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MASTER COURSE HUMAN RESOURCES AND GLOBAL MOBILITY

Remote Work from Abroad (Switzerland)
Benefits, Compliance, and the Best Approach to Limit Risks

Dagmar Wagner

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1 Introduction

At the time of writing this thesis, one can acknowledge that we live in a time of continued radical change and uncertainty. Besides certain mega trends, including digitalization and remote work (Grömling and Haß, 2009; Lichtenthaler, 2021), the COVID-19 pandemic presents us with new challenges. In particular, the way we work and people's freedom of movement have changed drastically because of the pandemic (Schwarzbauer and Wolf, 2020).

In March 2020, the World Health Organization (WHO) declared the novel COVID-19 virus, which first appeared in the Chinese city of Wuhan in December 2019, a pandemic (Cucinotta and Vanelli, 2020). As a result, governments around the world were called upon to take action to protect populations from this virus as much as possible, causing economic activity in many countries to largely grind to a halt. Often, only systemically important businesses such as pharmacies and grocery stores were maintained to ensure basic supplies for the population (Burstedde, 2020).

Most importantly, remote work, in all its variety, experienced a major boost due to employers' objective to not only reduce the risk of a potential virus infection at the workplace, but to also support their staff through the pandemic by allowing them to work remotely (Flores, 2019; Islam et al., 2021; Schwarzbauer and Wolf, 2020). This way, governmental pandemic related regulations could be accounted for, while simultaneously taking advantage of the potential benefits of remote work. It is the author's own practical experience that employees took advantage of not having to commute to the office every day and some even decided to cross borders and to work out of their vacation homes. This added a global perspective to related issues.

Due to advanced technology that is available to any business today, it is possible for individuals to work remotely from almost everywhere without a negative impact to the company (Kłopotek, 2017). From a practical point of view, and again from the personal experience of the author, it can be stated that the quality of the work does not necessarily change, regardless of whether the employee works from of their home in Frankfurt or from a vacation home in Switzerland or any other location in the world, as long as the technical challenges are solved.

However, beyond issues of technology, availability, time zones and general manageability of a global, virtual team and/or workforce (Kłopotek, 2017; Muralidhar et al., 2020), important legal issues might have been neglected when permitting remote work on a larger scale, especially considering that related measures might initially have been considered rather short term (cp.

Czech, 2021). Especially regarding taxation, many challenges and issues remain ignored and thus largely unanswered (Soled, 2021). From a human resource management perspective, the question arises where taxes will need to be paid, in which amount and to which welfare system such international remote workers belong to. Answers to these questions are anything but trivial as they touch on not only legal obligations of the employer but also social security of the employee (cp. Nellen, 2021).

Consequently, this thesis aims to answer the following questions:

What are the benefits of remote work and why is it relevant?

What are the possible compliance risks to the employer and the employee if an individual decides to work remotely from abroad?

How can organizations reduce / avoid these risks?

At first the term remote work will be defined and its relevance as well as its benefits will be outlined.

The following chapter will focus on the compliance risks that remote work can lead to. The research will focus on the following topics: immigration, tax and social security issues. All these legal and fiscal aspects need to be considered separately. The paper will mainly focus on the Swiss perspective but will also include the double tax treaty the Swiss government has concluded with Germany.

The last chapter will outline possible solutions to the employer on how to provide flexibility to the employees, but at the same time reduce the compliance risks involved.

2 Remote Work

Questions: What is remote work?

Why can a remote cross border worker very often not be considered as a posted worker?

Which legal context conventionally needs to be considered?

What are the benefits and disadvantages of remote work?

In the year 2021 Deloitte conducted a survey about the future of remote work (Deloitte Worldwide BRC, 2021; Swanson Switzer, 2021). 36.1% of the respondents expect that 50% of their workforce to work remote and only 3.3 of the respondents expect that 0% of their workforce to be remote (Deloitte Worldwide BRC, 2021, p. 6). Before the pandemic the numbers were very different. 2.5% of the respondents expected 50% of their workforce to work remote and 21.3% expected 0% of their workforce to work remote (Deloitte Worldwide BRC, 2021, p. 6).

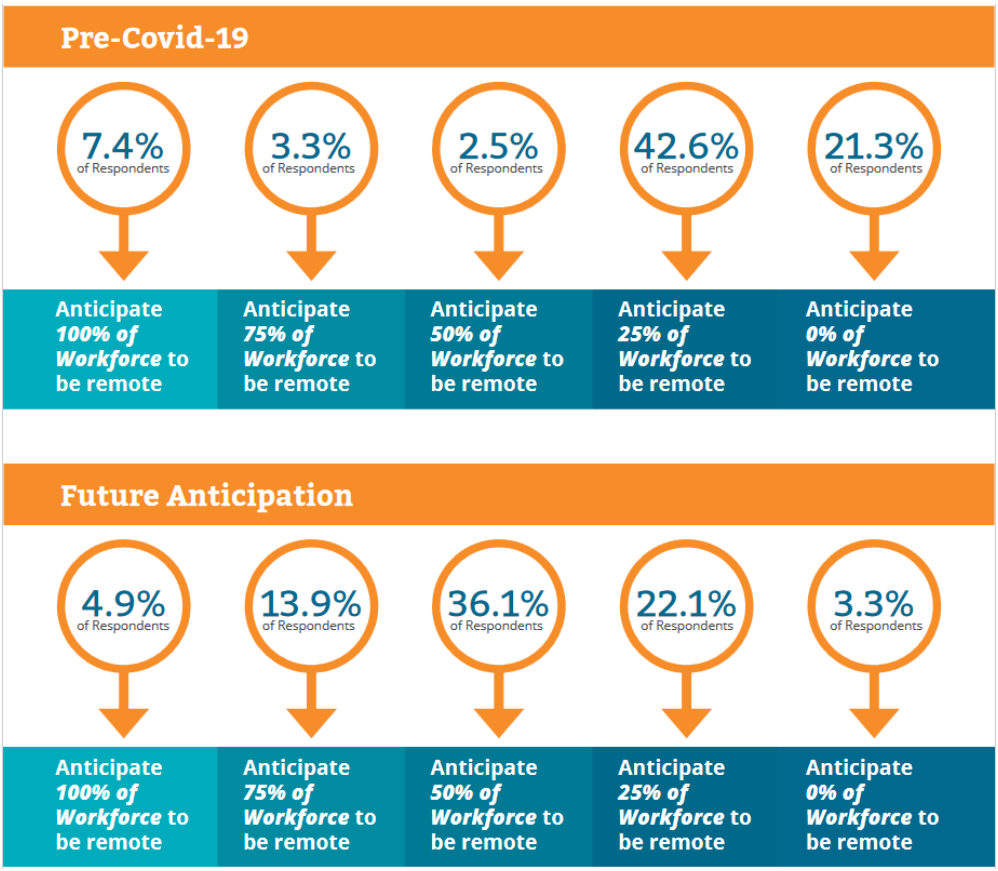

Figure 1: Comparison Remote Work Before and After Covid-19 (Deloitte Worldwide BRC, 2021, p. 6)

In the past, many employers allowed their staff to work remotely only on exceptional bases, for example if they had health problems that would make it impossible to commute to work, or they only allowed it to a handful of employees that were part of the top management (cp. Felstead and Henseke, 2017). However, with the pandemic employers needed to react immediately and therefore most employers allowed their employees to work from home. Suddenly, remote work was the new reality for a big majority of people in Switzerland, as the author can confirm from her own experience.

Thus, as stated in the introduction, remote work has become a new reality and it is likely going to remain popular and more widespread even after the pandemic. The same is true for the related legal and compliance issues.

As a further introductory chapter, laying the foundation for any other additional considerations, this part of the thesis attempts to provide necessary definitions and to distinguish remote work from posted work. This aspect is relevant for the remainder of the thesis as both concepts rely on different legal contexts. Especially with regards to remote work, such legal issues will need to be summarized here. The specifics of remote work when conducted abroad will be discussed. Finally, the advantages and disadvantages of remote work will be briefly discussed.

2.1 Defining Remote Work

Remote work is a flexible work arrangement that allows professionals to work from remote locations outside of the traditional office environment (cp. Charalampous et al., 2019, pp. 51). Remote work arrangements can be temporary or permanent, part-time, or full-time, occasional, or frequent (cp. Araújo and Lua, 2021). It is based on the idea that employees do not need to do their work in a specific place or office to be successfully. Instead of commuting to an office every day, remote employees can work on their projects wherever they want, even while they are on a train, in an air plane or in a café.

Thus, Charalampous et al. (2019, p. 52) provide a brief overview of the chronological development of the term, ranging from telecommuting to "e-work" and define remote work as "… a broader term, used to describe 'work being completed anywhere and at any time regardless of location and to the widening use of technology to aid flexible working practices". […] According to this definition, work can be conducted from home, company sites, hotels, and airports."

When speaking about remote work, one should also be aware that remote work can be split into five different categories, depending on the level of risk and compliance issues (Deloitte Worldwide BRC, 2021, p. 7):

1. Work from home
2. Remote work from anywhere within the local tax jurisdiction
3. Remote work from anywhere within the country of residence
4. Remote work in the office or from anywhere where a permanent establishment exists
5. Remote work from anywhere

Each of the above category has different risks and compliance considerations of remote work. Where category one – working from home – would be considered as having less compliance risks than the last category.

In Switzerland, very often the term "home office" is being used (Schulte et al., 2021) even though the term is not legally defined. The State Secretariat for Economic Affairs, SECO, defines home office as follows (SECO, 2020, p. 4):

"Home office means that employees are allowed to work from their home. This arrangement can be temporary or permanent, part-time, or full-time, occasional or frequent. The homework place is usually connected to the company workplace by electronic means of communication."

However, this definition of home office is not necessarily aligned with the general understanding that people might have. During the pandemic crisis, many employees took a broader approach, as the author of this thesis learned first-hand: They interpreted the term home office as a work from anywhere they chose. This could mean that they could work from their vacation home abroad or even while travelling on a train.

2.2 Defining Posted Work

It is important to make a distinction between posted workers living and working in Switzerland and remote workers. The Council Directive 96/71/EC (OJ L, 1996) defines a "posted worker" as an individual who is sent by his or her employer to carry out work on a temporary basis in a member state other than the State where he normally works. This definition excludes persons who decide on their own to relocate to another country. In that context, especially from a legal

perspective, Fekete (2018) provides a coherent overview of the definitional development of the term, as well as for a more general perspective on the respective legislation Danaj (2018).

Therefore, a posted worker remains under the direction of their employer abroad. It is up to the employer to define the working conditions and to decide when the posting ends. Generally, a posted worker has no Swiss local employment contract and is expected to return to their home country at the end of the assignment. This means that in contrast with a migrant worker in Switzerland, a posted worker is not integrated into the Swiss labour market.

It is important to note that one is dealing with a definitional and legal distinction between terminology here, i.e. remote work vs. posted work, with the latter responding to urgent EU requirements of free movement of labour, while the former results in certain difficulties to be addressed below.

2.3 Labour Law and Work Abroad

As stated above and opposing EU regulations with regards to posted work within the EU, when simply working abroad without any assignment, it is not always clear which labour law applies in the event of a dispute. In such cases, the private international law can be helpful. The Federal Act on Private International Law (IPRG) decides which state may apply its laws in an international context and which is the responsible court (SR 291 - Federal Act on Private International Law (PILA), 1988). Thus, an employment contract is subject to the law of the state in which the employee has his or her place of work. If the person is employed in more than one state, the law of the state in which the employee is domiciled or habitually resident applies.

