



The YEAR IN REVIEW

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International Legal Developments Year in Review: 2022

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International Tax

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YANPING WANG, ALBA I. JOUBERT PEREIRA,
VITTORIA DI GIOACCHINO, MAURITS VAN DEN BERG,
ANDREW DICKESON, AND MANUELA MARTIN MONZON*

I. Developments On the Taxation of Remote Work in 2022: Guidelines for Employers

A. INTRODUCTION

Since the start of the pandemic, many employers have become more flexible about permitting remote work. As a result, governments worldwide are reviewing, and sometimes updating, tax rules that apply to remote workers.

Before the pandemic, the number of employees working remotely in the United States was already on the rise, and that trend does not seem likely to reverse itself.¹ Employees are now deliberately pursuing remote work opportunities and increasing the talent pool for many employers, particularly individuals who might want to work for employers in different countries.² Many employers wish to allow remote work arrangements and

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1. Ryan Golden, *Most U.S. Employers with Flexible Work Plans Choose Hybrid Work*, *Mercer Says*, HR DRIVE (July 14, 2021), <https://www.hrdrive.com/news/most-us-employers-with-flexible-work-plans-choose-hybrid-work-mercero-says/603304/> [<https://perma.cc/YW2N-8B3U>]; see also *Statistics on Remote Workers That Will Surprise You*, APOLLO TECH. (Dec. 2, 2022), <https://www.apollotechnical.com/statistics-on-remote-workers/> [<https://perma.cc/5HUE-4RHL>].

2. *Statistics on Remote Workers That Will Surprise You*, APOLLO TECH. (Dec. 2, 2022), <https://www.apollotechnical.com/statistics-on-remote-workers/> [<https://perma.cc/5HUE-4RHL>].

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therefore attract remote workers from other countries who come to the physical office infrequently.³

Employers must investigate the tax consequences of hiring a remote employee located in a different country than any of an employer's other employees.⁴ Hiring such a person could make an employer liable for complying with requirements such as (1) income tax withholding, (2) unemployment tax withholding, and (3) potential nexus issues.⁵

Each country treats the three types of taxes listed above differently. Many countries have additional taxes or variations on the three listed taxes, and many countries have tax treaties with other countries; employers will need to determine which taxes are owed for each country, how to comply with these taxes, and then comply with these taxes annually.⁶

B. CANADA

A number of issues can arise if an employee of a non-Canadian employer works remotely from Canada. Unless the employee is seconded to a Canadian affiliate of the employer on a cost-recovery basis, the employer will be required to register with the Canada Revenue Agency (CRA).⁷ Among other things, depending on the circumstances, the employer may also have an obligation to file Canadian tax returns, pay Canadian income tax, and comply with payroll tax and/or value-added tax obligations.⁸

The discussion herein assumes that the remote working arrangement in Canada is intentional. Where the remote working arrangement arose or

3. Lynn Kier, *Remote Work: The Ultimate Equalizer for Talent Acquisition and Employee Experience*, FORBES (Aug. 10, 2020), <https://www.forbes.com/sites/forbescommunicationscouncil/2020/08/10/remote-work-the-ultimate-equalizer-for-talent-acquisition-and-employee-experience/?sh=377612507986> [https://perma.cc/9TVB-R2BS].

4. See, e.g., Roy Deaver, *5 Tax Considerations for International Remote Working*, (Feb. 2, 2021), <https://www.mossadams.com/articles/2021/02/international-tax-impacts-and-remote-work> [https://perma.cc/77GS-598C].

5. *Id.*

6. See Mo Bell-Jacobs et al., *Remote Workforces Are Complicating State Tax Nexus and Withholding*, RSM, <https://rsmus.com/insights/services/business-tax/remote-workforces-are-complicating-state-tax-nexus-and-withholdi.html> [https://perma.cc/2GPY-YSJ9] (last visited June 12, 2022); see also Paul Jones, *Remote Work Complicates Employer Tax Compliance, Pressures States to Revise Rules*, TAXNOTES (Apr. 5, 2022), <https://www.taxnotes.com/tax-notes-today-global/corporate-taxation/remote-work-complicates-employer-tax-compliance-pressures-states-revise-rules/2022/04/05/7db5p?highlight=remote%20Work%20Complicates%20Employer%20Tax%20Compliance%2C%20Pressures%20States%20to%20Revise%20Rules> [https://perma.cc/9ULN-RS78].

