed below. • **Overseas Entity** – No potential tax implications are foreseeable. • **Overseas End-User** – No potential tax implications are foreseeable. • **Individual** – The employee's income attributable to services rendered in Singapore is subject to tax in Singapore if employment is exercised in Singapore for more than 60 days in a calendar year.

Singapore

If employment tax is payable in both Singapore and another country, would double taxation relief be available?	Whether or not tax is payable in another country would depend on the tax laws of that other country. Whether double taxation relief is available will depend on whether there is an applicable Double Tax Agreement (DTA) between Singapore and that other country.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	**Scenario 1** – The risk of creating a PE is higher. Whether a PE exists or otherwise is largely a question of fact and would entail a consideration of, among other things, the nature of the activities or work scope in Singapore and any DTA between Singapore and the other country. The general position is that a foreign entity shall be deemed to have a PE in Singapore if the person acting on behalf of that foreign entity: • Has and habitually exercises an authority to conclude contracts • Maintains a stock of goods and merchandise for the purpose of delivery on behalf of that foreign entity • Habitually secures orders wholly or almost wholly for that foreign entity or for such other enterprises as are controlled by that foreign entity A foreign entity is not deemed to have a PE merely because that enterprise carries on business through a broker, general commission agent or any other agent of an independent status, where such broker or agent is acting in the ordinary course of their business. **Scenario 2** – The risk of creating a PE is low, as there is an employment relationship between the employee and the Home Employer. The risk of creating a PE also depends on the individual's role/job scope. **Scenario 3** – The risk of creating a PE is low, as there is an employment relationship between the employee and the PEO. The risk of creating a PE also depends on the individual's role/job scope.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Singapore?	In general, there are no express prohibitions or regulations in Singapore against these suggested scenarios.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Singapore in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in Singapore.

Singapore

Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer/PEO and the Overseas Entity/ Overseas End-User (even if the Home Employer/PEO is not located in an EEA country such as in this instance).
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Singapore?	Foreign employees must have a legal entitlement to work in Singapore if they are employed by the Home Employer or PEO in Singapore. Assuming the foreign employee has a right to stay in Singapore, they are not required to have a work pass to work in Singapore for an Overseas Employer. **Scenario 1** – If the individual is not a Singapore citizen or permanent resident, they would need to obtain a work pass to work and stay in Singapore. Where the employer is overseas, the individual/Overseas Employer would need to secure a local sponsor to obtain a work pass. **Scenario 2** – If the individual is not a Singapore citizen or permanent resident, they would need to obtain a work pass to work and stay in Singapore. The Home Employer would need to apply for a work pass for the individual. **Scenario 3** – If the individual is not a Singapore citizen or permanent resident, they would need to obtain a work pass to work and stay in Singapore. The PEO would need to apply for a work pass for such an individual. Generally, to apply for a work pass for a foreign employee (i.e. someone who is neither a Singapore citizen nor a Singapore Permanent Resident), the employing entity must establish a presence, in the form of a subsidiary company or a branch office in Singapore. In scenario 1, the Overseas Employer may obtain a work pass provided there is a local sponsor company willing to be responsible for the foreigner. Such a "sponsorship" work pass would require the sponsoring Singapore entity to explain its relationship with the Overseas Employer and why it requires the foreign employee to work in Singapore.

Singapore

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If the individual was working overseas for the benefit of a company based in Singapore and travelled to Singapore for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Singapore)?	This would depend on the work scope expected of the employee when they are in Singapore. Activities such as attending seminars and conferences, providing expertise to transfer knowledge on process of new operations in Singapore and participating in an exhibition as an exhibitor would be eligible for work pass exemption. In addition, the employee will be entitled to attend company meetings, corporate retreats or meetings with business partners without a work visa, as these fall within the category work pass exemption activities. However, a work pass will be required to carry out substantive work for a Singapore-based entity.

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Slovak Republic

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We have assumed that if an individual is based in, or relocates to, the Slovak Republic as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside the Slovak Republic ("Overseas Employer") and works for that company remotely from the Slovak Republic.
- **Scenario 2** – The individual is an employee of an entity in the Slovak Republic ("Home Employer") but is assigned to work remotely for an entity outside the Slovak Republic ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in the Slovak Republic (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside the Slovak Republic ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The laws of the Slovak Republic would apply, unless the Overseas Employer's labour regulations are more beneficial for the employee (and the relationship is deemed a posting). **Scenario 2 –** The Home Employer's laws would apply (i.e. the Slovak Republic's), unless the Overseas Entity's labour regulations are more beneficial for the employee. **Scenario 3** – The laws of the Slovak Republic would apply. In all scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity/Overseas End-User is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Slovakian employment law purposes?	Yes.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Slovak Republic employment law purposes?	Yes.

Slovak Republic

If Slovak Republic employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	There is no statutory requirement for compensation for confidentiality clauses. However, it is not permissible to require confidentiality regarding an employee's working conditions, including salary, benefits, bonuses, etc. Any such agreements or clauses in employment contracts would be deemed void. As regards non-competition clauses: **During the employment relationship** – There is no need to compensate the employee and the employee may carry out such competitive activities only subject to the employer's consent. **After the relationship** – If the employer and employee agree on a post-termination non-competition clause, the employer would be legally required to compensate the employee. Maximum of one year in duration, at least 50% of average monthly wages, in monthly recurring payments.
Does the Slovak Republic impose any additional obligations in relation to homeworking?	Under normal circumstances, employment agreements need to contain a specific clause that stipulates an agreement between the employer and the employee on working from home. The employer must ensure it adheres to the applicable health and safety legislation while the employee works from home.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	A few of the key employment law issues to be aware of for PEO employees/individuals: • **Worker rights** – The individual has a direct claim against the Overseas End-User, e.g. if the PEO fails to provide the individual with wages at least as favourable as those of a comparable employee of the Overseas End-User, the Overseas End-User must pay the individual the wages, or the appropriate differential, within 15 days of the pay date. • **Employment processes and procedures** – Overseas End-Users must remember that they are not the individual's employer for the purposes of any employment processes, e.g. performance/disciplinary/termination, and so will rely on the PEO to manage these. It would be advisable to ensure the contract with the PEO includes provisions to govern this.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the Slovak Republic? Can an overseas employer operate a local payroll?	**Scenario 1** – Yes, a local payroll is required. **Scenario 2** – Yes, a local payroll is required. **Scenario 3** – Yes, a local payroll is required. An overseas employer can operate a local payroll.

