your company nexus with that state. But after the pandemic hit, several states temporarily waived the enforcement of certain nexus laws. Indiana, Massachusetts, Mississippi, New Jersey, Pennsylvania, and Washington, D.C., were among the first to announce they wouldn't treat working from home as a nexus-generating activity if the arrangement was temporary and due to COVID-19.

Gail Cole • Jun. 21, 2022

Some employees went back to the office after government stay-at-home mandates were lifted, but others may never go back. They don't have to: A growing number of companies, including Airbnb, have told employees they can "live and work anywhere."

That opens up a world of possibilities. It will likely create a world of new tax

Even having employees in different countries temporarily can create tax complexity. Chesky noted that "most companies don't do this because of the mountain of complexities with taxes, payroll, and time zone availability."

So, what tax tangles will you need to unravel if you allow employees to work abroad, or do so yourself? Reviewing how remote employees can give you a tax obligation in another state is a good place to start.

Working remotely within the U.S. can establish nexus

Nexus is a connection that enables a taxing authority to impose a tax obligation on an individual or business entity. As a general rule, the connection must be substantial. Unfortunately, every taxing authority defines "substantial" differently.

Ordinarily, having an employee working remotely in another state would likely give your company nexus with that state. But after the pandemic hit, several states temporarily waived the enforcement of certain nexus laws. Indiana, Massachusetts, Mississippi, New Jersey, Pennsylvania, and Washington, D.C., were among the first to announce they wouldn't treat working from home as a nexus-generating activity if the arrangement was temporary and due to COVID-19.

Some states emphasized the temporary nature of the more lenient policy. In fact, the Indiana Department of Revenue issued guidance saying, "If the person remains in Indiana after the temporary remote work requirement has ended, nexus may be established for that employer."

Employees are trickling back to the office now that stay-at-home orders have ended. Some companies, like the one I work for, are encouraging rather than requiring employees to return. Others, like Airbnb, are embracing the benefits of remote work. (It's not lost on anyone that Airbnb stands to benefit if other companies allow employees to work from anywhere, even temporarily.)

This brings us back to setting up shop in another country.

company to goods or services transferred within the company (i.e., an intercompany transaction). In the case of remote work, an employee based in one country may create a permanent establishment (PE) for their employer in another country. In this case, the local tax authorities may be entitled to levy taxes on the PE (in addition to any payroll taxes). Tax authorities will then use transfer pricing methods to determine the level of profit, or taxable income, of the PE. Typically the profit of the PE will be based on the nature of the employee's work (e.g., marketing, research and development, etc.).

As companies of all sizes expand globally, they need to maintain transfer pricing compliance concerning their international activity. However, businesses may use transfer pricing to reduce their overall tax burden. For example, a company may opt to pay more for goods or services provided by divisions located in a high-tax country (rather than paying less for goods or services provided by divisions located in a low-tax country) because that could reduce its overall profits and therefore the tax on profits.

Tax authorities the world over have "intensified their focus" on transfer pricing. They're less likely to take an interest when intercompany pricing matches pricing for unrelated companies, and when pricing for international intercompany transactions matches pricing for domestic intercompany transactions.

If there's activity (usually associated with sales of a product or service) in a country

what tax authorities will do to ensure transfer pricing is properly calculated.

Some countries want to tax you and your remote workers

Some countries strive to collect as much tax from companies with employees working remotely within their borders. They say, *hey, you're doing business in this country, benefiting from our infrastructure, so you should pay your share of taxes*. Governments usually do this only if a company has a permanent establishment (PE) in the country, but for some, an employee working remotely for six months or a year may suffice to create a PE. Therein lays some of the complexity for businesses with a roving workforce: figuring out each country's policies.

Individual countries can make their own mandates, depending on the tax treaty between the local country and the other country (i.e., the remote employee's home country). According to the Organisation for Economic Co-operation and Development (OECD), working from an office, home, hotel, or Airbnb for more than 183 days in a calendar year can be enough to establish a PE.

Some countries want your remote workforce more than tax revenue

Other countries have developed more lenient tax policies to encourage globe-trotting workers to put down roots within their borders, at least for a time. They basically say, *we won't tax you if you come here and work from here for a while. You won't have to pay income tax for __ (six months, one year, etc.)*.

After Portugal changed its laws to entice the world's wandering remote workforce to its shores, it became a top preference for digital nomads. Mondaq says employees from other countries "would likely be able to apply for a special non habitual tax resident status that could grant them a flat 20% tax on their income received in Portugal." Other income may be taxed at other rates.

It’s a pretty smart move, inviting people who are getting paid by someone else to live

governments to make it easier for more people to travel and work around the world.”

Other country’s rules may affect you

Of course, there may be other considerations aside from tax policies. Just as businesses in the U.S. must adhere to certain federal and state policies related to sick leave, paid time off, and so forth, if you have employees working from other countries, even temporarily, you may be required to abide by that country’s sick leave, PTO, and other policies.

For example, Portuguese employment laws usually apply to employees working in Portugal, even if they’re employed by a foreign entity. Payroll and social security taxes may apply if the employee becomes a tax resident. The employer may need to obtain a tax number as a nonresident entity without activity. In other words, although the employer may not have an obligation to pay taxes in Portugal, it may still need to jump through some hoops.

Furthermore, there’s always a risk that the presence of one or more employees working remotely in a country may establish local representation for their employer, which could have a tax impact. However, employees working remotely from an Airbnb or similar lodging are less likely to create a PE than if they lease office space. In Canada, for example, even an employee’s home office generally doesn’t constitute a PE for their employer.

You can’t hide from the tax authorities

“Everything ties together,” says Eran Shif, senior director of Transfer Pricing at Avalara. “No matter what you’re doing or where you are, tax authorities will know about it due to data sharing agreements.” If you tell the Internal Revenue Service that you have employees temporarily working from Barcelona, Spain, the IRS will make

- Be consistent.
- Be transparent.
- Document everything.

Is one remote employee enough to give its employer a substantial presence? It depends. If the employer is a small company with only 10 employees, one employee may create substance. One employee out of 50,000 employees may not. Yet Shif says countries may be more likely to take an interest in employees of larger companies because they're likely to have more profits, and taxing a small percentage of a big profit can bring in enough tax revenue to make it worthwhile for the country. Another factor is the level of the responsibility of the employee: The higher their rank, the more responsibilities can be translated to higher attributable profits.

A word on VAT

Remote working can also create value-added tax (VAT) issues for employers and employees, especially if a remotely working employee gives its employer a fixed establishment in another country. In this case, services provided by a remote employee would likely be subject to VAT in that country, requiring the employer to register, collect, and remit VAT.

What counts as a fixed establishment in one country may not in another; it depends on each country's laws and regulations as well as the nature of the remote work arrangement. According to Deloitte, "The more independence that those remote workers have the greater the risk of a fixed establishment."

You don't have to navigate remote work tax complexity alone

All this just scratches the surface of what can be a truly complex undertaking: Navigating the tax implications of working remotely from another country. No wonder Airbnb is creating a 20-person team to help employees deal with payroll and

facts and make complex laws and legislation more digestible for accounting and business professionals.

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