Erasmus University Rotterdam / The Expatise Academy

Master Course Human Resources and Global Mobility

Master Thesis

Work From Anywhere, risks vs. flexibility spectrum: Does a compliant international remote work strategy contradict flexibility?

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Table of Contents

1. Introduction

The question that this thesis will attempt to answer is whether a complaint international remote work strategy is preventing employees to be flexible in respect to the place they work from.

The research will specifically focus on international remote work, remote work conducted from a jurisdiction that is different than the one that the employee and the formal employer normally reside. The research will focus on employees and not freelancers and contractors. The employees that are the basis for the research typically (but not limited to) work for a multinational company with presence in multiple countries globally.

In the previous 20 months there was a tendency of large multinationals, particularly in the technology sector to publish and then revoke their remote and international remote work policies. Within the scope of this research, I have not succeeded to find a company that offers international remote work for all its employees without a restriction. The policies that are currently implemented and that were analyzed mostly fall within the international remote work within framework scenario, shortly explained as employer-guided and facilitated work-from-anywhere.

In a survey by Gallup[1], published in May 2021, 72% of white-collar workers and 14% of blue-collar workers were doing their jobs remotely during the pandemic in the United States. This percentage reached 80% in four occupations as computer-oriented or mathematical fields; life and social sciences; arts, design, entertainment, media; and financial services, insurances, real estate or consulting. Given that the measured employee productivity was increasing, and that the employers were asking their employees to work exclusively remotely for almost 14 (to 22) months, this resulted in raised expectations on flexibility by the same employees post-pandemic – later stages of the pandemic.

For the purpose of collating the analysis in a more structured manner, I have extracted the most common policies for international remote work into four scenarios: 1. International remote work policy for everyone, 2. International remote work policy within a framework; 3. International remote work policy without a framework with limited risks and costs; 4. No international remote work policy.

The interviews conducted for the research take the perspectives of strategic advisors, in-house global mobility SMEs and international remote work vendor. The interviews were conducted on purpose with interviewees that have opposed opinions on the research subject. The commonality of the answers is that there is no company that managed to offer international remote work for all its employees without restrictions, nor there are companies that strictly forbid international remote work during the pandemic (exceptions in employees stuck abroad, commuters working from home, not office). The extremely flexible and the extremely strict sides of the spectrum are not the rule, but the exception. Majority of the companies are shifting between with and without framework for international remote work.

For the purpose of additional numerical comparison on the different approaches multinationals have towards international remote work I conducted a short three questions survey. The context of the conducted survey is placed among large multinationals with headquarters in the Netherlands. The industries that are looking into international remote work policies are predominantly white-collar industries and professions conducted from an office environment, not determined by physical location. Approximately one fourth of the respondents represent the financial sector in the Netherlands, an industry that is heavily regulated (by national financial regulators) in terms of where the actual work is being performed. Majority of the respondents are working on, testing or have implemented a framework for international remote work.

By 2030, almost half of the labor market will be millennials who favor flexibility over remuneration. Employees are reluctant to give it up after having flexibility on time and place of work during Covid-19. As we have read in multiple studies and analysis on the subject of future of work, adapting to the changes in the employee expectations will be

[1] Gallup: Seven in 10 US white-collar workers still working remotely: https://news.gallup.com/poll/348743/seven-u.s.-white-collar-workers-still-working-remotely.aspx

critical for retaining and attracting talent. This goes in line with the employee expectations towards international remote work as well. As the practice has shown in the elaborated examples in the research below, compliance and limited flexibility can function simultaneously.

1.1.Definitions

The first and starting point of this research is defining some of the key terms that are reoccurring in today's world of global mobility. The paragraphs below define terms as remote work, also called work from home and telecommuting, flexible work, work from anywhere also known as international remote work and dispersed and distributed workforce.

Remote work is an overarching term for work from home, telecommuting
The practice of an employee working at their home, or in some other place that is not an organization's usual place of business (Cambridge Dictionary)

Remote work, also known as work from home [WFH] or telecommuting is a type of flexible working arrangement that allows an employee to work from remote location outside of corporate offices. (Gartner Glossary)

Telecommuting is an alternative work arrangement in which employees perform tasks elsewhere that are normally done in a primary or central workplace, for at least some portion of their work schedule, using electronic media to interact with others inside and outside of the organization. (Gajendran and Harrison, 2007). [2]

International Remote Work/Work from Anywhere
International remote working refers to employees who work virtually from another country. International remote working is, of course, just an extension of remote working, but it may come with a host of compliance and practical complications. (Mercer Mobility Exchange)

Dispersed/distributed workforce
Work in geographically dispersed teams (GDTs) is not 'new', but it is increasingly common as firms try to tap into distributed expertise, expand their market reach, provide employees with flexibility and reduce real estate costs. (O'Leary and Mortensen, 2010).[3]

Flexible work
An arrangement in which an employer allows people to choose the times that they work, whether they work in the office or at home, etc. (Cambridge Dictionary)

1.2. Remote work in pandemic timelines

Pre-pandemic remote work

Prithwiraj Choudhury in his latest Harvard Business Review article 'Our Work-from-Anywhere Future'[4] explains that the Work-from-Home policies arising in the 1970s, driven by the soaring gasoline prices are one of the early predecessors of the 2020 sharp and global rise of WFH policies. Choudhury also attributes the 2000s adoption of WFH on larger scales to

[2] Gajendran and Harrison, The Good, The Bad, and the Unknown About Telecommuting: Meta-Analysis of Psychological Mediators and Individual Consequences, 2007
[3] O'Leary and Mortensen, Go (Con) Figure: Subgroups, Imbalance, and Isolates in Geographically Dispersed Teams, February 2010
[4] Prithwiraj Choudhury, Harvard Business Review article 'Our Work-from-Anywhere Future' https://hbr.org/2020/11/our-work-from-anywhere-future

two factors: usage and wide availability of personal computers, the internet, email, cell phones, cloud computing and videotelephony; and necessity to provide equal opportunity for employment to the workforce with disabilities.

Remote work as overarching term was a term predominantly used with the rise of the digital revolution when speaking about employees in the information technology sector companies and more specifically freelancers. To give a perspective on the digital revolution, in the 2000 19% of the world population were cell phone subscribers and 11% were internet users. These percentages have risen to 62% for cell phone and 59% for internet users in 2020. Many companies globally were forced to speed up their digital transformation by the pandemic. Almost overnight, in March 2020, the term remote work shifted from being used for limited number of IT sector freelancers to all white-collar employees globally that were able to perform their everyday job using a computer and internet connection from their homes.

'While now almost cliché to discuss, the Covid-19 pandemic upended every aspect of society and demonstrated that nothing is certain in business except for the need of adaptability and constant innovation. The goal for many was digitizing their operations – a difficult proposition in the best of times-which includes the complex tasks of coordinating many interdependent systems including technology enablement, upskilling employees for digital expertise and the deployment of new collaborative tools while maintaining in-person synergies.'[5]

Pandemic remote work

'The virus has broken through cultural and technological barriers that prevented remote work in the past, setting in motion a structural shift in where work takes place, at least for some people.'[6] notes the McKinsey Global Institute in their analysis What's next for remote work.

As a result of the closed borders, strict quarantine measures, stranded employees globally, governments advising and recommending work from home (when and where possible), there were multitude of scenarios appearing contradicting with traditional application of 1. Creation of permanent establishment; 2. Place of effective management; 3. Cross-border workers; 4. Individual residence status for tax purposes.

Institutions as the OECD Secretariat took a proactive role going publicly with concrete recommendations on how to translate the known concepts in global mobility to the pandemic times. The OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis, April 2020, answered some of the major concerns of both employers and employees directly affected by the pandemic. Due to the extraordinary circumstances and the temporary dislocation of employees, 'the OECD was working with countries to mitigate the unplanned tax implications and potential new burdens arising due to effects of the COVID-19 crisis.[7]

The immigration authorities across the world were also faced with a very unique situation of closed borders, travel bans and closing of consulates and representations abroad. Institutions as the Dutch Immigration and Naturalization Service (IND) took a liberal approach towards residents with the right to work, study or stay with family. For example, if the employee was stranded abroad the Netherlands and can explain to the authorities that this is not her/his fault, there are no consequences to the residence permit rights. At the same time, employees stranded abroad were considered exempted to the travel ban and were given priority on the repatriation flights organized by the government.

The governments and its institutions worldwide showed flexibility in the interpretation of otherwise strict tax, immigration, social security and labour laws. The question that is posed is whether new set of rules will emerge once the

[5] BakerTilly: Industry 4.0 and the digital workplace revolution https://www.bakertilly.com/insights/industry-4.0-and-the-digital-workplace-revolution

[6] McKinsey Global Institute: What's next for remote work: An analysis of 2,000 tasks, 800 jobs and nine countries, November 23, 2020

[7] The OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis, April 2020

pandemic is over? This thesis analyzes the ever-changing laws, rules and regulations that are dominant in the global mobility sphere and whether the effect of the pandemic will change the international and national laws.

Post-pandemic remote work

Globally renown consultancy, research and advisory firms have dedicated their 2020 report on predictions and models of how the Future of Work will look like post-pandemic, with specific focus on (international) remote work. After 20 months of employees' flexibility in regard to place of work, the consequence is raised expectations with the same employees. Majority of the companies that were 'forced' to allow its employees to work remotely (non-essential and not-location specific professions) and measured productivity during the pandemic, have reported same levels or increased productivity. In the continuous efforts of companies worldwide to tackle retention while at the same time 'winning the war' for talent, multinationals will have to make a well-informed decision in regard to allowing/forbidding international remote work.

The Gartner 2020 report on HR Trends for a Post-COVID Future of Work, 2020, notes: Preliminary data shows that 41% of employees will work remotely after the pandemic and 74% of CFOs intend to increase remote work at their organization after the pandemic. Furthermore, the Gartner report is clarifying that 'while 30% of employees were working remotely pre-pandemic, 41% is the projected percentage of remote workers post-pandemic (19% always and 22% sometimes)'.[8]

The Boston Consulting Group in their March 2021 report on Decoding Global Talent, Onsite and Virtual, follow the same prediction model, explaining that 'International remote work appeals to many: 56.9% of respondents globally would work remotely for an employer with no physical presence'.[9]

From an employer perspective, 64% of the participating companies in the AIRINC Mobility Outlook Survey, 2020, report increased employee requests for non-traditional mobility (remote work).

