



Remote working in an international context | A New Reality ?

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Your speakers today



Wim Eynatten

International Tax Partner and Japanese Desk Leader, Deloitte Belgium

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Wim is an International Tax Partner and is based in the Brussels office. He is a certified Tax Consultant with more than 20 years of experience. Wim combines many years at a Big4 organisation with relevant experience in a Magic Circle law firm.

Wim leads Deloitte's Japanese Business Taxation Europe (JBTE) team and he also leads the Japanese Desk in Belgium. He has many Japanese clients in various industries and assists them with their Belgian domestic and cross-border tax issues.

Wim is Chairman of the Legal & Tax Committee of the Belgian-Japan Association and Chamber of Commerce (BJA) and also a member of the Executive Committee and Board of Directors of BJA.

He has spoken at various seminars and conferences and is the author of various publications in the field of taxation.



Carolien Van Gestel

Senior Manager, Global Employer Services, Deloitte Belgium

Carolien is a Senior Manager within our Global Employer Services practice and is based in the Brussels office. She is a certified Tax Consultant having much experience in national and international tax, social security, compensation and payroll matters.

Carolien is part of our Japanese Services Group and serves a variety of Japanese and other multinational companies with their international mobile workforce and also provides support with structuring and optimizing compensation & benefits packages for their local as well as internationally mobile employees and executives.

In 2012 Carolien did spend 3 months in Tokyo on assignment to Deloitte Tohmatsu Japan to support our Japanese colleagues with personal income tax compliance.

Agenda

01

Introduction : Remote working as the new standard

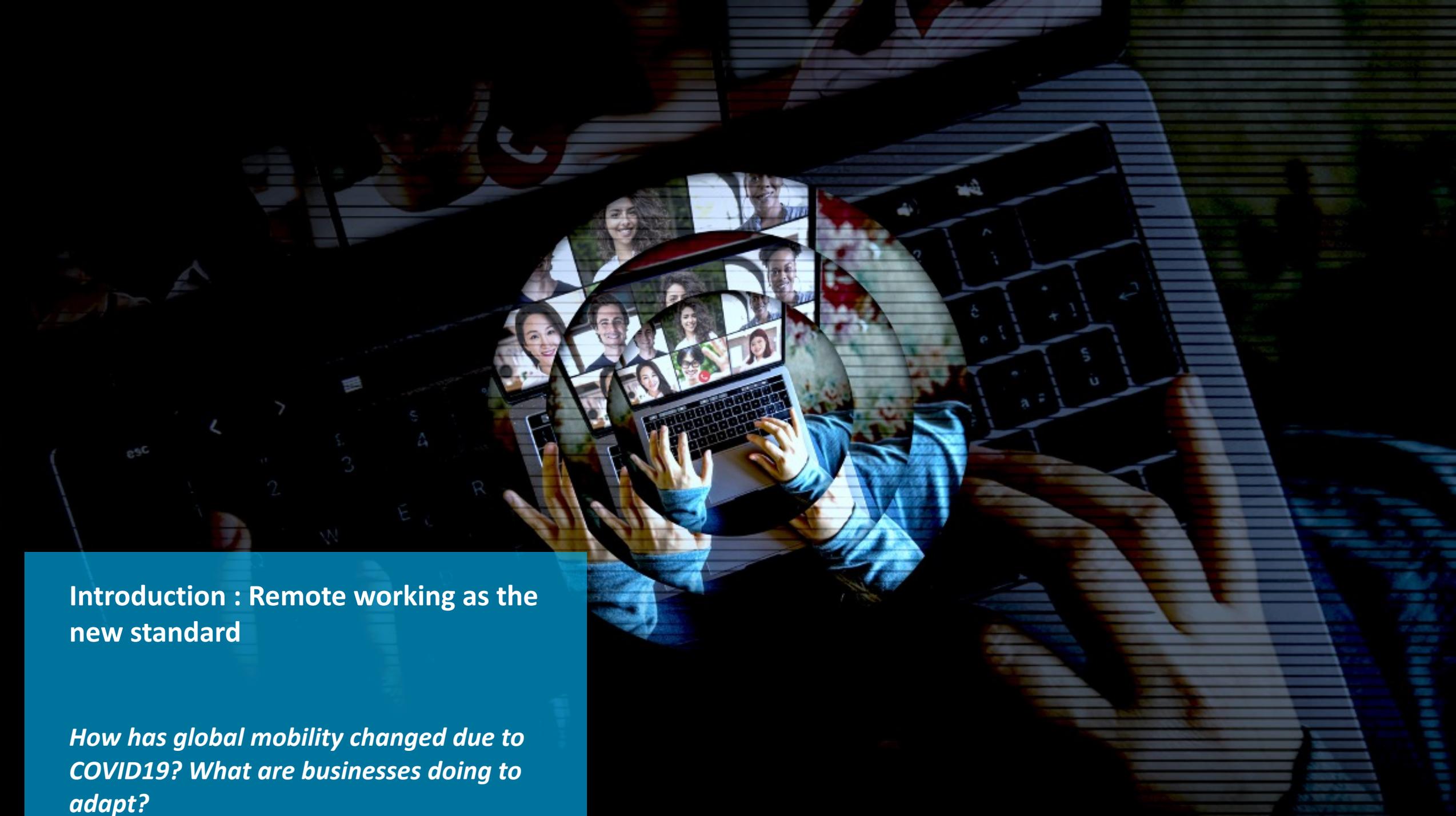
02

Zooming in on personal income tax and corporate tax implications

03

Practical considerations



A person is shown from a high-angle perspective, sitting at a desk and using a laptop. The laptop screen displays a video conference with several participants. The person's hands are visible on the keyboard. The background is dark and slightly blurred, showing a desk lamp and other office equipment. The overall lighting is dim, with the laptop screen providing the primary light source.