7. *Doing Business in Canada – GST/HST Information for Non-Residents*, CAN. REVENUE AGENCY (Jan. 24, 2023), <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4027/doing-business-canada-gst-hst-information-non-residents.html> [https://perma.cc/EY2D-87QY].

8. *Employer's Guide – Payroll Deductions and Remittances*, CAN. REVENUE AGENCY (Nov. 2, 2022), https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4001/employers-guide-payroll-deductions-remittances.html#P263_15329 [https://perma.cc/28K8-FBYC].

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continued due to Covid-19 travel restrictions, the CRA has provided for significant administrative concessions that limit a non-resident employer's exposure.⁹

1. *Canadian Payroll Tax Obligations*

Employers with employees living in Canada will have to register with the CRA for a payroll account because there will be payroll tax obligations (or the account will be required to obtain an exemption from some, or all, of its payroll tax obligations).¹⁰

In general, resident and non-resident employers have the same payroll tax obligations with respect to work performed in Canada by their employees, including deductions for income tax, Canada Pension Plan (CPP) contributions, employment insurance (EI) premiums, and any applicable provincial payroll taxes.¹¹

A non-resident employer without an establishment in Canada is generally not required to withhold CPP contributions.¹² Further, EI premiums are not required to be withheld if premiums are payable in respect of the Canadian employment services under the employment insurance laws of the employee's home country.¹³ Where CPP contributions and/or EI premiums must be deducted from an employee's pay, the employer is liable for CPP contributions and EI premiums on its own account.¹⁴

2. *Canadian Non-Resident Employer Certification*

Under a non-resident employer certificate regime, employers that are a resident of a treaty country and become certified by the CRA, are not required to deduct and remit Canadian income tax on remuneration paid to qualified non-resident employees.¹⁵ Qualifying employees must be:

- (1) A resident in a country with which Canada has a tax treaty;
- (2) Exempt from Canadian income tax on the remuneration because of that treaty; and

9. See *International Income Tax Issues: CRA and COVID-19*, GOV'T OF CAN. (Dec. 12, 2021), <https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/guidance-international-income-tax-issues-covid.html> [<https://perma.cc/Y8T9-4NAZ>].

10. *Determine If You Need to Register*, GOV'T OF CAN. (Jan. 25, 2017), <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/determine-need-register.html> [<https://perma.cc/WZ43-T6YU>].

11. *Non-Resident Employer Certification*, GOV'T OF CAN. June 25, 2020), <https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/information-been-moved/rendering-services-canada/non-resident-employer-certification.html#> [<https://perma.cc/D2RW-TX4R>].

12. Canada Pension Plan Regulations, C.R.C., c.385 s.22(1).

13. Employment Insurance Regulations, SOR/96-332, s.7(d) (Can.).

14. Canada Pension Plan, R.S.C. 1985, c.C.8 s.21; Employment Insurance Act, S.C. 1996, c.23 s.82(4).

15. Income Tax Act R.S.C 1985, c.1 (5th Supp.) s.153(1)(a)(ii) (Can.).

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(3) Either (A) not in Canada for ninety or more days in any twelve-month period that includes the payment time, or (B) not in Canada for forty-five or more days in the calendar year that includes the payment time.¹⁶

The employer will generally have continuing reporting obligations on amounts paid to its qualifying non-resident employees.¹⁷ Further, the employer may be liable for withholdings to the extent that the non-resident employees were not in fact qualifying non-resident employees.¹⁸

If the employer is not certified as described above, or the employee is not a qualified non-resident employee, the employee can apply for an exemption via a Regulation 102 waiver if the remuneration is exempt from Canadian income tax because of a tax treaty.¹⁹

3. *Income Tax Obligations*

Having an employee in Canada will raise an employer's risk of being classified as carrying on business in Canada.²⁰ Subject to a treaty exemption, a non-resident "carrying on business" in Canada is generally liable for tax with respect to profits from such business activities.²¹

Under one test commonly used by Canadian tax courts, a non-resident would generally be found to be carrying on business in the jurisdiction where the business contract is concluded, or where the center of profit-making activities is located.²² Further, certain activities of the employee may cause the employer to be deemed as carrying on business in Canada, such as where the employee "solicits orders or offers anything for sale in Canada . . . whether the contract or transaction is to be completed inside or outside Canada."²³

An employer that is entitled to treaty benefits is not generally liable for Canadian income tax with respect to its business profits, provided it does not carry on the subject business through a permanent establishment (PE) in

16. *Id.* s.153(6).