In the past 20 months, more than 20 countries (and island countries) have introduced or promoted remote work (digital nomad) visas. Among the more promoted programs worldwide are coming from EU (Croatia, Czech Republic, Estonia, Germany, Greece, Iceland, Italy, Portugal, Norway[10]), and globally Bermuda, Cayman Islands, Dubai, Mexico, Thailand etc. The programs are led under the terms virtual working program, temporary resident, self-employment visa, digital nomad. Their duration varies from one to four years and one of the preconditions is a proof that the individual earns approximately EUR 50.000 – EUR 100.000 per year (in the previous years).

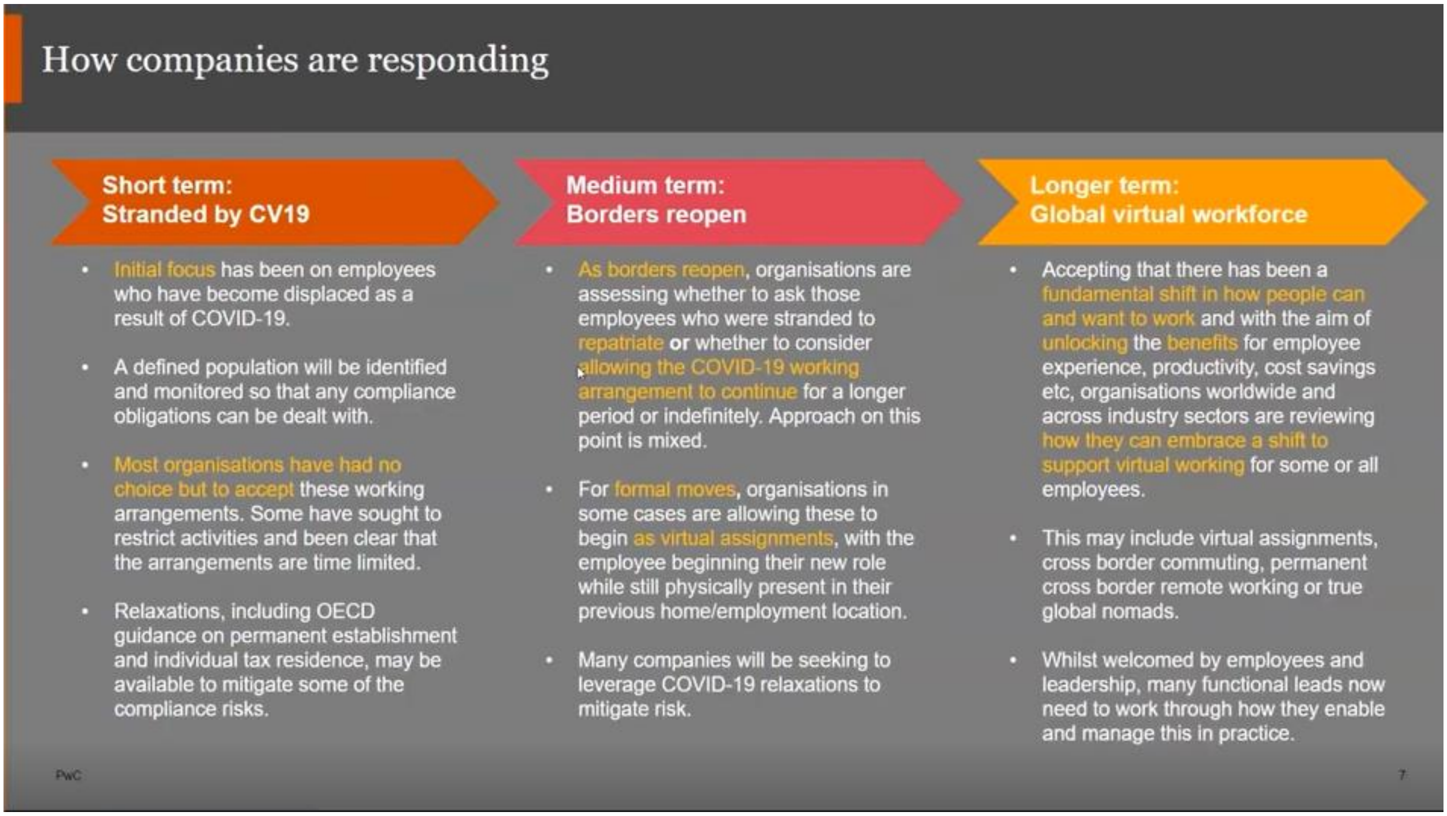
Traditionally, countries as the Netherlands and Denmark have attracted expatriates with tax incentives for a limited period of years (5-7), amounting at approximately 30%. The governments recognizing the potential in the projections as explained above invested additionally in launching new tax incentives programs. In 2021, Greece and Italy launched new tax incentive programs. Greece offers a tax regime under which new residents will only have to pay income tax and social security contributions on 50 percent of their Greek income for seven years. Italy went a step further, offering a tax regime under which there is 70 percent detaxation of the income generated while the new residents, reside in Italy for the first five years.

The PwC graph as shown below makes a distinction between: the short term - stranded by Covid 19 employees; medium term – borders reopen; longer term – global virtual workforce. According to this specific timeline, the companies are currently in between the medium-term and long-term scenarios. The thesis seeks to search for subject matter experts' opinions on what the future of work brings in terms of 'the fundamental shift in how people can and want to work' and the companies' strategies on 'how to embrace a shift to support virtual working for some or all employees'.

[8] The Gartner 2020 report on HR Trends for a Post-COVID Future of Work, 2020

[9] The Boston Consulting Group: Decoding Global Talent, Onsite and Virtual, March 2021

[10] ETIAS: Digital Nomad Visas in EU Countries: https://www.etiasvisa.com/etias-news/digital-nomad-visas-eu-countries



[11]

[11] PwC – RIN network workshop April 2021

2. Scenarios on the spectrum between risks and flexibility

To answer the posed question of this research regarding the compliance vs. flexibility aspect of international remote work, we will analyze four different scenarios:

1. International Remote Work Policy
2. International Remote Work within a Framework
3. International Remote Work without Framework with Limited Risks and Costs
4. No International Remote Work Policy (forbidden and laissez-faire)

The analysis will be divided in six important sub-questions:

1. Definition and characteristics:
2. Risks: immigration, tax, social security, labor law, data protection laws
3. Implementation: policy, approval, monitoring
4. Costs (implementation and non-compliance)
5. Compensation model
6. Employee experience

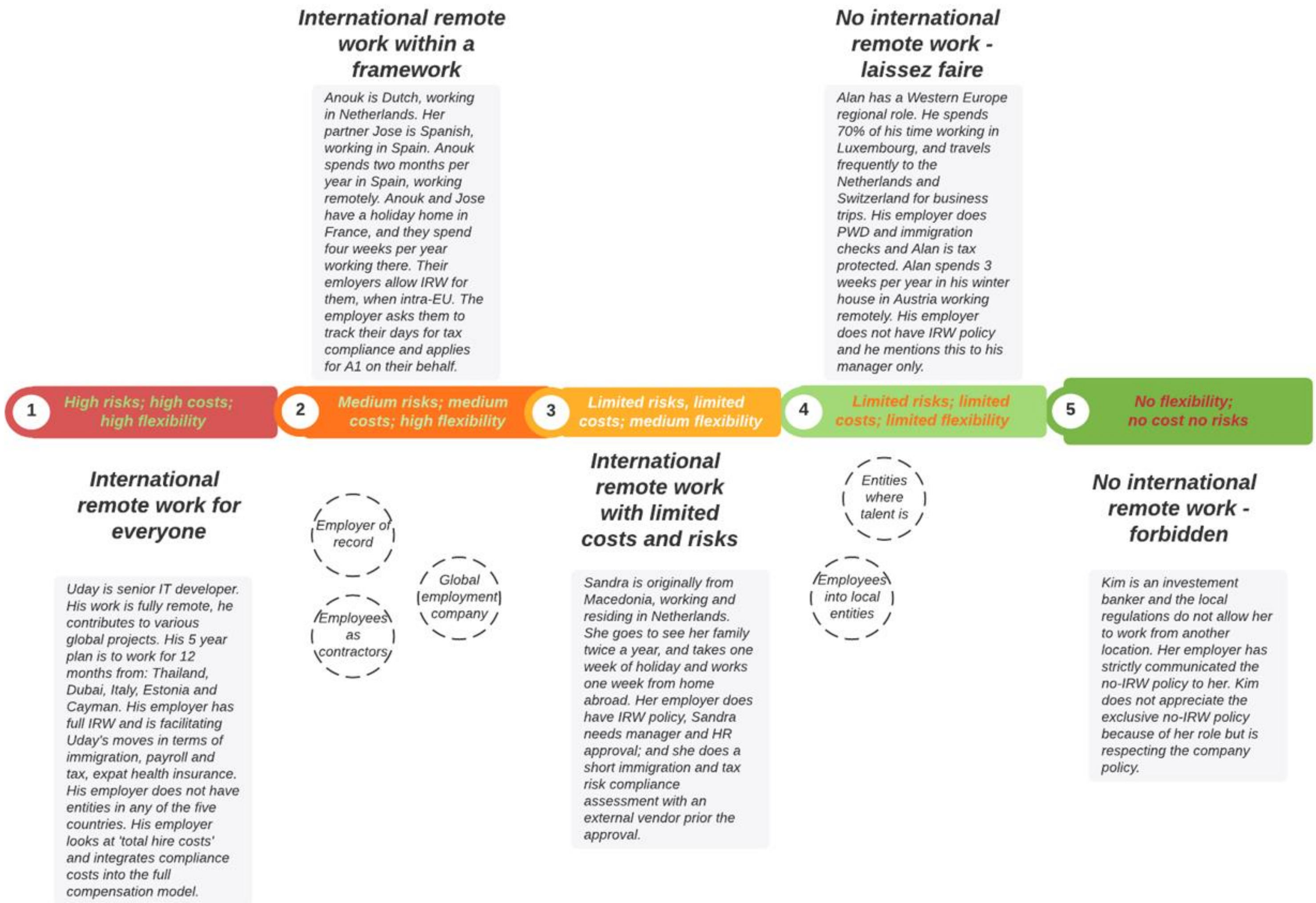
In the infographic as presented below, the 4 different scenarios of international remote work are analyzed and positioned in the spectrum between low compliance and high flexibility vs. high compliance and low flexibility. In practice, it is expected that the companies will combine these scenarios, creating hybrid models in their international remote work policies.

