"live and work anywhere." This can pose a world of new tax obligations.

Gail Cole • Jul. 11, 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 obligations too.

Airbnb employees can now live and work from anywhere in their home country, without it affecting their salary. Starting September 2022, they'll also be able to work abroad in over 170 countries for up to 90 days a year (per location). But decamping

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.

Working remotely in other countries can establish nexus and trigger tax obligations

As with states in the United States, each country has its own rules regarding when a

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 because an employee is working remotely from there, the local taxing authority will want to know where the work is happening (e.g., a home office? WeWork desk? Airbnb?) and whether the employee's presence creates a PE. If it does create a PE, the tax authority will want to know how much profit should be attributed to the PE.

For transfer pricing purposes, the employer may need to allocate profit to a remote employee's work. Typically, the profit is based on the cost-plus method, with an arm's length markup (4%, 7%, etc.); to determine and support the proper rate, it may be necessary to prepare a transfer pricing report with comparable companies. That's 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

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 within their borders for a time. Those people need housing. They need to eat and they'll likely spend money entertaining themselves. Portuguese businesses will benefit, and so will the country's tax base — even without taxing the income or payroll of the remote employees.

Portugal isn't alone. Over 20 countries, including Costa Rica, Mexico, and Spain, offer remote work visas (aka, digital nomad visas) and favorable tax policies to encourage the presence of remote workers. If Airbnb has any clout, more may do so in the future: The company is "actively partnering with [and lobbying] local 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

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 sure the Spanish tax authorities know this.

In fact, information is often shared automatically. Shif says governments worldwide are working to increase automatic data sharing and increase tax pricing, so it will no longer be necessary to make a request for information.

One way to manage all the exposure this creates is to ensure every country gets the same story:

- 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

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 tax complications connected to working (temporarily) outside the country.

Most small and midsize companies won't be able to put that many people to solving this problem. Automation can help small and midsize companies — and accountants working with these businesses — manage tax exposure and risk.

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