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The global “digital” nomad:

*Economic environment,
Swiss compliance and
the Global Employment Company.*

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General remark:

For reasons of the legibility the male form was chosen in the text, the information refers nevertheless to members of both genders.

Introduction

The technology that we have available to us today, such as internet everywhere, laptops, and smartphones enables individuals in select positions to work remotely from wherever they would like to. For example, the management of a website for a company does not need a fixed working place just like how the design of a marketing campaign is not fixed to a desk in a company's office building. The individual could therefore design a product for a company at the beach in Thailand or in the Swiss Alps.

Individuals' being 'unleashed' from their fixed working place has given rise to a new category of workers in the world, the so-called "digital nomads".

The research would like to answer the question:

"What kind of economic background the global digital nomad would need and how to be compliant from a legal perspective, including the harbouring of a digital nomad in a Global Employment Company?"

In the first chapter the focus will be on the background of digital nomadism, which is practiced by the digital nomad, and aim to discuss the following questions: what kind of an economy does a digital nomad require, where can nomadic work be found, how does a digital nomad define himself (self-categorisation) and differentiate himself from other travellers and mobile employees.

In the second chapter, my research will concentrate on the legal compliance risks the possibility of remote working can create for both as an employer or the digital nomads themselves.

As compliance risks would generally arise from issues relating to labour, immigration, tax and social security law, all four of these categories will be discussed in more details. Another compliance risk created by digital nomads working remotely relates to creating a permanent establishment of their firm in this country. This position will be reviewed from a Swiss perspective, however, the perspectives of other countries application of permanent establishment rules could be integrated into the discussion as well.

I would like to point out, that a subset of these individuals are also known as global travellers, only working if needed to finance their stays or travels from one place to another, mostly doing work on a local basis (in a bar etc.). This group will not be considered in the thesis.

In the third chapter I would like to elaborate on a possible solution for companies to handle the digital nomads, by researching the employment of a digital nomad by a Global Employment Company (GEC). The setup of a GEC can be done in one of two ways: a) as a subsidiary of the mother company in a holding construct; b) as a third party vendor who lends the employee to the company in need of the manpower. A GEC might act as a potential safe haven or at least simplify the administrative burden for the individual and the companies. As some countries have various restrictions and regulations on the supply of temporary workers, the research will focus on the possibilities and regulations in Switzerland.

1 Digital Nomad

Questions: What kind of an economy does a digital nomad require?

What is digital /nomadic work?

How does a digital nomad define himself (self-categorisation) and differentiate from other frequent travellers?

Just how the term *digital nomad* is relatively new, the economic concept enabling this life-style is a recent development in human history. Of course, nomadism itself is a behaviour known to mankind for millennia, however, in the twentieth and twenty-first century, the developed work nomadism grew with rising of the digitalisation in the workplace. Therefore, although remote working existed before the concept of digital nomadism was defined, the differentiation of digital nomads in comparison to other to other remote workers or even tourists should be made. Furthermore, with the given new possibilities digital nomads seeking their spots of living based on low living cost, while generating a comfortable income to afford their needs.

1.1 Definition of a digital nomad

Tsugio Makimoto and David Manners, authors of the book “Digital Nomad”ⁱ, first coined the term (in its current meaning) in 1997. A clear definition of the term is not included in dictionaries in either Englishⁱⁱ or Germanⁱⁱⁱ, however online dictionaries such as “Investopedia.com”^{iv} or “Urbandictionary.com”^v define “digital nomads” as individuals who are independent from their location by performing their work by using “new” technologies, thereby deriving their income by working remotely. A digital nomad is not required to commute to the employers’ office / headquarters to be physically present, as telecommuting is their preferred way of working. The typical digital nomad can be found in a myriad of locations, including using public co-working spaces, a home office or travelling around the globe.

The main two new technologies needed to shape and enable the lifestyle of a digital nomad are the internet, which in 2018 has a wide reach and falling prices and voice over internet protocol (VoIP) technology which is used to stay in touch with the employers and clients

1.2 Economy

Development of technology is not the only driver of digital nomadism, as the labour market would also need to evolve in order to best utilize the new technologies^{vi} as well as workforce resources

One of the drivers enabling a location independent workforce is known as the *Gig Economy*. The gig economy is defined as the short-term and temporary employment industry, whereby the independent worker is paid per gig, job or assignment. Gig work allows people to work on short term basis as independent contractors with flexible and on-demand working arrangements^{vii}. The marketplace connecting gig workers to companies offering such short-term contracts is dominated by a large number of sophisticated digital intermediaries, applications, or platforms^{viii}. Typical examples for such digital based application would be the transportation app “UBER” or the freelance working platforms “Hubstaff” or “Upwork” and many more. In addition to the labour that is offered, a gig may require an investment or asset provided by the individual, such as a car in the example of UBER.

These platforms normally act merely as an agent between the contractor and the requesting individual or company, thereby avoiding the responsibility of an employer's liabilities towards the individual providing the services. From a contractor's perspective, this setup enables a flexible working schedule, allowing him to work based on the income required and the current location.

For the customer, this service model provides considerable advantages, as they are able to "hire" staff in peak times and make them redundant easily, as they would not have to provide any social security coverage, vacation pay and other obligations they might have as an employer.

This has its downsides, however, as the lack of a factual employer might force a contractor to accept many small "gigs" to ensure his financial survival. He would therefore be dependant of the actual market situation, while not having the security that having employer guarantees, including social security coverage, the right to paid holidays and more, depending on the country of employment. As a result, the discussion arose in numerous jurisdictions^{viii}, as of when the platform itself would be seen as an employer and would be obliged to fulfil an employer's obligations^{ix} and provide the contractors all of the benefits of an employee.

Even for an employer, the model of having remote workers around the globe can have various positive effects, such as having the opportunity to engage in emerging markets, no need of a expensive office complex, attracting talents world wide.

Another economy enabling and supporting the nomadism lifestyle is the "sharing economy". The sharing economy has a range of meanings; however it derived from the exchange of goods or services on a peer to peer level. Today the term is mostly used for an economy for internet based service offerings such as "Airbnb" as well as "UBER", where goods and services are shared (a room/apartment or the ride in a private car), and the platform or app is only acting as the intermediary. The exchange is, in this context, mostly connected to a monetary fee. Other terms for the shared economy are collaborative consumption or peer economic^x.

How does the shared economy support the lifestyle of a digital nomad? As the digital nomad as per the definition above is permanently on the move, he tends to live a minimalistic (in terms of consumption) a minimalist lifestyle. On the other hand, he requires accommodation as well as a place to work. The sharing economy enables therefore the individual to easily find the workspaces he needs online and have them available for his use as necessary. For example, someone who owns a property in his hometown, could offer it on a platform like Airbnb and generate a passive income out of it during his travels.

1.3 Nomadic / digital work

Not all fields of employments are practicable for digital nomads and remote workers. The type of work most compatible with this lifestyle is therefore mostly focused around selling expertise allocated, including but not limited to media, marketing, IT, consulting, tutoring, journalism.

Beside the limited fields a digital nomad could work in, the individual may also struggle with the continuous movement from country to country or workspace to workspace. A traditional nomad was following their work, whereas a digital nomad is traveling while working, meaning that the travel is not a requirement for their living, the decision to travel and the destinations are freely chosen. Due to the travel lifestyle of a digital nomad, the mobilisation of their work resources and the navigation within the local infrastructure are key to them performing their own work.