The infographic also describes the 4 (5) scenarios using the personas approach. Personas are fictional characters that represent a type of user of your service. This concept has originated from design thinking, and it is used to help in better understanding your clients' needs, behaviors, experiences, and goals.

'Alan Cooper, who developed this conception of personas, explained that – personas are not real people, but they are based on the behaviors and motivations of real people we have observed and represent them throughout the design process. Although Cooper initially popularized personas as a tool for software developers, the technique has since been adopted in other fields, including marketing, business and design'[12]

For the purpose of better explaining the four (five) different scenarios of international remote work, I have used the personas approach assuming the clients are the internationally remote employees. The personas approach is explained in the graphic below with practical examples.

[12] User personas and social media profiles – Dr. Aaron Humphrey, University of Adelaide https://ojs.deakin.edu.au/index.php/ps/article/view/708/653

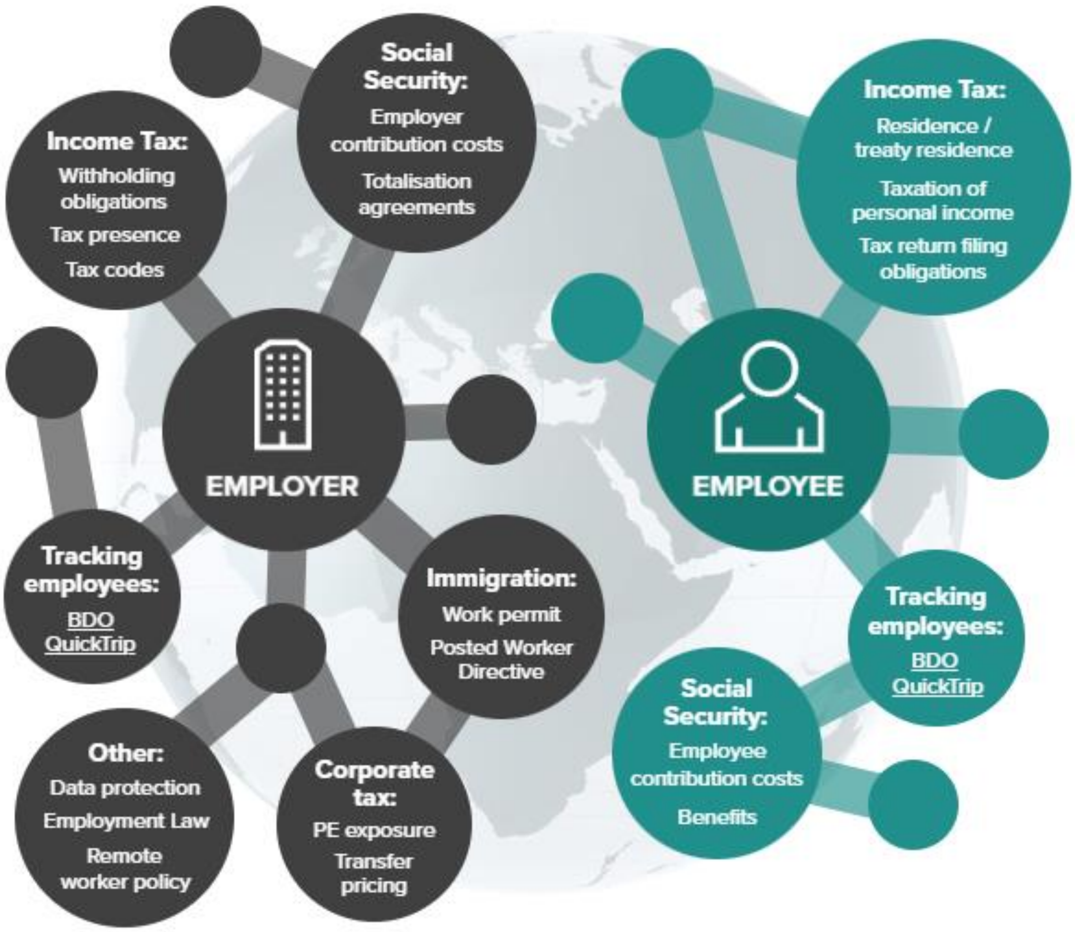


Given that the subject of international remote work (IRW) is new and contemporary, for the purpose of giving it a more academic approach I have used two research methodologies:

1. Survey conducted with 17 multinationals, headquartered in the Netherlands.
2. Interviews conducted with strategic global mobility advisors and in-house senior subject-matter-experts: Chris Debner (Strategic Talent Mobility Advisor), David Enser (Founder of the RES Forum), Hans Hoogendijk (Global Mobility Manager at Royal BAM Group), Zainab Naby (Director Global Mobility at Prosus/Naspers) and John Lee, (co-founder of Work From Anywhere-global tax marketplace for remote work).

3. International Remote Work Policy

In this chapter we will start with analyzing the risks in different areas of implementing full international remote work policy for everyone. The BDO graph below shows a very comprehensive overview of the employee and employer risks.



[13]

3.1. Definition and characteristics

Introducing a full international remote work policy involves allowing IRW for all employees, no threshold or position dependency, no countries' limitations and fully facilitated by the employer.

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[13] BDO: Have you considered the tax risks of your international remote working arrangements? https://www.bdo.co.uk/en-gb/insights/tax/global-employer-services/have-you-considered-your-international-remote-working-arrangements

3.2. Risks

Immigration

In the full IRW policy, the employer would replicate the business travel procedures to self-initiated travel in terms of compliance monitoring. The employees do a travel assessment prior to the travel to ensure they have the correct residence or work permit in place.

Three important conditions need to be met to make this policy feasible from an immigration perspective:

- The employer is willing to apply for the necessary permit regardless of the chosen location
- The employer has the sponsor role in all countries where its employees decide to work from
- The employer is willing to file all obligations under the EU Posted Workers Directive for its employees

In relation to employee flexibility, this policy it the most flexible and accommodating one. The employee's choice to work in another country is completely personal, and the employer is flexible enough to offer support with full immigration compliance. There are quite a few countries globally offering digital nomad visas and this is one option available to the employees/employers. What needs to be taken in account is that certain digital nomad visas are applied for on personal basis, not via employer. Moreover, some of the digital nomad visas require specifically that the employee does not have an employer in the country.

Tax and permanent establishment

From employer perspective the tax risks include: withholding obligations, shadow payroll set-up, double employment income taxes, PE exposure for corporate tax.

From employee perspective the tax risks include: potential double taxation of personal income, tax filing obligations in two or multiple countries.

In the full IRW policy, the employer is willing to facilitate the tracking and monitoring of the tax liability of its international remote workforce. The employer is willing to support its remote workforce with filing annual tax returns in all respective countries. The employer would need to make a decision whether the international remote workforce will be responsible for the tax liability in different countries, or whether the tax equalization or tax protection principle will be applied. While in some countries the tax liability can be resolved via submitting a tax return to pay any liabilities, other countries would require setting up foreign payroll and monthly tax withholding obligations for the employer.

When international remote work is allowed without a restriction on duration, the risk of tax liability in two or more countries is high. Employers wishing to offer higher degree of flexibility to their employees will consider treating personally requested international remote work as traditional assignment and use the tax equalization or tax protection principles. Tax equalization during IRW would mean that the employee will be nor better nor worst off in terms of taxes due as a direct effect of the international remote work, and the additional taxes due or tax credits received will be for the company. Tax protection during IRW would mean that the employee will be protected if additional taxes are due as a direct effect of the international remote work, but if the country of remote work has lower tax rates applicable the benefit will be for the employee.

An average EU country has 50-100 double tax exemption[14] treaties and double taxation will arise in all other countries globally, where the company would potentially have international remote workforce.

[14] European Commission official website https://ec.europa.eu/taxation_customs/treaties-avoidance-double-taxation-concluded-member-states_en

When IRW is allowed for senior management and/or sales positions in the company, which have authority to conclude contracts on behalf of the employer, a risk of creating permanent establishment (taxable presence for corporate tax purposes in the host country) arises.

As of 8 October 2021, 137 member jurisdictions of the OECD have agreed a two-pillar solution to address the tax challenges arising from the digitalization of the economy. This solution is called BEPS (Base Erosion and Profit Shifting) Regulation and the in-scope companies are the multinational enterprises with global turnover above 20 billion euros and profitability above 10% in Pillar One. An important change arising from BEPS connected to international remote workers is the stricter PE definition, not only limited to PE exposure in terms of where the contract is legally signed, but the performance of significant preparatory and auxiliary activities. In terms of senior management and sales executives, this means working remotely in another country than where the formal employer is located, creates immediate PE exposure risks.

In terms of flexibility of offering international remote work for all employees, the tax risk will be significantly different depending on two main aspects: duration of international remote work and the job position of the employee. An employer offering IRW without limitation of duration and to senior management and sales roles, will undoubtfully face significant double employment income taxation and very high PE exposure risk. It is difficult to make an estimate whether the costs of full compliance are higher or lower than the risks of non-compliance and fines.

Social security

In the full IRW policy, the employer is responsible for assessing and contributing to the correct social security system on behalf of its internationally remote workforce. In the Netherlands, for example, you are insured in your country of residence if you: spend 25% or more of your time working in that country, provide 25% or more of your services in that country and receive at least 25% of your income from that country[15].

This comes from the EC Regulation[16] on the coordination of social security systems, Article 14, stating – in the framework of an overall assessment, a share of less than 25% in respect of the criteria mentioned above (in the case of an employed activity, the working time and/or remuneration) shall be an indicator that a substantial part of the activities in not being pursued in the relevant Member State.

For the international remote workforce, the 25% would be the high-risk threshold in terms of social security. In practice this means that if the duration of the time spent in another country, then where the formal employer is, goes beyond 25%, the need to determine which social security system applies arises and the need of application for Certificate of Coverage.