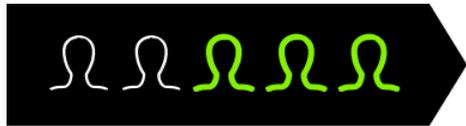
Introduction : Remote working as the new standard

How has global mobility changed due to COVID19? What are businesses doing to adapt?

The landscape for remote work is changing rapidly

The pandemic has accelerated the future of work, and there is increasing desire from employees and employers to evaluate the long term potential for remote work.

Workforce sentiment



3 in 5 workers who have been working remotely during the pandemic would prefer to continue to work remotely post-pandemic¹



60% of workers say that they are confident they can efficiently do their job remotely²



50% of workers believe they are equally or more productive working from home than at the office³



Health & Safety
COVID-19 will continue to disrupt all economies and businesses



Human Behavior
People are experiencing unprecedented emotional and financial stress



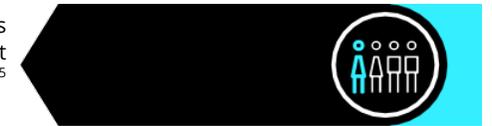
Regulatory Response
Regulations are constantly changing and jurisdictions are starting to respond by rethinking detection and enforcement modalities

Employer sentiment

Nearly **3 in 4** CFOs plan to shift at least **5%** of previously on-site employees to permanently remote positions post-COVID 19⁴



Nearly **1 in 4** CFOs plan to shift at least **20%**⁵



38% of Organizations have increased remote work opportunities to redesign work around well-being⁶



¹Megan Brennan, "U.S. Workers Discovering Affinity for Remote Work" *Gallup*, April 3, 2020

^{2,3}Roy Maurer, "Majority of Employees Embrace Remote Work," *SHRM*, April 22, 2020

^{4,5}Justin Lavelle, "Gartner CFO Survey Reveals 74% Intend to Shift Some Employees to Remote Work Permanently" *Gartner*, April 3 2020

⁶Deloitte HC Trends 2020 "<https://www2.deloitte.com/us/en/insights/focus/human-capital-trends.html>" *Gartner*, May 18, 2020

Remote work

Remote work is a cross-functional effort. It requires resilient leaders across enabling functions to evolve the organization's approach.

CORPORATE TAX

- Domestic and international corporate tax implications
- Permanent establishment risk
- Intercompany agreements & transfer pricing considerations
- Eligibility matrix : triage & exclusions

EMPLOYMENT TAX

- Employment tax and social security assessments
- Income tax withholding and filing requirements
- Entity and payroll registration requirements
- Income and payroll tax reporting and cost projections

DATA / TECHNOLOGY

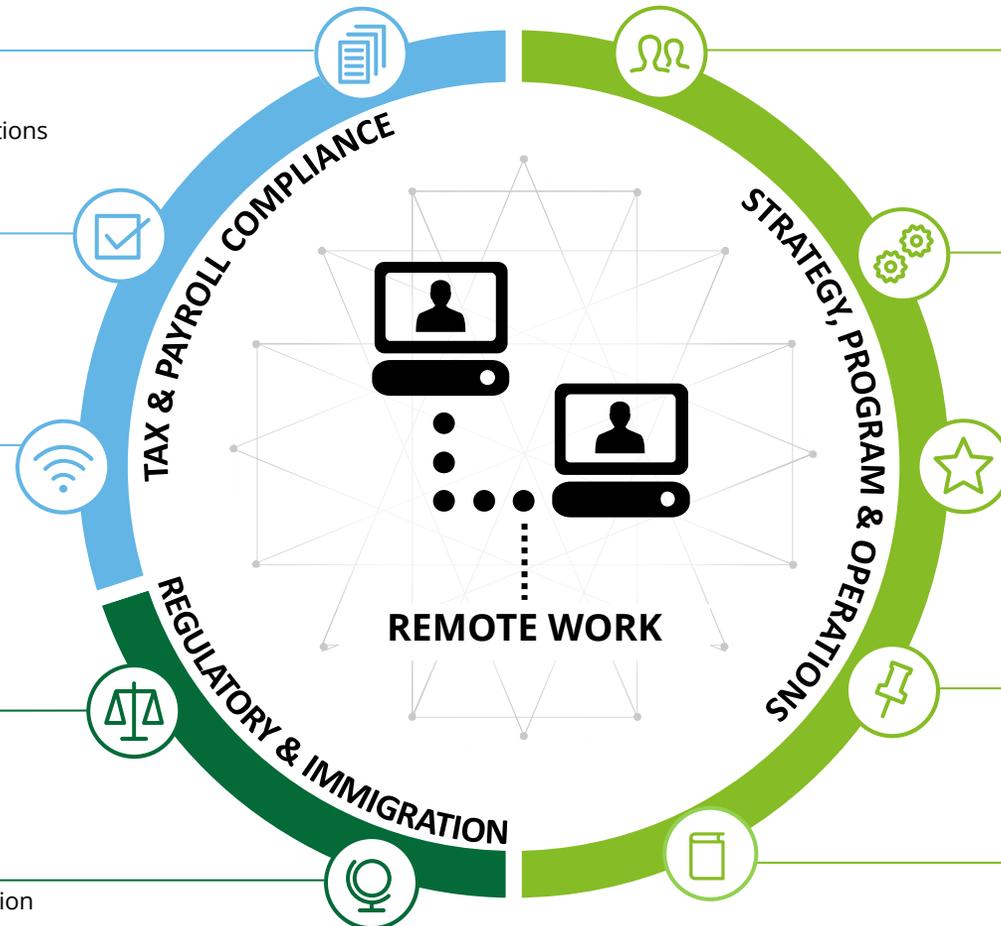
- Continuous data tracking and reporting
- Compliance analysis
- Flagging and quantification of risks
- Business travel tracking
- Approval process for remote working and tracking