Due to this situation, that digital nomad usually does not have the access to facilities where a physical product would be manufactured. The product produced must be a digital product, which

can then be submitted online to the client or employer. The work resources used by the digital nomad are cloud based and can be divided into two categories. The first category are profession-specific tools (i.e. Photoshop for a graphic designer etc.) central storage in a cloud platform. A second category are general tools, which enable not only nomads to work in a “collaborative” manner, meaning having video conferences or VoIP calls independent of the current location. Applications used for these purposes include Skype, Google Docs and the platform Slack, which facilitates project management and coordination of a team, independent of location. Besides the tools needed for the digital work, the digital nomad is heavily dependent on a fast and secure internet connection. The community of digital nomads has therefore built forums and platforms to share the best spot for internet access with respect to factors such as price, place, accessibility, security for places all over the world^{xi}.

1.4 Self-definition / Characterisation

Besides the definition based from sites such as “Investopedia.com” or “Wikipedia.org”, the digital nomad might define themselves differently and would like to differentiate themselves from other groups of travellers or remote workers.

The typical digital nomad is a younger person from a western country, generally with a higher education, who is looking to living a more adventurous life. He likes to travel and has the skillset that enables him to work independently. Usually, he has also no relationship while travelling the world and does not have a need for material items (such as owning a car) – being free and mobile are his core values. Such statements are supported by studies undertaken by various researchers^{xii/xiii} and by anecdotal evidence in threads like “introduce yourself” on nomadforum.io^{xiv}. Furthermore, the actual digital nomad sees himself as a completely different class from a tourist, who is visiting a country or city and explores the surroundings of the hotel. The digital nomad wants to explore more of the country and discover the culture as well. Besides the cultural interest, he values the opportunity to work independently to afford his living^{xii}. In addition, they also differentiate themselves from the classic expatriate, who is on assignment for his home employer. The digital nomad community argue, however, that these expats also have relations to the local culture, as, during the assignment, the strong cultural link with the home country is missing.

Another characteristic seen while studying various digital nomad blogs is a strong bias towards the positive sides^{xv} of the lifestyle, with little to no downsides^{xvi} being mentioned. As the typical nomad is also younger, the lifestyle does not consider their future in detail. Usually, retirement savings or social security contributions and entitlements are not subjects that are considered when making this lifestyle choice. In some forums you will find threads about visa and immigration as well as taxes, however as the digital nomad might prefer stay “under the radar” of the authorities and possibly being non-compliant.

1.5 Conclusion

Based on the questions posed above, a digital nomad needs to have an economy that supports his strategy. Such an economy is partially based on the new sharing community which is raised in the early 21st century by the development of internet platforms. In addition the “gig” economy can support their lifestyle by giving them opportunity to apply for a project only when the income is needed. The sharing community and the development of internet platforms that easily connect the provider with the client/customer have strongly facilitated the growth of the gig economy.

The nomadic work is numerous kinds of digital work, where a service can be delivered to the customer while not being physically in the same location. This circumstance has developed various

digital nomad platforms enabling to communication between each other, with clients and applying for new opportunities. These forums and platforms also inform individuals about the local infrastructure for nearly all major cities around the globe.

As the basic definition of the digital nomad does not differentiate, in detail, between the terms of remote worker / expatriates or even a tourist, the self-definition and characterisation of the digital nomad gives a deeper insight into their true goals and values. The typical digital nomad is a younger person, who enjoys and enables himself to travel the world with few belongings, as the personal assets are limited, by generating income while travelling. They tend to generate more and more passive income over their wandering career, in order to spend more time on traveling as opposed to actively working. Another characteristic is that the digital nomad is usually not considering or spending much on the legal and compliance portion of his lifestyle and taking the risk of “flying under the radar”. Also the individuals are only minimally concerned about their future situation, such as retirement or the event where support social security from a local social security fund is required.

2 Compliance risk of a Digital Nomad

Question: How could a digital nomad be compliant with the various laws involved?

Remote working provides many benefits, however, in most research in regards to digital nomads, the compliance does not get much attention. As such, in this chapter I would like to point out the various risks a digital nomad might face as well as the risks undertaken by employing such an individual. The research is mainly based on the Swiss legislation and provides input for both inbound and outbound digital nomads.

2.1 Labour law

The term “digital nomad” and its definition do not point out whether an employment contract is needed or the income can be generated through self-employed. However, in a first step the differentiation of a self-employment and of a gainful employment needs to be defined.

2.1.1 Definition of Self-employment / Freelancer

From a Swiss perspective the law does not define the term self-employment; however the Swiss Federal Income tax act (FITA)^{xvii} used the term in article 18. The FITA article 18 states that income derived from working as an independent profession (“Freie Berufe”) are considered as taxable income. A more precise definition of self-employment is given by the State Secretariat for Economic Affairs of Switzerland (SECO)^{xviii}. To be considered as a self-employed individual, the person has to act under his name, on their own account, being in an independent position and bear their own economic risk.

2.1.2 Definition of employment

The SECO defines gainful employment as follows; the individual acts in a third name for limited or unlimited period of time, without bearing the economic risk.

In addition to the SECO definition, the Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations / “CoO”)^{xix} provides further detail in regards to the rights and obligation of an employer an employee, based on any kind of employment contacts.

2.1.3 Impact of the labour status for a digital nomad

You might question why a differentiation between self-employment and a gainful employment is required for a digital nomad. In case of an outbound digital nomad, currently having his residency in Switzerland, with all his work is performed outside of the country, the Swiss classification of the employee might be less relevant than that of his host country. This country would be generally responsible for qualifying him and apply specific treatments to the individual from a local labour law perspective.

As a general definition of gainful v. self-employment is not enshrined in Swiss Law, the authorities are able define and determine the status of individuals on a case by case basis. It is therefore possible, also due different legislations across countries, that the Swiss authorities could qualify the self-employed / freelancing nomad having his current base in Switzerland as an employee of his current “employer” or “client”, even the status of self-employment in the country of origin is accepted. In such a situation the Swiss self-employment status is dismissed due to the qualification as a “false- or pseudo-self-employment” by the authorities (mainly the labour inspection).

The pseudo-self-employment is tested by the authorities to avoid misapplying the posted worker directive^{xx}. In the posted worker directive self-employed persons are not considered and therefore (self-employed) foreigners registered in the European Union (EU 25) would be allowed to work up to 90 days per calendar year as a professional service provider without any further requirements beside of a registration with the immigration authorities in Switzerland. This regulation is also based on the free movement act between the EU and Switzerland^{xxii}.

A professional service provider, who considers himself as self-employed, can prove his self-employment in the country of origin in case the position is challenged by the authorities. He needs then to provide various further details^{xxiii}.

If an inbound individual to Switzerland is not able to produce the requested documents, a fine could be levied and he would be prohibited to continue working. Even without the requested documents, the individual can defend his status with additional evidence of the self-employment (such as business registration and presence on the market etc.).

In case the inbound would be qualified as an employee rather than self-employed, the consequences of this ruling are shifted onto the client, as he will have to fulfil all of the obligations that are set out for an employer in the law.