Employers offering IRW for all employees have to set-up a mechanism of making sure adequate social security coverage remains in place during the international remote work. One of the issues is that IRW is based on personal request, the employee is not sent on assignment as in traditional global mobility, when the Certificate of Coverage is applied for. The governments are temporarily flexible and allowing this under the relaxed Covid-19 measures. Remains to be seen what approach will be applicable when the relaxed measures will be lifted, expected mid-2022.

Similar as tax, social security liability will mean double/multiple contributions in cases where no bilateral/multilateral agreements on social security are concluded. Furthermore, social security liability of an employee triggers payroll obligations in the host country(ies). Given that there are employer and employee contributions for social security, the risks and costs are on both sides. From employee perspective, there is also a risk of gap/under coverage/losing rights of social security coverage.

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[15] Official governmental site of Business.gov.nl (point of single contact for resident and foreign entrepreneurs in the Netherlands) https://business.gov.nl/regulation/social-security-different-eu-member-states/

[16] EC Regulation https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009R0987&qid=1641591751433

Data protection laws

In some heavily regulated industries, as the financial industry (banking, insurance, investment, financial services), access to/transfer of data is restricted to the country of work. This is regulated by national or regional regulative and is case-to-case specific. Other regulated sectors include: telecommunications, transportation, life sciences, healthcare, energy, agriculture, construction, defense and postal services.

For the purpose of risk assessment, we will use as an example GDPR (General Data Protection Regulation)[17], which sets out detailed requirements for companies and organizations on collecting, storing and managing personal data.

Under GDPR data transfer outside of the EU is allowed if your company is following the measures below:

- The non-EU country's protections are deemed adequate by the EU.
- Your company takes the necessary measures to provide appropriate safeguards, such as including specific clauses in the agreed contract with the non-European importer of the personal data.
- Your company relies on specific grounds for the transfer (derogations) such as the consent of the individual.

CNIL, the French Comission Nationale de l'informatique et des Libertes has created an interactive map[18] on data protection around the world. For example, Indonesia (commonly mentioned example country for digital nomads) is labeled by the EU as a country that does not ensure an adequate level of data protection.

There are two risks that are easiest to spot in terms of data protection laws compliance: access to employee data and to client data. To ensure flexibility has been given to employees requesting to work from another country, while not compromising compliance, both client-facing roles and employee-data access roles will need another set of approvals.

3.3. Implementation

The full IRW policy requires a very detailed and specific policy explaining all the points mentioned above. The roll-out and implementation of the full IRW policy requires a specific communication strategy for all stakeholders, from Executive Committee, to country management teams, to managers, HR and finally all employees.

The sign-off process on case-to-case basis required approvals from different employer stakeholders: legal, corporate tax, HR, global mobility, manager.

To ensure proper monitoring and risks mitigation, the full IRW policy assumes full transparency on employee side, concretely in allowing instant location (GPS) and IT access share with the company. Location share would allow the company to track exact travel days, working days, residence days for the purpose of determining income tax liability, social security and labor law implications.

While the IRW policy has employee flexibility in the core of its design, it does come with a compromise on privacy protection, to ensure employer-driven compliance.

3.4. Costs

The most common categories of costs relating to the implementing of a full IRW policy are:

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[17] EU official website https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index_en.htm

[18] CNIL interactive map https://www.cnil.fr/en/data-protection-around-the-world

- Internal resources: designing policy, communicating policy, implementing process with all relevant stakeholders, monitoring
- Immigration: ongoing immigration costs for permit applications and sponsor entities, immigration assessment outside of office location and frequent business travel countries – to all countries globally
- Tax: continuous tax vendor services for tracking thresholds, complex tax return services in multiple countries, analysis of corporate tax and permanent establishment exposure for high-risk cases, double tax costs in countries where there are no double tax exemption treaties, payroll services for shadow payrolls, tax equalization costs
- Social security: possible double country contributions especially where no bilateral/multilateral agreements are in place, certificates of coverage applications, covering gaps in social security benefits
- Pension: international pension plans for all internationally remote employees
- Health: international health plan for all internationally remote employees
- Fines: for non-compliance on any of the points above
- Reputation risk for the company

3.5. Compensation model

On the compensation model with full IRW policy, we see two developments:

- Global compensation model (location-agnostic pay model): where employees are paid the same salary regardless where they live/reside. David Enser mentions this model as 'costs to hire' in which the employer has set total compensation package for a certain position and the compliance costs are included in the full employer's costs package. The determined package needs to include both gross annual salary (including fixed allowances) and estimated compliance costs for the international remote model pre-agreed with the employee (new hire).
- Geographic pay philosophy[19]: or pay differentials are changes to the level of base salary paid to an employee to account for variations in the cost of labor in different locations (determined with cost of living indices). For example, the work location tool launched by Google in June 2021 [20]

The expectation of the employees when international remote work without restrictions has been published is that either a global compensation model will be adapted, or there will be no change of compensation as direct effect of working remotely in another country. The practice in the past 20 months has not been in employees' favor, as typical example is the geographic pay philosophy.

3.6. Employee experience

The full IRW policy provides maximum flexibility in terms of location for the internationally remote workforce. On the pros side the employee is benefiting from employer support in all mandatory employer obligations as work permit, wage tax, social insurance. On the cons side, the employers might offer different compensation packages location-dependent and any tax liability above the usual home tax liability, will be for employee's account (unless tax equalized or tax protected).

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[19] BDO - Developing a geographic pay philosophy: a tool for building a resilient workforce https://www.bdo.com/insights/tax/global-employer-services/developing-a-geographic-pay-philosophy-a-tool-for

[20] Reuters: Pay cut: Google employees who work from home could lose money https://www.reuters.com/world/the-great-reboot/pay-cut-google-employees-who-work-home-could-lose-money-2021-08-10/

The international remote work policies that were publicly communicated as fully flexible in the past 20 months, for the purpose of building on the employer value proposition, in the implementation phase added multiple layers of compliance guidelines and restrictions.

4.International remote work within framework

According to PwC virtual workforce survey: 68% of the companies will have immigration restrictions for remote work; 76% will have location restrictions to entity presence and 55% will have role restrictions.[21]

4.1. Definition and characteristics

International remote work within framework indicates allowed IRW with restrictions on additional immigration compliance, restrictions on roles, restrictions on location.

IRW within framework attempts to limit the compliance risks mentioned above in the full IRW policy. The practical examples that I have analyzed in the Dutch networks of global mobility managers are:

- Allowing IRW for all roles, except senior management roles and sales roles (to avoid potential permanent establishment exposure risks)
- Allowing limited time in another country than where the formal employer is located: this ranges between 4 and 8 weeks per year
- Allowing IRW with limited immigration risk
- Allowing IRW for non-regulated roles, restricted to being performed in contracted country

[21] Virtual Workforce Survey Insights November 2020, https://www.pwc.com/us/en/hr-international-assignment-services/assets/pwc-embracing-the-future-of-mobility.pdf

The overly communicated Spotify's 'work from anywhere' policy would currently fit the definition of IRW within framework. "We need to respect the challenges that come with working in different time zones. So for now, we can only support remote working within the region your role is based. For example, if your role is based in Stockholm, you may be eligible to work remotely within Europe. There are a few things to consider though. To comply with local laws, Spotify must be a registered entity in the country you wish to work. You'll also need to have all the necessary visas and documentation to work in the location of your choice. And of course, any changes will need to be discussed and approved by your manager to ensure it makes sense for your team and role. If you do wish to move region, you can apply for a new role in that region and go through the recruitment process as usual'. [22]

The case of PwC US announcing[23] that their US employees who can telework – will have ability to work virtually from anywhere in the continental US, is another example of IRW within framework.

In the paragraphs below we will go through the specifics of the risks (or the limitations of them) following implementation of IRW within framework policy.

4.2. Risks

Immigration

Limiting the immigration risks from three perspectives:

- Allowed within EU, only for EU passport holders. Allowed within US, only for US passport holders or work permit holders.
- Allowed within passport country (for employees on work permits in country of formal employer and passport holders of another country).
- Allowed if the employee has the proper work permit to work and reside in the host country.

Tax and permanent establishment

The risk of creating permanent establishment is higher for senior management and sales role which can trigger corporate tax obligations, administration burden and profit allocation discussion with local tax authorities.

According to the Action 7 OECD Report: Preventing the Artificial Avoidance of Permanent Establishment Status[24] 'changes to ensure that where the activities that an intermediary exercises in a jurisdiction are intended to result in the regular conclusion of contracts to be performed by a foreign enterprise, that enterprise will be considered to have a taxable presence in that jurisdiction unless the intermediary is performing these activities in the course of an independent business.

An article from KPMG Switzerland goes a step further into explaining that in Switzerland for example, there is the possibility to create permanent establishment from one canton to another. This results in companies not only having to consider employees working from other countries but also working from other cantons.[25]

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[22] Official Spotify - Work From Anywhere page: https://www.lifeatspotify.com/being-here/work-from-anywhere
[23] CNBC: PwC announces nearly 40.000 US employees can work remote from anywhere in the country https://www.cnbc.com/2021/10/01/pwc-says-us-employees-can-work-from-anywhere-in-the-country.html
[24] OECD.org: Action 7 Permanent establishment status: https://www.oecd.org/tax/beps/beps-actions/action7/
[25] KPMG: Work anywhere, together, can create PE risk https://home.kpmg/ch/en/blogs/home/posts/2021/06/wat-permanent-establishment-risk.html

Social security

For social security purposes, when introducing IRW within a framework, the 25% threshold is considered. To mitigate the risk of double social security obligations, or change of applicable social security system, the companies set the limitation on maximum 90 days per calendar year. The employer would in this case apply for A1 or Certificate of Coverage for the internationally remote employee.

Chris Debner made a very valid point on this topic saying: 'The A1 certificate is aimed to be used when the company sends you to another country to work on assignment, not when you decide to work from another country than the contracted one, because of your private reasons.'

An interesting category for research in terms of social security are the cross-border commuters, because even with the local remote work policies not even the international remote work, they will face stricter restrictions than their colleagues that reside and work in the same country. This comes from the fact that if the remote work policy allows employees to work from home for example 40% of their working hours and 60% from office, post-pandemic, due to reaching the tax and social security high-risk thresholds this will not be possible for commuters. While the rules might be 40% work from home for regular employees, they will be maximum 20% for commuters to avoid high numbers of red-flag cases for compliance (tax and social security).