17. *Non-Resident Employees Who Carry Out Services in Canada*, GOV'T OF CAN. (Jan. 31, 2020), <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/income-tax/non-resident-employees-who-perform-services-canada.html> [<https://perma.cc/7M6K-K7V6>].

18. Income Tax Act, s.153(3.1) (Can.).

19. *See Regulation 102 Waiver Application*, CAN. REVENUE AGENCY (Aug. 3, 2021), <https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/r102-r/r102-r-21e.pdf>. [<https://perma.cc/QH97-U7PB>].

20. Income Tax Act, s.253 (Can.).

21. *Id.*

22. Peter Aprile & James Roberts, *Corporate Tax Residency in Canada: The Legal Tests Explained*, COUNTER TAX (Nov. 11, 2021), <https://www.countertax.ca/blog/corporate-tax-residency-in-canada-legal-tests> [<https://perma.cc/JG77-QQJW>].

23. Income Tax Act, s.253 (Can.).

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Canada.²⁴ If the employee has the authority to conclude contracts in Canada, the tax treaty may deem that the employer has a PE in Canada.²⁵ Under certain treaties such as the Canada-U.S. tax treaty, there is additional risk of a deemed PE if the employee is providing services on behalf of the employer.²⁶

A non-resident carrying on, or deemed to be carrying on, business in Canada in a year is required to file a Canadian tax return with respect to that year, even if they are exempt from tax by reason of a tax treaty.²⁷

If the employee is providing services in Canada, the employer's customer may be required to deduct and remit fifteen percent of the payment for such services to the CRA unless a waiver is obtained.²⁸ In many situations though, the customer may not be aware that any part of the service is being provided from inside Canada. These withholdings are applied against the non-resident service provider's potential Canadian income tax liabilities for the year.²⁹

Employers may be eligible to apply for a waiver to eliminate or reduce the withholding. Treaty-based waivers are available to treaty residents that do not have a PE in Canada.³⁰ Income and expense waivers are available to allow a payer to withhold tax at a reduced rate based on the employer's anticipated net income on the services rendered.³¹

C. CHINA

1. *Individual Income Tax Law of the People's Republic of China*

Foreign nationals have enjoyed certain tax benefits in China for a long time.³² Examples include a reasonable allowance for housing, food, and laundry expenses, a relocation allowance, a business travel allowance, a home leave allowance; language trainings for executives and school fees for

24. Convention between Canada and the United States of America with respect to Taxes on Income and on Capital, Can.-U.S., Sept. 26, 1980, 1984 Can. T.S. No. 15, art. V(7).

25. *Id.* art. V(5).

26. *Id.* art. V.

27. Income Tax Act, s.250(1) (Can.).

28. Income Tax Regulations, C.R.C., c.945 s.105 (Can.).

29. *Required Withholdings from Amounts Paid to Non-Residents Providing Services in Canada*, CAN. REVENUE AGENCY (Feb. 24, 2020), <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic75-6/required-withholding-amounts-paid-non-residents-providing-services-canada.html> [<https://perma.cc/PV9C-H6XL>].

30. *See Regulation 105 Waiver Application*, CAN. REVENUE AGENCY (Aug. 3, 2021), <https://www.canada.ca/content/dam/cra-arc/formspubs/pbg/r105/r105-21e.pdf> [<https://perma.cc/2ZNS-3NG8>].

31. *Id.*

32. *China Rolling Back Tax Exempt Benefits for Expats in 2022*, INTEGRA GRP. (Dec. 24, 2021), <https://www.integra-group.cn/tax-exempt-benefits-for-expats-ending-2022/> [<https://perma.cc/H6GT-3KMQ>].