For workers coming to Switzerland from outside the European Union, the 90 day rule is not applicable, and therefore they are required to have a work permit in Switzerland if the work more than 8 days per calendar year. In this case, due to the strict day limit, the distinction between employed or self-employed is less relevant.

2.1.4 Conclusion

Depending of the country of origin and the qualification of an inbound individual to Switzerland, a classification of self-employed or employed has a major differentiation in regards to the work permit required to follow a gainful activity in Switzerland. For employed individuals and non-EU inbounds a work permit is required as soon as more than 8 days per calendar year are in Switzerland. For EU inbound being accepted as self-employed, a work permit needs to be obtained, only if they perform work for more than 90 days per calendar year.

2.2 Immigration law

As the digital nomad is an individual who works unbounded from his home country, he travels often and therefore need to consider having the right to enter the country of his destination. Due to the various requirements (such as nationality, country of origin etc.) obtaining the correct type of visa (which is often linked to the work permit) is vital. The following remarks will be focused to inbound persons to Switzerland. Nevertheless, as Switzerland is not “yet” known as one of the top spots for the digital nomadism as per definition; I will also highlight the challenges to be faced in other countries.

2.2.1 Type of Visas / Permits in Switzerland

2.2.1.1 Visa

A visa is an authorisation (linked to conditions) of a country to a foreigner, which allows them to enter, remain or leave the country issuing it. Visas can be issued with various conditions and restrictions, putting limits on the duration, number of entries allowed and minimum presence in the

country during a year. However, the actual entry of an individual into the country remains at the discretion of the immigration official at the port of entry and can be revoked at any time^{xxiv}.

Switzerland applies three types of approaches relating to visas. The “Schengen-Visa” which limits the stay to 90 days within a 180 day period and can be issued for third country nationals (the Swiss State secretariat of Migration “SEM” provides the full country list respectively visa requirements^{xxv}). For EU/EFTA nationals no Schengen visa is required, as these are applied only to individuals with a citizenship not coming from an EU/EFTA state. The second category is the “Visum D”; the national visa can be issued for a stay of more than 90 days (within 180 days) and up to 120 days in Switzerland for third country nationals. This visa type is generally linked to the Swiss 120 day work permit. The third kind of visa is the “Airport Transit Visa”, which is required for individuals of certain nationalities to transfer through Swiss airports.

2.2.1.2 Permits

Switzerland issues the L-, B-, C- and G-Permit, which can be relevant for foreign nationals living and / or working in the country. The F-, N- and S-Permits are not relevant for this research.

The L-permit limits the duration of the stay in Switzerland to 12 months. The purpose of the permit (e.g. self-employment or gainful employment) has to be defined at the time of application. For EU/EFTA no restrictions are applicable.

A B-Permit is issued for stays longer than 12 month in Switzerland with a defined purpose. It is granted for one year (5 years if he applicant is EU/EFTA national), and requires an employment contract lasting at least 12 months.

The C-Permit is issued to individuals who have been living in Switzerland for 10 years in a row. This condition is relaxed to 5 years if the is an EU/EFTA national or a national of specific *third countries*.

The G-Permit, is issued for individuals living outside of Switzerland but working in Switzerland and returning to the home country at least once a week. For third country nationals, this permit is limited to individuals living in defined border regions.

2.2.2 EU/EFTA-citizens

The Agreement on the Free Movement of Persons (AFMP), which was signed in 1999 by the European Union and Switzerland, first came into force in 2002 for the “old” EU-member states as well as for EFTA States. Today all EU-member states are covered by the AFMP, with the exemption to citizens of Bulgaria and Romania, where the Federal Council of Switzerland applied the so-called safeguard clause. This *safeguard clause* limits the immigration of individuals from these countries by establishing quotas of the available work permits. This limitation will be abolished as of 1. June 2019, and as of this date, Bulgarian and Romanian nationals will enjoy the full rights of the AFMP.

With the AFMP EU/ EFTA nationals, who would like to live or work in Switzerland, have no restrictions to move to Switzerland, however an application for a residency permit is still required. The agreement on free movement is complemented^{xxvi} by the mutual recognition of professional qualifications, the right to buy property, and the coordination of social insurance systems.

2.2.3 Third Country nationals

For any third country national, it needs to be verified whether a visa application is required or only the residency permit need to be requested by the individual.

In addition the request to the residency permit, which is linked to the right of employment in Switzerland, third country nationals are subject to a quota and need fulfil further requirements before being granted a residency permit. The residency permit is currently only issued to individuals who are highly qualified, i.e. being a specialist, manager or other skilled professional, thus a higher education and several years of professional work experience are usually required.

Besides these skills, the individual has to prove his long-term professional and social integration, such as knowledge of a Swiss language(s), professional and social integration. Furthermore, the future employer has to argue that the position cannot be filled with any suitable individual from Switzerland or the EU/EFTA countries and the similar conditions (salary, social security and terms of the contract) adapted to the region, the professional and particular sector.

2.2.4 *Immigration issues for outbound digital nomad*

The typical digital nomad can be found at hotspots around the world, which are mostly outside of the European Union and therefore the AFMP cannot be applied. In such cases, the digital nomad has to check, prior to departure, whether he needs a visa or a work permit in the host country.

In practice, the individual is entering his destination often with a tourist visa (if a visa is even required) - however the tourist visa usually gives no permission to work as well in the country and limits the stay to a certain date. The extension process for a tourist visa can be quite difficult and even annoying. Some countries, namely in the Asian region (such as Vietnam or Thailand), have no strict work inspection and therefore, although non-compliant with the local legislation, the individual could work without permission and consequently be working illegally. Of course for some countries (such as Canada), the type of work performed is relevant to whether a work visa is required or not. It is therefore possible that you could be seen as not breaking any labour laws as long as you have no clients in the country of destination (i.e. only perform online business) and are not destruction their local labour market.

In order to work legally in a country you would have to obtain the correct work visa. To obtain a work visa, the individual mostly needs the invitation or confirmation of an employer in the country of destination. This can prove to be a challenge for a self-employed digital nomad. Another avenue to substantiate a work permit application (and avoiding the risk of working illegally in a country) could include the founding of the own business (or branch), which might have some substantial financial impact and investment needs. In some countries (mostly western states, such as Australia, New Zealand, Canada and more^{xxvii}) the possibility apply for a so-called entrepreneur / start-up visa can be given, however these visas are linked to various conditions (i.e. building an company, create jobs for nationals of the countries and more). A third possibility is obtaining an investment visa or even obtaining the citizenship (economic citizenship) by substantial investment in the country of destination. In this case, the financial requirements for an investment visa or economic citizenship could be enormous.

As the lifestyle of digital nomadism becomes more relevant some countries start to provide special categories of visa to digital nomads. Thailand, for example, has introduced the “SMART visa” in February 2018, to attract drawing science and technology experts, senior executives, investors and start-ups^{xxviii}. This type of visa is still linked to conditions the applicant has to fulfil, such as a minimum income or saving capital, being engaged in a defined sector and more^{xxix}. In Europe, Estonia is planning to introduce the “digital nomad visa”, which allows nomads to live and work in Estonia up to a year and would abolish the need to be on tourist visas working in the “grey area” of the law. The visa is planned to be available as of 2019^{xxx}.