With regards to remote work this means that, according to Art. 351 Obligationenrecht (OR) (Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches, 1983), an employee who has an employment contract that allows them to work outside of the company office is obligated to either work from home or from another location or office which has been defined in the contract.

If employees are allowed to work remotely, this does not change the fact that there is still an employment relationship according to the Art. 319 OR (Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches, 1983). Accordingly, work is done for remuneration in a subordinate position. The fact that at least some of the work is not performed on the

company's premises does not change the existence of an employment relationship and thus the application of the employee protection regulations of the OR or the public labour law.

While there appears to be legislation according to work contractual issues as well as legal disputes, more issues arise with regards to compliance and taxes. Some related texts summarize these issues very well. Günsel (2021), for example, acknowledges the general problem and states that this could result in a situation in which

"... the conditions for the application of the cross-border commuter regulation provided for in the double tax treaties would no longer be met. Moreover, if working from home were to be carried out over a longer period of time, the 183-day rule […] would lead to the risk of a salary split and correspondingly to a proportional taxation in the country of work and the country of residence."

With respect to such concerns the OECD (2021) publishes a detailed document containing the main concerns, and KPMG responds to these with some broad suggestions of how to solve issues by setting up agencies abroad, or similar (Enache and Puscas, 2021).

To illustrate the problem in more practical relevance Matteotti et al. (2021) detail the following case:

"Upon commencement of employment, the German employee physically carried out his work in Switzerland. At a later date, however, he moved to Qatar, where he continued to work for the Swiss company. The employer subsequently took the view that the obligation to pay withholding tax ceased upon commencement of the gainful employment in Qatar and applied for a refund of withholding taxes already paid. The Federal Supreme Court upheld the employer's view and obliged the tax authorities to refund the unlawfully collected withholding tax (FSC decision 137 II 246 E. 4 and 5). This case law must therefore be kept in mind in the context of a working from home model triggered by the COVID-19 pandemic."

2.4 Advantages of Remote Work

Besides apparent issues that will be the subject of subsequent chapters, there are a number of valid reasons why remote work might make sense for the employer and the employee alike, as there are many others complicating possible advantages.

These days, in most organizations remote work was introduced to mitigate the risk of a COVID-19 infection at the office. But as indicated above, remote work is anything but a recent

development, and there are many more advantages that management should consider when deciding if remote work should continue to be allowed in the future.

First, by working remotely employees are more productive since they can avoid common workplace distractions like background noise and interruptions (Jalagat and Jalagat, 2019). Research shows that professionals that chose to work remotely feel that they increased their productivity and that they could focus better on their work (Galanti et al., 2021). Thus, remote work can help employees and organizations to focus on performance. One could even argue that the office environment can lead to bias and favouritism. Some professionals can create a positive image by coming in early and staying late, while their actual performance or the quality of their work might not be that good.

Second, remote work improves the loyalty and retention of the employees. Many professionals have stated since the early days of remote work that being allowed to work remotely would make them more likely to recommend their company to a friend. In addition, they state they are likely to stay in their current job for the next five years (Kurkland and Bailey, 1999).

Third, employees also have obligations outside of their workplace. Working from home allows them to be more flexible and to spend more time with their friends and families (Sullivan, 2012), for example by having meals together. Full-time remote workers indicate that they are happy in their job especially because of not having to commute to work, and through their increased productivity they have more time for their personal life (Kurkland and Bailey, 1999).

Fourth, Kurkland and Bailey (1999, pp. 54) mention that another reason to implement remote work is that it widens the talent pool available to the organization, since potential employees would not have to relocate for the new job.

Fifth, an organization can create a more diverse workforce through virtual teams (Dolan et al., 2020). Very often these teams consist of members who are separated geographically, sometimes they even live on different continents. Organizations can benefit from their diverse team members and their cross-cultural links.

Sixth, According to Flexjobs, people who work from home for 50% of their work time save up to USD 4.000 per year due to lower transportation cost and the possibility to eat lunch at home instead of with their colleagues at a restaurant or canteen (Courtney, 2021). Organizations can also save around USD 11.000 per year for every employee that works from home according to Global Workplace Analytics (Lister, 2021). Real estate cost can also be reduced by an average

of 32%, as employers do not have to eke out centrally located office space. Employees can thus share a workplace as not all of them are going to be at the office all the time.

Last but not least one of the best ways to reduce the carbon emissions is by reducing the commuter travel (Orange Business Services, 2020). Researchers found that nitrogen dioxide pollution decreased significantly in China, in Western European countries, and in the USA during the 2020 lockdown (Myllyvirta, 2020).

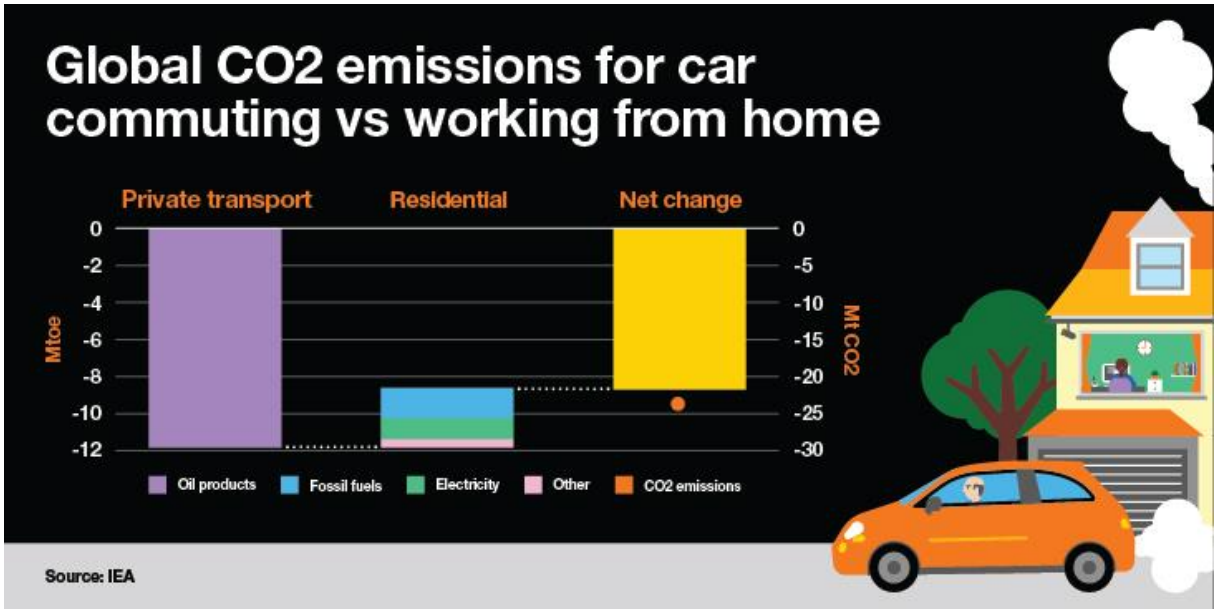

Figure 2: (Orange Business Services, 2020)

2.5 Disadvantages of Remote Work

While remote work has some great advantages, the management of any organization should also be aware of some possible disadvantages.

To start with, remote workers save time by not having to commute to the workplace, however working from home makes it more difficult to separate the private and the working life (Duxbury and Smart, 2011). Employees feel pressured to respond to emails and calls even outside of their regular working hours or to work even when they are sick. According to research by Eurofound, longer working hours have a direct negative effect on employees' health including the physical condition as well as mental health (Vargas Llave and Weber, 2020). Due to the fact that employees work out of the home office, employers have less control of the working hours and they can no longer support their workers by creating a safe and healthy

office environment. Especially in cities like Zurich, the apartments are rather small and not every individual has an additional room available that they can transform into an office. This is more difficult especially for employees with little children that are at home all day, as this might lead to additional interruptions during working hours.

Second, remote work can lead to social isolation (Galanti et al., 2021; Kłopotek, 2017). Especially when starting a new job it is more difficult to get to know one's co-workers or to receive face to face training. Employees seem to be less involved in online meetings compared to the meetings that took place in the office. Another factor is that the number of emails increases as people now prefer to send emails rather than to directly discuss the topic with a colleague. This can also lead to longer response times. Moreover, remote workers can be excluded from company life and the latest news. Isolation may even worsen the health and well-being. However, this negative impact is mainly observed for workers that work remotely every day. If employees go to the office on a regular basis for one or two days a week, they are less likely to feel isolated (cp. Lal and Dwivedi, 2009).

Third, remote work leads to less face-to-face interaction with managers and their direct reports. Managers may find it more difficult to control their employees and to build up trust (cp. Faulconer and Gruss, 2018). On the other hand, some of the employees might take advantage of the flexibility provided to them and work less or even deliver a lower work quality.

Last, COVID-19 has forced employers to build remote work infrastructures. However, these new infrastructures create an additional security risk (Medina-Rodríguez et al., 2020). Therefore, organizations should invest more money into cybersecurity and set up a policy to reduce security risks.

2.6 Interim Summary

There are many types of remote work. An employer has the option to allow their employees to work from home or to work from anywhere, even from a different country. They can ask the employee to come to the office once or twice per week or they do not expect the employee to come to the office at all. Since the pandemic might last for several years, it is important that organizations and their employees find a balance between offering enough flexibility to the employees and to keep everything under control. It can be very risky for organizations to allow their employees to work from anywhere as this can lead to additional tax, immigration, and social security implications.

It is also important to point out that a remote worker who chooses to work from abroad is not considered as a posted worker, since they were not sent by the employer to fulfil a mission abroad. It is critical to point this out to the employees and to set up a policy that clearly states what employees are allowed to do while working remotely for their employer. It is also advisable to ask the employees to come into the office on a regular basis, to meet in small groups or to set up social online events. Otherwise, the employees may lose the connection to their colleagues, they may not identify themselves with the company anymore and they may be less motivated. If the employees and the employer find a good compromise, like a part time remote work set up, this could lead to a win-win situation on both sides.

However, the potential compliance risks in regard to Immigration, Taxation and Social Security still remain. In the following, these issues will be discussed in more detail.

3 The Compliance Risks of Working Remotely from Abroad

Questions: What are the compliance risks involved when working remotely from abroad?

What are the compliance risks in regard to immigration?

What are the compliance risks in regard to taxation?

What are the compliance risks in regard to social security?

To reduce the risk of a COVID-19 infection at the workplace, management of many national and international companies have announced in 2020 that all employees can work from home as per immediate effect. As outlined above, related organizational measurements, especially regarding remote work, are still in effect today. However, there have been reports of cases where organizations have withdrawn the permission to work from places other than the assigned workplace. The reasons for that can be manifold, but the author of this thesis noted that in many cases companies underestimated the potential compliance risks and complexity of cross-boarded tax legislation.

Therefore, this chapter will focus on the related issues, structured according to immigration, taxation and social security.

3.1 Immigration and International Free Movement Agreements

Foreign (remote) workers who want to work in Switzerland require a work permit or are subject to registration requirements (cp. Beerli et al., 2021). Depending on the nationality of the employee, different regulations and minimum requirements apply for obtaining a work permit (cp. Cristelli and Lissoni, 2020). As can be expected for people from the EU or EFTA states the burden to receive the approval from the authorities is lower compared to persons from third countries. For example, the Agreement on the Free Movement of People (FMPA) aims to gradually open the labour markets (Dostál, 2018). The agreement between the EU and Switzerland has been in force since 2002. It gives Swiss nationals uncomplicated access to the EU labour market and facilitates access to the Swiss labour market for people who belong to an EU country.