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children are tax exempted.³³ In 2018, China amended its Individual Income Tax Law to provide that these benefits would sunset by December 31, 2021.³⁴ But, on December 31, 2021, China issued a notice declaring that these tax benefits were extended for foreign nationals until December 31, 2023.³⁵ This policy does not appear to be a direct response to Covid-19; instead, it seems to be a policy to attract foreign investment in China.

Starting from January 1, 2022, China encourages individuals to set up individual personal pension account. Each individual can contribute up to RMB 12,000 per year to his/her personal pension account, and such contribution amount will be deducted from his/her taxable income for that contribution year. The earnings made by the personal pension account prior to retirement age are tax deferred, and when the individual withdraws the pension after reaching retirement age, the withdrawn amount will be subject to only three percent income tax.³⁶ Though this policy is issued during the pandemic period, it intends to address the issue of inadequacy of the pension fund administered by the government to pay higher amount of the pension resulting from increasingly bigger aging populations.

2. *Corporate Income Tax Law*

During the period from January 1, 2019, to December 31, 2021, certain small companies with a small profit margin enjoyed a reduced corporate income tax rate.³⁷ Qualifying companies were companies that (1) engaged in

33. Notice of the Ministry of Finance and the State Administration of Taxation on Several Policy Issues Concerning Individual Income Tax [财政部 国家税务总局关于个人所得税若干政策问题的通知], STATE TAX ADMIN. [国家税务总局] (May 12, 1994), <http://www.chinatax.gov.cn/chinatax/n363/c1186/content.html> [https://perma.cc/8KUG-CYZ7]; Notice of the State Administration of Taxation on Issues Concerning the Implementation of an Individual Income Tax Levy or Exemption on Allowance of Foreign Individuals [国家税务总局关于外籍个人取得有关补贴征免个人所得税执行问题的通知], STATE TAX ADMIN. [国家税务总局] (Apr. 9, 1997), <http://www.chinatax.gov.cn/chinatax/c101249/c101638/index.html>.

34. Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice of the Min. of Fin. and the State Admin. of Taxation on issues related to the convergence of preferential policies after the revision of the Individual Income Tax Law [财政部 税务总局关于个人所得税法修改后有关优惠政策衔接问题的通知] (Dec. 26, 2018), <http://www.chinatax.gov.cn/n810341/n810755/c3978994/content.html> [https://perma.cc/R57X-UBCY].

35. Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice of the Min. of Fin. and the State Admin. of Taxation on Continuing Implementing Certain Allowances Relating to Individual Income Tax Beneficial Policy In Favor of Foreign Nationals [财政部、税务总局关于延续实施外籍个人津补贴等有关个人所得税优惠政策的公告], (Dec. 31, 2021), <http://fgcx.bjcourt.gov.cn:4601/law?fn=CH1610s105.txt&truetag=2923&titles=&contents=&dbt=CH1> [https://perma.cc/37A2-D8PW].

36. Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice of the Min. of Fin. and the State Admin. of Taxation on Individual Income Tax Policy relating to Personal Pension Fund [财政部、税务总局关于个人养老金有关个人所得税政策的公告], (Nov. 3, 2022), <http://www.chinatax.gov.cn/chinatax/n363/c5182621/content.html>.

37. Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice of the Min. of Fin. and the State Admin. of Taxation on Further Implementing Corporate

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industries that were not prohibited or restricted; (2) had a taxable income less than RMB three million and the number of the employees was no more than 300 people; and (3) with total assets not exceeding RMB 50 million.³⁸

If a company's taxable income was less than RMB 1 million, only 12.5 percent of the taxable income was subject to corporate income tax, and the applicable tax rate was decreased from the standard corporate income tax rate of twenty-five percent to twenty percent, meaning the qualifying companies only needed to pay 2.5 percent corporate income tax rate.³⁹ This preferential rate expired on December 31, 2022;⁴⁰ however, during the period from January 1, 2023 to December 31, 2024, if a company's taxable income was less than RMB 1 million, only twenty-five percent of the taxable income was subject to corporate income tax, and the applicable tax rate is twenty percent, meaning the qualifying companies only need to pay five percent corporate income tax rate.⁴¹