Limited duration

To limit the immigration, tax and social security risks as explained in chapter 3, some employers decide to limit the duration of work from another country than where the formal employer resides.

For immigration purposes, some countries allow travel within 30-90 days on visitor (short-stay) visa, and do not specify that work permit is needed if the intended travel involves performing actual work. This is country specific and business travel assessment tools can be used to mitigate the risk.

For income tax purposes, the basic 183 days rule is the start of the discussion. To mitigate risk again, companies use in practice 'the worst case scenario' approach. This means they take in account the country (among the jurisdictions they are present in) with strictest tax residency implications as a baseline to limit the threshold. The thresholds are usually set between 30 and 90 days per calendar/fiscal year.

The limited duration and limited eligible roles for IRW within this policy provide a certain degree of flexibility for the employees while not compromising on compliance.

4.3. Implementation

The IRW within framework policy requires specific communications plans targeting both employees that are restricted from IRW and employees that are eligible for IRW.

The approval process would be two-folded: internal stakeholders (legal, corporate tax, HR, global mobility, manager) and external vendors – to ensure compliance.

4.4. Costs

Few categories of estimated costs of implementing IRW within framework policy are mentioned below:

- Limited internal resources: design, communication, implementation and monitoring

- Vendor compliance assessment tool: immigration, tax and social security
- Vendor services for A1/CoC, tax return when above thresholds
- Global travel policy cover for internationally remote employees (during private travel)
- Fines for non-compliance of any of the points above

4.5. Compensation model

There are no obvious changes in the compensation model within this model since the duration of the permitted international remote work is limited.

4.6. Employee experience

The IRW within framework policy provides reasonable amount of flexibility for the internationally remote workforce. The employee experience is in the focus of attention of the employer, while limiting the compliance risks and costs. Important point for the employee experience in this policy specifically is that it can be perceived as discriminatory by the employees excluded from benefiting from it. For the employees that are eligible for IRW it is crucial to focus the communications strategy on raising awareness of risks, if the limitations on thresholds are not followed strictly.

5.International remote work without framework with limited risks and costs

5.1. Definition and characteristics

International remote work without framework with limited risks and costs is policy in the form of written guidelines explaining the risks and restrictions of IRW. Within these guidelines part of the obligations are delegated to the employees and part to technology.

In terms of limitations, this limited IRW policy will be more restrictive. The limited IRW policy is usually more restrictive than the IRW with framework. The limited IRW policy will follow all restrictions from the IRW with framework and additional ones:

- Allowing IRW for all roles, except senior management roles and sales roles (to avoid potential permanent establishment exposure risks)
- Allowing limited time in another country than where the contracted office is located: max 30 days per calendar year (preferably spread across the year)
- Allowing IRW only with limited immigration risk
- Allowing IRW for non-regulated roles, restricted to being performed in contracted country

The most important three distinction of the limited IRW are:

- Guidelines for incidental remote workers
- Self-service technology tools
- Delegation of the approval process to managers and HRBP (red flagged cases to global mobility)

5.2. Risks

The risks are limited and involve tracking red-flag/high-risk cases.

The most common risk from this policy is misinterpretation or free interpretation of the guidelines by the stakeholders to which the approval process was delegated. This can/will lead to more high-risk cases than originally anticipated.

5.3. Implementation

The IRW without framework policy requires specific communications plans targeting both employees and their managers. Guidelines are developed and published on the intranet as to all restrictions for employees that wish to work remotely internationally.

The approval process would be two-folded: self-service technology tools to ensure compliance and managers and HRBP approval process when the general guidelines are followed.

5.4. Costs

Few categories of estimated costs of implementing IRW within framework policy are mentioned below:

- Very limited internal resources: guidelines, communication, implementation and monitoring
- Vendor compliance assessment tool: immigration, tax and social security
- Self-service social security tools
- Global travel policy cover for internationally remote employees (during private travel)
- Fines for non-compliance of any of the points above

5.5. Compensation model

There are no obvious changes in the compensation model within this model since the duration of the permitted international remote work is very limited.

5.6. Employee experience

The limited IRW policy provides limited amount of flexibility for the internationally remote workforce. These guidelines have compliance in the focus of attention and risk mitigation, while allowing limited flexibility as perceived in pandemic times. The limitation of the limited IRW policy is that there are few mandatory employer obligations that cannot be transferred to the employees: work permit, wage tax and social security assessment. To limit high-risk cases, the communications strategy aimed at cross-border remote employees and the approvers is crucial.

From employee perspective this policy can be observed in two manners: providing more freedom to decide on the place of work in terms of country for limited employees in-scope of policy; while delegating some employer obligations to the employee (immigration, risks of double taxation on individual income, gaps on social security coverage, gaps in health insurance coverage).

6.No International Remote Work Policy

6.1. Definition and characteristics

No international remote work policy can be analyzed from two aspects, as outlined by Chris Debner: laissez faire vs. forbidden.

The laissez faire status on IRW within the company means that the interpretation of not having an international work policy is left at the 'free market'. In company terms this means the employees and their managers have the responsibility to get themselves educated on the potential risks of cross-border remote work and make well-educated decisions. Some companies will go a step further and use the intranet to provide the employees with materials to get themselves familiar with the potential risks, or an obligatory global training will be provided by a specialized immigration, tax and social security provider.

The forbidden international remote work is in principle straightforward: no international remote work is allowed for any employee.

6.2.Risks

If the policy is fully respected by all employees, there should be no risk for the employer.

Two important considerations to mitigate any potential risk:

- Post pandemic - Covid-19 temporary measures and mutual agreements are expected to end by mid-2022.
- Data analysis should/can be performed of incoming IRW request in the past 18 months during pandemic and how they were solved. The results should be analyzed in combination with corporate travel agency data on business travel and IP login data from the IT department (especially during/after holiday period). Data privacy laws to be respected when dealing with employee data.

6.3. Implementation

No implementation process.

To give an example provided by Chris Debner, in the network of largest Swiss (market index) companies: 5 are still considering IRW policy introduction, 5 have implemented the framework approach, and 5 have strictly forbidden it.

6.4. Costs

Potential costs for the scenarios of no IRW policy are in two respects:

- Education training and materials on risks of international remote work
- Fines for non-flagged high-risk cases
- Reputational risk

6.5. Compensation model

No distinctive compensation model necessary.

6.6. Employee experience

The employee will have no flexibility in terms of location to perform his work from. There are still some personas that offer flexible approach with no IRW policy, for example self-initiated transfer and internal mobility to a role in another jurisdiction.

7. Survey conducted

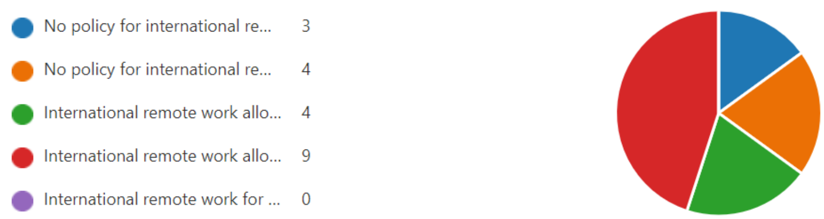
For the purpose of practical research on the question of the thesis a survey was designed with three questions that have a focus point in answering:

1. Where are multinationals positioned in the spectrum between no IRW and full IRW policy?
2. Which IRW personas are most common in their organizations?
3. Which solutions are the companies looking at to answer on requests for IRW?

The survey as shared in the image below, has been distributed to 40 multinationals in the Netherlands (majority headquartered in the Netherlands and present globally. The graphs below show the answers from 17 multinationals.

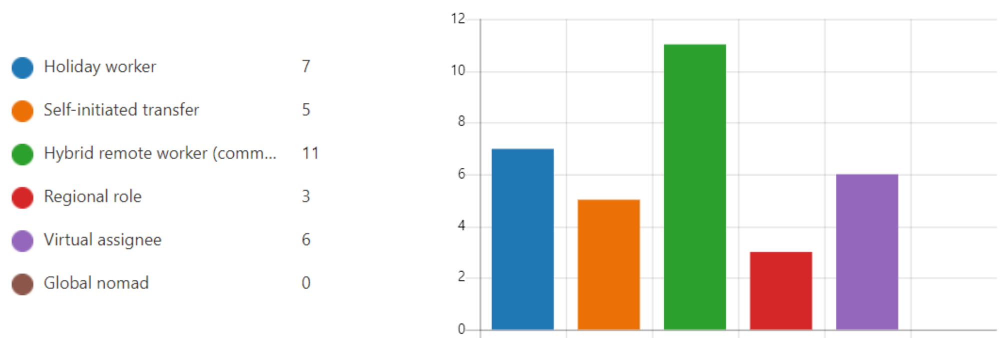
1. In the spectrum between 'no policy for international remote work' and 'international remote work for everyone', where is your company positioned?

More Details



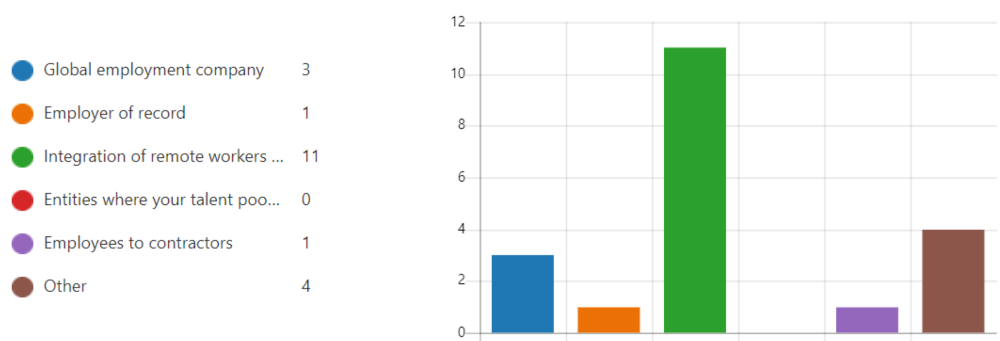
2. Which international remote work personas are the most common in your company?