Slovak Republic

Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in the Slovak Republic for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes, the Overseas Employer would be required to register locally for tax and social security if the employee's place of work is in Slovakia, and to have statutory social and health insurance for the locally based employee. In certain situations, even the Overseas Entity or the Overseas End-User would be subject to Slovak tax and social security rules (e.g. if the assignment exceeds a maximum duration of 24 months (or for a shorter period of time, which can be extended up to four times for a total combined duration of up to 24 months) and an employment relationship will, therefore, be established between the individual and the Overseas Entity or the Overseas End-User). In addition, due to EU social security regulations, exceptions can apply. Therefore, situations should be analysed on a case-by-case basis. Yes, non-payment of mandatory social security, health insurance deductions and payroll taxes is a criminal offence (if they are payable). There may be criminal lability of up to 12 years' imprisonment and/or other criminal sanctions may apply. The maximum administrative penalty is €200,000. Criminal courts can also issue financial sanctions.
Are there any potential Slovakian tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User, or individual?	• **Home Employer** – The Home Employer will most likely be required to operate a local payroll and comply with and perform all standard statutory tax/social security deductions. However, the answer to this question might be different based on the location of the Overseas Entity (e.g. whether EU social security coordination regulations apply), the nationality of the employee and other factors pertaining to the employee (e.g. the tax residency of the employee). • **Overseas Employer** – The Overseas Employer would need to consider whether it is under obligations from a Slovak law perspective to register as an employer in Slovakia (to a large extent, this depends on the formal place of work of the employee). Moreover, depending on the location of the Overseas Employer, it would be necessary to analyse whether EU social security regulation coordination rules apply (this would determine the obligations from a social security perspective and the competent authority). In respect of taxation issues, it would be necessary to analyse whether there are any bilateral tax treaties in place and what is the habitual tax residency of the employee. Nevertheless, generally speaking, it is very likely that payroll tax deductions would be performed in the country where the salary is paid (but this depends on the applicable law in the concerned jurisdiction). • **Overseas Entity/Overseas End-User** – It is unlikely that the Overseas Entity/Overseas End-User would need to register as an employer in the Slovak Republic. However, depending on the location of the Overseas Entity/Overseas End-User, it would be necessary to analyse whether EU social security regulation coordination rules apply (this would determine the obligations from a social security perspective and the competent authority). In respect of taxation issues, it would be necessary to analyse whether there are any bilateral tax treaties between the countries where the Home Employer and the Overseas Entity/Overseas End-User are located and what is the habitual tax residency of the employee. Nevertheless, generally speaking, it is very likely that payroll tax deductions would be performed in the country where the salary is paid (but this depends on the applicable law in the concerned jurisdiction). • **Individual** – The primary responsibility for compliance with tax and social security provisions rests with the employer. Nevertheless, depending on any other activities performed by the individual and their location, this would have an impact on the employee's habitual tax residency. It would be necessary to analyse whether any double taxation international treaties are applicable in the situation or not. From a social security perspective, the set-up with the employer as per above would need to be considered.

Slovak Republic

If employment tax is payable in both the Slovak Republic and another country, would double taxation relief be available?	It depends whether it is an intra-EU relationship and whether there is a treaty on the abolition of double taxation between the other relevant country and the Slovak Republic.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	Generally speaking, it does not for either the Overseas Employer, the Overseas Entity or the Overseas End-User, if the employer does not provide services aimed at the Slovak Republic. However, the situation would need to be analysed on a case-by-case basis.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the Slovak Republic?	Labour leasing is regulated, whereas hidden employment is prohibited.
Which rules governing labour leasing in the Slovak Republic would apply to these scenarios?	**Time limits** – Labour leasing is permitted for a maximum duration of 24 months (or for a shorter period of time, but can be extended a maximum of four times for a total combined duration of up to 24 months). In the event of a breach of the maximum assignment period, Slovak laws stipulate that the employment relationship between the individual and the Home Employer or PEO terminates by operation of law and an employment relationship of indefinite duration is established between the individual and the Overseas Entity or Overseas End-User. In scenario 1, if there is absolutely no relation to any employer or any entity in Slovakia, then this would not be considered labour leasing. However, it would be necessary to confirm that the employee is not, for example, working out of the office of a Slovak affiliate of the Overseas Employer. In scenarios 2 and 3, if the assignment is not temporary, but rather of a permanent nature, then labour leasing regulations would not be applicable and the situation would most likely result in a new employment relationship. **Any exceptions for intra-group situations** – Yes, but only in respect of performance of certain types of temporary work. **Formal registration requirements** – If labour leasing is performed between entities that are not temporary employment agencies, then certain registration requirements are applicable (especially in cross-border leasing). However, no licence is required for this purpose. In these scenarios, registration should not be required unless the labour leasing was being performed as a regulated main business activity of any of the concerned entities.
Are there any financial penalties/criminal sanctions for non-compliance?	**Criminal sanctions** – Yes, non-payment of wages in accordance with applicable law (when hidden employment is uncovered by the authorities) and non-payment of mandatory social security, health insurance deductions and payroll taxes are criminal offences, the sanction for which is up to 12 years' imprisonment and/or other criminal sanctions. **Financial penalties** – There can be administrative liability of up to €200,000 for illegal employment and up to €100,000 for carrying out temporary employment agency activities without a licence.

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Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Slovak Republic in any of these scenarios?	**Scenario 1** – There is a risk that the PWD would apply in scenario 1 because the definition of establishment/ undertaking is not that firmly established in Slovakia. Hence, should the worker visit or spend time in an office of an affiliated company of the Overseas Employer, this might be interpreted as a posting. However, if it is envisioned that the employee will work from home in Slovakia and will have no contact or connection to any other employer than the Overseas Employer, then the risk of this arrangement being deemed to be a posting is low. **Scenarios 2 and 3** – Not if the transfer to the Home Employer or PEO in Slovakia is permanent, as this would fall outside the PWD and a new employment relationship would be established. Furthermore, the PWD only applies where the employee remains employed by the "posting" company.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No, if such visits are of an occasional business trip nature. **Scenarios 2 and 3** – Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered.
Are there any financial penalties/criminal sanctions for non-compliance?	The maximum penalty is €200,000 in the Slovak Republic. An additional fine may be issued in the other relevant jurisdiction. There are only potential criminal sanctions if non-payment of wages/non-payment of applicable mandatory social, health and tax deductions breach occurs – if they are payable.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in the Slovak Republic?	In general, if the employee lives in Slovakia and performs work in Slovakia, even for the Overseas Employer, the Overseas Entity or the Overseas End-User outside Slovakia, both the employee and employer need to comply with applicable immigration requirements. There is a risk that any work performed by anybody in Slovakia without the right to work in Slovakia could be identified as illegal employment or a breach of immigration laws. It would likely be difficult to obtain a work visa if the individual is not filling a genuine role for a Slovak-based entity.