The purposes of the Agreement on the Free Movement of People are the following (cp. Dostál, 2018):

- The agreement is the basis for the employment of foreign workers

- The right to enter and take up residency in Switzerland
- The right to be employed in Switzerland
- The right to open a business in Switzerland / The right to be a self-employed person
- Equal living and working conditions for Swiss nationals and foreigners
- The right to remain in Switzerland after termination of employment

The work permits must be obtained before taking up employment in Switzerland. They are issued by the respective cantons.

3.1.1 Work Permits in Switzerland for EU Nationals

Different types of work permits can be distinguished. To illustrate the most common ones, in the following, information from the Schweizerische Eidgenossenschaft (2021) regarding work permits for EU and European Free Trade Association (EFTA) member states will be summarized:

Work Permit B

This type of permit is issued in the case of an unlimited employment relationship or in the case of a limited employment contract exceeding 12 months.

Short-term Work Permit L

The L permit is valid for a maximum of 364 days and is normally issued for limited employment contracts of less than a year. The authorized duration of stay in Switzerland is in line with the duration of the limited employment contract.

Cross-border Commuter Permit G

The maximum duration of the cross-border commuter permit G is five years. A daily return to the home country / country of residence is required.

The Residence Permit C

The residence permit C has the advantage of employees no longer being subject to withholding taxes. Persons from the EU and EFTA member states can apply for this permit after 5 years of residence in Switzerland.

3.1.2 Registration Requirements

Workers from the EU or EFTA states may work in Switzerland for up to 90 working days per calendar year (cp. Dostál, 2018; Schweizerische Eidgenossenschaft, 2021). All that is required is a notification to the Office of Economic Affairs and Employment. It is important to note that the 90 working days are limited to the company and to the person (MB Meldepflicht). The sending employer from abroad must carry out the notification procedure as soon as the employee provides services in Switzerland for more than eight days per calendar year.

If the employer does not comply with the laws, they must expect a fine of up to CHF 5,000 as well as a further charge for the inspection costs incurred according to Art. 9 EntsG (Bundesgesetz über die flankierenden Massnahmen bei entsandten Arbeitnehmerinnen und Arbeitnehmern und über die Kontrolle der in Normalarbeitsverträgen vorgesehenen Mindestlöhne, 1999).

The wage and working conditions that are in force in Switzerland must be followed and will be reviewed by the relevant authority, especially when the employer chooses to use the "Meldeverfahren" and the employees are in Switzerland for less than 90 days (cp. Lampart and Bühler, 2019). This applies in particular to salary, working hours, the number of vacation days, safety at work and equal treatment of men and women.

3.1.3 Admission Requirements for Third Country Nationals to the Swiss Labour Market

Third country nationals who wish to work in Switzerland must apply for a work permit and are only admitted on a limited basis (Schweizerische Eidgenossenschaft, 2021b). The conditions for admission are laid down in the Federal Act on Foreign Nationals (AuG) and in the Ordinance on Admission, Residence and Gainful Employment (VZAE) (European Union, 2009; Schweizerische Eidgenossenschaft, 2021a). A person from a third country must fulfil the following conditions to obtain a work and residence permit:

Economic Interest

According to Art. 19 and 20 AuG third country nationals will be granted a work permit if this is in the economic interest of Switzerland. The situation on the labour market and the individual's ability to integrate must be examined.

Quotas

In 2021, a total of 8,500 qualified third country nationals may be employed in Switzerland. The Federal Council has slightly increased the maximum numbers compared to the previous years due to the continuing demand of the economy (SEM).

Qualifications

The most important personal requirements are that the individual has a university degree and several years of work experience. It is also helpful if the employer can prove that the individual is a specialist or a manager. Furthermore, the Immigration authorities (SEM) usually consider the following criteria:

- Language skills
- Age
- Integration
- Social adaptability

According to Art. 21 AuG, persons from third countries are only granted a permit if the potential employer can prove that in spite of long and intensive search efforts he or she has been unable to find a suitable candidate on the Swiss and on the EU / EFTA labour markets. Furthermore, the job must have been advertised at the Regional Job Centre (RAV).

Third country nationals must be paid equal to Swiss and EU/EFTA nationals (Art. 22 AuG). The immigration office reviews whether the wage and working conditions of foreigners correspond to the usual conditions in the local labour market. By doing this, the authorities want to protect both the third country nationals working in Switzerland as well as the Swiss citizens. This measure also intends to prevent wage dumping.

Furthermore, third country nationals can only be admitted to the Swiss labour market if they have an appropriate place to live. This means that the size of their home has to be big enough for the number of people living there (Art. 24 AuG).

3.1.4 Types of Work Permits for Third Country Nationals

Similarly to EU nationals' regulations, different types of work permits can be distinguished for non-EU or non-EFTA member states citizens. Again, the Schweizerische Eidgenossenschaft (2021) will be cited generally:

Work Permit B

Usually, a third country national will receive a B permit which is limited to one year. The initial permit is subject to a quota. The employer must apply for a renewal of the B work permit every year for as long as the employee is intended to stay in Switzerland. However, the maximum duration is five years. If the employee wants to move to another canton, an approval from the authorities will be required.

Work Permit L

If the intended stay is less than one year, the employee will receive an L permit. This type of permit is not subject to a quota up to a duration of 4 months. After that, it is also subject to a quota.

Residence Permit C

The residence permit is the most beneficial permit. The employer does not have to deduct withholding taxes from the employee's salary and the individual does not require an approval from the authorities if he or she wants to change the canton or the employer. However, third country nationals can only apply for a C permit after they lived in Switzerland for 10 years.

Cross-border Commuter Permit G

Third country nationals can also obtain a cross-border commuter permit. However, they must have a permanent residence in a border region to Switzerland. The permit is limited to one year and is only valid for the border region of the issuing canton. If the person wants to change jobs or even the professions, this must be approved by the authorities.

Lastly,

Management transfer (GATS)

If a third country national is sent abroad on an assignment from their employer to work in Switzerland for a limited period of time, and this individual is considered a manager or above, then the individual can benefit from the "General Agreement of Trade in Services" (European Commission, 2021) and may stay in Switzerland for up to 48 months. The duration of the work permit is in line with the duration of the assignment.

3.1.5 The Schengen Agreement

The Schengen Agreement has been in force since 2008. Based on this agreement, the systematic border controls in the Schengen area have been abolished. This makes it easier for international tourists and workers to travel. Another advantage of the Schengen Agreement is the Schengen visa for third-country nationals (Dostál, 2018; *SchengenVisaInfo.com*, 2021). The Schengen visa may also allow the holder to stay in other Schengen states. This is particularly important for international organizations that have several branches in different Schengen countries, because it means that an employee who is a third country national can easily visit another branch as long as the Schengen visa is valid.

Such agreements, however, mean that it is not easy for remote workers to receive a Swiss work permit. While EU/EFTA national can enter Switzerland without a visa requirement, they will also need to apply for a work permit in Switzerland to be allowed to work from their home office in Switzerland. In general, an EU/EFTA national who has a local Swiss employment contract, that meets the Swiss requirements (salary, vacation days etc.) will receive the work authorization. Even if the individual is on an expat assignment or self-employed in Switzerland a work permit will be granted if the requirements are met.

EU/ EFTA nationals that intend to stay in Switzerland for more than 8 days for business purposes must report their stay to the immigration authorities (Meldeverfahren). If the intended stay exceeds 90 days, the application of the work permit L or B will be required. Some third country nationals like Indians even require a Schengen visa to enter Switzerland as a tourist. Working in Switzerland based on a tourist visa is prohibited and will lead to fines (cp. Schweizerische Eidgenossenschaft, 2021a)

For third country nationals it is even more difficult to receive work authorization since there is a limited amount of work permits available per calendar year. In addition, the employee must be highly qualified to receive the approval. If a company sends a third country national to Switzerland who is part of the management or a specialist the employee may qualify for the GATS. This process does not require an employer to prove that they could not find an equal qualified individual within Switzerland or the EU / EFTA states.

3.2 Taxation

If an employee works remotely for his employer and remains in the home country, this does usually not have any impact on the tax liability. However, if the employee choses to work from abroad, especially for an extended period of time, this could lead to additional obligations for both the employee and the employer.

3.2.1 Tax Residence

An individual is considered a tax resident of Switzerland if he or she maintains a tax domicile in Switzerland (Oberson and Hull, 2011, pp. 3). If an individual lives in Switzerland with the intention to remain in Switzerland, then this person establishes a so called “tax domicile” (Oberson and Hull, 2011, pp. 107). A “domicile” is defined as the place where a person lives with the intention of a permanent stay. This can also be defined as the centre of vital interests. The centre of vital interests is where the individual has their personal relationships, where their friends and family members live, where they spend their free time and where they have active club memberships. However, an individual cannot freely choose the tax domicile. When the authorities must evaluate where the personal interests of a person are, they look at objective criteria and they do not only consider the declarations made by the individual.

On the other hand, a place of work does not qualify as a tax domicile (cp. Collins and Shackelford, 1996). An individual establishes a tax residence if he or she stays in the country for a minimum of 30 days and when they carry out a gainful activity, or if the individual stays for longer than 90 days. In this case no gainful activity is required to become a tax resident. If the individual exceeds the minimum period, then the unlimited tax liability will apply retroactively to the first day when the person arrived in the country. When calculating the number of days one spends in Switzerland all days must be considered, even weekends, public holidays, or vacation days (Oberson and Hull, 2011, pp. 3).

According to the article 3 of the Federal Act on Direct Federal Taxation (Schweizerische Eidgenossenschaft, 2021a), an individual becomes taxable on the worldwide income when he or she establishes a tax residence in Switzerland. In addition, one should consider that when a taxpayer leaves Switzerland to move to another country, this individual will continue to have the tax domicile in Switzerland until a tax domicile is established in the new country. This approach would even apply to a globe trotter who leaves Switzerland to travel the world. These persons would still be subject to an unlimited tax liability in Switzerland until they establish a

tax domicile in a new country. This would even be the case if they would live on a boat for several years. In short, the authorities will only accept that a person has a new tax domicile when the individual cuts ties with the former tax domicile and established a new tax domicile (Schweizerische Eidgenossenschaft, 2021a).

3.2.2 Limited Swiss Tax Liability

An individual can become taxable even if he or she does not have a tax resident status in Switzerland. One can become subject to a limited tax liability by creating an economic attachment according to article 5 of the Loi fédérale sur l'impôt fédéral direct (LIFD) (Schweizerische Eidgenossenschaft, 2022).

This applies in particular to the following groups:

- Members of the board of directors or Management of a Swiss company receiving royalties or other remuneration
- Cross-border workers,
- Owners of a real estate situated in Switzerland

If a person becomes taxable based on the economic affiliation, the taxation is limited to the income that was generated in Switzerland (Art. 6 LIFD). However, the worldwide income also needs to be declared in the tax return in order to determine the applicable tax rate (Art. 7 LIFD). This method is called the progressive tax rate principle.

3.2.3 Switzerland and its Double Tax Agreements

Double Tax Agreements (DTA) are international treaties that are binding under international law and are an integral part of domestic law. If the internal law contradicts a DTA, the DTA is to be given precedence and the internal law is restricted. The DTAs take precedence over federal law and cantonal tax law. The internal tax law of Switzerland is not abolished but forms the basis for any taxation (State Secretariat for International Finance, 2022).

Thus, a DTA sets limits to the contracting state in asserting tax claims on Swiss territory. The DTAs contain allocation norms which determine which state is allowed to tax which tax object. According to this, it is up to the respective state to decide whether and to what extent to tax the taxable object on the basis of domestic law (Mäusli-Allenspach/Oertli, 2010 pp 561).