REGULATORY / WORKFORCE CONSIDERATIONS

- Communicate relevant policies to remote workers
- Remote workforce expenses

IMMIGRATION

- Assessing right to work remotely from a particular location
- Visas and work authorization impacts



WORKFORCE STRATEGIES

- Enterprise philosophy and strategy
- Workforce segmentation and job profile analysis
- High-performance team in a virtual environment

PROGRAM & OPERATIONS

- Remote Policies and guidelines
- Roles and responsibilities, processes, and tools
- Mapping key remote working scenarios
- Employee and stakeholder communications

REWARDS

- Compensation and benefits design and implementation
- Benchmarking
- Pension considerations
- Cross-border equity considerations

EMPLOYMENT MODEL

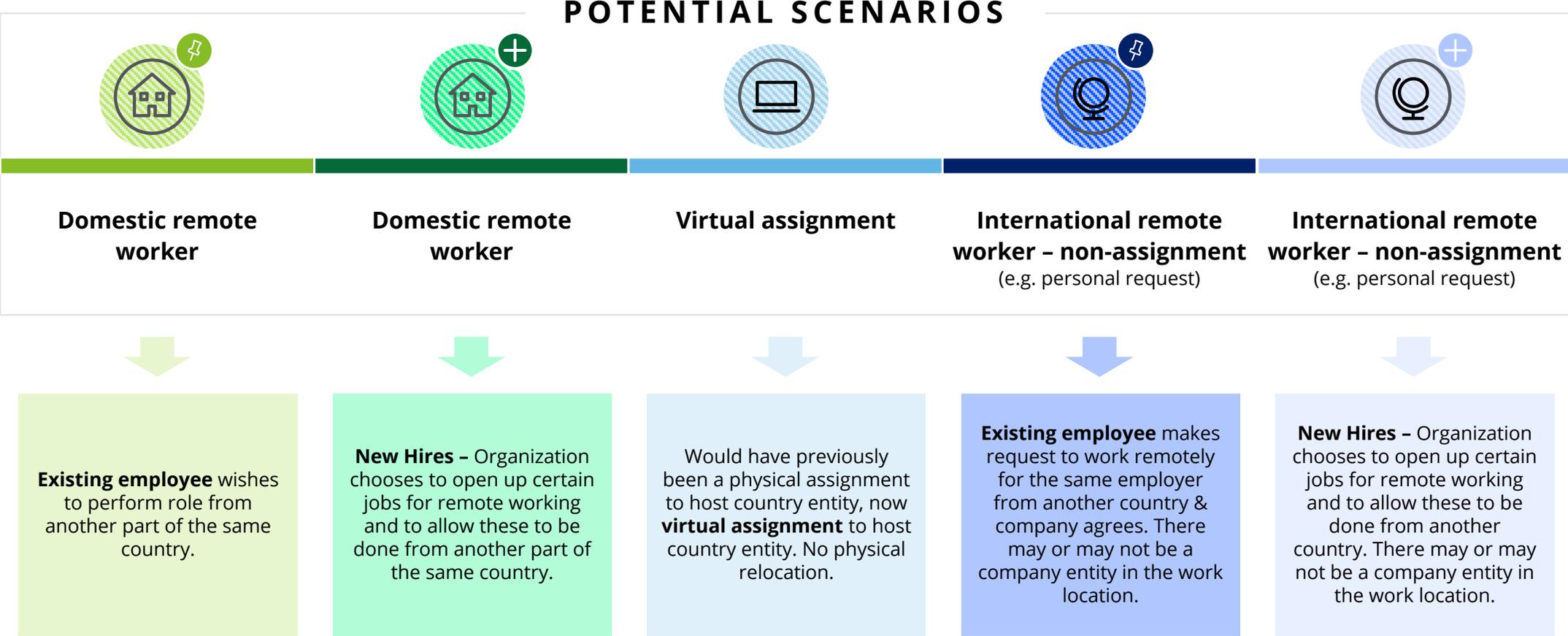
- Intercompany agreements & transfer pricing considerations

LEARNING

- Virtual learning model
- Identification of knowledge gaps

Remote work - potential workers' scenarios

While the landscape is ever-changing, we are seeing remote work come to life in several scenarios today. Each has different features, challenges and possible approaches.



The tax implications of remote work

Tax teams (along with other stakeholders) will have a critical role to play in shaping remote work policy, remediation work and ongoing compliance.