Slovak Republic

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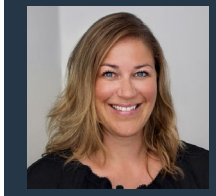
If the individual was working overseas for the benefit of a company based in the Slovak Republic and travelled to the Slovak Republic for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in the Slovak Republic)?	If the employment relationship is directly between the employer in Slovakia and a foreign-based employee, then this would constitute illegal employment if the applicable Slovak immigration requirements are not adhered to depending on the immigration status of the employee and the type of activities performed by the employee in Slovakia. Therefore, it would be necessary to analyse the situation on a case-by-case basis in order to provide an accurate response.

Contact



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Spain

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We have assumed that if an individual is based in, or relocates to, Spain as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside Spain ("Overseas Employer") and works for that company remotely from Spain.
- **Scenario 2** – The individual is an employee of an entity in Spain ("Home Employer") but is assigned to work remotely for an entity outside Spain ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in Spain (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside Spain ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The Overseas Employer and the employee can agree on the law that governs their employment relationship and, therefore, it depends on the terms of the employment contract. **Scenario 2** – As an employee of the Home Employer working in Spain, Spanish labour law would generally apply unless agreed otherwise between the Home Employer, or Overseas Entity, and the employee. **Scenario 3** – The PEO and the employee can agree on the law that governs their employment relationship and, therefore, it depends on the terms of the employment contract. However, in all three scenarios, the agreed choice of law must not exclude certain mandatory provisions under Spanish law if they are more favourable to the employee than the agreed laws, for example in relation to termination provisions, collective bargaining agreements, annual leave, maternity and sick pay, working time and minimum wage. The employee may also gain employment rights in the country in which the Overseas Employer/Overseas Entity/ Overseas End-user is situated, depending on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for Spanish employment law purposes?	Yes. In intra-group scenarios a "labour group of companies" may arise. In that case, all of the companies in the labour group would be jointly and severally liable for all obligations in respect of the employee. Therefore, the Overseas Entity may be jointly and severally liable for all the employment and social security obligations of the Home Employer. An employee in this scenario may have the right to claim the status of being a permanent employee in the company of their choice.

Spain

In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for Spanish employment law purposes?	Yes. PEOs are a recent development in Spain and there is a risk they could be considered as temporary work agencies that involve the illegal transfer of workers. According to Spanish regulations, only temporary work agencies (ETTs) duly authorised upon the terms established by the law are legally allowed to assign employees to third-party companies and exclusively on a temporary basis. Therefore, if the purpose of the PEO is merely limited to placing employees at the disposition of the Overseas End-User, a risk of unlawful labour leasing/transfer of employees could arise and the Overseas End-User could be deemed to be the real employer of the assigned employees.
If Spanish employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	Confidentiality or non-competition provisions are not prohibited in Spain. However, post-termination non-competition provisions should, among other things, meet the following requirements to be valid and enforceable: • **Adequate compensation** – Between 40% and 50% of the employee's remuneration is a good general guide. • **Duration** – A maximum period of two years for senior executives, managers and technical employees and six months for all other employees.
Does Spain impose any additional obligations in relation to homeworking?	Homeworking is a voluntary arrangement between employee and employer. It cannot, therefore, be insisted upon unilaterally by the employee. The parties must enter into an individual homeworking agreement establishing the conditions governing homeworking. Either party is entitled to terminate the homeworking arrangement according to its terms (opt out). It is compulsory to reimburse for any costs incurred by employees in working from home. The reimbursement of any costs should be regulated in the applicable collective bargaining agreement and, if not, the parties must agree an adequate amount (around €50 per month is common practice in Spain for employees working remotely full time) in the individual homeworking agreement. Employees who work from home are entitled to adequate health and safety protection, and the provisions of Law 31/1995 of 8 November on the Prevention of Occupational Risk and its implementing regulations will apply in all cases.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	If there has been an unlawful transfer of employees, the following consequences may arise for the Overseas End-User: • Joint and several liability of the PEO and the Overseas End-User for all obligations assumed *vis-à-vis* the assigned employees, whether in relation to wages, severance payments or social security contributions • It could be considered as a very serious infringement by the Labour Inspectorate, imposing an administrative fine of between €7,501 and €225,018
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in Spain? Can an overseas employer operate a local payroll?	**Scenario 1** – Yes, the Overseas Employer would be required to operate a local payroll. **Scenario 2** – The Home Employer (but not the Overseas Entity) would be required to operate a local payroll. An overseas employer can operate a local payroll. **Scenario 3** – A local payroll is required but would be operated by the PEO.

Spain

Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in Spain for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	The Overseas Employer or Overseas Entity would be required to apply for a tax ID for a non-resident company without permanent establishment (PE). After registering the company in Spain, the company will receive a non-resident tax ID and an employer social security number. Both numbers are required to be able to hire any employee and process the payroll. From a social security perspective, in order to continue to be covered by the social security system of the Home Employer, the Home Employer must request an A1 form from the social security institution (INSS). In scenario 3, the PEO will be in charge of all issues related to tax, social security and labour compliance. If the PEO fails in doing so, the Overseas End-User would most likely be held joint and severally responsible. **Criminal penalties** – For serious breaches of these provisions, employers could be punished by imprisonment for six months to six years and a fine of six to 12 months. **Financial penalties** – These range from: • **Minor breaches** – Fines of €60 to €625. • **Serious breaches** – Fines of €626 to €6,250. • **Very serious breaches** – Fines of €6,251 to €187,515.
Are there any potential Spanish tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer will continue to be obliged to withhold taxes from the salary of its employee on account of its Spanish Personal Income Tax (PIT). • **Overseas Employer** – The Overseas Employer may be deemed to have a PE in Spain if certain conditions are met (see below for further details). If so, the Overseas Employer will be subject to the Spanish Corporate Income Tax (CIT) and will be obliged to withhold taxes from the salary of its employee on account of their PIT. If no PE is deemed to exist, and the Overseas Employer does not develop any economic activity in Spain, the Overseas Employer will not be subject to taxes in Spain nor to withhold taxes on the salaries of its employees. This has been confirmed by the Spanish Directorate of Taxes through its tax ruling V3286-17. • **Overseas Entity** – There would be no tax implications in Spain. • **Overseas End-User** – No obligations. • **Individual** – The individual will be considered as a tax resident in Spain and will have to pay taxes on their worldwide income through the Spanish PIT.
If employment tax is payable in both Spain and another country, would double taxation relief be available?	Double taxation relief depends on the other jurisdiction and any Double Tax Agreements in place.