Accordingly, Switzerland levies taxes in an international context if the relevant DTA assigns the right to tax to Switzerland and if there is an internal legal basis (State Secretariat for International Finance, 2022). However, the DTA can also restrict the right to tax.

3.2.4 The Tie Breaker Rule

Since Germany is a neighbouring country of Switzerland and many Germans travel to Switzerland for either work or leisure, it makes sense to have a closer look at the DTA between Germany and Switzerland.

The first DTA between Germany and Switzerland was signed in 1976 and defines which country has the taxation right (LawyersSwitzerland.com, 2019). The double tax treaty between Switzerland and Germany includes the tie-breaker rule, which helps to determine which country has the right to tax a person as the country of residence in case the person qualifies as a resident according to the domestic laws of Germany and Switzerland (Art. 5 DTA Germany and Switzerland). For people that usually reside in more than one country or for employees who work in one country and reside in the other country, this is very common (Maisto, 2010, pp. 576). As mentioned before the country of residence taxes the worldwide income and the other country taxes only that income that was generated in that country. Hence, a double taxation of the same income is avoided.

The tie-breaker rules are based on facts and circumstances. They provide a step-by-step test that helps to determine which of the two countries can tax the worldwide income (cp. Maisto, 2010, pp. 576):

1. The individual is considered a treaty resident in the country where they have a permanent home.

2. If the individual has a permanent home in both states, then one must determine where the “centre of vital interest” lies by considering the family as a criterion.

3. If the centre of vital interest cannot be determined, the next step is to check where the individual habitually resides.

4. If it is not possible to determine where the person habitually resides, the tax residency will be determined according to the nationality of the individual.

5. Is the individual a national of both countries or neither of the two countries, then the tax authorities of both states must decide by mutual agreement which country should be al-lowed to tax the person as the country of residence.

Once the country of residence has been determined based on the DTA, the next step is to decide which country has the right to tax the employment income.

3.2.5 The 183-Day Rule

According to article 15 DTA between Germany and Switzerland, the employment income is assigned to the country where the work is carried out (KPMG, 2019). However, there are a few exceptions to this basic rule. The most important one is the 183-day rule, which states that the place of work does not take precedence if the employee was physically present in the other country for less than 183 days in any twelve-month period, the salary was paid by an employer who is not based in the working state, and the personnel costs have not been passed on to a permanent establishment at the place of work (Federal Ministry of Finance, 2006).

Consequently, if the employee stays in the country for more than 183 days or if the personnel costs are borne by a permanent establishment, then taxation is again based on the place of work principle. This exception is very important for posted workers as it enables their employers to send them to other countries for work, without the workers becoming subject to income taxation abroad.

3.2.6 Special Groups of Employees

When defining a tax strategy, special attention should be paid to a certain kind of groups of employees as there are special agreements in place between Switzerland and Germany.

The cross-border commuters

A cross-border commuter is a person who works in one country and is domiciled in another country. These commuters usually return to their place of residence every day(Federal Ministry of Finance, 2006, pp. 5). Art. 15a DTA Switzerland and Germany determines how cross border commuters should be taxed on their employment income.

A cross-border commuter from Germany (country of residence) to Switzerland (country of work) will be subject to an unlimited tax liability in the country of residence (Germany).

Switzerland, as the country of work, has the right to deduct a tax at source of 4.5% from the income of the individual. The paid withholding tax in Switzerland can be credited in the country of residence (Germany). Thus, as an exception to the rule, income earned by cross border commuters is mainly taxed in the country of residence (Art. 15a DTA Switzerland and Germany).

It should be noted that the cross-border commuter status according to the tax law is not automatically linked to the Swiss cross-border commuter permit. If the person does not return to the place of residence (in Germany) every day, the cross-border commuter status may no longer apply. This is the case if a person was unable to return to the place of residence for more than 60 working days within a calendar year (cp. KPMG, 2019). A non-return day is defined as a day when it was not possible for the employee to return home due to business reasons (long meetings, business travel etc.).

According to the German-Swiss consultation agreement a return to the home place is considered as unreasonable if the daily commute from the workplace to the place of residence by car is more than 100 kilometres or if the commute by public transportation takes longer than 1.5 hours one way (cp. KPMG, 2019). Hereby it is the responsibility of the cross-border commuter to prove that he or she did not return home. A confirmation by the Swiss employer is required for this. In case the employee stays at the place of work for private reasons, this has no influence on the tax status.

If the status as a cross-border commuter no longer applies, the income generated from employment is fully subject to the regular Swiss tax at source rates (that usually apply to foreigners) on their workdays they spend in Switzerland. The German workdays will be taxes in Germany.

The international commuter

The term “international commuter” describes a person whose main residence differs from the place of work and for whom a daily commute is not possible due to the long distance (ECA International, 2019). Usually, the international commuter returns to the main place of residence on the weekends, since his or her centre of life is there.

Employees who carry out a gainful activity in one country and who are married or live together with their partner in another country, the ties to their family are stronger than the ties they created at their workplace (European Union, 2021). Therefore, the place where the family is

located will be considered as their tax domicile, even if they only return home on weekends or when they are on vacation.

The taxation of the international commuter is not explicit mentioned in the DTA between Switzerland and Germany. Therefore, the general rules apply. Accordingly, the individual is subject to an unlimited tax liability at the main residence and subject to limited tax liability at the place of work. Therefore, the state where the individual works may tax the employment income.

Managing Directors

Article 15 paragraph 4 of the Swiss-Germany DTA contains the exemption of the managing director (Federal Ministry of Finance, 2006, p. 5). Managing directors are usually persons who are registered in the commercial register as authorized signatories.

The centre of interests for managing directors is at their place of work. However, the managing director still has the option to prove that the ties with the place where their family is located are stronger.

Accordingly, the employment income of a managing director of a corporation is taxed in the country in which the employer is registered. The place of work and the domicile of the executive are not decisive. If the executive employee is a resident of Germany and works for a corporation based in Switzerland, the right of taxation falls to Switzerland.

Board of Directors

The income of the Board of Directors members is subject to taxation in the state, where the company is registered. The members of the board of directors may not engage in any operational activity. If a member of the Board of Directors receives a remuneration for an operational activity, the income will be taxed in accordance with article 15 paragraph 1 or 4, and will therefore be treated like managing directors (cp. Federal Ministry of Finance, 2006).

3.2.7 The Principle of the Economic Employer

If an employee is posted to a subsidiary abroad, one must check whether the receiving company in the host country becomes the economic employer.

The Cantonal Tax Office has listed the following requirements that have to be met in order for the receiving company to become the economic employer of an assignee (IB zur faktischen Arbeitgeberschaft):

- The employee's work performance abroad is essentially the same as the company's business activity in the home country.
- The receiving company carries the responsibility and the risk for the employee's performance.
- The receiving company has the authority to give instructions.
- The host company bears the wage costs.
- To what extent will the employee be integrated in the company abroad?
- Which company determines the work the employee must carry out?

According to the OECD treaty the company that bears the responsibility and the risk and that benefits from the work performed by the employee will be considered as the employer.

If based on the above criteria, the receiving company is qualifying as an economic employer, while the company in Switzerland is obliged to pay withholding taxes.

According to internal practice, the cantonal tax office in Zurich only examines if the receiving company qualifies as an economic employer if the employee spends more than 3 months in the country. Before the threshold of 90 days, the Zurich tax office assumes that the entity in the host country is not considered an economic employer due to the short stay in Switzerland. It should be noted that only the workdays the employee physically spend in Switzerland will be taxable in Switzerland (IB zur faktischen Arbeitgeberschaft).

3.2.8 The Swiss Withholding Tax Obligation and the Reform of 2021

Unlike in many other countries, in Switzerland no withholding tax is being deducted from the employment income. The following two groups are an exception:

- Employees from abroad, who are resident in Switzerland but who do not have a residence permit C, are taxed at source on their employment income according to article 87; 1 DBG.

- Individuals who are domiciled abroad and who are therefore subject to a limited tax liability in Switzerland.

In both cases the employer is responsible for deducting the withholding tax and remitting it to the cantonal tax authorities. The cantonal tax authorities administer the withholding taxes. Each canton has its own withholding tax guidance (Mäusli-Allenspach/Oertli, 2010 pp 277).

The withholding tax is calculated and deducted based on the monthly gross income (IB quellensteuerpflichtige Personen Kanton Zürich). This deduction includes cantonal income taxes as well as the federal income taxes. For many employees, the deduction represents the entire tax liability in Switzerland.

If an individual earns more than CHF 120,000 gross per year and it subject to unlimited tax liability in Switzerland, then the person is obliged to file a tax return according to article 4 QStV (Verordnung des EFD über die Quellensteuer bei der direkten Bundessteuer, 2018). The income and wealth tax due will be calculated based on the worldwide income and wealth. The withholding tax already paid is credited against the assessed tax amount (Ruch, 2002 pp 275).

Individuals domiciled abroad may also be subject to withholding tax on their employment income. These persons are subject to limited tax liability in Switzerland. This also applies to Swiss nationals who live abroad.

This is particularly the case for the following types of income (Ruch, 2002 pp 273):

- Income from employment of employees who work in Switzerland as cross-border commuters or as international commuters
- Income received by artists, athletes, and speakers for their activities in Switzerland
- Remuneration of the board of directors and managing directors of Swiss companies

In these cases, the deducted withholding tax represents the definitive tax burden. The taxpayer may not file a tax return in Switzerland to correct the tax tariff. Unless if at least 90 % of the worldwide income is taxable in Switzerland in the corresponding tax year. The legal basis for this can be found in art. 14 QStV.

Upon obtaining the C permit, a foreign person is no longer subject to Swiss withholding tax but to the ordinary tax assessment. This means that the person must submit a tax return in any case, regardless of whether he or she reaches the CHF 120,000 gross annual salary limit.

Exemption from the withholding tax obligation

Employees liable to withholding tax may be exempted from the obligation to pay tax if the following conditions are cumulatively met (Ruch p 277):

- The Swiss company is not the economic employer
- The worker stays in Switzerland for less than 183 days within a 12-month period
- The employee does not receive any remuneration out of Switzerland
- There is no direct cross-charges of the wage costs to the permanent establishment in Switzerland.

If the above conditions are not all met, then the salary of the person concerned is subject to tax from the first day of work in Switzerland.

The Reform of 2021

Former legislation in Switzerland regarding withholding tax has been revised in 2016, and is in effect as of January 2021.

Before that date, if an individual earns more than CHF 120,000 gross per year and is subject to unlimited tax liability in Switzerland, then the person is obliged to file a tax return. The income and wealth tax due will be calculated based on the worldwide income and wealth. The withholding tax already paid was credited against the assessed tax amount.

According to a respective report from PricewaterhouseCoopers (2021),

"... employees can no longer use a withholding tax tariff correction form to claim deductions from pension buy-ins and Pillar 3a contributions. Any potential tax benefit from these deductions are to be claimed solely through the filing of a Swiss tax return. [Moreover] Swiss tax residents earning less than CHF 120,000 p.a. and taxed at source may voluntarily file a tax return to claim additional deductions. However, actual tax rates applied in the Swiss tax return may be higher than the average withholding rates applied through payroll resulting, in some cases, a higher tax liability that may partially or fully offset the expected savings from pension

buy-ins and Pillar 3a contributions. [T]ax resident in Switzerland who are taxed at source and do not reach the gross salary threshold of CHF 120,000 are mandatorily required to file a tax return reporting worldwide income and assets if they have other taxable personal income or assets."

Therefore, regarding the withholding tax there are currently many open questions (cp. PricewaterhouseCoopers, 2021).

