



Remote working in India

Tax and regulatory considerations



Overview

Over the last couple of years, COVID-19 induced restrictions on cross-border travel have prompted organisations globally to re-evaluate their work models, transition and embrace newer work cultures. The unprecedented situation resulted in companies assessing the requirement to transform human resources, compensation and benefits policies, practices and resultant workplace arrangements in the long run.

As travel restrictions are being eased, the pandemic has resulted in a fundamental shift on how workplaces will function in the future with organisations adopting flexible working models such as Work from Anywhere (WFA) under which employees are provided an option to not only work from home but other locations, domestic or international as well.

While hybrid/remote working models have gained ground, it is pertinent to examine and ensure that remote working by employees is compliant and efficient from a tax and regulatory standpoint both in the country of employment as well as in the country from where such employees are working remotely. From an India perspective a large number of employees of foreign multinationals may be requesting a work from India model for varied periods of time. Hence, a greater emphasis ought to be placed on determining if the physical presence and rendition of services by an employee in India under a remote working arrangement triggers any tax, reporting and compliance requirements in India and the home country of the employee.

Key impact areas - tax and regulatory

Personal Income tax

- Possible change in the residential status due to the physical presence in India
- Tax liability in India owing to services rendered in India and change in residential status
- Impact of change on residential status and taxability in the country of employment
- Availability of exemption/relief if any, under applicable tax treaty to avoid double taxation in the country of employment and India
- Depending upon the taxability in India, tax return filing and other compliance obligations in India.

Corporate tax

- Assess withholding tax obligations for the foreign entity in India where its employees are taxable in India owing to services rendered in India
- Evaluate if remote working by employees in India result in creation of Permanent Establishment/ business connection of foreign entity in India
- Potential change in the place of effective management of a foreign company as a result of temporary re-location or remote work in India in case of senior executive(s)/member(s) of Board of Directors
- Transfer Pricing implications of any transaction between Indian entity and a foreign entity with respect to employees working remotely in India.

Indirect tax

- GST implications on reimbursement of salary cost if any, by India entity to foreign entity with regard to employees working remotely in India
- Possibility of foreign entity having a fixed establishment in India and corresponding implications.

Social security

- Evaluate obligation to contribute towards Provident Fund either by the Indian entity or foreign entity with regard to remote working population in India.

Foreign exchange regulations

- Permissibility of receipt of salary in/outside India
- Maintenance of bank accounts in/outside India
- Remittance of salary outside India.

Immigration

- Applicability of the appropriate type of visa depending upon the nature of work to be performed in India.

What should organisations do?

- Assess feasibility of remote/hybrid work model basis facts and circumstances of each employee
- Track employees' travel history who are working remotely in India
- Maintain requisite documentation for the nature of work performed/business activities carried out in India by remote working population
- Ascertain compliance requirements that need to be adhered to from tax, immigration, social security and other regulatory aspects
- Take cognisance of requisite safeguards to be put in place for remote working in India.

How we can help?

Advisory

- Undertake review of remote employees' situation/arrangement and existing documentation
- Basis such review, assess potential risks and implications from tax and regulatory perspective
- Sensitise foreign entity/Indian entity and such employees about tax and regulatory risks and implications
- Identify possible approaches, if any, on the identified risk areas in alignment with the provisions of applicable tax treaty, legislative updates, and available judicial precedents.

Compliance

- Assistance in obtaining Indian tax registrations (TAN and PAN) of foreign entity and of the remote employees as relevant
- Assistance in withholding tax compliances on salary payment and related tax filings for the employer
- Assistance in payment of advance tax/self-assessment tax by the employees
- Assistance in filing tax returns for the employees in India
- Assess the need and wherever relevant assisting in tax clearance procedure
- Tax services on company tax filings (including transfer pricing compliances) and employee tax filings.

At KPMG in India, we provide a wide range of tax and regulatory services aligned to client specific facts, business considerations and related nuances.

The KPMG in India advantage

- We work with a multi-disciplinary team involving professionals from direct tax, global mobility services, indirect tax, transfer pricing and foreign exchange regulations to proactively engage in finding a tax and regulatory compliant approach
- In depth technical knowledge and experience delivered through a competent and dedicated client service team
- Long standing global relationship with various multi-national clients, including servicing globally mobile employees and CXOs, thus, aware of their working/internal processes and service expectations from us
- Leverage our global network of member firms to address cross border tax/regulatory issues
- Vast experience in assisting various clients with advisory on tax and regulatory matters on this topic
- Strong dispute resolution team supported by ex-senior officials of apex government agencies such as CBDT, RBI, etc.

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