More Details



3. Where are you looking for solutions for requests for international remote work?

More Details



Analyziing the answers on question 1. In the spectrum between ‘no policy for international remote work’ and ‘international remote work for everyone’, where is your company positioned?, majority of the companies are currently in the scenario IRW allowed within a framework. There are 7 companies that do not have IRW policy, out of which 4 have laissez faire approach, and 3 publicly forbid it. There is no multinational company that has embraced IRW for everyone.

The second question is: Which IRW personas are the most common in your company? The personas as used in the survey are described in details on page 19. The answers on this question are in majority (11) mentioning the hybrid remote workers (commuters). The reasoning for this is also the geographical position of the Netherlands and the fact that the surveyed companies are in large number headquartered in the Netherlands. There is high probability that these multinationals have offices in Luxembourg, Belgium, Netherlands, Germany, Switzerland, where cross-border workers are typically very common. Holiday workers are the next most-common category with 7 affirmative answers.

To add to this, the policies that the companies are developing, as described in the textual question of the survey mention tailoring the IRW policies specifically for personal requests with temporary nature. ‘We are in the midst of launching our remote working policy however, this is aimed at employee driven remote working requests for temporary periods. Where there is remote work being conducted due to business set-up, entity structure or hiring plan, these would follow the route of relocation, assignment or contracting only.’

The third question, Where are you looking for solutions for requests for IRW?; has an almost unanimous answer that the companies during the pandemic period have been using the solution of integrating international remote workers into local entities, where these are present. There are 3 companies that are looking into solutions as the global employment company. There is only a minor number of respondents that are exploring the employer of record option or converting employees to contractors.

One of the respondents concludes the survey by sharing a very valuable input on the shift of narratives internally, explaining: ‘We allow it for certain expertise (e.g. IT, Talent), only if we can do it in a compliant manner and if any additional cost does not outweigh the benefits. Although the starting point was often that any complication should be avoided, the difficulties in getting talent now seem to have shifted the mood a bit and people see that in the war for talent concessions need to be made (including remote working and any added cost and complications this may bring).’

Personas – most frequently addressed IRW requests

To increase the clarity on the question 2 from the survey conducted, the short descriptions of the personas used; is in the table below.

Holiday worker	Self-initiated transfer	Hybrid remote worker (commuter)	Regional role	Virtual assignee (project worker)	Global nomad
Emma asks to work from her holiday home in Spain 3 weeks per year. And work from her passport country for 2 weeks per year.	Rene has always wanted to relocate to US. His company has US entity and an open position that fits Rene's experience. The company encourages internal mobility and will provide one-off support to Rene for his transfer.	Anita is employed by Luxembourg entity but she lives in a city in Germany near the border. Anita has always commuted to work to Luxembourg, but she was working from her home in Germany since March 2020, per company request. Anita asks for flexibility to work remote 2 days per week as the WFH policy implemented for all employees.	Raj has a regional APAC role and is located in Singapore. Raj requests to perform his role from UAE in 2022, since his role has equal responsibilities in 6 APAC region countries.	Simon has been working on a global project for the past three years. During Covid-19 this was formalized in a virtual assignment letter. The project continues in 2022 and Simon is expected to travel to Hong Kong, UK, India, US and Switzerland to meet his project team.	Nura has always wanted to relocate to Japan for 1 year, Singapore the second year and UK in the third year. Nura has a vital client-facing role and is responsible for relationship management of a big multinational client. For strategic retention purposes, her employer is willing to support the three moves. The employer has entities in these three countries.

8. Interviews: strategic advisors, in-house GM and vendor

During the period October-December 2021 I have conducted interviews with strategic global mobility advisors and in-house senior subject-matter-experts: Chris Debner – CD - (Strategic Talent Mobility Advisor), David Enser – DE - (Founder of the RES Forum), Hans Hoogendijk – HH - (Global Mobility Manager at Royal BAM Group), Zainab Naby – ZN - (Director Global Mobility at Prosus/Naspers) and John Lee – JL - (co-founder of Work From Anywhere-global tax marketplace for remote work). The interviewees are based in Switzerland, Germany, Netherlands, and Ireland (global), making the opinions expressed more Europe-centric, than global. The major focal points in relation to international remote work (work from anywhere) viewed from the perspective of the interviewees are outlined below.

Pre-pandemic vs. post-pandemic

CD: You have to distinguish pandemic vs. post-pandemic. During the pandemic a lot of the institutions were not looking at laws, there was a grant-period also for the cross-border workers. People are sometimes still in these arrangements, for example when work-from-home policy has still not been defined, they might still work from another country. Some companies have monitored it very closely, others have been more laissez-faire about it (the effort was too huge to scan where all the people are). It is clear that some of the laws will come back into effect by the end of 2021, and you really must prepare for a post-pandemic scenario. Cross-border workers are very common in Netherlands, Luxembourg, Switzerland. And with work-from-home policies there are many risks, permanent establishment, social security risk; if the cross-border workers are also allowed to work from home. The benchmarking among Swiss companies for cross-border workers is maximum 1 day per week work from home, and 4 days they have to come to the office. Which differentiates cross-border workers from other employees in the domestic work-from-home policy. Some companies define it at max 25% to be in line with social security regulations. Some companies have questioned the 25% because when the employees travel to another country during the year, that will change the calculations of the 25%. This is outside of WFA, this is domestic work-from-home policy.

DE: In the early days of this, there were many companies that jumped promoting work from anywhere forever. 95% of those companies have pulled back from these positions now. Major Chinese social media company – the most frequently asked question to the talent acquisition specialists is ‘can I work remotely?’. 70% of UK and similar percentage of US employees have said we do not want to go back to the office (definitely not full time as it was). There is a demand, and you as company, have to listen.

Then there is the classic Spotify example, misquoted sentence ‘work from anywhere on a New York salary’. Misinterpretation of the topic of how reward will be structured. Google recently said that you can actually work from home, but there will be reward and benefits consequences. They have created a ‘pay and benefits’ calculator that says if you want to work from another state, then this is how your pay and benefits will be affected by the choices you make.

JL: How I define work from anywhere is a policy which allows employees to temporarily work remotely abroad in specific countries for more than 7 days but less than 365 days. [26] Prior pandemic you had business travelers and expats. Business travel is less than 7 days, and expats and permanent transfers is more than 365 days. The people going for more than 7 days but less than 365 days, there wasn’t huge numbers in companies. You had project workers (2/3 months), client work, but in general not too often. Traditionally, they either fitted the business travel or the expat bucket. The new challenge is between 7 and 365 days, that is where I position the ‘work from anywhere’. They need the sophistication in terms of compliance of the expats, but they have the frequency of the business travelers.

[26] https://www.wfa.team/defining-work-from-anywhere/

Major trends

CD: Majority of the companies I work with restrict it to a number of countries. Typical guideline is immigration (Europe but not Switzerland). I have seen 3 weeks, 4 weeks, 8 weeks. One of my clients wanted to implement 4 weeks, not consecutive. All of them have sign-off process, compliance checks. Permanent establishment is very 'close to the heart' for many companies, which immediately excludes some of the roles from being eligible for IRW. Social security, some companies are going for the A1's, which is also problematic in Europe, because A1 in some countries can only be applied for if you are going on behalf of the company, which is not the case in 'work from anywhere'. Germany has now opened up; it offers A1 being used for people that go for themselves. Health insurance, we need to make the employee aware that there is a risk that they will not be covered by their home health insurance (and they need to do something about it). Different approaches towards how much the employees will be informed. Immigration is the simplest example, when you cross a border to US and you need to show your passport, the border control will ask you 'what is the purpose of your visit'. If you say just for holiday, you would be lying, simple as that.

DE: I spent the last 12 months talking to 40/50 companies on this topic, companies all around the world: banks in New York, services firms in Singapore, big UK organization across different sectors (consulting, FMCG), really taking a broad view. What I've seen works for many organizations is first of all to try and make it simple, with broad key principles in mind. This is easier to communicate and get buy-in (executive support for roll-out). Take a major British-German travel company, they are approaching this with few bullet points: focused on 'cost to hire'. Rather than looking at salaries and compliance, they simply look at cost to hire. For example, the budget for this role is EUR 100.000, 'you' can do it anywhere you like but all the tax complexities would need to fall into that budget. It cannot cost more to the company than it does now; you have to be present at office when required; your job has to be suitable for this (process framework for establishing that); when you are working you have to be present (no swimming pools and being disrespectful towards your colleagues). This has been embraced by both the distributed workforce and senior leadership. Simplicity for me is very important. There is a process of determination whether a role is suitable for IRW, whether the enterprise structure, the legal entities structure you are creating is suitable from corporate tax perspective.

As consultants, we have been working with a major UK retail organization, with operations in Asia and India and the process of determination 'is this role suitable for IRW' goes through several checks: HR, manager, corporate tax, legal. Once all check and approve, you can implement it against a simple framework.

ZN: On the remote work policy, we have a very simple policy in place where we say – we hire the employees at the location where they are living and working. That means that most of the remote working challenges are taken out. Now the question is how do you determine where do you hire these people. If someone is from Ukraine and they do not want to relocate, do you hire them in Ukraine and how do you do that? We have quite a broad structure of entities in our portfolio, head office entities but also businesses we own, where we can use their entities to facilitate employees in. Cross-population, cross-pollination type of structure. In this example, if we do have an entity in Ukraine, we look at how many people do we have that we want to hire in Ukraine. If it is beyond certain amount of people and it fits the strategy of having an office, where people can integrate into the company, then we start hiring the people that we want to hire in Ukraine. That means that they might have a manager in the Netherlands, or different team in another country. From that perspective, we are very flexible. We do not need the manager and the team to be sitting in the same office. Because our local flexible working arrangements are that not everyone has to be at the office.

There are instances where we say no. If we have a Russian candidate that wants to be hired in Russia, because they do not want to relocate to a specific location, but we see that the entity in Russia or the payroll facilitation that we have in Russia is not that large, where it becomes a challenge for this person to integrate in the company, then we often say no.