2.2.5 Conclusion

While travelling into Switzerland or out of Switzerland, as well for many other country combinations, a visa is required. With the AFMP the requirements within the EU/EFTA are abandoned and at least for short stays in Switzerland no visa or more precisely no work visa needs to be requested. For third country nationals either a tourist visa, or, if the intention is to work in Switzerland, the work visa and residency permit needs to be requested even for short stays in Switzerland. The requirement for third country nationals are more restrictive and limited to quotas, and are therefore not easily obtainable for a digital nomad.

In Switzerland, working while being on a tourist visa is not permitted, and could lead to a sanction by the government. In other countries and hot spots for digital nomads, the performed work could be the defining factor whether working on the tourist visa is permitted or prohibited, however mostly it is not traced by the authorities and therefore in a “grey-area” of the respective law.

To avoid the unlawful act of working without the work visa or permit the individual would have to apply for the correct visa. This could be legitimated by having the own company, being accepted as start-up / entrepreneur or as an investor. These possibilities mostly have quite substantial financial impacts.

The digital nomadism trend could lead to new visa / work permit types (as for Estonia and Thailand) being created, simplifying the administrative burden for individuals and allowing them to continue their remote working lifestyle.

2.3 Tax law

In general, as soon as an individual generates any income from work or becomes a tax resident in the respective country, the tax authorities would have the right to levy income taxes on an individual. For a digital nomad, thus the question arises as of when and where is he be obliged to pay taxes in the country he performs his work in or has his residency in. In addition, besides the income taxes for the individual, corporate taxes might be levied in case the nomad is employed (also by his own company).

2.3.1 Income tax on individual level

Based on the Swiss federal tax law, an individual become a tax resident when he as the intention to stay permanently in Switzerland, which will be seen after being in Switzerland for a continuous period of 30 days while performing a gainful activity or after 90 days without any gainful activity (FITA article 3). With the establishment of his tax residency in Switzerland the individual becomes taxable on his worldwide income and wealth.

Besides the taxation due to the tax residency, an individual can become taxable if he has an economical affiliation to Switzerland. This can be defined as having a business operation, a permanent establishment, real estate in Switzerland (FITA article 4), or having further economical connections to Switzerland such as any gainful activities in Switzerland, receiving director royalties or similar income (FITA article 5). The taxability based on the economical affiliation is limited to the actual income generated in Switzerland, the worldwide income will only be considered for the determination of the applicable tax rate.

The unlimited as well as the limited taxation start with the establishment of the permanent abode respectively as of taking up the any gainful activity in Switzerland. This is applied retroactively to the first day of entry or economic affiliation to Switzerland.

All kind of income are considered as taxable, regardless of whether they come from an employment or also from self-employment (FITA article 16ff). The Swiss tax law does not differentiate whether the income is paid as a one-time payment or as a continuous basis (i.e. salary payment). The authorities define self-employment as income not derived from a corporate body such as one-man businesses or ordinary partnerships.

The responsibility to pay taxes is placed on the individual. However, the Swiss law stipulates that for foreign employed individuals holding a residency permit (respectively work visa) other than the categories C, the employer is obliged to withhold a tax directly from the employment income paid. The individual will no longer be subject to the tax at source if the individual or his/her spouse is Swiss citizen or has a C-Permit (FITA article 84ff).

2.3.2 Income tax on corporate level

The Swiss tax law defines the following legal entities as taxable; joint-stock companies (stock corporations, partnerships limited by shares, limited liability companies) and cooperatives and associations, foundations and other legal entities.

A legal entity becomes subject to taxation based on personal affiliations if their registered office or place of effective management is located in Switzerland (FITA article 50). An economic affiliation, and therefore a limited taxability status can be given, if they have one of the following relations to Switzerland: partnerships with respect to business operations in Switzerland, maintain permanent establishments in Switzerland or have any connection to the real estates located in Switzerland. The law defines a permanent establishment as a permanent business establishment which is wholly or partially engaged in the business activities of an enterprise or an independent profession (FITA article 51).

With a personal affiliation to Switzerland the tax duty is unlimited in scope, however foreign income or losses can be considered with some restrictions. If a company is considered only as economically affiliated to Switzerland, only the profit generated in Switzerland becomes taxable. However, based on the regulations set out in several of treaties with the scope to avoid double taxation, any profits or losses taxable or creditable abroad will not be considered in Switzerland (FITA article 52).

The taxation of a legal entity starts with their incorporation or the transfer of such entity's registered office or place of effective management to Switzerland or the acquisition of assets taxable in Switzerland (FITA article 54).

2.3.3 Impact to an inbound digital nomad

An inbound nomad in principle becomes taxable in Switzerland after 30 days in Switzerland with a gainful activity. In addition he needs to have his usual abode or the intention to stay permanently in Switzerland. There is no differentiation whether the income derives from an employment or self-employment.

In a first instance, it needs to be tested, if the individual is taking up his habitual abode in Switzerland. Usually, having an address in Switzerland is enough to consider an individual as habitual abode in a country, even if digital nomad could still have an additional home address abroad. It is worth noting, though, that it is challenging to prove an intention to stay permanently, namely as the digital nomad as per definition is not leashed to a place or country and might travel on at any time.

Under the assumption that the individual has no further address abroad (in his home country) and he does not clearly define the duration of his stay in Switzerland, he would be seen as tax resident in Switzerland.

In case the duration of the stay is limited and a home country address exists, further clarifications are needed. The individual would become limited taxable due to an economical affiliation to Switzerland based on national tax law, however as he could be taxable in another country as well, it needs to be tested whether a double tax treaty exists to protect the individual. If so, this would allocate the taxation right of income to either one country or another. The model tax convention on income and capital published by the Organisation for Economic Co-operation and Development (OECD) provides a standard to avoid the double taxation and is adapted in most double tax treaties worldwide, therefore the research will be based on the OECD model tax convention (MTT-OECD)^{xxx1}.

The article 4 of the MTT-OECD provides the definition of a resident in the contractual state. As a tax residency can only be held in one state, the MTT-OECD mentions a four step test to define the mail tax residency (*Treaty Residency*) if an individual is tax resident in more than one state:

- 1) Firstly, the individual would be considered a *treaty* resident in the country where he has a permanent address available to him. If this is available to him in both states, the *treaty residency* is allocated to in the state where the centre of vital interests of the individual lay.
- 2) In case the centre of vital interest cannot be determined or no permanent address is available in either state, the deemed residency shall be in the state where he has is habitual abode.
- 3) If still not determinable where his habitual abode is, the individual becomes resident in the state where he is a national.
- 4) As a last resort, if all three tie breakers are not clear, the involved states have to determine the tax residency by a mutual agreement.

As soon as the residence is defined, it needs to be tested where the income in question is generated, therefore the differentiation whether self-employment (or only pseudo-self-employment) or employment is given (as above 1.2) has an impact. As a self-employed digital nomad, the income generated in Switzerland becomes taxable in the Switzerland, as the taxation follows the permanent establishment principle. This outlines that a permanent establishment for business activities for a one-man business is given by following the individuals abode.

However, for service contracts, a divergent definition of a “service” permanent establishment can be given, which would build upon the generated income and the actual presence of the individual in Switzerland (for more than 183 days)^{xxxii}.

The definition of a permanent establishment is stated in article 5 MTT-OECD. This could also become relevant for a remote worker or their employers, if the employer allows its employee to work remotely in another country. Not only does the employee became taxable on his income in the state of residence, but the employer might face some corporate tax issues, even if there was no intention by the company to set up a permanent establishment in Switzerland. This is explored further below.

