

Social Security: Alternative arrangements for international remote working

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In brief

As more companies announce their intention to facilitate virtual working for their employees, global mobility functions should consider the compliance and risk aspects of international virtual working.

Our [previous insight](#) explored social security issues for international remote working where the employee remains formally employed in their home country while working abroad.

This insight looks at the social security implications of alternative contractual arrangements, including global employment companies, contracts with local country offices, and using contractor arrangements.

In detail

Many companies that choose to implement international virtual working may continue to engage the relevant employees through a home-country employment contract. However, some businesses may wish to consider alternative arrangements which, in the right circumstances, could help control costs and manage compliance risks.

Global employment companies

For some employers, a Central Employing Entity (CEE), also known as a Global Employment Company, might be an effective method for managing international virtual workers (see more details [here](#)). A CEE is a special purpose vehicle established to employ a defined population of employees. An immediate advantage is that the HR/Global Mobility function for that entity can centrally manage compliance for that population.

While the location for a CEE will depend on many factors, they are typically set up in countries that do not require social security to be paid if the individual does not physically perform work in that country. This normally means that the individual becomes subject to social security only in the country where they physically perform their work. If so, this can reduce social security costs in scenarios where there is no social security agreement between the individual's home country and the country from which they will work virtually. Under a continuing home country contract model, dual social security liabilities may arise; however, with a CEE the liability typically is limited to the host country only.

While the potential social security cost savings from a CEE may seem attractive, other factors need to be weighed. First, if the CEE results in an individual no longer being subject to social security in their home country, they may lose some or all of their entitlement to certain contributions-based state benefits. While this may be less of a concern where the employee is driving the request for virtual working, businesses can seek to mitigate any potential loss by making the employee aware of the benefit implications. Employers also may wish to consider advising on or paying voluntary social security contributions where these are available or consider alternative options to replicate the benefit, such as international pension or health care plans.

Second, the business needs to consider the employment law implications of switching employees to CEE contracts. Many jurisdictions have introduced legislation that gives the authorities an ability to challenge employment arrangements that they perceive as artificial. If the home country entity, which originally employed the individual, continues to direct the employees activities, have the right to recall or dismiss the employee, etc. there is a risk that authorities could argue that the entity remains the true employer and then seek to reimpose home country social security for the individual.

This issue is particularly topical for workers within the European Union. A recent European Court of Justice (ECJ) [ruling](#) found in favour of the Dutch authorities, who argued that where the EU Social Security coordination provisions for 'Multi-State Workers' reference a liability defaulting to the Member State where the employer is registered, this should be interpreted as the entity which carries out the actual functions of the employer, rather than the entity which notionally holds the employment contract.

Observation: A CEE can be an important component of an effective virtual working strategy. Due to the increased focus of authorities on economic employer issues, companies may wish to consider using a CEE for employees whose roles are genuinely global in scope and who do not remain under close direction from their former home country entity. Undertaking an employment law review is fundamental to manage the risks in this area, but if the risks can be managed, a CEE can drive substantial operational efficiencies and cost savings.

Using local country employment contracts

For some employees opting to work remotely from another country, the employer may wish to consider transferring them onto an employment contract in that country. This can be done via several mechanisms. If there already is an existing entity of the business in the country, the employees could be transferred to a contract with that entity. Alternatively, a separate branch or subsidiary of the home country entity could be set up in the remote working country.

Typically, this can result in the individual becoming liable to social security in the country where they are working. However, care is needed as depending on the combination of countries and the structure used, dual social security liabilities could arise. For example, if using a branch structure as the branch has no separate legal standing, or if the home country legislation applies a social security liability to anyone employed by an employer in that country regardless of their working location, then home social security still would be payable. In addition, if the host country applies social security based on physical location, there could be a dual liability. A subsidiary entity potentially could help resolve this but could cause additional complications in other areas.

For individuals working within the EU, under the social security coordination regulations the individual (and employer) are only liable in a single Member State. Switching the country of employment can alter in some circumstances in which Member State the liability will arise, so the employer needs to assess the implications case-by-case. Moreover, the recent ECJ [ruling](#) mentioned above also is relevant to cases where individuals are transferred to a local country contract.

Observation: In any scenario where an employment contract is transferred between countries, it also will be important to consider the corporate tax and employment law implications. Any social security saving achieved may be outweighed by additional costs in these areas, so due diligence needs to be undertaken in advance.

Contractor arrangements

Certain roles that can be performed remotely (and internationally) may suit using contractor arrangements rather than employing the individuals, including certain project-based roles as well as roles in support functions such as IT.

From a business perspective, these arrangements may serve to simplify the social security position considerably. The contractor, being self-employed, will be responsible for paying self-employed social security, and the company generally

will not be required to withhold employee social security nor pay employer social security; this may result in considerable savings. In an international context, the rates of employer social security can be so high in certain jurisdictions that unless a contractor arrangement can be agreed, allowing remote working from that location may not be commercially viable.

However, considerable caution is required with this approach. Many authorities have or are in the process of implementing legislation that targets 'disguised employment.' Use of contractors therefore should be limited to roles where it can be demonstrated that there is a genuine contractual arrangement for services and the individual is not performing the functions of an employee.

Observation: A detailed employment law review should be undertaken if this route is being considered. In particular, if any existing employees would be switched to contractor status, there needs to be clear evidence of a change in the nature of how that role is performed to support a position that it no longer should be considered employment.

Moreover, within the EU, regulations on the coordination of social security can result in some unusual outcomes for individuals, as the regulations rely on the employment status determined in each location. Even if the individual is classified as self-employed in the location where the business contracting with the individual is located, if he or she is deemed an employee in the location where they are working remotely, the business still could be required to register and pay employee and employer social security in that location. An assessment of the regulations must be undertaken for each case and any work-related travel within the EU should be monitored.

The takeaway

For businesses implementing an international remote working strategy and policies, considering alternative employment structures may yield benefits, including simplified administration and reduced social security costs, depending on the particular situation.

However, careful attention needs to be paid to the implementation of any alternative structures in seeking to achieve the desired social security outcome and to manage employment law, immigration, and corporation tax risks.

Let's talk

For a deeper discussion of how this impacts your business, please contact your Global Mobility Services engagement team or one of the following professionals:

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