1

Shifting Tax Costs

As a result of moving into higher/lower tax jurisdictions

2

Increased Tax Risk

Tracking challenges; Tax risks through longer term or under the radar remote working.

3

Payroll Reporting risk

Tax/social security being paid in the wrong location; new registrations needed

4

Increased complexity in compliance management

Mid term – remainder of 2021 and 2022. Longer term - requiring strategic planning

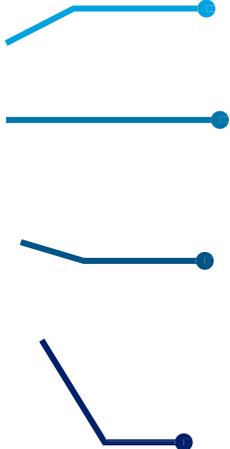
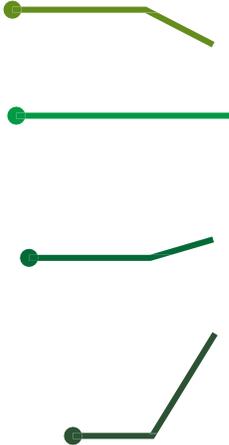
HOW COULD ONE EMPLOYEE DISRUPT THE BUSINESS?

PERMANENT ESTABLISHMENT / CORPORATE TAX RESIDENCE

TRANSFER PRICING

FINANCIAL STATEMENT

INTELLECTUAL PROPERTY (LOCATION) AND CORPORATE STRUCTURE

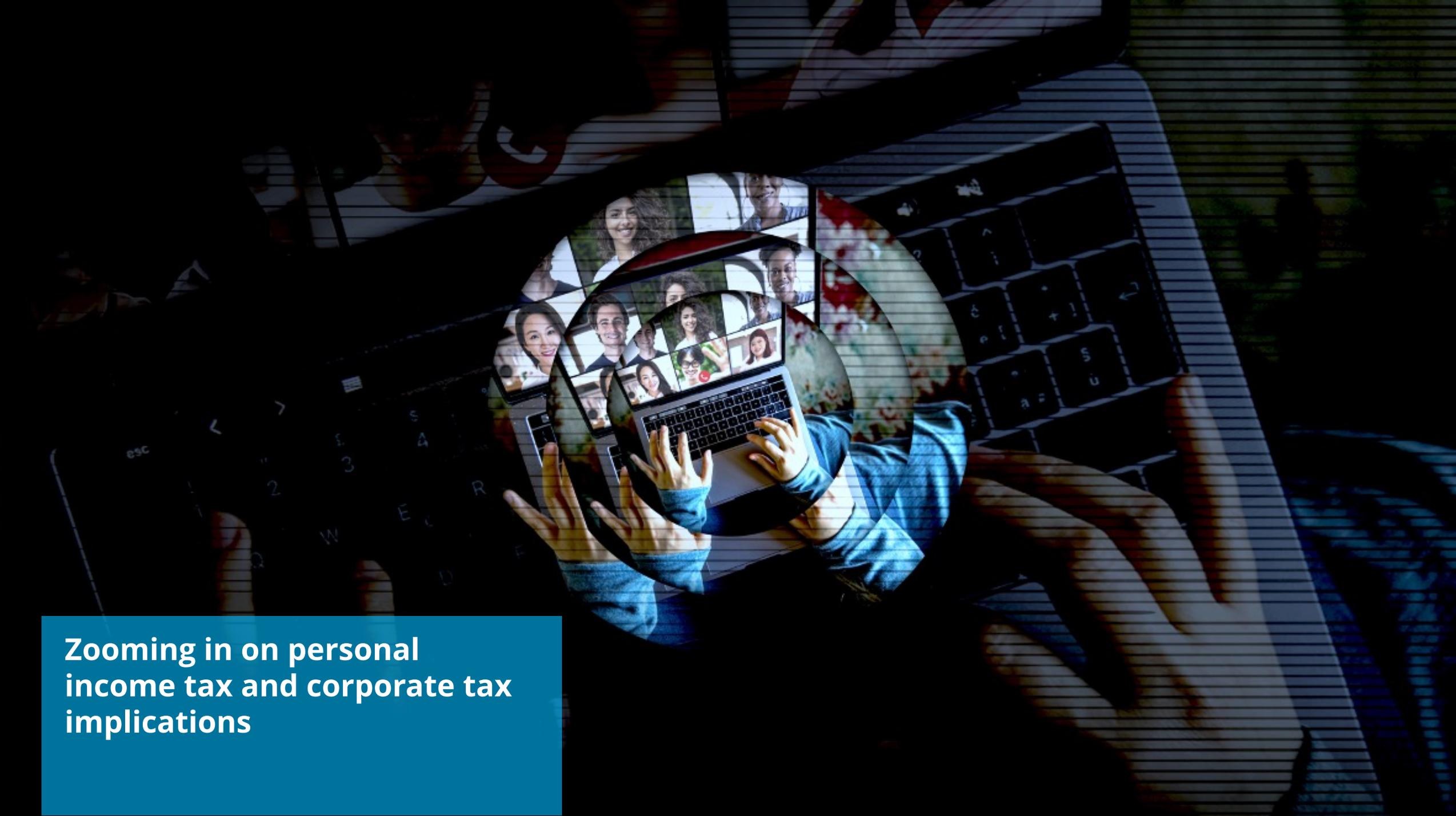


EMPLOYMENT LAW COMPLIANCE AND REGULATORY COMPLIANCE

IMMIGRATION CONSIDERATIONS/RIGHT TO WORK-WORK AUTHORIZATION

PAYROLL REPORTING AND EMPLOYER ANNUAL/MONTHLY FILINGS

ANNUAL INDIVIDUAL TAX RETURN FILING

A person is shown from a high-angle perspective, sitting at a desk and using a laptop. The laptop screen displays a Zoom meeting with multiple participants in a grid view. The person's hands are visible on the keyboard. The background is dark and slightly blurred, showing a desk lamp and other office equipment. The overall lighting is dim, with the laptop screen providing the primary light source.