For companies whose taxable income was more than RMB one million but less than RMB 3 million, only twenty-five percent of its taxable income was subject to corporate income tax, and the applicable tax rate was decreased from the standard corporate income tax rate of twenty-five percent to twenty percent.⁴² This reduction meant the qualified companies only needed to pay five percent corporate income tax rate.⁴³ This preferential corporate income tax rate was applicable from January 1, 2022, to December 31, 2024.⁴⁴

For qualified manufacturing companies whose annual sales are more than RMB 20 million but less than RMB 400 million, the payment date for fifty percent of corporate income tax payable after October 1, 2021, can be deferred to January 15, 2023.⁴⁵ Companies that paid the enterprise income

Income Tax Preferential Policy to Small Companies [财政部 税务总局关于进一步实施小微企业所得税优惠政策的公告], (Mar. 14, 2022), <http://www.chinatax.gov.cn/chinatax/n362/c5173677/content.html> [<https://perma.cc/TRC8-FQDB>].

38. *Id.*

39. Press Release, The State Admin. of Taxation [国家税务总局], Notice of the State Admin. of Taxation on Issues relating to Implementing Income Tax Preferential Policy to Small Companies with Small Profit Margin and Individual Industry and Commerce Households [国家税务总局关于落实支持小型微利企业和个体工商户发展所得税优惠政策有关事项的公告] (Apr. 7, 2021), <http://www.chinatax.gov.cn/chinatax/n362/c5163255/content.html> [<https://perma.cc/2SZF-YCL8>].

40. *Id.*

41. Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice of the Min. of Fin and State Admin. of Taxation on Issues relating to Income Tax Preferential Policy to Small Companies with Small Profit Margin and Individual Industry and Commerce Households [财政部 税务总局关于小微企业和个体工商户发展所得税优惠政策的公告] (Mar. 26, 2023), <http://www.chinatax.gov.cn/chinatax/n362/c5185878/content.html>.

42. The Min. of Fin. & The State Admin. of Taxation [国家税务总局], *supra* note 36.

43. *Id.*

44. *Id.*

45. Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice on Issues Concerning Midsized and Small Manufacturing Enterprises Defer Payment of the Partial Taxes for Fourth Quarter of 2021 [国家税务总局 财政部关于制造业中小微企业延缓缴

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taxes during the period from November 2011 to February 2, 2022, can voluntarily apply for a refund.⁴⁶

Small manufacturing companies whose sales revenues are less than RMB 20 million can defer 100 percent of the corporate income tax payable for the fourth quarter of 2021 and the first and second quarter of 2022 until January 2023 and May 15, 2023, respectively.⁴⁷

D. COSTA RICA

Costa Rica is widely known for its natural wonders: majestic rainforests, active volcanoes, and dreamy beaches. In 2019, Costa Rica had its best tourism year ever, surpassing three million arrivals of international tourists.⁴⁸ According to the Costa Rican Central Bank, the tourism industry represents approximately 6.3 percent of the country's GDP, which jumps to 8.2 percent when the indirect contributions are included.⁴⁹ The tourism industry employs 8.8 percent of the country's workforce.⁵⁰ 2020 was expected to greatly exceed the numbers from the prior year, but that expectation

纳2021年第四季度部分税费有关事项的公告], (Oct. 29, 2021), <http://www.chinatax.gov.cn/chinatax/n362/c5170139/content.html> [https://perma.cc/G7SP-YNQ3].

46. Tax payments for the 4th quarter of 2021 are deferred by three months. *See id*; *see also* Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice Concerning the Continuation of the Implementation of the Deferral of Partial Tax Payment by Small, Medium and Micro Enterprises in the Manufacturing Industry [国家税务总局 财政部关于延续实施制造业中小微企业延缓缴纳部分税费有关事项的公告] (Feb. 28, 2022), <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5173058/content.html> [https://perma.cc/VFF5-HPYR]. Further, mid-sized manufacturing companies can defer the 50% of the enterprise income tax due and payable for first and second quarter of 2022 for six months and the small manufacturing company can defer 6 months. *Id.* The Ministry of Finance & The State Administration of Taxation further permitted that the payment date can be differed by another four months. *See* Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice on Matters Concerning the Continued Delay of Payment of Some Taxes and Fees by Small, Medium and Micro Enterprises in the Manufacturing Industry [国家税务总局 财政部关于制造业中小微企业继续延缓缴纳部分税费有关事项的公告], (Sept. 14, 2022), <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5181400/content.html> [https://perma.cc/6E7Q-VTED].