Spain

Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	In general, the Overseas Employer will be deemed to have a PE in Spanish territory if it holds, in any way, installations or work premises of any kind, or acts through an agent authorised to hire, in the name and on account of the Overseas Employer, using these powers regularly. Therefore, this will depend on the powers to be granted to the employee in Spain. In this regard, the Double Tax Agreements signed by Spain usually set forth that where a person (individual, a trust, a company and any other body of persons) – other than an agent of an independent status – is acting on behalf of a company and has, and habitually exercises, in Spain an authority to conclude contracts on behalf of that company, it shall be deemed to have a PE in Spain in respect of any activities that person undertakes for that company. Based on the above, provided the employee does not have any binding power with respect to the Overseas Employer, and the Overseas Employer does not develop any economic activity in Spain, in principle, no PE risk in Spain should arise.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in Spain?	Prohibited, except in intra-group scenarios or through temporary work agencies.
Which rules governing labour leasing in Spain apply to these scenarios?	• **Time limits:** In scenarios 2 and 3, the assignment of the employee would be considered unlawful labour leasing from the beginning of the assignment so no time limits apply. • **Any exceptions for intra-group situations:** Yes, there are exceptions in intra-group situations where one company may provide workers to another company within the same corporate group. In these cases, there could be joint and several responsibility between the companies of the group regarding the employment and social security obligations towards the assigned employee. • **Formal registration requirements:** In Spain only temporary work agencies can assign employees to other companies. In such cases, the entity must be duly registered and authorised by the Ministry of Labour to operate as temporary employment intermediaries. In scenarios 2 and 3, the Overseas Entity/End-User would be jointly and severally liable for all the employment and social security obligations of the Home Employer/PEO.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to Spain in any of these scenarios?	**Scenario 1** – No, because the employee would not be posted to provide services to an establishment or undertaking in Spain. **Scenario 2** – Not if the transfer to the Home Employer in Spain is permanent, as this would fall outside the PWD. Furthermore, the PWD only applies where the employee remains employed by the "posting" company. **Scenario 3** – No, because the employee would be hired by a Spanish PEO and, therefore, they would not be posted to Spain.

Spain

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Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	**Scenario 1** – No. **Scenario 2** – Potentially, but it will depend on a number of factors, including which country the employee is returning to, the nature of the visit, any local requirements, etc. The PWD only applies where a worker is "posted" to provide services to an establishment or undertaking in another EEA country. Workers on business trips (where no services are provided) or attending conferences will not generally be covered, although some of the registration requirements under the Posted Workers Enforcement Directive with relevant national authorities may be triggered. **Scenario 3** – No, provided they are only occasional.
Are there any financial penalties/criminal sanctions for non-compliance?	• **Minor breaches** – Fines of €60 to €625. • **Serious breaches** – Fines of €626 to €6,250. • **Very serious breaches** – Fines of €6,251 to €187,515. • There are no criminal sanctions for non-compliance.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in Spain?	If the individual is a non-EU national, they will need an existing right to work in Spain, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. It would likely be difficult to obtain a work visa if the individual is not filling a genuine role for a Spain-based entity. A digital nomad type visa is also available.
If the individual was working overseas for the benefit of a company based in Spain and travelled to Spain for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in Spain)?	If the employer is located in Spain and the employment relationship is established between a Spanish entity and an individual who does not have an existing right to work in Spain, such an employee must have a work visa and valid work permit regardless of the place from where they are usually performing their job duties for the benefit of the Spanish entity and regardless of the nature of the work being carried out when visiting Spain (with the exception of short trips for business meetings, etc.).

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United Arab Emirates

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We have assumed that if an individual is based in, or relocates to, the UAE as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside the UAE ("Overseas Employer") and works for that company remotely from the UAE.
- **Scenario** 2 **–** The individual is an employee of an entity in the UAE ("Home Employer") but is assigned to work remotely for an entity outside the UAE ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in UAE (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside the UAE ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	In respect of scenario 1, individuals can apply for a one-year remote working visa, which allows them to work remotely from Dubai. For individuals working "virtually" from Dubai under this type of visa, the employment laws of the country in which the Overseas Employer is situated would apply. In the absence of working under the remote-working visa, or where the individual would be carrying out work for a Home Employer (as set out in scenario 2) or where the individual is looking to work from the UAE (other than from Dubai), it is not possible for an individual to live and work without a valid work permit and residence visa. Therefore, in this instance, if the individual is living and working in the UAE, local UAE laws will apply. In both scenarios mentioned above, the individual may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated, depending on the laws of that jurisdiction. In scenario 3, the individual and the PEO/Employer of Record would need to enter into a local employment contract and, therefore, strictly speaking, the PEO will be considered the employer and the applicable UAE employment laws would apply.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for UAE employment law purposes?	From a UAE perspective, the employer is the UAE entity that sponsors the employee for their work permit and residence visa, which, in this scenario, is the Home Employer. However, if payments are also made to the employee in the Overseas Entity jurisdiction, there is always a risk that the employee could try to include such payments in the calculation of local statutory benefits in the UAE such as end of service gratuity and payment in lieu of accrued but unused leave and claim that the payments received by the Overseas Entity are taken into consideration when calculating their entitlements and benefits from a local UAE law perspective.

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In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for UAE employment law purposes?	The risk of the Overseas End-User being deemed to be an employer for UAE employment law purposes is remote in practice on the basis that the strict legal position is that only local entities established in the UAE may formally employ and sponsor individuals (as they are the entity ultimately responsible for procuring the employee's work permit and employment visa). Notwithstanding this, and in order to reduce/eliminate such risk on the Overseas End-User of the individual eventually claiming dual employment benefits from the Overseas End-User and the PEO, it is common and, indeed, recommended that the Overseas End-User enters into a form of agreement whereby it is confirmed that the employer's obligations in this scenario shall be discharged and settled directly by the PEO. Any such agreement would also confirm that the corresponding employee waives any and all claims or rights of action whatsoever that they may have in the future against the Overseas End-User and that the Overseas End-User has no obligation to pay any sums or benefits due to the employee, whether during the employee's employment or following its termination.
If UAE employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	There is no prohibition on confidentiality or non-competition provisions (in fact, breach of confidentiality can be a criminal offence) and there is no requirement to provide a payment for the same. However, for the most part, across the UAE (outside of the ADGM or the DIFC), for a breach of a non-competition provision, the company is limited to a claim in damages, as injunctive relief is not an awarded remedy by the courts. From a practical standpoint, we consider that it would aid enforcement if the employment contract provides for a liquidated damages clause that allows the employer to recover compensation from the employee in the event of a breach of the latter's confidentiality and non-competition obligations (as opposed to payment to the individual for any confidentiality and/or non-competition provisions which does not constitute standard or common practice in the UAE).
Does the UAE impose any additional obligations in relation to homeworking?	No, there are no specific additional obligations. However, an employer is obligated by law to provide a safe working environment.