**Zooming in on personal
income tax and corporate tax
implications**

Personal income tax implications

Double Tax Treaties



- ✓ Country where the employer is established / where the employee spent more than 183 days / where an employee creates a permanent establishment
- ✓ Power of taxation on the income related to physical working days in the country of employment
- ✓ Tax settlement through payroll reporting and/or annual (non-resident) tax return
- ✓ Home working days tolerance for cross border workers in the respective double tax treaties.

- ✓ Reporting of the worldwide income in the annual income tax income in the country of residency
- ✓ Taxation of foreign employment income, incl. income related to working days performed physically abroad (article 15 DTT (OECD Model))
- ✓ Tax exemption / tax credit applied on the foreign employment income (article 23 DTT OECD Model))

Social security implications

EU-Regulation



General rule



Exception

- ✓ Country of employment (EU-Regulation 883/2004)



- ✓ Employee is subject to the social security scheme of the home country where and if professional activities are carried out for 25% of more of the employee's working time for a period 12 months.
- ✓ Additional administrative formalities for the employer (registration of the employer in the country of residence for social security purposes, setting up payroll administration, (health) insurances,...)
- ✓ CoC / A1 can be obtained to remain under home country social security

Immigration and Posted Workers Directive

Immigration and work authorization for non-EU individuals entering Europe

Based on international legislation, the immigration rules of the country where the professional activities are performed physically will apply.

A remote worker will need to meet the eligibility criteria & obtain the required immigration paperwork in the country where the work is remotely performed.



Posted Workers Directive

EU Member states have implemented the new Enforcement rules to varying degrees. Some countries (e.g. Belgium, Spain, Italy and Poland) have decided to implement the provisions not only to the posting of workers **between Member States**, but **also** to workers coming **from non-EU countries**.

Notification requirement
example: Belgium: Limosa

Principles

- ✓ Equal Pay for Equal Work
- ✓ Host country's mandatory labour law – core set + after 12 (or 18 months) full mandatory labour law provisions
- ✓ No impact on social security

Corporate tax implications

Permanent establishment

Domestic law

- Art. 229, §1-2 BITC: Belgian establishment
- Material PE: any fixed place of business through which the business activities of a foreign enterprise are wholly or partly carried out in Belgium.
- No negative list (no exclusion of preparatory and auxiliary activities)
- Dependent agent PE: no requirement to habitually conclude contracts
- Services PE: services performed in Belgium for over 30 days