For a non-tax resident, who has an employment in Switzerland the MTT-OECD outlines the taxability in Article 15. As a principle, the income from employment is assigned to the country where the actual work is performed. However, when talking about the reassignment of an individual from one country to another, paragraph 2 of article 15 lays departs from this approach if the following conditions are met:

- 1) the individual was not physically presence of more than 183 days in a calendar year or 12 month period
- 2) the remuneration is paid by (or on behalf of) an employer resident in the working state
- 3) the remuneration is not born by a permanent establishment in the working state.

Based on this, Article 15 of the MTT-OECD has only an impact for a digital nomad, if he has his employer abroad and no permanent establishment is in Switzerland. As soon as the employer is in Switzerland, the employment income generated physical present in Switzerland becomes taxable in Switzerland regardless of whether the three above conditions were met.

In case the digital nomad is the owner of his own legal entity (LLC etc.) registered outside of Switzerland, the taxation of the legal entity and its profit of the entity comes into question. In article 7 MTT-OECD the allocation of business profits is defined, thus if a legal entity has a permanent establishment in the relevant country, the profit generated in this permanent establishment becomes taxable therein. Should the national laws define the term of profit differently could this lead to a double taxation of profit, which the states involved would have to avoid, either by credit the taxes paid or exclusion of the profit share already taxed.

An enterprise fully owned by the digital nomad, at the very least, would be deemed to have set up a permanent establishment in Switzerland, or even be considered to have the centre of management in the place of residency of the owner.

As a conclusion, not only the income (salary of the individual), but also the business profits of the legal entity become taxable in Switzerland and the exclusions based on Article 7 or 15 MTT-OECD are generally not applicable.

2.3.4 *Impact to an outbound digital nomad*

Based on national tax law, the right to tax an individual or company ceases when an individual leaves Switzerland permanently, with exemption of income related the immovable assets in Switzerland or employment income generated as non-resident (see above).

To leave Switzerland permanently requires an official de-registration with the Swiss (tax) authorities. The de-registration requires the naming of a new residence address, as confirmed by the Swiss federal court^{xxxiii}. Without a new residence address, the residency, and therefore the taxability, in Switzerland would continue until a new residency is constituted.

As the outbound nomad might become taxable in another country, he could potentially face a situation where he is double taxes as well. As usually double taxation is avoided by the double tax treaty in place, the income taxed abroad is only considered for the tax rate determination in Switzerland (so-called exemption with progression principle). However, applying the treaty in this situation could create a large administrative burden for the individual in both countries.

In case a Swiss employer allows his employee to work remotely, he could face the issue of raising a permanent establishment abroad and therefore making the employer become taxable in another country on profits generated in the country by the employee.

For a legal entity the taxation would end with the liquidation or the move of the effective place of management outside of Switzerland, with exemption of income related to immovable assets in Switzerland or a profit generated in a permanent establishment in Switzerland.

2.3.5 Taxes for digital nomads in other countries

Even though the taxation is usually linked to the residency or the place the relevant income is generated, it is possible that a nomad would not be considered as resident in his “home” country nor in his “host” country. Additionally, it is possible that income earned is not considered as taxable according to respective national law. The nomad would, in this case, end up in the “no man’s land of tax”, which would be in favour of him, as he would stop paying taxes at all, however this usually not is accepted by the international laws.

2.3.6 Conclusion

The taxation of a digital nomad is triggered by the residency of the individual or by a corporation creating permanent establishment in the host country. Furthermore the taxation right can be defined based on the personal or economic affiliation, leading to either full taxation of an individual, or a taxation leading to only items sourced in the country being taxed. It is also possible for an individual to not be considered as a tax resident in any country – which could lead to a large tax saving for him.

Form a corporate tax point of view, the taxation can also be unlimited, if the place of residency or the place of effective management of the legal entity is in Switzerland. A limited taxation is given if the legal entity establishes a permanent establishment in Switzerland and generates profits from this permanent establishment.

Any possible double taxation should be avoided, if a double tax treaty between the countries is in place.

In case of remote workers, the risk of establishing a permanent establishment of their employer should be always considered before the employee is allowed to work remotely in another country. If this is not clarified upfront, the employer could face, besides obligation to withhold taxes at source, an obligation to pay tax on the profits generated in Switzerland.

An outbound digital nomad might have the issue, of not being able to de-register properly, as a new place of residency would not be known - therefore the continuing to be considered a resident in Switzerland for tax purposes.

In case the de-registration would be accepted or is not required in other countries *and* on the other hand, registration is not required in the new country *or* the income earned would not be taxable in the new country, a digital nomad could end up in a tax free situation.

2.4 Social security law

In general the state social security of an individual is connected either to his residence and / or to his place of employment. For a digital nomad (and remote worker) it could provide challenging to ensure at least a basic insurance for the retirement as well as in the case of disability or unemployment. Firstly, I will highlight the requirements an inbound to Switzerland has and secondly, the consequences a Swiss outbound might face and how certain risks could be minimized.

2.4.1 Impact to an inbound digital nomad

In Switzerland the social security system is based on a so-called 3 pillar system, the first pillar provides a basic insurance of old-age, survivors’, disability, and unemployment insurance. The second pillar is the mandatory employee pension scheme covering the same risks as the first pillar,

but provided by the employer instead of the state. The third pillar is additional, private savings that the individual is free to undertake or not, depending on his preferences.

The first pillar is mandatory for Swiss residents having a gainful activity in Switzerland and voluntary for residents without a gainful activity. The main purpose of the old-age and disability insurance is to cover the basic need to afford a living. The pillar 1 is financed by equal contribution from an employer and its employees. The employer has the obligation to withhold the employees' share directly via the payroll. For self-employed individuals the full contribution needs to be paid directly by the individual in a self-declaration made to the authorities. If no declaration is completed, the social security authorities would claim the contribution on an estimated basis and levy a fine. If you are not employed, not married or the spouse contributes less than the double minimum contribution, a voluntary insurance is possible, where you would have to contribute the fixed minimum contribution^{xxxiv}.

At the official retirement age (currently for men 65 of age; for women 64 of age), and under the condition that the individual has contributed for at least one year, he has the right to claim the retirement annuity. The annuity is limited and calculated based on the years of contributions.

The survivors insurance would pay an annuity to the surviving spouse or the children as of the death of the spouse respectively parent until the spouse would remarry or the child would reach the age of 18 (or 25 if completing their first university degree). The annuity is limited and also based on the average wages of the respective years of contribution.

The disability insurance would also pay an annuity until the official retirement age to the disabled person, based on the severity of the disability. The duration can be limited if the disability could be cured over the years. The annuity will be calculated on the years of contribution and the average wages in these years.

Also integrated in the first pillar is the unemployment insurance. The insurance is only available to employees with some minor exclusion (such as minimal earners, employees of artistic works, orchestra musicians and similar), however the self-employed individual cannot be insured in the official unemployment insurance.

The second pillar is compulsory for employees earning more than a certain threshold per annum; self-employed individuals with income above the same threshold can voluntarily contribute to a pension scheme. The main objective of the first pillar, together with the first pillar, is to allow a retiree to maintain the previous standard of living after retirement.