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Are there any other employment law-related issues to be aware of in relation to scenario 3?	While this scenario is commonly seen as an interim solution for Overseas End-Users to engage individuals in the UAE without having a legal presence, these arrangements can be onerous from a costs and timing perspective (PEOs often charge high premiums in the UAE). Notwithstanding this, we have set out the key employment law issues to be aware of below: • The PEO regime is heavily regulated and there are a limited number of licensed manpower providers (due to the stringent requirement for a company to obtain a manpower activities licence). The Overseas End-User must, therefore, ensure that the entity they engage is a licensed manpower service provider in the UAE that is permitted to sponsor individuals' residency visas and work permits and has all of the requisite approvals/authorisations from local licensing authorities in the UAE. • Overseas End-Users must carefully consider their liability *vis-à-vis* the PEOs and carefully review the manpower services agreement to be entered into to ensure that their financial liability/exposure is limited to the extent possible. For this arrangement, the services agreement put in place between the Overseas End-User and the PEO should document arrangements with respect to the payment of the relevant individual's salary, the level of control to be exercised over the individual, obligations with respect to complying with the Overseas End-User's policies and provisions with respect to liability for any breaches of local laws, etc. As part of this arrangement with a local sponsor/manpower provider, the corresponding services agreement would also include provision that the Overseas End-User would be obligated to indemnify the PEO (as the local employer of record) for any liabilities arising out of a potential Labour Law claim to the extent the losses were not as a direct result of the PEO's acts or omissions. • Overseas End-Users should familiarise themselves with the applicable local employment laws to the extent that statutory benefits (such as end of service gratuity, accrued annual leave, overtime pay, etc.) automatically apply in the context of a full-time employment engagement in the UAE for which they would be ultimately liable for. In addition, while the engagement of a local manpower provider/sponsor is generally permissible in practice for temporary engagements, from a corporate/regulatory perspective, depending on the activities being undertaken by the individual, there could potentially be corporate/anti-fronting law issues, as, strictly speaking, a company should not be operating or generating revenue in the UAE without a valid trade licence.

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Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the UAE? Can an overseas employer operate a local payroll?	The current position is that an employee's remuneration may be paid in any currency that is agreed upon by the parties, be it the local currency (UAE Dirhams) or otherwise. In practice, some employers choose to pay part of an employee's salary in another jurisdiction (e.g. for US nationals to pay a percentage of their salary in the US). However, this is not recommended and, at the very least, the amount specified in the employee's contract filed with the authorities for immigration purposes (be it a nominal amount or otherwise) is generally paid locally in the currency agreed upon by the parties. An overseas employer cannot operate a local payroll.
Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in the UAE for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes, although there is no income tax in the UAE. In all scenarios, there would be a requirement for the local employer on record (i.e. the Home Employer and/or PEO) to register for social security as opposed to the Overseas Employer/ Overseas Entity/Overseas End-User. Social security contributions are applicable in the UAE only for UAE nationals, and nationals of the Gulf Corporation Council countries (GCC), which are the UAE, Saudi Arabia, Bahrain, Oman, Kuwait and Qatar. **Criminal sanction** – Yes, the general manager named on the local employer's trade licence could be criminally liable and may face imprisonment in the event they deliberately provide false data or refrain from providing data to the GPSSA to avoid paying the relevant entitlements due to the General Pension and Social Security Authority (GPSSA). Article 59 of the UAE Pensions Law states that the general manager may "be sentenced to imprisonment and a fine not exceeding AED5,000 or to either penalties". **Financial penalty** – A failure to register local or GCC nationals for pension entitlements is also likely to attract fines or penalties. • A fine of AED5,000 can be imposed on a private sector employer by the GPSSA for every eligible employee who has not been registered with the authority for the pension scheme • Where there is a delay in the payments of the contribution amounts, an additional sum amounting to 0.1% of the due subscriptions shall be imposed on the employer for every day of delay without a need for a warning or notification Additionally, employers who have not deducted the subscriptions of all or some of the employees, or who have not paid the subscriptions based on the real salaries, shall be ordered to pay an additional sum amounting to 10% of the value of the due subscription without any warning or notification.

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Are there any potential UAE tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	No, there is no income tax payable in the UAE. However, from June 2023, a federal corporate tax became payable by UAE resident businesses and non-UAE resident businesses in respect of their UAE-sourced business income. Specific tax advice should be sought on this element, depending on the scenario in question and the applicable legal entity.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	**Scenario 1** – Potentially yes, depending on the employee's role. The permanent establishment concept for the UAE corporate tax is based on Article 5 of the OECD Model Tax Convention. The permanent establishment concept has been designed to determine if a company has an adequate presence in a foreign country. Generally, a country can impose taxes on a foreign company's business profits if it has a permanent establishment in that country. In this scenario, if there is no fixed place of business, the activities of "dependent agents" could still trigger a permanent establishment for the overseas entity in the UAE. We recommend seeking specific legal advice to assess this based on the activity of the individual. **Scenario 2** – This will depend on the laws of the Overseas Employer or the Overseas Entity. **Scenario 3** – This will depend on the laws of the Overseas End-User.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the UAE?	There is no concept of labour leasing in the UAE. The general rule is that in order to legally work and reside in the UAE, an expatriate must obtain a residence visa and work permit via an entity established in the UAE. Citizens (e.g. UAE or GCC nationals only) would only be required to obtain a work permit. Notwithstanding the above, businesses may (and commonly, in practice) engage expatriate individuals through a licensed manpower service provider, whereby such provider would sponsor the individuals and ensure that local law requirements are met. In this scenario, depending on how the arrangement is structured, the PEO would be the employer of record. However, the Overseas End-User/Overseas Entity would remain the ultimate employer from a liability perspective (as liability would likely pass to the Overseas End-User/Overseas Entity through its agreement with the manpower provider) and would be required to pay the manpower entity's fees and all financial entitlements due to such employees (including their monthly salary, post termination entitlements, etc.).
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to the UAE in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in the UAE.