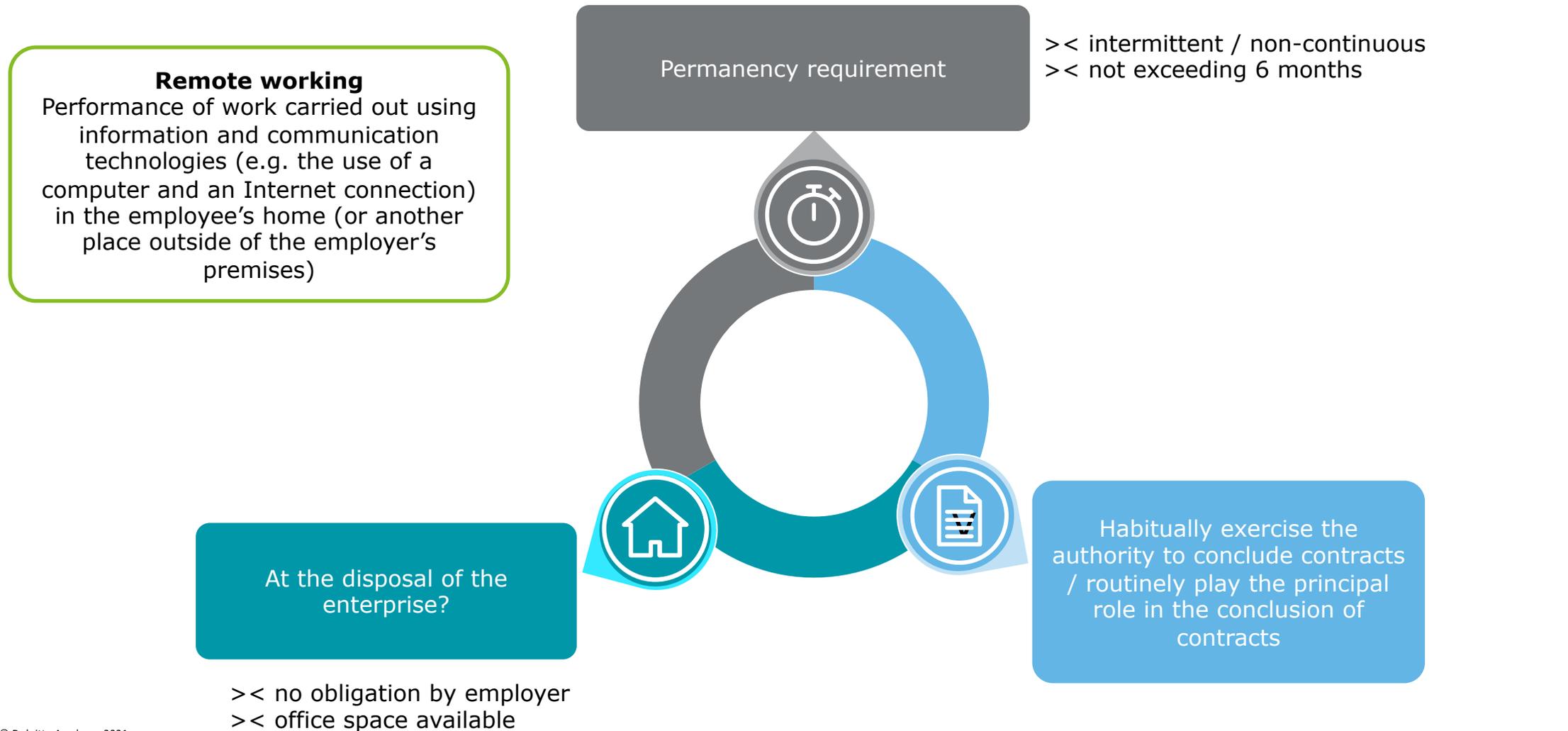
Treaty context

- Art. 5 OECD Model Convention
- Material PE: Fixed place of business through which the business of an enterprise is wholly or partly carried out
- Exclusion for preparatory and auxiliary activities
- Dependent agent PE: requirement to habitually conclude contracts in the name of the enterprise
- Broadened by MLI: play a principal role in the conclusion of contracts which are routinely concluded without material modification

- Degree of permanency / continuity
- Rule of thumb: 6 months
- At the disposal of the enterprise (material PE)

Home office as permanent establishment: situation pre COVID-19

OECD has taken a position on whether and under which circumstances a home office can qualify as a PE (OECD MTC commentaries on Art. 5 para 18).



Ruling n° 2017.083 dated 26 April 2017



Group wishes to implement uniform home-office policy (resulting in more efficiency and better work-life balance)



Policy excludes employees authorized to enter into contracts



Presence at employer's premises still required for various tasks (coaching, knowledge transfer, client meetings etc.)



Home office 1 day/week and 45 days/year maximum (not a guaranteed right)



Working from home remains exceptional

Ruling Commission: **no PE presence** due to **continuous availability of employer's office** and mere **intermittent home-office possibilities**

Permanent establishment issues resulting from the lockdown measures

OECD guidance in the context of the COVID-19

The COVID-19 pandemic and the lockdown measures have resulted in X-border working situations whereby employees remain working remotely in their home state for their foreign employer. This triggers obviously questions regarding the PE-status of that foreign employer:

- Could the employee's home office create a fixed PE ?
- And what if the dislocated employee is negotiating or concluding contracts – could this result in an agency PE ?

In its **guidance of 21 January 2021**, the OECD confirmed that COVID-19 should be regarded as a case of *force majeure* (“Act of God”) and should therefore not create any (involuntary) PEs

- Temporary >< permanency requirement
- Individuals who stay at home to work remotely are typically doing so as a result of public health measures: it is an extraordinary event not an enterprise's requirement >< establishment at the disposal of the employer
- Conclusion of contracts is transitory situation >< habitually concluding contracts
- Quid post COVID-19 once public health measures have been lifted?

Country Guidance

Many jurisdictions have issued guidance specifically addressing the PE risk in the context of COVID-19 travel restrictions.

Australia

The effects of COVID-19 will not alone result in the company having an Australian PE if it meets all the following:

- No Australian PE in Australia before the effects of COVID-19
- No other changes in the company's circumstances.
- The unplanned presence of employees in Australia is the short-term result of them being temporarily relocated or restricted in their travel because of COVID-19

Austria

Working from a home office due to the COVID-19 measures recommended by the respective governments qualifies as force majeure. Provided that work in the home office does not become the norm there will be no PE given the lack of sufficient disposal of the company over the home office and if the employer provides an office which in normal circumstances is available to its employees

Canada

No home office PE or agency PE solely as a result of the travel restrictions being in force, provided that such activities are limited to the COVID-19 restriction period and would not have been performed in Canada but for the travel restrictions.

Ireland

Ireland has issued guidance to disregard the presence of an individual in Ireland –and where relevant, in another jurisdiction –for corporate income tax purposes for a company in relation to which the individual is an employee, director, service provider or agent, if such presence is shown to result from travel restrictions related to COVID-19

UK

A non-resident company will not have a UK fixed place of business PE after a short period of time as a degree of permanence is required. Whilst the habitual conclusion of contracts in the UK would also create a dependent agent PE in the UK, it is a matter of fact and degree as to whether that habitual condition is met.

US

During the COVID-19 Emergency Period services or other activities performed by one or more individuals temporarily present in the US will not be taken into account to determine whether the non-resident or foreign corporation has a PE, provided that the services or other activities of these individuals would not have occurred in the United States but for COVID-19 Emergency Travel Disruptions.