3.2.9 Permanent Establishment

An important issue to address is the question when the home office in Switzerland leads to a permanent establishment for the employer. From a Swiss perspective, a permanent establishment is a fixed place in which the business activities of a company are carried out either partially or as whole (cp. Skaar, 2020). This means that the concept of a permanent establishment is more narrowly defined in the Swiss internal tax law than in other countries, where, for example, a fixed place of business is not always required.

For a business activity to constitute a permanent establishment, it must last for a certain time and have a certain importance for the business (cp. Schaffner, 2013; Thorpe, 1997). The temporary business activity in a home office for a few weeks or months – for example as a result of a pandemic – does not in principle create a permanent establishment. This is even the case if the activity is carried out temporarily at home and it is of crucial importance to the business. Even activities like answering emails in the evening or preparing for business meetings do not in principle create a permanent establishment, even if these activities are regularly carried out from home.

However, if a substantial part of the work is performed in the home office over a period of at least six to twelve months, this activity can lead to a permanent establishment at the place of the home office (Olivier, 2002, pp. 866). In such cases, a home office is a fixed facility in which part of the company's business activities are regularly carried out. From a Swiss perspective, it is also crucial whether the "business facility" is allocable to the employer. This is the case if the home office is under the employer's power of disposition. For the employer to have the power of disposition, it is not necessary to have unrestricted access to the home office, or for the home office to be owned or rented by the employer. The important factor is whether the employer instructs the employee to use the home office for business purposes. This is generally the case if the employer instructs the employee to carry out certain business activities in the

home office or if there is an agreement in the employment contract. Another criterion is whether the employer also bears the costs for the home office. In a worst-case scenario, if the employer does not provide the employee with a suitable workplace and the employee is therefore forced to work from home, this could lead to a permanent establishment at the location of the home office of the employee (cp. Skaar, 2020).

In the opposite case, if the employer provides a suitable workplace that is permanently available to the employee and the individual decides to work from home against the employer's will, the home office does not lead to a permanent establishment due the employer's lack of power of disposal, regardless of the scope of the activity that is carried out there. However, so far, the Swiss case law has not dealt with this topic in detail.

There are many uncertainties when it comes to the question if a home office leads to a permanent establishment. If a home office in Switzerland creates a permanent establishment, this leads to a limited tax liability of the employer. If the employee does not generate a revenue by the activities in the home office, the allocation of the profit for taxation is more difficult.

3.3 Social Security

Another important issue deals with the question whether remote work has any impact on social security contributions, similarly to the challenges described above regarding tax. Obviously, when employers allow their employees to work remotely, they must consider the social security laws of the countries involved. It is safe to assume that when the workplace is abroad for an unlimited period of time, the individual and the employer will become subject to social security contributions at the specific location. To avoid social security obligations to multiple states, Switzerland has concluded social security agreements with various countries.

Similarly, to the tax issues discussed before, for social security purposes, states can be divided into three categories:

1. Countries applying the EU regulation
2. Countries that have signed bilateral social security agreements with other states
3. Third countries

If a person is a Swiss national or a national of an EU/EFTA member state, then only the social security scheme of one member state applies (Jorens and van Overmeiren, 2009). This is governed by the EC regulation 883/2004 (Schoukens and Pieters, 2009). The agreement is designed to allow people in the EU and Switzerland to settle and work in any other EU country or Switzerland without that person incurring gaps in their social security coverage.

3.3.1 Social Security Principles

The following principles are relevant to both the Agreement on the Free Movement of People and the bilateral social security agreements (cp. European Union, 2004; Jorens and van Overmeiren, 2009; Verschueren, 2009):

1. The principle of equal treatment

Any kind of discrimination based on nationality is prohibited. There shall be no difference in treatment with regard to employment, pay and working conditions. Foreign nationals shall be treated equally to Swiss nationals (Ruch, 2002 pp 221).

2. The place of employment principle

In determining the applicable social security law, the place where the employee works is decisive. This means that, in principle, every person is subject to social security contributions in the country in which he or she works and not in the country in which he or she is domiciled. This regulation is generally valid and is not subject to any time limit (Ruch, 2002 pp 221).

3. Subjection to the legislation of one country

The laws of one country are applicable even if the employer's domicile or registered office is in another country or if the gainful activity is carried out in several countries. The employer who is located in another country can also be obliged to pay contributions.

The following criteria must be considered in order to determine where the employee and employer are subject to social security contributions (cp. European Union, 2004; Pennings, 2009; Schoukens and Pieters, 2009):

1. place of employment

2. place of residence of the employee

3. registered office of the employer

4. main activity

If an employee is employed in several member states, the respective person is subject to social security in the country in which they establish a residence. The prerequisite for this is that the person also pursues an activity in the country of residence. If this is not the case, the person is subject to social security in the country in which the employer has the registered office or a permanent establishment and in which country the person is mainly employed.

4. The totalization principle

If a person has worked in several states during his or her life and has contributed to the social security systems of several member states, then they can apply to receive pension payments from these states once the individual reaches the retirement age. The individual would even be eligible for benefits in the event of disability or in the event of death (Ruch p 222).

5. The export of benefits principle

An individual who has made social security contributions to one or more member states retains the right to claim benefits, even they are a resident in another state when the benefits are claimed. This means that a person who has worked in Switzerland and Germany and who has made social security contributions to both schemes will retain pension rights even if they spend the retirement in Spain.

There is a general obligation to export Swiss benefits to EU countries, except for the unemployment benefits, the integration measures of the IV and the cantonal supplementary benefits. In general, Swiss social security contributions are due on the salary paid to an employee if the individual is a resident in Switzerland or if he or she receives a remuneration for business activities carried out in Switzerland (cp. Elert and Brooks, 2017). This is the case even if the employer is domiciled abroad. However, the employee has to do a business activity in Switzerland which exceeds three consecutive months in a calendar year. If an employee becomes subject to social security obligations in another state, then the employer should register himself in the foreign country to be able to contribute to the social security system of that state.

3.3.2 The 25%-Rule

The 25% rule states that the social security system of that state applies, in which the worker has his or her residence and where he or she carries out a substantial part of the work activity (European Commission, 2022). A workload of at least 25% of the total work activity is considered as a substantial part ("25% rule"). However, if the employee has a foreign employer and if he or she spends less than 25% of their work activity in the country of residence, then the social security system of the country where the employer is located applies.

Working from home can affect the applicable social security system (cp. Martinsen et al., 2019; Mei, 2003). As already outlined, a home office in Switzerland can lead to a permanent establishment of the foreign employer in Switzerland. In this case, the social security authorities may take the standpoint that the Swiss permanent establishment and not the foreign employer is to be considered as the employer. This is even more the case if the employer registers the permanent establishment in Switzerland as a branch office.

In this case, due to the 25% rule, if the employee spends more than 25% of their working time in the home office, then this also generally leads to the application of the social security system of the country where the employee has their place of residence/home office. This is the case even when the employer was not informed by the employee about their home office abroad or even when this happened explicitly against the employer's will. To prevent these things from happening, employers could include in the employment contract that employees may not spend more than 25% of their working time at their place of residence and that they must keep a calendar, which allows them to control the number of days spend abroad.

In exceptional situations, an employee may spend a substantial part of their working time in the home office, even if this was not intended when the employment contract was set up. This could be due to personal reasons, like health reasons or due to a pandemic.

Because of the COVID-19 pandemic the Federal Social Security Office announced that the applicable social security system is based on the usual place of work. If a substantial part (25% or more) of the working time is temporarily spent in the home office abroad, due to the pandemic, this should have no effect on the applicable social security system. However, it is recommended to request a binding confirmation form the social security office.

3.3.3 The A1-Certificate

By issuing the A1 certificate the social security institutions confirm that the employee who is currently working abroad for a limited period of time continues to be subject to the social security system of his home country (cp. European Union, 2022; PricewaterhouseCoopers, 2019). Based on the A1 certificate the employee and the employer do not have to contribute to the social security system of two countries. The maximum posting period is two years. In principle, the form would have to be applied for from day one when an employee is on a business trip abroad. However, this is rarely done.

The A1 certificate simplifies the free movement of people, as a foreign employee can work abroad for a short period of time without having to change the social security system. The employer must apply for the A1 certificate before the employee starts working abroad (European Union, 2022). Although the European Court of Justice also recommends applying for the A1 as early as possible, the certificate can also be applied for during the posting.

The following criteria must be fulfilled (cumulative) in order to be allowed to apply for an A1 certificate (cp. European Union, 2022):

- The assignment period is for no longer than 2 years
- Significant activities of the posting company in the posting state
- The employee was covered under the social security system of their home country before they went on assignment
- The expat is not sent abroad to replace another posted worker
- The employee is a Swiss or EU national
- The posted employee has an ongoing employment relationship with the company in his home country

3.4 Interim Summary

As can be seen from the above stated discussion, the subject of remote work from abroad, especially for an extended period of time, is a complex one. This is regardless of the decades of experiences of related issues, EU, Swiss, or further international regulations, and even despite the past and present urgency related to the COVID-19 pandemic.

In a nutshell it can be summarized that the issue of work-related movement across a border touches on a number of legal issues regarding immigration, and thus also tax liabilities, as well

as questions addressing the responsibilities towards and rights towards local and home social welfare systems. Many of these issues depend on any legal agreements between the respective countries, the reasons for working abroad, the duration of the stay, as well as the nature of one's own job and/or assignment. What needs to be stressed is that many organizations might have underestimated the readiness of employees, at least in some industries, to work remotely abroad, and their own legal and fiscal responsibilities when permitting such.

Therefore, the following chapter is concerned with which actual organizational measures might be appropriate to avoid the potential risks and downsides of remote work in pandemic times.

4 Possible Solutions

Questions: How can organizations reduce compliance risks that remote work from abroad creates?

During the pandemic global mobility professionals might receive a lot of requests from employees who want to work from home or even from another country. Moreover, management might consider such measures as very appropriate considering the current COVID-19 circumstances. On the one hand, organisations should be as flexible as possible in implementing related measures. On the other hand, they should also minimize the compliance risks for the employee and the organization.

From the author's experience it can be said that there are cases in which employees have already started to work remotely from abroad. If this is the case, the responsible HR professional must react promptly to find a suitable solution to avoid any legal dangers. There will never be an ideal solution that fits all, instead each case must be evaluated separately considering the circumstances of the employee, their position in the company and the legal requirements of the country where he or she wishes to work from.

This chapter aims to address the potential solutions in addressing compliance risks related to remote work from abroad. It is based on the issues detailed before, however, in terms of suggested solutions, it is focused on the author's own personal professional background and expertise in the field. In this way, novel, practical and applicable solutions are the main goal of this section.

4.1 Risk Assessment

Since each case of remote work from abroad might be different, an individual risk assessment is required. General management should work together with the HR department in the host and the home country, the legal department, the corporate tax department, the payroll department, the responsible business manager, etc., and it is also advisable to consult an external immigration, tax, social security and labour law consultant. Involving different parties will improve the analysis and then the stakeholders can make a decision together.

Since the risk assessment is so complex it should be managed centrally, for example at the headquarters of a company, and it should not be managed by individual legal entities as this can lead to inconsistency and probably not all stakeholders would be involved. Another advantage

of managing all cases centrally is that the team members benefit from experience, decisions can be made faster over time and it is more likely that employees are being treated equally.