The risks covered by the second pillar are similar to the first pillar with the exception of the unemployment insurance. The main difference, however, is in the financing, of the pension. The employee and employer have to contribute a statutory minimum to the second pillar (with the employer being obliged to contribute at least half of the amount). These monthly contributions build up the retirement saving capital of the employee. In the calculation of the minimum contribution, the civil status as well as the age is considered. The saved capital can then be converted to an annuity or paid-out at the official retirement age as a lump sum. Also the annuity for the survivors and disabled individual are calculated on the saving capital at the time the insurance event occurs.

The last pillar, the third pillar is the voluntary pension saving that benefit from a preferred tax treatment. The aim is to supplement the annuities received from the first and second pillar upon retirement. The third pillar or, more precisely, the pillar 3a is a blocked bank account or a blocked insurance product offered by Swiss financial institutions. To be able to make contributions to the

pillar 3a, the individual has to be subject to the pillar 1 and be gainfully employed or self-employed. The contributions are limited; self-employed individuals are allowed to contribute significantly more than employees. This is allowed in order to minimise the lack of a mandatory second pillar for self-employed individuals – as they do not have an employer that can provide this.

In addition to the three pillars, the health insurance is an additional part of social security that should be mentioned. In Switzerland, each resident is obliged to have minimal health insurance coverage. This is true regardless of age, family or employment status. The insurance is offered by private companies.

For an inbound from the EU/EFTA countries, an exemption from Swiss social security is possible on the basis of the EU Regulation 803/2004. This can be obtained by applying for a certificate of coverage. Additionally, individuals from other countries^{xxxv} with a social security treaty in place would have the opportunity to benefit from an exemption of Swiss social security.

2.4.2 Impact to an outbound digital nomad

As mentioned above a Swiss resident has to be covered at least in the first pillar and the health insurance. If the individual is employed, he would also need to be covered in the company's pension scheme. Thus, the questions arise what would happen if a digital nomad breaks his Swiss residency and leaves Switzerland permanently.

In regards to the first pillar, the contribution would stop with de-registration at the Swiss authorities and the right to claim any benefits from disability and survivors insurance would be ceased as they are linked to the residency status in Switzerland. A voluntary contribution of a Swiss national and citizen of the EU or EFTA Member States, who lives abroad in a non-EU or non-EFTA Member State, would be possible under the condition that the individual has been insured on a continuous basis for at least 5 years. The retirement benefits can be still claimed at the official retirement age of the individual, however the annuity would be limited, without voluntary contributions, as the years of contributions would be less than others in their age group would have.

The second pillar is different, as the contribution of the employee and the employer are credited to a personal account of the leaving individual. With the de-registration the employee has the right to claim the termination benefit (saving capital up to leaving date), however after the pay-out the individual has no further rights of benefits from a Swiss second pillar. In case an individual would leave into an EU/EFTA country, the law defines a so-called statutory minimum amount, which would need to stay in Switzerland on a vested benefit account, which is blocked until the individual reaches the retirement age or leaves the EU/EFTA area permanently. Should an individual not claim or transfer the termination benefits to a vested benefit account, the benefits would be transferred to a Swiss state organisation. A claiming from the organisation would be still possible on request of the individual, nevertheless there might be a small risk of loss of the funds. In addition, the individual might have the risk of a taxation of the pay-out in the new country of residence at a less beneficial tax rate compared to Switzerland.

The third pillar, as it is voluntary, could be paid out to the individual at the time of de-registration. There is no differentiation between leaving to the EU/EFTA or a third country. In some cases, defined by the providing financial institute, the pillar 3a could be held even as non-resident. Similar to the second pillar, the risk of a less beneficial taxation exists.

In general, also the health insurance would be terminated as an individual de-registers in Switzerland. The outbound nomad therefore would risk having no further health insurance

while being abroad. As the health insurance in Switzerland is not directly linked to the Social security system, a private solution can be offered by certain health insurance providers that would ensure the digital nomad's protection in case of sickness or an accident. Alternatively, traveller's insurance or health insurance from a global or local provider in a different country could be bought by an individual.

Similar to the inbound employee, an outbound employee might obtain a certificate of coverage, where an employer confirms that he will continue to contribute to the first and second pillar on his behalf while abroad. This is only possible to countries of the EU/EFTA or third countries with a social security treaty in place.

2.4.3 Conclusion

An inbound digital nomad will become part of the Swiss social security as soon as he is registered as a Swiss resident and therefore obliged to contribute to the first pillar and the health insurance at least. Should the nomad be employed in Switzerland (also as a pseudo-self-employee) the employee must, together with Swiss employer, be included in the company pension fund (second pillar). In case he as a foreign employer, it depends whether the individual could apply for and obtain a certificate of coverage, exempting him from Swiss social security. If not, the foreign employer might have the obligation to register himself in Switzerland and seek for a first and second pillar solution for his Swiss based employee.

For an outbound digital nomad usually most ties to the Swiss social security would be terminated, however he would be still able to continue in the 1st pillar, if he was insured at least 5 years without interruption. The retirement benefits can be claimed at the retirement age regardless of the residence at this time. In regards to the second pillar, the termination benefits (limited within the EU/EFTA region) can be paid out to the individual or transferred to a vested benefit account in Switzerland. In case the outbound employee has the intention to return to Switzerland within a maximum of 6 years, he can request the continuation in the Swiss system with the employer and the Social security authorities to maintain his current status (assignment situation). This would be confirmed with a certificate of coverage. If the employee respectively the employer does not request the certificate of coverage, an obligation to join the foreign social security system of the new residence might occur. The health insurance might be continued on different terms as they are contracted on a private basis.

2.5 Conclusion on the challenges and solution for digital nomads

The compliance of a digital nomad can be challenging as he has to ensure to meet the requirements for all mentioned legal fields.

From a labour law perspective the digital nomad has to ensure that he qualifies either as a self-employed person or being employed by a company, which could be as well his own company. For a company, the qualification of the employee is important as if the individual is not qualified as contractor, the company has further obligation as an employer. Working without being accredited as self-employed individual can lead to a ban of working in Switzerland in addition to being financially fined.

In regards to the immigration law, the main impact in Switzerland has the nationality of the digital nomad. As such, an EU/EFTA national has an easier access to Switzerland and fewer requirements for the work permit compared to a national of a third country. The digital nomad has to be able to enter Switzerland to ensure that the correct visa and permit is requested and obtained. Being in

Switzerland without the correct permit could lead to fines and the order to leave the country. Digital nomads might not “fly under the radar” as easily as in other countries, and therefore the correct and compliant registration is important. In other countries, the entry with a tourist visa and subsequent gainful activity in an own business may be accepted as long as the countries labour market is not disturbed, however this is a grey area which differs wildly between jurisdictions. As more countries discover of this new life-style, the trend to have official solutions like special visa or work permits for digital workers may spread past the examples of Estonia and Thailand.

Tax law is usually more accurately defined in comparison to other sectors we have or will discuss. For a digital nomad the Swiss national tax law can qualify the individual (retroactive to the first day in the country) as a taxable resident after 30 days in Switzerland having a gainful activity or even as non-resident if he has a gainful activity in Switzerland. An exception can be apply, if he is assigned to Switzerland as an employee from a foreign employer and certain conditions in a double tax treaty are met. In case the case the digital nomad has his own registered company, the place of management is a topic that should be considered with regards to the corporate taxation in Switzerland and its extent.