It is more of case-by-case type of assessment. These requests are sent to global mobility, we make the assessment internally, we align with corporate tax, legal structure team, on the possibilities; we align with HR on what kind of vision do they have for this specific team (located in one location, or not). Based on the input that we receive from all these stakeholders, we give our go-ahead or decline the request. Often when we decline the request, we always provide an alternative (for example, if the employee does not want to move to Amsterdam, there is possibility to move to Berlin or another location for which the employee expressed interest). This has the purpose of not losing our talent, at least to a certain level we can facilitate their needs and requests.

HH: We have published a no-international remote working policy on our intranet for those who voluntarily move house abroad. The basic communication process is that managers and HRBPs play a gatekeeper role. We have sent newsletter and direct emails to all managers in order to raise awareness. The main massage is that international remote work as a personal request is not allowed. It is very important to speak the same language as the manager, after all IRW can lead to costly repairs, which besides the reputational risk for the company has direct costs which at the end, will be covered by the manager's project budget.

The visual representation of the risks involved from international remote working are grouped in the following categories: income tax, wage tax, social security, immigration, health & safety, employment law, corporate tax.

JL: What is really important is to try to understand the background of the companies. For example, what you find is that companies that are heavily regulated or manufacturing companies, they can never allow work from anywhere. You can immediately say that our company structure/company industry does not allow us to have international remote work.

From national cultural aspect of this, some countries are very strict on rules, strong frameworks and risk-averse. And other would be more relaxed, more laissez-faire, so understanding who is designing the policy, what country they are from is key. The people designing the policy have a huge say, obviously.

International remote work for everyone, it depends on how do you define that. Work from anywhere for everyone is not really possible, because it depends on your visa status/immigration side, depends on the tax, depends on the role. Even in a company that allows international remote work, the secretary at the head office will have to be physically at the office space. There is always that challenge of balancing act. On one hand we want to offer it to everyone, but on other hand there are certain roles (highly regulated or on-physical location roles) that we can never move. You want to have the equity side of it, on one side, and on other side – you have the challenge that you can only offer it to a segment. Potentially if you do it the wrong way, if you haven't thought it through, you can run into the risk of being sued by your employees for discrimination.

How I have seen it so far is that companies announce a policy and publish it for their employer branding to the job market as 'work from anywhere for everyone'. But in the behind, it is specific countries and very often there are a number of approval layers to go through. For example, do you have a work permit/visa, and all other compliances. 50% of the employees might request it, but in the end only 15/20% might get it, depending on the framework.

Documenting non-compliance

CD: Advising a Swiss company (20.000 employees) to develop IRW within a framework, we finalized the policy with: 4 weeks per year, several compliance checks, sign-off process, thorough employee communications (risks for employer and risks for employee), rules and regulations. This was signed by the HR board and the Executive Board. During implementation, one HRD wanted to add addendums to the employment contracts and document the IRW. Being made aware of this, Head of Legal convinced the entire Board to revise the Policy and its implementation, because of the addendums. By documenting a potential non-compliance in contract addendum or policy – from legal point of view you are documenting non-compliance (addendum to contract, policy, employee benefit). What an ethic committee, what an auditor (internal, external) would say? The intent counts more in corporate law (the intent to avoid being caught).

Delegating risk to employees

CD: How much can you delegate the risks to the employee? Even if you say you will pay the income tax in another country, the tax system of a country can force me as an employer to set-up payroll in that country. The risk is never fully delegated to the employee. Even immigration can indirectly fall back to the employer. For example, UK, they have a rating points system, where they rate employers how well they are handling employment law.

HH: In some countries, there are certain employer obligations that cannot be transferred to the employee: work permit, wage tax, social security.

Global nomads

CD: 'Digital nomad' is utopia given the current context. A company cannot support that from my perspective because you are violating laws right, left and center. Why it cannot be expected from the world of tax authorities to do something: every country would have to change their social security law, tax law and so on. Nobody will do it.

The digital nomad visas – Estonia, Croatia – major traps. While they state you don't have to pay income tax, they do not guarantee that the tax authorities will not come and say you have a permanent establishment. I do not think that there is sustainability in this. Example: tax department in UK is setting up a task force to find employees who work in UK, which do not have an employer in UK. If I was part of that task force, the first thing that I would audit is all employers of record; immediately 100/200 permanent establishments. I also have my doubts about 'employer of record'. They are booming now in the remote work context. In Germany, the employer of record would not work, because the tax authorities would immediately look through that this is just an 'on behalf' employment, and they would potentially violate the personal lending laws (they are doing this on behalf of someone and they might not even have license to do that).

ZN: We do have a big category of global nomads. The structure is that they all have a Hong Kong secondment, they live and are registered in HK, which is easier from tax perspective, but their residence situation might shift (depending on where they are majority of their time). In HK you do not need an address to be marked as tax resident, it considers the fiscal year to determine whether you are a tax resident. The rest of the time you can freely travel wherever you want to be. These global nomads require that, they travel a lot for work, travel a lot for family reasons, they do not have a specific place they call home. These are generally senior executives and we have included them in a global employment company: international pension scheme, international medical, international life and disability insurance.

JL: Goncalo Hall, is one of the most influential remote work leaders in Europe, founder of the Digital Nomads Madeira project. He is very plugged-in into what is going on in Spain and Portugal. He mentions that pre-pandemic only 10% of the people coming to this remote work destinations were corporate nomads, whereas now it is closer to 50-50%. Previously you would have had these digital nomads, freelancers, working for themselves, hoping from country to country, going on leisure visas, not declaring tax to local authorities. Whereas now you have a huge jump in corporate nomads, people working for a company, they will have to report to the local labor, tax authorities. That is a huge shift, evolution of this new, emerging demographic of corporate nomads. This is the reason why these companies are offering these new policies, because people want to become corporate nomads. When I say corporate nomads, there are two different types of corporate nomads: 1. People that want to constantly travel around as much as they can; 2. People that are happy with their base and when they go on holidays for two weeks, they want to extend it for 3/4 weeks with remote work from that country to give them that flexibility. The second category will be the one with a lot of people, as opposed to the first category which will be impossible for companies to manage (different risks).

Digital nomad visas – they are not a solution for everyone, absolutely not, but in some cases, they are a fantastic solution. In some countries they do not charge you any income tax, you can still do payroll tax in your home country. The company would need to investigate seriously on the payroll obligations of this person taking a digital nomad visa, where do we pay them out from, whether there is a legal entity in the digital nomad visa destination (some of the visas restrict you from being employed by a company in that country). These are new solutions, and because of Covid and travel restrictions, companies did not really have a chance to investigate them properly.

Holiday workers

ZN: Holiday workers – we limit the holiday workers for a month, and within Europe. We don't want to deal with any immigration, because when immigration is done there usually is tax implication, legal implication. For example, 2 weeks of holiday, attached to 4 weeks of work-from-home. This is the maximum and we generally do not approve anything more than that. The approval process is centralized with global mobility (HQ). Local HR receives these requests, but the instruction is to send the requests to global mobility for assessment, and the approval is then given by us.

HH: We get information on IRW without permission cases when HRBPs are approaching us with questions. These employees do not use the company's travel agent, because these are personal travels. Holiday workers, we have come across two of them – accidently – this was the first reason for communicating the no IRW policy.

Self-initiated transfers

DE: I see a greater usage of permanent transfers in general vs. LTAs across the globe, in all situations. What I have not seen is massive move towards people saying 'I want to transfer myself now to a different location and work from there'. There have been some, but I do not see a huge wave of it.

ZN: We also have a rise in self-initiated relocations, people that have moved for their job and now want to go back home and work remotely from wherever they feel home is. We do not always approve those. We assess them on case-to-case basis, is there a fraction of a business need. If there is, we will look further. If not, we discuss with the employee, how do you foresee this, your team is in another country and at certain moment there will be a requirement to be back at the office, 1 or 2 days per week. We generally don't help them with anything. They relocate on their own, the only thing we facilitate with (if approved) is the local employment contract that needs to be shifted. And sometimes the simplest answer is saying no. Because if we say yes to one person without a valid reason, you will see a big increase of requests.

If they apply to vacancies, we do not consider them as self-initiated relocations, this is fully business-related move. These cases we support fully with the entire relocation.

HH: International-local hire whether self-requested or business-requested, we do not make a difference. They will be compensated for: relocations costs, tax support; additional allowances decided by Director of Compensation & Benefits and CHRO).

JL: If you look at self-initiated permanent transfers, that fits more into the expat bucket. The company should not necessarily pay for the relocation cost. This is additional challenge for global mobility. They always had the business requested transfers, but now they have the personal requests as well. We are definitely seeing more of this type. This is very tricky because the existing policies are not designed for this type of requests. They were dealt with on an ad-hoc basis previously, whereas now this has become something that needs to be addressed.

Branch assignments – this is one of the solutions that can be offered for remote work from another country. Just a temporary assignment from a home country to a destination country. For example, if somebody is going to be working remotely from Germany, in Spain for 3 months, rather than moving from one payroll to another, just do a short-term assignment. They can still be on home payroll, obviously depending on social security and double taxation agreements.

It reduces the complexity.

Integrating remote workers into local entities

CD: Integrating someone into an existing entity – depends from company to company. I've heard about massive push back from corporate tax, because you will have to have a recharge (reallocate the costs), transfer pricing, VAT (do you have a license for personal leasing of employees); you have people working side-by-side with different salary levels. Questionable as an option.

DE: I have seen remote workers needed to be housed by existing structures, this is the most prevalent for me. This has placed a strong pressure on the legal enterprise discussions. Where I see complexity growing is legal enterprise structure. The different subsidiaries, the legal registered entities, are they capable of hosting employees or not, are there quotas (Asia, Hong Kong, China – regulations around the entity structure, quotas, number of employees, roles that can be done from certain legal entity types). Probably Covid has put the biggest pressure on the legal and tax teams on how they organize the financial viability and the whole company structure together.

Entities where your talent pool is

DE: Rethinking of site strategy and talent sourcing strategy– if that is where your developers are, that is where we will hire them. There is no point in relocating them, we will just have to find a way to have 50 extra developers in Belarus (they do not want to move, they do not want to move with their families, it will be extremely costly).