When preparing the risk assessment, the following areas of concern should be covered:

Position of the employee

- Can the employee's job be done remotely?
- Is the employee in a leadership position? If the employee is part of the leadership team or a board member, this may have an impact on the corporate residence as the place of effective management. Many countries have special taxation rules for leadership members and board of directors. They might become taxable in the host country from day one.
- Does he have any direct reports?
- Did the employee work remotely in the past and was his or her work quality still at a high level?
- Does the job require face to face meetings?

Permanent Establishment

- Is there a risk to create a permanent establishment?

Does the organization have a legal entity in that country?

- Does the organization have a legal entity in that country?
- Is there a minimum wage requirement and if so, does the employee's current salary meet this requirement?
- Which legal entity regulates defines the compensation?
- Is it possible to offer a local employment contract at that location?
- Does the current salary fit into the grading structure of the host country?

The salary can also be too high, which can also lead to a risk. For example, if the employee's position is a purchaser, he should be paid similar to a purchaser in the host country, since other employees in that same position could ask to be paid equally since they perform the same job and might have a similar educational background and experience.

Timing

- For how long does the employee plan to work from abroad?

If the employee plans to work abroad for a short period of time, the compliance risks involved tend to be smaller. It is advisable to only approve requests for a short period of time and document the expected return date.

If the employee plans to work from abroad for a longer period of time (more than 90 days), consider offering him an international assignment contract or a local employment contract, if this is possible. However, it is very expensive for the employer to set up an international assignment contract. Therefore, a local employment contract might be the better solution for the employer.

Family status

- Is the employee married, do they have children?
- Will their family relocate with him or her?

Depending on where the family is located, the centre of vital interest may move to another country or the employee may even establish two tax residencies. The nationality and immigration status for the family members should also be considered.

Nationality

- What is the nationality of the employee?
- Does he or she have the right to live and work in that country?
- If not, can he or she apply for a work permit, what are the chances to receive approval for the work and residence permit and what are the costs involved?

Tax Residence

- Will the employee create a tax residence in the other country?

If the employee establishes a residency in another country this could have an impact on his net pay.

Social Security

- Will the employee and the employer become subject to social security obligations at the new location?
- In case the employee becomes subject to the social security system in the new location, is this system beneficial for them and is the employee aware of this?

In a case like this, it makes sense to provide a pension cap analysis to the employee, where he or she can see the requirements to be met in order to be eligible for a pension payment in the new location. A comparison between the old and the new host location might also make sense.

Payroll

- Does the employer have a reporting obligation?
- Does the employer have to deduct and transfer a wage tax to the authorities in the new location?
- Can the wage tax deductions in the home country be stopped?
- If wage taxes need to be paid to both countries, who will cover the cost for the cost for this?

Additional to all the above mentioned issues it is recommended to always involve local experts regarding taxation, social security and immigration. It needs to be clarified if the employee will acquire new employment rights in the host country and if they are an additional risk to the employer.

Once the urgent cases have been solved, the Global Mobility Professional should take the time to draft a policy for remote work. Here it is important to involve a large and diverse group of stakeholders, internal and external experts to get their feedback and approval for the policy. Depending on the size of the organization it might make sense to have more remote policies in place for specific regions (European Union) or countries like the USA.

Special attention needs to be paid to the employee protections rules in various countries. It is very important to follow the local rules (respect foreign holidays), laws, and minimum standards (health and safety, minimum pay etc.).

In the policy it is also possible to list certain countries from which employees are not allowed to work remotely, for example out of Iran, Iraq, Afghanistan, Cuba etc.

A policy will not solve all cases and problems, but it can reduce compliance risks, give guidance to employees and their managers, and ensure that a minimum standard is met, and employees are treated fairly.

4.2 Solution Scenarios

In this chapter possible solutions will be presented for different scenarios.

4.2.1 Scenario One

Situation:

An employee with a Swiss employment contract wants to work remotely from his home in Switzerland.

Challenge:

How to set up a local Swiss employment contract with the option home office.

Solution:

According to Swiss Employment Law an employee cannot claim to work from home on their own accord. However, the employer and the employee can agree that the individual can perform a part of his or her work from home.

The following topics should be regulated in the employment contract:

Place of Work

The employer shall determine that, in addition to the place of work at the registered office, the employee's place of residence may also be the place of work. The "may" phrasing is important so that the employer can revoke and waive the home office option at any time.

Time Limitations

The contract should state how many days per week the employee should be allowed to work from home. An increase of the amount of time to be worked out of the office requires an amendment to the contract or a notice of change.

Working hours and overtime

It is important to define the working hours, breaks and overtime in the contract. Although activities can be arranged more flexibly in the home office, the mandatory provisions of the

Labour Code – in particular those concerning working hours and rest periods – must be strictly observed. The obligation to record working hours can be delegated to the employee in the home office. If misbehaviour is suspected the employer can evaluate the access to the company server. However, this possibility should be mentioned in the employment contract.

Data Protection and Confidentiality

The obligation to maintain confidentiality is particularly important when working in the home office since family members might share an office etc. employees must ensure that neither family members nor other third parties have unauthorised access to confidential business information. The employee shall be contractually obligated to ensure that business secrets and confidential information is protected at all times. The employee should be asked to take technical measures to ensure data protection, for example, to use password protection on all devices, to use a protected connection to the company network, to maintain and regularly update the device etc. In order to make these obligations more effective, a contractual penalty could be included in the contract.

Termination of the home office clause

It is in the interest of the employer to have the right to terminate the home office option. It is therefore recommended to include a regulation in the contract according to which the employer can ask the employee to return to the office at the business premises or at the regular place of work in accordance with the employment contract.

From an Immigration point of view the employee should already have a valid work permit and therefore no change of work permit or additional registration is needed.

As long as the employee works from the home office in Switzerland, he or she will not create any further tax residency. The home office option will have no impact on the withholding tax obligation of the employer and also no change on the social security contributions side.

4.2.2 Scenario Two

Situation:

An employee with a German employment contract wants to work short term (below 90 days) remotely from Switzerland.

Challenge:

How to set up an addendum to the local German employment contract with the option remote work from Switzerland.

Solution:

The employer should inform the employee about the terms and conditions of a short-term remote work arrangement in writing. The below items should at least be included:

- The maximum stay is 90 days per year and the exact dates need to be reported to the immigration authorities (Meldeverfahren), assuming the individual is a German (EU/EFTA national) national. Any stay that exceeds the 90-day mark, will require a work permit. A work permit will only be granted if the company offers to the employee a local employment contract in Switzerland or an international assignment contract.
- The individual keeps his or her residency in the home country
- The employee is only working for the legal entity in Germany
- The individual is not allowed to close deals / contracts with local customers in Switzerland and must not present themselves as having the authority to do so. This reduces the risk to create a Permanent Establishment in Switzerland.
- It is the responsibility of the employee to set up a reliable technology in the home office which will allow him or her to work remotely.
- The employee must ensure to have sufficient health insurance coverage in the home and the host country. An additional insurance coverage will most probably be needed for Switzerland.
- The employee will be liable for any additional income taxes or employee social security which may be due, and the employer is authorized to deduct these amounts from the payroll.
- The employee will be responsible for the filling of a tax return if required

This solution is suitable for employees that work for example in administration or accounting. However, special attention is required when the request comes from a sales manager or from a member of the leadership team as there is a higher risk that their presence abroad creates a permanent establishment.

In addition to that, employees should only work from a foreign country when the organization has a legal entity in that country. This will make it easier for the employer to meet the reporting obligations and registration requirements.

The second scenario requires the employer to inform the Swiss authorities about the intended stay in Switzerland (Meldeverfahren). As long as the 90 days are not exceeded, and the employee executes only tasks that are allowed to be performed under the "Meldeverfahren" no official work permit will be required and no withholding tax obligation applies to the employer. The employee remains subject to the social security system of Germany. However, it is advisable to apply for an A1 certificate for the time spend in Switzerland and to set up an additional health insurance coverage. As long as the personnel cost are not charged to the legal entity in Switzerland and the employee does not receive any additional salary out of Switzerland, he or she stays below 183 days within twelve months in Switzerland the employee does not create a limited tax liability. It can also be assumed that the employee keeps his or her residency in Germany and the centre of vital interest does also not move to Switzerland.

4.2.3 Scenario Three

Situation:

A cross border commuter from Germany to Switzerland wants to work remotely from his home in Germany.

Challenge:

How to arrange this without compliance issues.

Solution:

During the pandemic companies have asked their employees to work from home. This possibility was also given to cross-border commuters, who otherwise commute on a daily basis across the border to their place of work. In the past, employees did not even consider giving this option to cross border commuters due to the tax risks.

However, it is possible to offer home offices to cross-border commuters to a limited extent without creating tax and social security problems. According to the European Law, this is also applicable to Switzerland because due to the Agreement of Free Movement, a person can only be subject to the social security system of one country at the same time. A person who lives in

Germany and works in Switzerland contributes to the social security system of Switzerland if they have the status of a cross border commuter.

If the German employee works out of the home office in Germany for more than 25% of their workload, he or she will be subject to the social security law in the country of residence and the employer has to pay social security contributions there. In the case of cross-border employment relationships, it may therefore be necessary to limit the home office work to a small workload – for example to a maximum of 20%.

If an employee with the G permit (cross border commuter permit) works from his home in Germany for more than 60 days within a calendar year, the individual might lose the cross-border commuter status. If this happens the employment income would be taxed in the country of residence which would be Germany.

In principle the employment income that is generated through physical presence in Switzerland is subject to withholding taxes in Switzerland. Since the Swiss tax authorities are only allowed to tax the working days that the employee actually worked in Switzerland, the employer needs to have a detailed record of the place of work of the employee in order to calculate the correct tax at source amount that is due to the Swiss authorities. The days worked in Germany are therefore fully taxable in Germany and this can lead to a higher tax burden for the employee and to a big administrative effort for the employer.

Until recently, due to the COVID-19 pandemic, both the Swiss and the German authorities are refraining from implementing the 25% rule consistently. This exception has remained valid until December 31, 2021. If work in the home office is to be continued after year 2021, the employer should review whether the amount of work carried out in Germany should be limited contractually.

From the employer's point of view, it should be noted that cross-border commuters, who are allowed to work from their home office in Germany can lead to the creation of a permanent establishment in Germany at the place of the residence of the employee. Whether the home office is to be regarded as a permanent establishment must be checked on a case-by-case basis.

One should clarify the question of whether the actual work activity carried out by the employee in the home office represents a relevant part of the overall activities of the Swiss company. If this is the case, this could lead to the qualification of a permanent establishment. On the other hand, some experts hold the opinion that no permanent establishment is to be assumed, as long as the employer has no power of disposal over the private premises of the employee.

Until today there is no case law on this topic, which leaves uncertainty on how the courts would evaluate such a case. Therefore, one should be very careful when allowing cross border workers to work from home and to review each case separately as the creation of a permanent establishment can have serious consequences to the employer. The Swiss entity would then be liable to pay taxes to the German government on the profits attributable to the home office location of the employee.

4.2.4 Scenario Four

Situation:

An employee with a German employment contract wants to work in Switzerland remotely for a period of six months up to five years.

Challenge:

How to arrange this without compliance issues.

Solution:

Set up an international assignment contract / secondment contract for the specific period.

With this international assignment contract / secondment contract it will be possible to apply for a work permit in Switzerland. In addition, the employee can remain in the German social security system as the planned stay in Switzerland is temporarily and below five years. The employer should apply for an A1 certificate to be relieved from contribution to the Swiss social security system. From a tax perspective, the employee will create a tax residency in Switzerland, which will lead to a Swiss tax liability. However, the income tax rates in Switzerland are lower compared to the tax rates in Germany. Therefore, if the company has a tax equalization policy for expats, they can deduct the taxes that the employee would have paid in Germany as a hypo tax from his payroll and use this money to pay off the effective taxes in Switzerland. In addition, the employer should set up a shadow payroll in Switzerland and pay the withholding taxes to the Swiss tax authorities on a monthly basis. This can be a big administrational burden to the employer.