For the outbound digital nomad it is to consider that the de-registration is only possible, when the individual is creating a new tax residency abroad, if this is not possible Switzerland would continue to tax his worldwide income and assets. In other country combinations it might be possible that a digital nomad becomes non-tax resident in all states and therefore ending up in a “no man’s land” of taxation, however this exceptional and risky.

The social security in Switzerland follows mainly the taxation of a Swiss resident, thus if a digital nomad is qualified as a Swiss tax-resident, he will also have to contribute to the Swiss social security system. As a self-employed nomad at least the first pillar contributions are due, should he qualify as employed the second pillar will be added to the contribution he needs to fulfil. In case the digital nomad is employed by his own company, he has employer obligations as well in Switzerland. An exemption from the Swiss social security contribution is only given when the individual can provide a certificate of coverage of another countries social security. The certificate of coverage is only available, when a social security treaty is in place and the employer and the country of origin confirm the subscription in the home country.

Unfortunately there is no general solution for the digital nomad to be compliant with all legal requirements as each case has aspects based on the circumstances of the individual’s income, residency situation and nationality. For an individual, it might simplify the legal aspects, if he is an employee of a company, as the company might support him with the visa application (sponsorship), ensuring the work permit, enabling the correct tax residency status to be defined and providing an accurate social security coverage (including health care). Of course, for a digital nomad being employed by his own legal company, the personal aspects might be clearer to him however the company would have to consider the corporate aspect of the persistent move, and therefore the individual itself would have to act on the corporates behalf.

3 Global Employment Companies

Question: Could a Global Employment Company harbour a digital nomad and assist the individual being compliant?

As mentioned above a digital nomad could benefit from being an employee of a multinational company and therefore meet the legal requirements to work while travelling around the globe. The Global Employment Company could also assist the customers of a digital nomad as the company would absorb the risk to be qualified as an employer of the nomad based on the law, where the individuals currently resides.

3.1 Global Employment Company (GEC) – Definition

A Global Employment Company (GEC) is a corporation, which provides employment / staffing services to another company. Typically, the company is set up within the corporate group and the employment services are provided between the different entities. In general, a specified population of highly globally mobile employees, who will travel frequently or be assigned for several years to another global entity within the same organisation, will be formally employed by the GEC^{xxxvi}. The history of such GEC started already some decades ago, previously with denominations such as Hubs, Managing Platform and others. In the nineties the GEC was mainly designed as a solution for “International Employees”, who spent their careers mainly on assignment and would therefore not repatriate to their “home” country. For such employees, a home or host based approach is not feasible, an additional solution had to be found. The GEC was then able to set up policies with wages in major currencies, international insurance, retirement plans as well as a centralised administration for these individuals. In the early 2000, the GECs were used to optimise and simplify the assignee management of a corporation regardless of the home or host countries. Today, GECs act also as strategic partners of the HR departments of the corporations. They can provide a fast and efficient employment and deployment of talents with the companies while maintaining a high standard of compliance^{xxxvii}. The GEC can be incorporated in any country, however usually the incorporation is done in countries with a wide tax and social security treaty network to enable more cost saving opportunities. In Europe the following countries are considered as “GEC-friendly”; Switzerland, the Netherlands, Ireland and the UK (pre-“Brexit”). Other countries might be less “friendly” due to more complex regulations^{xxxviii} or smaller treaty networks.

3.2 Swiss GEC

As mentioned above, Switzerland is a GEC “friendly” country and therefore some more insight to the set-up, the pros and cons will be given. In addition, could a Swiss GEC host also remote employees as the typical digital nomad would be?

The basic incorporation of the GEC is simple; however there are some regulations in Switzerland in regards to intragroup loan staffing. The government regulates in the Federal Recruitment and Loan Staffing Act (RLSA) the sharing of employees between group companies. Therefore, one of the requirements to act as a company staffing respectively sending employees to other companies or affiliates in the group within Switzerland or abroad is to obtain a loan staffing permit from the authorities. Not permitted at all is the loan staffing from a foreign entity to Switzerland according to the RLSA. The RLSA and the directive of the RLSA have had some exemption from the permit requirement for loan staffing between affiliates of the same company group, so-called “secondments”, also from abroad to a Swiss affiliate. In 2017 the directive^{xxxix} was amended and became more restrictive. In the amended directive: Secondments became subject to the permit

requirements set out in the RLSA, while an intragroup cross border staffing arrangement, so-called “assignments”, are still allowed without the permit from the SECO.

Based on the new regulation, the differentiation between secondments and assignments is important. Both types have in common, that an employment contract with their “home” employer will remain in place and an additional assignment letter needs to be signed. The deployment would qualify as a secondment, when the individual would become part of the Swiss organization (place of work, Swiss reporting line etc.). Such secondments are only free of a permit if an employer (sending company) does not act in a pure commercial interest (measured by having a of maximum 10 secondments with commercial interest or less than CHF 100'000 of profit in a period of 12 month). A secondment is on a limited time, sporadic in nature and, limited in scope and the focus of such deployments is for the employee to gain new knowledge and the transfer of knowledge between the group affiliates.

Defined as an assignment are deployments of foreign employees, when the individual has to report to the “home” superior, the authorities of instruction needs to remain in the deploying company (termination decision, working time etc.)^{xi}.

Summarizing the above, a typical Swiss GEC, which handles mainly the administrative part of the international assignee population within the group affiliates, might actually act as their employer and assign them between the various group companies without the RLSA permission. The GEC would have to obtain a RLSA permit, in case there is a commercial benefit to the secondments it is administering and/or the GEC generates profits from their group affiliates.

The GEC would still able to manage the assignees of an international firm and enable the group to have centralised policies as well as tax set-ups and insurance (social security and health care) coverage for the whole population. In regards to the further compliance related topics in Switzerland, please refer to chapter two above.

3.3 Swiss Staffing Companies / Groups

A GEC could also be defined as a staffing company within or without being engaged to a corporate group as they provide staffing services to other companies. Such companies based in Switzerland would have to obtain the permit to perform the leasing of employees by definition. Usually such companies are also able to assist the matchmaking between candidates and searching companies and, in case of a direct hiring by a client, the administrative work, such as payroll and further compliance services.

In general, the temporary worker will be hired directly by the staffing company or employment agency and therefore the agency will become the formal employer of the temporary employee. The employee will then be posted to the client for a project or an undefined period. During the posted period, the right of managing or supervising the employee will be with the client, nevertheless the right of termination of the employment contract would stay with the staffing company. The agency has to ensure, that the temporary employee has the right to be employed in Switzerland (work permit etc.) and also to fulfil any contractual requirements of the client (such as a collective labour agreements “Gesamtarbeitsvertrag” and similar). The staffing to foreign clients (corporations) needs, in addition, the knowledge of the legal situation of the clients’ destination country, especially regarding immigration, labour law and loan staffing regulations^{xii}. As mentioned above, staffing from abroad into Switzerland is not permitted, with exemption of a secondment within group affiliates.

In case a staffing company is being organised as a multinational corporation and deploying their employees within their group, the regulation as per the intragroup staffing come into place (see above 3.2). As an alternative to the not permitted staffing from abroad, the foreign company, as employer of the deployed employee, could sign an agency contract or work and service contract (based on the Swiss law) with a Swiss company and send the employee directly to the client. The contract between the foreign employer and the Swiss client needs to be project based and state a clear scope of work or result as well as a timeline. Furthermore, the economic risk need to be borne by the foreign company and the right to instruct and supervise the employee is not transferred to the client^{x1}.