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Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer, the Overseas End-User and the Overseas Entity (even if the Home Employer is not located in an EEA country).
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in the UAE?	All employees must have a legal entitlement to work in the UAE, even if they are working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. **Scenario 1** – The employee could apply for a remote working visa to live in Dubai (and please note this applies to Dubai only in the UAE) while remaining employed with an Overseas Entity abroad. This visa is for one year only and, therefore, individuals will need to re-apply as per the standard application process. Individuals under an active remote working visa will be able to leave and enter the UAE during the term of the visa, but if the individual is outside the UAE for more than six months continuously, their respective visa will be nullified. Employee applicants will only be approved if they earn a monthly salary of US$5,000 (Dhs18,365) per month. In the absence of obtaining a remote-working visa, in order to lawfully reside and work in the UAE, all expatriate employees must be sponsored by a locally licensed entity for UAE work permit and residency visa purposes. Such sponsorship is both employer-specific and location-specific, permitting the individual to work only for the employer through whom they have obtained their visa and at the location specified in the visa. UAE and other GCC nationals (namely, citizens of Bahrain, Kuwait, Oman, Qatar and Saudi Arabia) are treated slightly differently in that there is no requirement to procure and obtain a UAE residence visa for them due to the concept of freedom of movement across the GCC member states. However, a requirement to obtain a UAE work permit still exists. **Scenario 2** – In this scenario, on the basis that the individual in question is formally employed by the Home Employer, the individual is either sponsored by such locally licensed entity and/or is issued a UAE work permit. **Scenario 3** – In this context, the PEO would sponsor the individual's residency visa and work permit and ensure that local law requirements are met. In practice, this arrangement would allow the individuals to obtain visa/work permits through the PEO, in order to reside and work in the UAE, notwithstanding that such individuals would be providing services to the Overseas End-User. Depending on how the arrangement is structured, the Overseas End-User would not be the employer of record. However, it would remain the ultimate employer from a liability perspective (as liability would likely pass to the Overseas End-User through its agreement with the PEO) and would be required to pay the PEO's fees and all financial entitlements due to such employees (including their monthly salary, post-termination entitlements, etc.).

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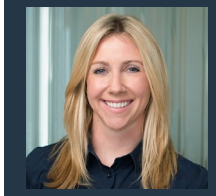
If the individual was working overseas for the benefit of a company based in the UAE and travelled to the UAE for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in the UAE)?	It is unlawful for an individual to engage in business activities in the UAE while on a visitor visa. In order to fully comply with local employment and immigration rules, the recommended practice would be for the individual to obtain a one- or two-year residence visa and work permit in the UAE, which would allow them to legally attend business meetings and engage in revenue-generating activities. However, this approach will require the individual to enter into an employment contract with the local entity in the UAE and the employee would accrue employment rights in accordance with the UAE Labour Law (such as annual leave, end of service gratuity upon completing one year of service and other statutory benefits). In addition, the individual in question would be required to have local medical insurance (procured by the company) and generally be present in the UAE at least once every six months.

Contact



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UK

We have assumed that if an individual is based in, or relocates to, the UK as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside the UK ("Overseas Employer") and works for that company remotely from the UK.
- **Scenario 2** – The individual is an employee of an entity in the UK ("Home Employer") but is assigned to work remotely for an entity outside the UK ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in the UK (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside the UK ("Overseas End-User").

Employment Issues	
The employment laws of which countries will apply in these scenarios?	In each of these scenarios, if the individual is living and working in the UK, they are likely to gain UK statutory employment rights. Whether the individual also gains employment rights in a different jurisdiction will depend on the laws of that jurisdiction.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for UK employment law purposes?	From a UK perspective, the starting point would be that the Home Employer is the employer for employment law purposes.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for UK employment law purposes?	Again, from a UK perspective, the starting point would be that the PEO is the employer for employment law purposes.
If UK employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	No. There is no requirement for payment to be made for such restrictions. However, the UK government has indicated that it will introduce a three-month statutory time limit on post-termination non-competition provisions. Note: In scenario 3, the Overseas End-User will need to consider carefully how to protect its business interests once its engagement of the individual via the PEO has ended. While it will not be the individual's employer, and so will not have a direct contractual relationship with the individual, it is its business (not the PEO's) that may be at risk if its interests are not adequately protected. One option may be to require the individual to enter into a separate agreement directly with the Overseas End-User containing appropriate restrictive covenants and confidentiality obligations. While it is not necessary to pay for confidentiality/non-competition restrictions in the UK *per se* (see above), any such agreement would need to include meaningful consideration in order to be binding.
Does the UK impose any additional obligations in relation to homeworking?	Individuals who work from home in the UK have all the same rights and obligations as workers on-site. The Health and Safety at Work Act 1974 imposes an overall duty to ensure, so far as reasonably practicable, the health and safety of employees. Employers should carry out a risk assessment of the work activities to be carried out at home to ensure appropriate measures are taken to reduce any associated risks.

Are there any other employment law-related issues to be aware of in relation to scenario 3?	While being useful in allowing Overseas End-Users to "quickly" engage individuals in the UK, these arrangements are more complicated than they might initially appear. A few of the key employment law issues to be aware of are set out below: • **Worker rights** – Depending on the specific facts of the arrangement, the PEO may be subject to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (which usually govern temping agencies) and/or the Agency Worker Regulations 2010, which, in some cases, could lead to the individual having a direct claim against the Overseas End-User, e.g. the individual would be entitled to the same pay and other "basic working conditions" as equivalent permanent staff after a 12-week qualifying period. The individual would also be entitled to be given access both to collective facilities and to information about employment vacancies from day one of their assignment. • **Employment processes and procedures** – Overseas End-Users must remember that they are not the individual's employer for the purposes of any processes, e.g. performance/disciplinary/termination, and so will rely on the PEO to manage these (meaning it will be important that the contract with the PEO includes provisions to govern this).
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the UK? Can an overseas employer operate a local payroll?	**Scenario 1** – The Overseas Employer would generally only be required to operate PAYE via a local payroll (whether dealing with this directly or via a payroll agent) if it has a place of business in the UK. However, it may be required to account for National Insurance (NI) contributions if it is resident in an EU state. **Scenario 2** – The Home Employer (not the Overseas Entity) would be required to operate PAYE via a local payroll. **Scenario 3** – The PEO would be required to operate PAYE via a local payroll.
Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in the UK for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	**Scenario 1** – The Overseas Employer may be required to register for PAYE and NI. **Scenario 2** – The Overseas Entity should not be required to register for PAYE/NI. **Scenario 3** – The Overseas End-User should not be required to register for PAYE/NI. Financial penalties apply for failing to register for and pay PAYE/NI on time, where required to do so. Various penalty regimes can potentially apply and the amount and frequency of the penalty can vary depending upon the number of employees, the amount of time that has passed since the relevant deadline, the number of failures and the amount(s) involved.