In addition to that, the employer should make sure, that the employee breaks the tax residency in Germany.

After the assignment in Switzerland the employee can return to his workplace in Germany and continue to work for his German employer without any negative effect on his social security contributions.

4.2.5 Scenario Five

Situation:

A German employee wants to transfer to Switzerland (long term).

Challenge:

How to arrange this without compliance issues.

Solution:

In a case like this the employer can offer a local Swiss employment contract to the employee, if a legal entity in Switzerland already exists. The Swiss local employment contract should include the salary, benefits, working hours, holidays etc according to the Swiss law.

On the basis of the local job offer the employee can apply for a work permit in Switzerland. The employee will most probably receive a B work permit, since his or her employment contract is not limited. Afterwards the individual will take up residency in Switzerland and become taxable. It would be ideal, if he or she would give up the residency in Germany, to avoid any further taxation.

Based on the B permit, the employer will have to deduct withholding taxes from the employee's payroll and to transfer them on a monthly basis to the tax authorities.

Due to the local employment contract, the employee and the new employer will contribute to the Swiss social security system. Since this system is different from the German system, it is recommended to provide the employee with a pension gap analysis prepared by an external provider.

In the case of an international transfer little responsibility applies to the former German employer as the employee leaves the German legal, tax and social security system.

4.2.6 Scenario Six

Situation:

A German employee wants to transfer to Switzerland (long term). Currently the organization does not have a legal entity in Switzerland.

Challenge:

How to hire an employee in Switzerland without a legal entity in Switzerland.

Solution:

If the organization does not have a legal entity in Switzerland and it is not planned to open a legal entity in Switzerland as it is time consuming and expensive, one can chose to work with an Employer of Record (EOR). The EOR employs the individual and becomes the formal employer. The EOR will provide an employment contract to the individual and ensures that he or she has the right work permit to be able to legally work in Switzerland. In addition, the EOR takes care of all the administrative work such as Payroll, Taxation, Salary and Benefits.

5 Conclusion

During the COVID-19 pandemic for many organizations remote work suddenly became the new normal. Remote work provides many advantages for the employees and their organizations, like time and cost savings. However, as the Global Mobility department continues to receive requests to work remotely, it is also the responsibility of the Management to minimize the risk of non-compliance regarding immigration, taxation and social security. Since the consequences of non-compliance can have a negative impact to both the employee and the employer.

A good method to minimize compliance risks is to set up an internal policy for remote work that is available to all employees of the organization. Here it is advisable to include internal and external stakeholders in the process to ensure that all compliance risks are included and to receive the feedback and support of other stakeholders.

The remote work policy sets some guidelines and provides information to the employees, but it cannot provide an answer to all requests for remote work from abroad, as each case must be analysed separately, and the personal situation of the employee needs to be considered as well as the legal requirements of the respective countries involved.

Therefore, a risk assessment should be done for each case and afterwards a possible scenario should be presented to the business for their approval.

As a last step the employee should be provided with an addendum or a new contract that outlines the conditions of the employment and additional information on immigration, social security and taxation.

This work is meant to provide a strong plea for more awareness of the potential challenges related to remote work abroad and to provide some insights in possible countermeasures. An obvious focus in this context lies in the fields of immigration, tax and social security, areas in which all internationally acting companies' HR departments should be well versed already.

Therefore, it is the conviction of the author that a well-concerted interplay between general and HRT management is necessary, as well as a centralized and well-prepared management of the above suggested measures that might permit avoiding any negative legal and fiscal outcomes of introducing remote work right from the start.

Literature

Araújo TM de and Lua I (2021) O trabalho mudou-se para casa: trabalho remoto no contexto da pandemia de COVID-19. *Revista Brasileira de Saúde Ocupacional* 46: e27. DOI: 10.1590/2317-6369000030720.

Beerli A, Ruffner J, Siegenthaler M, et al. (2021) The Abolition of Immigration Restrictions and the Performance of Firms and Workers: Evidence from Switzerland. *American Economic Review* 111(3): 976–1012. DOI: 10.1257/aer.20181779.

Bundesgesetz betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (1983) OR - BG vom 30. März 1911 betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht). Available at: https://www.gesetze.ch/sr/220/220_027.htm (accessed 1 January 2022).

Burstedde A (2020) *'Versorgungsrelevante' Berufe in der Corona-Krise: Fachkräftesituation und Fachkräftepotenziale in kritischen Infrastrukturen*. KOFA-Studie, No. 1/2020.

Charalampous M, Grant CA, Tramontano C, et al. (2019) Systematically reviewing remote e-workers' well-being at work: a multidimensional approach. *European Journal of Work and Organizational Psychology* 28(1). Routledge: 51–73. DOI: 10.1080/1359432X.2018.1541886.

Collins JH and Shackelford DA (1996) Corporate Domicile and Average Effective Tax Rates: The Cases of Canada, Japan, the United Kingdom, and the United States. In: Slemrod J (ed.) *The Taxation of Multinational Corporations*. Dordrecht: Springer Netherlands, pp. 51–79. DOI: 10.1007/978-94-009-1818-4_4.

Courtney E (2021) Remote Work Statistics: Navigating the New Normal | FlexJobs. Available at: https://www.flexjobs.com/blog/post/remote-work-statistics/ (accessed 1 January 2022).

Cristelli G and Lissoni F (2020) *Free Movement of Inventors: Open-Border Policy and Innovation in Switzerland*. ID 3728867, SSRN Scholarly Paper, 1 November. Rochester, NY: Social Science Research Network. DOI: 10.2139/ssrn.3728867.

Cucinotta D and Vanelli M (2020) WHO Declares COVID-19 a Pandemic. *Acta Bio Medica : Atenei Parmensis* 91(1): 157–160. DOI: 10.23750/abm.v91i1.9397.

Czech M (2021) Economic and legal aspects of employee monitoring, with particular emphasis on remote work. *Optimum. Economic Studies* 106(4). Wydawnictwo Uniwersytetu w Białymstoku: 97–110.

Danaj S (2018) Posted Work and Occupational Safety and Health: A Literature Review. *Dve domovini* (48). 48. DOI: 10.3986/dd.v0i48.7127.

Deloitte Worldwide BRC (2021) REMOTE WORK: THE ROAD TO THE FUTURE. Available at: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-remote-work-the-road-to-the-future.pdf (accessed 1 January 2022).

Dolan K, Hunt V, Prince S, et al. (2020) Diversity still matters. *McKinsey Quarterly* (May): 7.

Dostál P (2018) Changing European Union: The Schengen Agreement. In: Havlíček T, Jeřábek M, and Dokoupil J (eds) *Borders in Central Europe After the Schengen Agreement*. Cham: Springer International Publishing, pp. 15–35. DOI: 10.1007/978-3-319-63016-8_2.

Duxbury L and Smart R (2011) The "Myth of Separate Worlds": An Exploration of How Mobile Technology has Redefined Work-Life Balance. In: Kaiser S, Ringlstetter MJ, Eikhof DR, et al. (eds) *Creating Balance? International Perspectives on the Work-Life Integration of Professionals*. Berlin, Heidelberg: Springer, pp. 269–284. DOI: 10.1007/978-3-642-16199-5_15.

ECA International (2019) Trends and best practice for international commuter assignments. Available at: https://www.eca-international.com/Insights/Blog/June-2019/international-commuter-assignments (accessed 4 January 2022).

Elert N and Brooks C (2017) II. EU/EEA-States and Switzerland. In: *Expats in Germany – Inbound and Outbound*. Berlin, Boston: De Gruyter, pp. 168–172. DOI: 10.1515/9783110404012-013.

Enache R and Puscas A (2021) Remote work in the new reality - KPMG Global. Available at: https://home.kpmg/xx/en/home/insights/2021/04/remote-work-in-the-new-reality.html (accessed 6 January 2022).

European Commission (2021) Access2Markets The General Agreement on Trade in Services (GATS). Available at: https://trade.ec.europa.eu/access-to-markets/en/content/general-agreement-trade-services-gats (accessed 3 January 2022).

European Commission (2022) Which rules apply to you? Available at: https://ec.europa.eu/social/main.jsp?catId=851&langId=en (accessed 5 January 2022).

European Union (2004) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland). *OJ L*. Available at: http://data.europa.eu/eli/reg/2004/883/oj/eng (accessed 5 January 2022).

European Union (2009) Notification by the Swiss Confederation to the European Commission pursuant to Article 37 of Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (2009/C 50/09). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009XX0303(01)&from=PL (accessed 3 January 2022).

European Union (2021) Cross-border commuters. Available at: https://europa.eu/youreurope/citizens/work/work-abroad/cross-border-commuters/index_en.htm (accessed 4 January 2022).

European Union (2022) Sozialversicherungsansprüche – Standardformulare. Available at: https://europa.eu/youreurope/citizens/work/social-security-forms/index_de.htm (accessed 5 January 2022).

Faulconer EK and Gruss AB (2018) A Review to Weigh the Pros and Cons of Online, Remote, and Distance Science Laboratory Experiences. *International Review of Research in Open and Distributed Learning* 19(2). Athabasca University Press (AU Press). DOI: 10.19173/irrodl.v19i2.3386.

Federal Ministry of Finance (2006) Double Taxation Conventions. German Federal Tax Gazette (BStBI) I 2006. Available at: https://www.german-tax-consultants.com/content/download/ressources/021_Arbeitslohn_und_DBA_GB.pdf (accessed 4 January 2022).

Fekete S (2018) The Challenges of Defining Posted Workers. Available at: http://193.225.195.146/letolt/2018_1_a/A_02_FeketeS_hllj_2018_1.pdf (accessed 1 January 2022).

Felstead A and Henseke G (2017) Assessing the growth of remote working and its consequences for effort, well-being and work-life balance. *New Technology, Work and Employment* 32(3): 195–212. DOI: 10.1111/ntwe.12097.

Flores DMF (2019) Understanding The Challenges Of Remote Working And It's Impact To Workers. *International Journal of Business Marketing and Management* 4(11): 40–44.

Galanti T, Guidetti G, Mazzei E, et al. (2021) Work From Home During the COVID-19 Outbreak. *Journal of Occupational and Environmental Medicine* 63(7): e426–e432. DOI: 10.1097/JOM.0000000000002236.

Grömling M and Haß H-J (2009) *Globale Megatrends und Perspektiven der deutschen Industrie*. 47, Research Report. IW-Analysen. Available at: https://www.econstor.eu/handle/10419/181808 (accessed 31 December 2021).

Günsel S (2021) When cross-border workers are working from home - Ebner Stolz. Available at: https://www.ebnerstolz.de/en/coronavirus-border-crosser-home-office-328729.html (accessed 6 January 2022).

Informationsblatt zur faktischen Arbeitgeberschaft Finanzdirektion Zürich: July 2011 (zit. IB zur faktischen Arbeitgeberschaft)

Informationsblatt für im Kanton Zürich quellensteuerpflichtige Personen: 9. January 2012 (zit. IB quellensteuerpflichtige Personen Kanton Zürich)

Informationsblatt zum Quellensteuerverfahren für Grenzgänger und Gerenzgängerin-nen aus Deutschland: 30. November 2010 (zit. IB zum Quellensteuerverfahren)

Islam MA, Igwe PA, Rahman M, et al. (2021) Remote working challenges and solutions: insights from SMEs in Bangladesh during the COVID-19 pandemic. *International Journal of Quality and Innovation* 5(2). Inderscience Publishers: 119–140. DOI: 10.1504/IJQI.2021.117186.