There are organizations that realize that we can be remote-first organization, we can have a truly distributed workforce, look in the IT sector – you do not have to hire and bring people to a location (you can just hire the cheapest workers in Belarus, that seems to be the hotspot for IT, project workers and developers at the moment). You do not have to bring these people to a location. Somewhere between this digital nomad merging into hybrid-remote worker type – when someone just physically stays in a location and is physically present as and if required – this is the most prevalent type I see.

ZN: If we see a big rise of employee population to a certain location where we do not have an entity, we talk to the business to determine whether an entity needs to be established there. Dubai is an example of that, we've seen a rise of employees (needed to move to) and we established a business entity in Dubai (full entity able to sponsor permits in the country). And where we do not have entities and we see one/two employees that we need to move out of the global employment company, we discuss the contractor piece. The contractor piece is something that we like to keep only temporarily. We always inform the employee that at some point the contractor structure will need to change to more permanent local employment contract. We discuss this upfront and the potential implication might be that they would need to move to another location which is not the one they currently are in. This contractor phase is just for a specific period, within a specific framework and it will not last for a long time.

Global employment companies

CD: Global employment organizations – the effort of setting one up is massive. If a company wants to go completely remote, give up their office spaces globally, that is probably a solution. You will still have to take care of the compliance of all those employees in different jurisdictions; and there is the question of permanent establishment risks to be dealt with. This is not a mainstream solution, the clients I have spoken to do not want to make this effort.

DE: I have not seen a massive rise of global employment and regional employment companies. There are some that have adopted these concepts, for commonality of benefits, tax, social security.

ZN: Global employment companies, we use them quite often. There has been a big debate whether we should continue using them or not. This is in decline for us, and the reason is not only the cost perspective, but the employees are not really considered our own. You always have this detachment whether this is your employee or not, and whether the compliance element has been taken care of in the way it should be taken care of. The global employment companies being in decline, where we move our employees is to our own local entities.

HH: Global nomads – use to have them within BAM International global employment company in Singapore (now closed). The employees are working for other companies. Previous GEC was in Singapore and the employees had international pension, international health insurance.

Employer of record

DE: Where I have seen employers of record being used more, is not necessarily to offer the freedom and flexibility to go and work from anywhere, but to facilitate those temporary situations. Where you've got employees stranded (by choice or consequence), you've hired someone and you cannot get them to the location when they need to start. Example, we hired you from Australia to work in Austria, but the borders being closed we cannot get you to Austria. We cannot put you on Austrian payroll because you are not there yet. You have an Australian passport but we do not have a legal entity there. We will use employer of record in Australia to facilitate the contract, salary and set-up until you can travel to Austria.

Costs and risks

CD: A singular, complete compliance check for an individual going from one country to another from tier 2 (even from a Big4) provider costs between EUR 3.000 and EUR 5.000. The business travel checks have been automated to a certain degree. There is possibility for technology to come through and link compliance and work from anywhere, but I am not aware of anyone having that already.

German car manufacturer thinking of implementing it for some of their employees, small unit. If you are using a platform as remote.com, please calculate that this ups their salary for EUR 500 per month, massive employers' cost. Are they willing to do this for the sake of the benefit of better retention and better attraction of talent?

JL: Unfortunately, they have to discriminate (be careful), because look at permanent establishment risk, this is role dependent. If you are in a sales generating role, or senior leadership role, if someone like that triggers a PE risk, that is a huge risk for the company. If they go for less than 30 days there is lower risk, but as soon as they start going more than 30 days. Somebody says I am going to my house in south of France for 6 months, and they are going to be signing employment contracts, making key decisions. Immediately someone like that will need a more sophisticated review of the compliance risks.

As a service we offer a subscription-based tool to determine tax risk in specific countries, and a global marketplace of tax advisors to help companies manage remote work. Another technology tool we are building now is permanent establishment risk tool. There are solutions/tools out there that help manage tax, social security and immigration. But one of the ones missing on the market is really good, user-friendly permanent establishment risk tool.

ZN: We have certain locations within our portfolio, where we do not have an entity, we do not have a payroll, Ireland is one of these locations. Ireland has a very specific tax regulation, in working from Ireland if you are Irish. If you are not Irish, and intend to work from Ireland, from day one you have a limit of 59 days. We try to accommodate our senior executives and inform them of the tax implications, what happens when they go beyond these 59 days in Ireland. It does become a challenge for the company, because we need to set-up payroll (pay as you earn responsibility). We try to keep this below 59 days and we have not yet experienced anyone going beyond. This is one of the reasons Ireland is on our radars at all times. Singapore is another one, not so much of the days, but certain liabilities if you move out of Singapore and your tax residency has shifted. There are certain exit tax returns, exit practicalities that you need to manage as an employee before you can even be considered as a non-resident of Singapore. Belgium is another one, with the whole social security piece. We have a list of countries where we keep track on, to know at all times where the employees are going. We flag that when we encounter someone that did not inform us of anything and is at a location that is considered at risk location. We have a general risk assessment of all countries. We do this by the travel data we receive. It is linked with International SOS, so we can see when they fly in and fly out. The more challenging part is the employees travelling on their own, not using our travel agency. We have informed all local HR, to keep us updated on visitors they get in, longer traveler within their country that is coming from another office. The flag comes if the employees are overstaying more than two weeks. We try not go into the route of tracking IP addresses and location of logging in, that is against privacy laws.

Employee surveys

CD: The big risk, why a lot of companies shy-off of doing employees' survey: whenever you do a survey you can raise expectations. If you then decide not to implement IRW policy, you will only disappoint your employees. You can assume that majority of the employees would like to have that benefit. Among my clients, I have not seen anyone that made a survey. Usually, they come to me with anecdotal evidence, and number of employees with IRW requests.

Decision-making

CD: Clients are disappointed from the Big4 because they are not giving advice to their clients what to do. I would not dare to give advice (exEY, exAndersen). This has to be a weighted decision based on the company culture, stakeholder needs. It is balancing or risks, benefits and costs. And costs cannot be budgeted because you do not know them in advance.

ZN: There is a big discussion about international flexible working, and we have always looked at it with a bit of doubt, how will companies actually manage that. And we have not seen a company that has nailed it. There are so many challenges and so many problems and usually it is all solved and managed by global mobility, and it is not so much a business-driven decision, it is more compliance related. The discussion we all have to have at some point is how can we move this to a more business conversation instead of a global mobility conversation. And that has not happened yet. This is one of the reasons why we are not doing anything with that, because I do not think it is sustainable for the future – we are going to implement something that might not survive in two years' time (and we did so much work). We are patiently waiting to see what other companies are doing but the intention is not to move into that direction.

We do have a legacy of a flexible way of working even pre-pandemic. We try to manage it as flexible as possible, covering the compliance piece but also looking ahead and trying to avoid any future risks.

JL: We have seen different companies with different approaches on temporary international remote work policy. The non-financial, non-manufacturing companies, you typically have anywhere from 14 to 30 days, on the more aggressive side - Revolut (UK fin-tech company, approximately 2200 employees) is saying 2 months. Hubspot (US internet marketing company with approximately 3500 employees) are doing 90 days (as long as you have a work permit).

9. Conclusion

If 2020 was the year marked by the pandemic, 2021 was the year of the ‘great resignation’. The great resignation stands for massive resignations globally; the US Department of Labor reported 11.5 million employee resignations in the months April, May and June 2021. The most affected industries were tech and healthcare, the most common age group resigning was 30 to 45 years old, and a repetitive word that was dominant in the news headlines and white papers was employee flexibility.

Flexibility was expected from white-collar employees during the pandemic in terms of place and time of performing work. Governments globally obliged the companies to encourage its employees to work from home and to work flexible for minimum of 14 months. Now 22 months into the pandemic, employees are expecting the same level of flexibility from their current and future employers. Many multinationals globally published (perhaps prematurely) their remote work policies and international remote work policies in an attempt to safeguard their employer value proposition, retain current talent and attract new. While the news headlines were writing about remote work for everyone, no location restrictions, the reality in the background of the policies is that there are several layers of approvals and not every job position is eligible for (international) remote work.

While the interviews that I have conducted on the subject of employee flexibility vs. compliance in international remote work policies have a multitude of contradicting opinions, the common denominator is that offering international remote work for the entire employee population without restrictions is not feasible. The remaining three scenarios - IRW within and without framework, and no IRW, are often discussed not only with anecdotal data but also with companies practicing and implementing these types of policies.

Forty-five percent from the surveyed respondents in the short questionnaire I conducted, fall in the international remote work within framework category. The remaining 55% are spread between no framework, laissez-faire and forbidden international remote work. The analysis represents the multinationals with headquarters in the Netherlands.

Chris Debner concludes that the ‘jury is still out – what is the best approach?’ Debner specifies that ‘If you define your remote work policy as 10/20% work from office on monthly basis, then you can think about offering international remote work framework that is aligned with that. The WFA policy should come with all the risks that work-from-home comes with, and additionally it has its own risks from the fact that you are working cross-border.’

In April 2021, during a PwC Netherlands workshop for the RIN network, Maarten Enklaar gave few advices from a Big4 service provider point of view towards multinationals in the Netherlands working on design and implementation of international remote work policies. The summarized advice is: differentiate and tackle both employee and employer needs; learn from internal data and complex cases; while in the intermediate period prepare for the end of the Covid-19 mutual relaxation agreements.

To conclude, the international remote work policy within framework offers the highest degrees of flexibility while at the same time not compromising on compliance in all relevant matters: immigration, tax, social security, labour law, data protection. Majority of the researched companies are taking an agile approach in developing international remote work policies. They are using the holiday workers (so called workations) as temporary cases of international remote work that can be monitored and restricted to ensure compliance, as pilot policies for a broader IRW policy. While supporting work-from-anywhere for all employees might be an impossible task at the moment, companies are also largely supporting internal mobility (defined as both current employees applying to vacancies cross-border and retention of talent moving abroad). Tackling temporary limited personal requests for IRW and permanent self-initiated transfers can be addressed using traditional global mobility expertise, and addressing these two major components answers 60% of the most common requests employers have received during pandemic.

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ADDITIONAL RESOURCES

1) PwC working session 15 April 2021 (RIN Network): Outlining the landscape of remote working from abroad
2) PwC working session 22 April 2021 (RIN Network): Creating your international remote working policy
3) PwC working session 30 September 2021 (RIN Network): Remote Working Policy
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