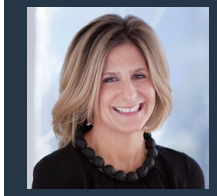
Are there any potential UK tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	• **Home Employer** – The Home Employer will usually be required to operate PAYE/NI. It may also need to consider whether it has any employment tax obligations in the Overseas Entity country. • **Overseas Employer** – The Overseas Employer will need to consider whether it is required to operate PAYE/NI via a local payroll. It will also need to consider the permanent establishment (PE) position and whether it has any employment tax obligations in its own country. • **Overseas Entity** – The Overseas Entity should not have local PAYE/NI obligations. It will need to consider the PE position and whether it has any employment tax obligations in its own country. • **Overseas End-User** – The Overseas End-User should not have local PAYE/NI obligations. There is a technical risk that it will need to consider the PE position, although that risk is typically low. If the individual engages with the PEO through their own company (which is not usually the case) and the Overseas End-User has a PE in the UK, the Overseas End-User would need to consider the IR35 legislation. • **Individual** – In scenario 1, if the Overseas Employer does not operate a local payroll, then the employee will need to deal with paying income tax/NI. If the employee is taxed in both countries, they will need to consider whether they can claim double taxation relief.
If employment tax is payable in both the UK and another country, would double taxation relief be available?	Double taxation relief is usually available, but this is subject to certain conditions and can depend upon the exact circumstances and the other country involved.
Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	If the Overseas Employer/Overseas Entity has an office or other premises in the country where the employee is living (which could include the employee's place of residence in certain circumstances, although this would be unusual), this would typically be a PE. A PE can also arise where the employee is involved in entering into contracts on behalf of the Overseas Employer/Overseas Entity. The PE position should be considered, taking into account the particular circumstances. There is a technical risk that the above position could also apply where an individual is working for an Overseas End-User via a PEO, although that risk is generally considered to be low on the basis that the PEO is simply a service provider, and the individual is not the Overseas End-User's employee.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the UK?	The concept of labour leasing does not exist under UK employment law.

UK

Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to the UK in any of these scenarios?	The UK has now left the EU and, therefore, the PWD no longer applies to workers being posted into the UK.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country) and/or the Overseas End-User (as applicable).
Are there any financial penalties/criminal sanctions for non-compliance?	Not in the UK.
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in the UK?	**Scenario 1** – An individual without an existing right to work in the UK will generally need to obtain permission to work in the UK, even if they will only work for their Overseas Employer. The UK's visitor rules prohibit non-British/Irish visitors from living in the UK for extended periods through frequent or successive visits. Visitors must only stay in the UK for up to six months at a time and must not make the UK their main home. Visitors are permitted to undertake activities relating to their employment overseas remotely while they are in the UK, such as responding to emails or answering phone calls. However, the visitor's main purpose for coming to the UK must not be to work remotely from the UK. **Scenario 2** – An individual without an existing right to work in the UK will need permission to be employed by the Home Employer even if they will only work for the Overseas Entity. However, unless the individual will fill a genuine role or vacancy for the Home Employer (and the Home Employer also holds a Worker Sponsor licence) while also working for the Overseas Entity, they will not qualify for sponsorship by the Home Employer under the usual Skilled Worker or Global Mobility Senior/Specialist Worker visa routes and will need to consider alternative visa routes. Potential alternatives that do not require a UK sponsor employer include Global Talent, High Potential Individual, Youth Mobility or Ancestry, but these have specific eligibility criteria and may, therefore, have limited applicability. **Scenario 3** – An individual without an existing right to work in the UK will need permission to be employed by the PEO even if they will only be providing services to the Overseas End-User. However, as the general nature of PEO arrangements means that the individual would not fill a genuine role for the PEO, they will not qualify for sponsorship through the PEO under the usual Skilled Worker or Global Mobility Senior/Specialist Worker visa routes and will need to consider alternative visa routes. Potential alternatives that do not require a UK sponsor employer include Global Talent, High Potential Individual, Youth Mobility or Ancestry, but these have specific eligibility criteria and may, therefore, have limited applicability.

If the individual was working overseas for the benefit of a company based in the UK and travelled to the UK for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in the UK)?	Those without an existing right to work in the UK would generally not be permitted to work for or provide services to the company while visiting the UK without obtaining a work visa. Any activity during such visits must be limited to those permitted under the UK visitor rules, e.g. attending meetings and conferences. The UK visitor rules include intra-corporate permitted activities, which allow employees of overseas-based companies to advise and consult; trouble-shoot; provide training; and share skills and knowledge on a specific internal project with UK employees of the same corporate group. However, this type of activity is only permitted on the basis that no work is carried out directly with clients and the individual is not undertaking employment or work that amounts to them filling a role or providing short-term cover for a role within a UK-based organisation.

Contact



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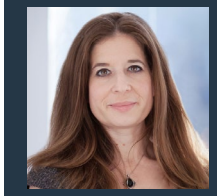

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We have assumed that if an individual is based in, or relocates to, the US as their "home country" and is living and working there but for the benefit of a company in a different country, the arrangement will typically take one of the following forms:

- **Scenario 1** – The individual is employed by a company based outside the US ("Overseas Employer") and works for that company remotely from the US.
- **Scenario 2** – The individual is an employee of an entity in the US ("Home Employer") but is assigned to work remotely for an entity outside the US ("Overseas Entity").
- **Scenario 3** – The individual is solely employed by a third-party Professional Employer Organisation in the US (PEO) (sometimes referred to as an Employer of Record) that then assigns the employee to provide services to an entity outside the US ("Overseas End-User").

General observations on the position in the US – Although sometimes used interchangeably, in the US, PEOs and EORs have some important legal distinctions. PEO is a legal term that describes an organisation that co-employs the customer's (or, in this case, Overseas End-User's) employees. A PEO helps manage the administrative burden of employing in multiple jurisdictions, and usually provides access to other services, such as human resources and employee benefits administration. Typically, both the PEO and the Overseas End-User jointly employ the individual, which means (i) the Overseas End-User must be registered in every jurisdiction in which it is using a PEO; and (ii) the Overseas End-User remains the legal joint employer of the individual and can be held liable for all human resources and employee benefit employment and compliance requirements.

An EOR is a descriptive term that describes a business that provides administrative assistance to Overseas End-Users looking to benefit from the work of individuals. An EOR does this by formally employing an individual while that individual provides services to the Overseas End-User.