Jalagat R and Jalagat A (2019) RATIONALIZING REMOTE WORKING CONCEPT AND ITS IMPLICATIONS ON EMPLOYEE PRODUCTIVITY. *Global Journal of Advanced Research* 6(3): 95–100.

Jorens Y and van Overmeiren F (2009) General Principles of Coordination in Regulation 883/2004. *European Journal of Social Security* 11(1–2). SAGE Publications Ltd: 47–79. DOI: 10.1177/138826270901100103.

Kłopotek M (2017) The advantages and disadvantages of remote working from the perspective of young employees. *Organizacja i Zarządzanie : kwartalnik naukowy* nr 4: 39–49. DOI: 10.29119/1899-6116.2017.40.3.

KPMG (2019) Switzerland – Agreement with Germany: Cross-Border 60 "Non-Return" Days Count - KPMG Global. Available at: https://home.kpmg/xx/en/home/insights/2019/04/flash-alert-2019-077.html (accessed 4 January 2022).

Kurkland NB and Bailey DE (1999) The advantages and challenges of working here, there anywhere, and anytime. *Organizational Dynamics* 28(2): 53–68. DOI: 10.1016/S0090-2616(00)80016-9.

Lal B and Dwivedi YK (2009) Homeworkers' usage of mobile phones; social isolation in the home-workplace. *Journal of Enterprise Information Management* 22(3). Emerald Group Publishing Limited: 257–274. DOI: 10.1108/17410390910949715.

Lampart D and Bühler J (2019) Temporärarbeit in der Schweiz. Schweizerischer Gewerkschaftsbund. Available at: https://sev-online.ch/de/downloads/pdf_de/2019/sgb-dossier-133-temporaerarbeit-in-der-schweiz.pdf (accessed 3 January 2022).

LawyersSwitzerland.com (2019) Switzerland Germany Double Taxation Treaty. Available at: https://www.lawyersswitzerland.com/switzerland-germany-double-taxation-treaty (accessed 4 January 2022).

Lichtenthaler U (2021) Digitainability: The Combined Effects of the Megatrends Digitalization and Sustainability. *Journal of Innovation Management* 9(2). 2: 64–80. DOI: 10.24840/2183-0606_009.002_0006.

Lister K (2021) Latest Work-at-Home/Telecommuting/Remote Work Statistics. Available at: https://globalworkplaceanalytics.com/telecommuting-statistics (accessed 1 January 2022).

Maisto G (2010) *Residence of Individuals Under Tax Treaties and EC Law*. Amsterdam: IBFD.

Martinsen DS, Pons Rotger G and Thierry JS (2019) Free movement of people and cross-border welfare in the European Union: Dynamic rules, limited outcomes. *Journal of European Social Policy* 29(1). SAGE Publications Ltd: 84–99. DOI: 10.1177/0958928718767300.

Matteotti R, Vogt P and Ezzaini N (2021) Switzerland settles mutual agreements for remote working. Available at: https://www.internationaltaxreview.com/article/b1qhpclz9q3l6g/switzerland-settles-mutual-agreements-for-remote-working (accessed 6 January 2022).

MÄUSLI-ALLENSPACH PETER/OERTLI MATHIAS, Das Schweizerische Steuerrecht, Ein Grundriss mit Beispielen, 6. Auflage, 2010

Medina-Rodríguez CE, Casas-Valadez MA, Faz-Mendoza A, et al. (2020) The cyber security in the age of telework: A descriptive research framework through science mapping. In: *2020 International Conference on Data Analytics for Business and Industry: Way Towards a Sustainable Economy (ICDABI)*, October 2020, pp. 1–5. DOI: 10.1109/ICDABI51230.2020.9325633.

Mei APV der (2003) *Free Movement of Persons Within the European Community: Cross-Border Access to Public Benefits*. Oxford: Hart Publishing.

Merkblatt für ausländische Arbeitgeber aus EU-27 und EFTA-Staaten, die Arbeitnehmende ihres Unternehmens zur Durchführung von Dienst- und Arbeitsleistungen in die Schweiz entsenden (zit. MB Meldepflicht)

Muralidhar B, Prasad DK and Mangipudi DMR (2020) *Association among Remote Working Concerns and Challenges on Employee Work-Life Balance: An Empirical Study Using Multiple Regression Analysis with Reference to International Agricultural Research Institute, Hyderabad*. ID 3650802, SSRN Scholarly Paper, 14 July. Rochester, NY: Social Science Research Network. Available at: https://papers.ssrn.com/abstract=3650802 (accessed 11 December 2021).

MYLLYVIRTA L (2020) Analysis: Coronavirus temporarily reduced China's CO2 emissions by a quarter. Available at: https://www.carbonbrief.org/analysis-coronavirus-has-temporarily-reduced-chinas-co2-emissions-by-a-quarter (accessed 1 January 2022).

Nellen A (2021) Suggestions for Pandemic State Tax Policy Endurance. *The Contemporary Tax Journal* 10(2): 23–45.

Oberson X and Hull HR (2011) *Switzerland in International Tax Law*. Amsterdam: IBFD.

OECD (2021) OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis - OECD. Available at: https://read.oecd-ilibrary.org/view/?ref=127_127237-vsdagpp2t3&title=OECD-Secretariat-analysis-of-tax-treaties-and-the-impact-of-the-COVID-19-Crisis (accessed 6 January 2022).

OJ L (1996) *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*. Available at: http://data.europa.eu/eli/dir/1996/71/oj/eng (accessed 1 January 2022).

Olivier L (2002) The Permanent Establishment Requirement in an International and Domestic Taxation Context: An Overview. *South African Law Journal* 119: 866.

Orange Business Services (2020) Remote working: better for the environment, how much? Available at: https://www.orange-business.com/en/magazine/remote-working-better-environment-how-much (accessed 1 January 2022).

Pennings F (2009) Introduction: Regulation 883/2004 – The Third Coordination Regulation in a Row. *European Journal of Social Security* 11(1–2). SAGE Publications Ltd: 3–7. DOI: 10.1177/138826270901100101.

PricewaterhouseCoopers (2019) Germany: Myths and facts around the A1 certificate. Available at: https://www.pwc.com/gx/en/services/people-organisation/publications/assets/pwc-germany-myths-and-facts-around-the-a1-certificate.pdf.

PricewaterhouseCoopers (2021) Swiss withholding tax reform 2021: what do employees need to know now? Available at: https://www.pwc.ch/en/insights/swiss-withholding-tax-reform-2021-what-employees-need-to-know.html (accessed 4 January 2022).

Ruch Frederike V, Expatriates – Inpatriates, Handbuch zur Entsendung von Mitarbeitern, 8. Auflage, 2002

Schaffner J (2013) *How Fixed Is a Permanent Establishment?* Kluwer Law International B.V.

SchengenVisaInfo.com (2021) Schengen Visa - Comprehensive information about EU Visa. Available at: https://www.schengenvisainfo.com/ (accessed 3 January 2022).

Schoukens P and Pieters D (2009) The Rules within Regulation 883/2004 for Determining the Applicable Legislation. *European Journal of Social Security* 11(1–2). SAGE Publications Ltd: 81–117. DOI: 10.1177/138826270901100104.

Schulte V, Steinebach C and Verkuil A (2021) Effects of Home Office on Employees' Working Conditions during Covid 19 Crisis in Switzerland. In: *Society50 PreProceedings of the First International Conference on Society 5.0* (eds A Gerber and K Hinkelmann), 22 June 2021, pp. 382–391.

Schwarzbauer W and Wolf M (2020) *Bedeutung der Telearbeit aktuell und nach der COVID-19 Pandemie*. 41, Research Report. Policy Note. Available at: https://www.econstor.eu/handle/10419/227421 (accessed 11 December 2021).

Schweizerische Eidgenossenschaft (2021a) SR 142.20 - Federal Act of 16 December 2005 on Foreign Nationals (FNA). Available at: https://www.fedlex.admin.ch/eli/cc/2007/758/en (accessed 3 January 2022).

Schweizerische Eidgenossenschaft (2021b) Working in Switzerland as a foreign national. Available at: https://www.ch.ch/en/foreign-nationals-in-switzerland/working-in-switzerland/ (accessed 3 January 2022).

Schweizerische Eidgenossenschaft (2022) RS 642.11 - Loi fédérale du 14 décembre 1990 sur l'impôt fédéral direct (LIFD). Available at: https://www.fedlex.admin.ch/eli/cc/1991/1184_1184_1184/fr (accessed 4 January 2022).

SECO S für W (2020) Digitale Wirtschaft. Available at: https://www.seco.admin.ch/seco/de/home/wirtschaftslage---wirtschaftspolitik/wirschaftspolitik/digitalisierung.html (accessed 13 November 2020).

SEM Staatssekretariat für Migration (2021) Bundesrat legt Kontingente 2021 für Erwerbstätige aus Drittstaaten und dem Vereinigten Königreich fest. Available at: https://www.sem.admin.ch/sem/de/home/sem/medien/mm.msg-id-81315.html (accessed 1 October 2021)

SEM Staatssekretariat für Migration (2021) Grundlagen zur Arbeitsmarktzulassung. Available at: https://www.sem.admin.ch/sem/de/home/themen/arbeit/nicht-eu_efta-angehoerige/grundlagen_zur_arbeitsmarktzulassung.html (accessed 18 October 2021)

Skaar AA (2020) *Permanent Establishment: Erosion of a Tax Treaty Principle*. Alphen aan den Rijn: Kluwer Law International B.V.

Soled JA (2021) *Workplace Transformation and Its Tax Compliance Implications*. ID 3925552, SSRN Scholarly Paper, 17 September. Rochester, NY: Social Science Research Network. DOI: 10.2139/ssrn.3925552.

SR 291 - Federal Act on Private International Law (PILA) (1988). Available at: https://www.fedlex.admin.ch/eli/cc/1988/1776_1776_1776/en (accessed 1 January 2022).

State Secretariat for International Finance (2022) Double taxation agreements. Available at: https://www.sif.admin.ch/sif/en/home/bilateral/steuerabkommen/doppelbesteuerungsabkommen.html (accessed 4 January 2022).

Sullivan C (2012) Remote Working and Work-Life Balance. In: Reilly NP, Sirgy MJ, and Gorman CA (eds) *Work and Quality of Life: Ethical Practices in Organizations*. International Handbooks of Quality-of-Life. Dordrecht: Springer Netherlands, pp. 275–290. DOI: 10.1007/978-94-007-4059-4_15.

Swanson Switzer D (2021) The Future of Remote Work in 2021. Available at: https://www2.deloitte.com/us/en/blog/human-capital-blog/2021/future-of-remote-work-whats-your-plan-in-2021.html (accessed 1 January 2022).

Thorpe KE (1997) International Taxation of Electronic Commerce: Is the Internet Age Rendering the Concept of Permanent Establishment Obsolete. *Emory International Law Review* 11: 633.

Vargas Llave O and Weber T (2020) Regulations to address work–life balance in digital flexible working. Available at: https://www.eurofound.europa.eu/de/publications/report/2020/regulations-to-address-work-life-balance-in-digital-flexible-working-arrangements (accessed 1 January 2022).

Verschueren H (2009) Special Non-Contributory Benefits in Regulation 1408/71, Regulation 883/2004 and the Case Law of the ECJ. *European Journal of Social Security* 11(1–2). SAGE Publications Ltd: 217–234. DOI: 10.1177/138826270901100111.