Future of Work

Corporate income tax and transfer pricing considerations



Once the travel restrictions are lifted and we go back to “normal”, it is expected that employees may wish to continue (partially or wholly) teleworking abroad from their home country. Therefore, companies are considering / drafting so-called ‘teleworking policies’

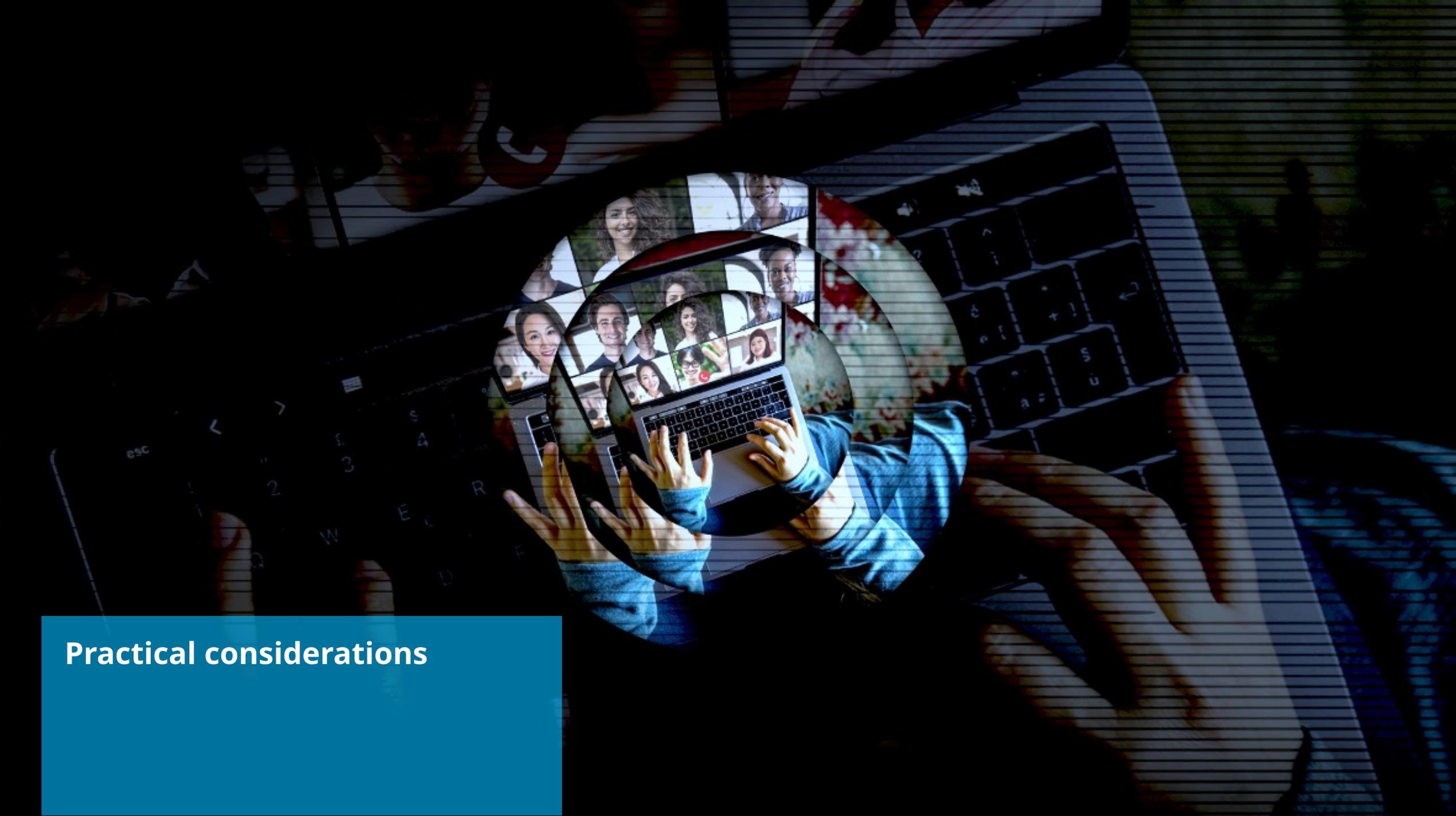
Possible (multiple) PE exposure(s) may arise in those jurisdictions (maybe even TP and/or residency issues)

Next to individual income tax also corporate tax considerations should be factored into strategies

A separate strategy for key employees and non-key employees may need to be developed

Corporate income tax and TP considerations

- Report multiple PEs or attribute income in jurisdictions of local subsidiaries (if required)
- Alternatively, put teleworking employees on the payroll of local subsidiary and consider transfer pricing
- Split payroll of key employees for executional role and strategic role and insure regular travelling of those employees to the employer’s location for the strategic role
- Reconsider TP strategy to avoid challenges by local tax authorities e.g. in case Significant People Functions of Principal are performing strategic or management roles in their home country
- Many other considerations not listed here, that are dependent on the relevant facts and circumstances: no one-size-fits-all approach.



Practical considerations

Remote Work: From short term actions to longer-term strategy

Integrated solutions

DISPLACED WORKERS – URGENT ACTION

Whilst some countries introduced limited COVID-19 tax and social security easements, with the passage of time these have diminished in applicability. Some individuals have already exceeded 183 days of displacement (or will shortly do so) and so will not be eligible for a double tax treaty exemption. Remote working can have a **significant impact** on the organisation's **tax risk profile**, and ultimately its **financial statements** as well as generating significant **employment law risk**.