Employment Issues	
The employment laws of which countries will apply in these scenarios?	**Scenario 1** – The employee working in the US will generally be covered by US employment law protections. **Scenario 2** – The employee working in the US will generally be covered by US employment law protections. In both scenarios, the employee may gain employment rights in the country in which the Overseas Employer/Overseas Entity is situated, depending on the laws of that jurisdiction. **Scenario 3** – The employee working in the US will generally be covered by US employment law protections.
In scenario 2, is there a risk that the Overseas Entity will be deemed to be an employer for US employment law purposes?	No. The Home Employer would be the employer for US employment law purposes.
In scenario 3, is there a risk that the Overseas End-User will be deemed to be an employer for US employment law purposes?	It depends. As set out above, although sometimes used interchangeably, in the US, PEOs and EORs have some important legal distinctions. Thus, if the PEO is not the EOR, both the PEO and the Overseas End-User jointly employ the individual and the Overseas End-User can be held liable for employment and compliance requirements. However, if the PEO is also the EOR, the PEO (not the Overseas End-User) would be deemed the employer and, thus, responsible for ensuring compliance with employment laws.
If US employment laws apply, do these prohibit or otherwise require payment for any confidentiality or non-competition provisions entered into with the individual?	It depends. US non-competition and confidentiality provisions are governed by state laws, not federal. Some states require additional consideration for restrictive covenants, some do not beyond at-will employment. Individual state law in the location where the employee will work would need to be considered in each case.

Does the US impose any additional obligations in relation to homeworking?	Yes. The general duty to provide a safe working space under US health and safety law applies to home-based office environments. State workers' compensation laws also apply to home-based or remote workers. A remote working agreement with guidelines and employee confirmations regarding safety of space is, therefore, recommended.
Are there any other employment law-related issues to be aware of in relation to scenario 3?	See above.
Payroll, Employment Tax, Benefits and Social Security Issues	
Would a local payroll be required in the US? Can an overseas employer operate a local payroll?	No, although US local, state and federal taxes (income and employment) must be withheld and paid to US government agencies. Many foreign companies use PEOs to serve as the payroll co-employer if there is no local entity. An overseas employer can operate a local payroll, but it is complicated. As above, use of a PEO may be helpful.
Would any of these scenarios require the Overseas Employer/Overseas Entity/Overseas End-User to register in the US for tax, social security, other benefits, etc.? Are there any financial penalties/criminal sanctions for failing to do so?	Yes. They generally will be required to obtain a federal Employer Identification Number (EIN), to pay applicable payroll taxes and withhold certain tax contributions from their employees. Employers may be required to register employees with the specific state in which they are employed (regulations vary from state to state). US citizens, resident aliens and non-resident aliens employed within the US by a foreign employer are generally subject to social security and Medicare tax withholding by the foreign employer. Some individuals employed in the US by a foreign employer may be exempt from US social security and Medicare taxes under the terms of a social security totalization agreement. **Financial penalties/criminal sanctions** – A failure to withhold, deposit, report or pay employment taxes can result in fines (up to 100% of the taxes owed) and, potentially, criminal liability (for wilful failure or evasion).
Are there any potential US tax implications for the Home Employer, Overseas Employer, Overseas Entity, Overseas End-User or individual?	Yes (see comments above).
If employment tax is payable in both the US and another country, would double taxation relief be available?	US citizens, resident aliens and non-resident aliens employed within the US by a foreign employer are generally subject to social security and Medicare tax withholding by the foreign employer. To prevent double taxation, some individuals employed in the US by a foreign employer may be exempt from US social security and Medicare taxes under the terms of a social security totalization agreement. In addition, depending on the particular facts and particular countries, relief from double taxation may be available under the US foreign income tax credit or deduction provisions or bilateral US Income Tax Treaty provisions with the home country.

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Do any of these scenarios create a permanent establishment risk for corporation tax purposes for the overseas entity, i.e. the Overseas Employer/the Overseas Entity/the Overseas End-User?	Having an employee in the US can, depending on facts and circumstances such as the employee's authority and activities, constitute a permanent establishment in the US for US income tax purposes. Bilateral income tax treaties can affect the result, but it is important to note that US states, generally, are not bound by such income tax treaties and may assert taxing authority over a non-US employer even where a treaty would not. In addition, an income tax treaty generally will not apply if business is conducted through a permanent establishment in the US, such as an office or other fixed base or a dependent agent. However, the IRS provided some relief with respect to the permanent establishment rules where services or other activities were conducted by individuals temporarily in the US due to COVID-19 emergency travel disruptions. See discussion above regarding the considerations for Overseas End-Users using a PEO and/or EOR.
Labour Leasing	
Is labour leasing or any analogous situation prohibited, regulated or permitted without restriction in the US?	Permitted without restriction.
Posted Workers Directive	
Would legislation governing posted workers apply if the individual moves to the US in any of these scenarios?	The Posted Workers Directive and Posted Workers Enforcement Directive (PWDs) govern the employment rights of workers who are posted from one EEA country to another on a temporary basis. These do not apply in the US.
Would the legislation governing posted workers apply: • In scenario 1, if the individual travels to the Overseas Employer for occasional work-related visits? • In scenario 2, if the individual travels to the Overseas Entity for occasional work-related visits? • In scenario 3, if the individual travels to the Overseas End-User for occasional work-related visits?	Although the PWDs are intended to apply to employers posting workers from one EEA country to another, in implementing the PWDs into local legislation, a number of EEA countries have extended the PWDs' provisions to workers being posted from non-EEA countries. This means that in scenarios 2 and 3, if the Overseas Entity/Overseas End-User is located in an EEA country, depending on the nature of the visit, and the way in which that EEA country has implemented the PWDs, additional obligations could apply to the Home Employer and the Overseas Entity (even if the Home Employer is not located in an EEA country) and/or the Overseas End-User (as applicable).
Are there any financial penalties/criminal sanctions for non-compliance?	Not in the US.

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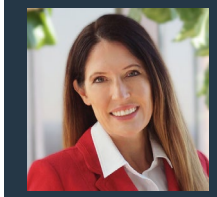
Immigration	
What are the immigration implications for each scenario if the individual does not have an existing right to work in the US?	Remote working for an overseas (non-US) employer for more than a very short period is not permitted, even if the individual is working solely for the benefit of the Overseas Employer, Overseas Entity or Overseas End-User. A foreign national who will be in the US for an extended period should seek an alternate visa classification or work authorisation to continue to work remotely. Options may be limited.
If the individual was working overseas for the benefit of a company based in the US and travelled to the US for occasional work-related visits, could they do this as a business visitor without obtaining a work visa (assuming they do not have an existing right to work in the US)?	Travelers under the Visa Waiver Program must first register under the Electronic System for Travel Authorisation (ESTA). Anyone who does not qualify under the VWP must first obtain a B1 business visitor visa prior to travel. B1 business visitors and VWP entrants can only conduct permissible business activities that do not accrue to the benefit of the US entity and should never receive any remuneration from a US source. Permissible activities include business meetings, attending conferences and seeking US clients, but do not include "actual work" in the US.

Contact



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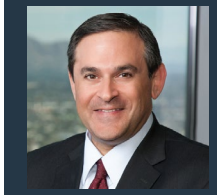

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