3.4 Conclusion – impact for a digital nomad

The centralisation of the assignee population of a company group can still be done by implementing these individuals into a GEC and managing all policies and compliance risks through the GEC. The risk of permanent establishments in other countries around the world would then be centralised only with the GEC and therefore the taxation (of the group) from a corporate perspective can be better monitored. However, the Swiss legislation has developed to become more restrictive and therefore the GEC would have to obtain permission to second their employees to other group affiliates. To receive such a permit, it would need to plan in detail whether the secondment can qualify as an assignment or not. In addition, with regards to corporate taxes, the OECD project for Base erosion and profit shifting (“BEPS”) needs to be considered in regards to the pricing of the services delivered for the assignee population by the GEC within the group.

As a digital nomad is usually highly mobile and wishes to work from a myriad of locations, the consolidation of such employees could be feasible by using a GEC. A centralised approach regarding his salary and insurances could be managed by the GEC and the digital nomad could be assigned to projects within the group. For the GEC, this would imply that it operates as a staffing company for their affiliates or even for external clients, thus from a Swiss perspective the RSLA permit would be a requirement. Furthermore, the integration of a digital nomad in a GEC is not given that the digital nomad can work fully remotely for the company or a client.

The remote work might have further consequences as mentioned as well in chapter two and is therefore always at the discretion of the employer. As remote work becomes more popular in Switzerland, employers may limit the radius of “freedom” to single countries or even only to Switzerland to manage this risk. The employer in Switzerland also has the obligation to ensure the safety at the place of work and the well-being of their employees, which cannot be easily supervised, when an employee is not in the office or abroad. Furthermore, the data security for client data and internal company data needs to be given as well while working remotely.

Overall the integration of a digital nomad in a GEC can assist an employer to have a centralised managed solution and could simplify the compliance processes with the client (intragroup or external). However, from a Swiss point of view, the company might have to fulfil further regulations regarding staffing permits while the sole assignment coordination could be done without such considerations.

The individual has with the integration to a GEC the security of an employer and the possibility to work potentially on various projects within the group enabling to rotate locations as well.

4 Findings and Conclusion

As digital nomadism might (or at least is predicted to) grow further in the future and work will be done more remotely, national and multinational companies just like the individual have to be aware of the possibilities, challenges and risks this could entail.

The economy already embraces already the new circumstances in regards to the information technologies in the market and gives the opportunity to use these with the “gig-economy” as well with the “shared-economy”. The possibility to work remotely and more or less location independently is only possible, if companies provide the opportunities for this. Thus, enabling an individual to bid on an engagement online and deliver the “product” in the same way would not be possible, if the market “sticks” to the “factory environment” and “office desk policy”. Of course, this disentanglement is not possible for all kind of work, so the digital nomad can mainly be found in the knowledge and advisory business, providing the individual’s knowledge to the client (or employer).

Based on the research the profile of a digital nomad is a younger person who is has further education, who sees himself focused on the freedom of travelling and working at his own discretion and just to afford his lifestyle. They tend to have fewer assets and share their goods if needed. Only the laptop and smartphone is important as these are their work tools. The main distinction from other frequent travellers, expatriates or remote worker is that the digital nomad is not a tourist or travelling regularly back to his “home” work place or the headquarter of the employer nor that is he working remotely for saving commuting time (e.g. “working from home”). He is also not assigned to be in a specific country, the digital nomad is free to choose the country with lowest cost of living while being “employed” with a well-paid engagement. The freedom to choose their location differs fundamentally to an expatriate, where the place of work is determined by the employer. The research shows as well that the compliance aspects or the retirement planning are less considered by the individuals, so these topics in forums are not seen often.

The compliance aspects in Switzerland are quite complex and always based on personal circumstances. From a labour law and immigration perspective a digital nomad with an EU/EFTA citizenship or residence right in these countries has fewer restrictions on being able to work legally in Switzerland. As a result, it is also for an employer it is easier to hire such individuals. For third country nationals, the situation is different, so a work permit is needed already after 8 days in Switzerland. The period of validity of the permit is also shorter, and the hire of a third country national is limited to quotas and needs the proof of no other matching candidate from Switzerland or EU/EFTA region. A further differentiation needs to be done in regards to being employed or being self-employed, as the self-employed individuals have other obligations than employees, the authorities have the possibility to inspect the claimed status and avoid the “pseudo-self-employment” status. In regards to the taxes the nationality is less relevant and any digital nomad could trigger taxability in Switzerland, when generating an income in Switzerland. In case the digital nomad is employed abroad while working in Switzerland, the employer has the risk of establishing a permanent establishment in Switzerland and become taxable on a corporate level, this would also apply for a digital nomad with his own corporate business registered abroad. For Swiss employers with an employee abroad, the risk of being taxed abroad is given as well. An exemption from a Swiss tax liability can only be applied, when a double tax treaty with the involved countries is in place. The social security in Switzerland is mostly mandatory if a Swiss income is generated and therefore link to the taxes can be made. Exemption to social security would have to be concluded in social security treaties in place. Also the differentiation between self-employment and being employed is relevant

for the individual as well as for the client, who could eventually become the employer with the obligation of providing the accurate social security coverage (pillar 1 and 2).

Based on my research other countries might be less strict with the enforcement of their law and obligations, which might enable the digital nomad to “fly under the radar” while others have developed already an accurate solution for such working travellers.

The research shows that a GEC, at least in Switzerland, could be a solution to handle mobile employees or even digital nomads as this could centralise the organisation and management of such individuals while providing an equal treatment of these employees in regards to income, social security and other benefits. However the solution might not be focused on cost efficiency for the company and of course the company need to be willing to integrate a digital nomad as an employee in its structure. Furthermore, the regulatory requirements became more complex in Switzerland in 2017 and, the GEC may have to have to review their internal requirements or processes. For an individual the employment might be beneficial as he as an employment contract with the possibility of being covered in many compliance aspects even when working abroad. Not given anyway, is the possibility of working fully remotely, if the employer is not willing to support it. In a staffing company, the digital nomad might have the possibilities to being posted to different projects and location, which might support his nomadic lifestyle.

Overall the research demonstrates that the global economic is adapting to the new lifestyle of a digital nomad. Also the employers start to see positive effects of this kind of remote working and searching for solutions, even this would be by engaging more self-employed /freelancing individuals. A global digital employee environment might also attract new talents to employers and enable a truly worldwide hiring practice. Form a political standpoint, the awareness that new legal basis needs to be developed to ensure a fair treatment of digital nomads (i.e. social security coverage, retirement plan) arise more and more, namely to avoid social dumping environments. In addition, from an immigration and labour perspective alternative solutions are developed, such as special visas or even e-residences, which enabled more free movement over borders.

The research cannot give a final solution, how an individual ensures his full legal compliance with the various possible set ups, nevertheless the main pitfalls in Switzerland have been provided.

In the future, the digital nomads as well as potential employers, should to observe the developments from a political and economic perspective. In addition, it would be beneficial from them to remain up-to-date on reform of immigration and labour procedures around the globe.

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