Identifying displaced worker cases as soon as possible is essential to enable businesses to assess and **action mandatory obligations prior to year end**, identifying increased and unbudgeted costs, documenting decision-making and policy exceptions.

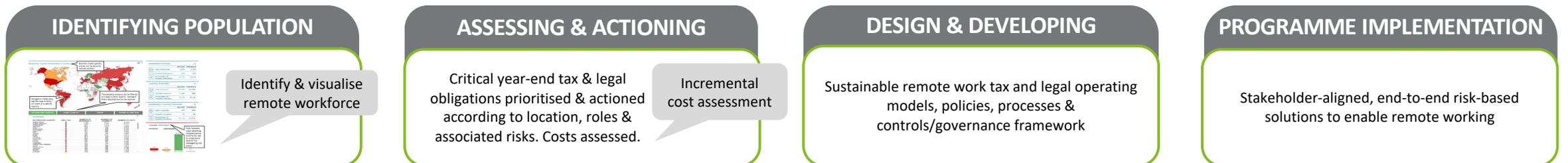
IMPLEMENTING LONGER TERM REMOTE STRATEGY

The lessons learnt in 2020 will be important in informing future business strategy as organisations look to implement a longer term approach to remote working. The following broad areas should be considered as part of any longer term implementation:

STRATEGY: DEFINE PURPOSE AND GOALS	Assess the feasibility of remote working and clearly determine how remote working enables the business and talent strategy
TALENT: OPERATIONAL ROLES REVIEW	Enabling a wider talent pool. Which roles can be performed & supported remotely on a sustainable basis from a technology/infrastructure/well being perspective?
TRIAGE & EXCLUSIONS - LOCATION/ROLES	Triage process: Consider non-treaty countries or those with an aggressive PE stance. Identify which roles are potentially workable and which should be considered for exclusion due to potentially unmanageable risk or costs?
IMPLEMENT THE REMOTE WORKING FRAMEWORK	Implement a robust service delivery & governance framework with operating guardrails , clear roles & responsibilities, policies, processes & technology (analytics & tracking) support. Embed the new approach with a robust communication & change management plan.

HOW DELOITTE CAN SUPPORT

We can help your organisation navigate both the short-term imperative actions necessary to address 2021 requirements as well as designing, building and implementing a robust remote work programme for the future by:



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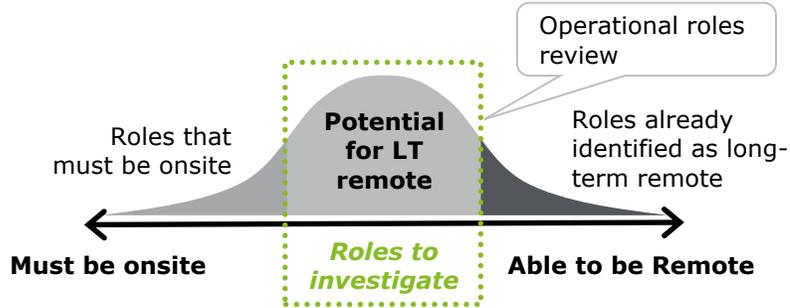
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Navigating from challenge to solution

International Remote Working

1

Talent strategy & timeframe



Assessing roles which can be performed remotely on a long-term sustainable basis.
Desired time frame – how quickly – e.g. 50% in 2 years? 5 years?

2

Triage and Exclusions

Permanent Establishment Risks
FPOB/dependent agency PE?
Relevant thresholds?
Employing entity considerations
Managing profit attribution risk

Location Risks
E.g. Non-Treaty countries;
countries with an aggressive stance on PE. Entity vs no entity etc.

Senior Roles
Recognise weight of senior roles
Policy needs to differentiate
More flexibility for junior roles

DEMPE & Similar Functions
Establish the critical roles
Be clear about risk tolerance

3

Framework, guardrails, roles & responsibilities, systems & tracking

Department	Consideration
Corporate tax	Is the company a registered employer in the destination location?
Corporate tax	Does the move of the employee trigger additional tax (Gross Income tax, payroll tax, etc.)?
Immigration	Are there additional immigration requirements due to the move?
Social taxes	Are there additional social security requirements due to the move?
HR	Does company need to adjust additional compensation to the employee due to the move?
HR	Does the company need to pay allowances (e.g., meals, transportation) to the employee due to the move?
HR	Is there a need for additional analysis regarding employment contract, retirement benefits, or severance payment due to the move?

Evaluation criteria

Manage costs

Employee Name: John Doe
Employee Location: Palo Alto, CA
Requested Work Location: Paris, France
John Doe is working for VMware with an assign Palo Alto, CA. The employee intends to work for an indefinite period.

Anticipated Incremental Cost: \$123,000
Corporate tax related costs: \$100,000
Immigration related costs: \$4,000
Social tax related costs: \$15,000
Compensation related costs: \$2,000
HR related costs: \$2,000

0% increase Pursue lower cost scenarios Unacceptable incremental costs

Visualise remote workforce

Incremental cost assessment

4

Desired outcome

Maximise business benefits within an acceptable level of tax risk & compliance costs

Identify and document '**Green zone**' for the business to operate in up to a certain level of seniority – enabling decision-making & responsibility within the business

'Amber zone' Roles/locations requiring closer monitoring, review & sign-off

'Red zone' – roles of significant importance; tight controls/exclusions

Support & administration processes



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