47. Press Release, The Min. of Fin. & The State Admin. of Taxation [国家税务总局], Notice on Matters Concerning the Continued Delay Of Payment Of Some Taxes And Fees By Small, Medium And Micro Enterprises In The Manufacturing Industry [国家税务总局 财政部关于制造业中小微企业继续延缓缴纳部分税费有关事项的公告], (Sept. 14, 2022), <http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5181400/content.html> [https://perma.cc/6E7Q-VTED].

48. *Costa Rica Registers Increase in Tourist Visits in 2019*, TICO TIMES (Feb. 6, 2020), <https://ticotimes.net/2020/02/06/costa-rica-registers-increase-in-tourist-visits-in-2019> [https://perma.cc/45QE-36HW].

49. *Costa Rica Seeks to Position Itself as The Perfect Destination To Connect With Life's Essential Values*, INSTITUTO COSTARRICENSE DE TURISMO, <https://www.ict.go.cr/en/featured-news/1558-costa-rica-seeks-to-position-itself-as-the-perfect-destination-to-connect-with-life%E2%80%99s-essential-values.html> [https://perma.cc/8PRN-WCY8] (last visited Mar. 27, 2023).

50. *Id.*

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dimmed when COVID-19 caused borders to be closed to travel for approximately seven months.⁵¹ COVID-19's impact on the Costa Rican economy was significant and many people suffered economic hardships as a result of the country closing its borders.⁵²

The "Digital Nomads Law"⁵³ (Law) was one of Costa Rica's efforts to attract international workers to revive the deeply injured tourism industry. The Law sought to regulate the activity of those foreigners who were authorized to enter and remain in the country under the migratory category of Non-Resident, Subcategory of Stay, "Worker or Remote Service Provider."⁵⁴ The Law also regulates the tax benefits on profits and the importation of equipment necessary for the digital nomad to provide its services.⁵⁵ But, the Law's main purpose is to make it easier for people from different parts of the world to work from Costa Rica, to potentially attract consequential investments and contributions that originate from this type of activity, and to promote long-term visits to Costa Rica that will hopefully result in an increase in foreign spending in Costa Rica.⁵⁶ While the Digital Nomads Law was approved in July 2021, the applicable regulations⁵⁷ were not approved until mid-2022, so the Immigration Office did not begin to apply the provisions until the regulations were approved.

The requirements to apply for a digital nomad permit are minimal, as the Law only requires a minimum income of USD \$3,000 for individuals travelling alone, or an income of USD \$4,000 for individuals travelling with their families.⁵⁸ Medical insurance is also necessary to cover any health issues while in the country. But, digital nomads cannot work for Costa Rican employers, which means that they must be hired by a non-domiciled entity, and they cannot provide their services locally.⁵⁹

The application process is very simple and can be done online. Once approved, an individual may remain in Costa Rica for a twelve-month period, which may be extended for another twelve months.⁶⁰

51. Alvaro Murillo, *Costa Rica Sees Ailing Tourist Trade Stagnant In 2021 After COVID-19 Blow*, REUTERS (Jan. 30, 2021), <https://www.reuters.com/article/us-costarica-tourism/costa-rica-sees-ailing-tourist-trade-stagnant-in-2021-after-covid-19-blow-idUSKBN29Z0SV> [https://perma.cc/89PB-QWZ5].

52. *Id.*

53. Ley No. 10008, 1 Sept. 2021, Ley Para Atraer Trabajadores Y Prestadores Remotos De Servicios De Carácter Internacional [Law to Attract International Remote Workers and Service Providers] LA GACETA, DIARIO OFICIAL [L.G.] (Costa Rica).

54. *Id.* art. 2.

55. *Id.* art. 17.

56. *Id.* art. 1.

57. Decreto No. 43619 H-MGP-TUR, 8 July 2022, Reglamento A La Ley No. 10008 "Ley Para Trabajadores Y Prestadores Remotos De Servicios De Carácter Internacional" [Regulations for Law No. 10008 "Law to Attract International Remote Workers and Service Providers] LA GACETA, DIARIO OFICIAL [L.G.] (Costa Rica).

58. Ley No. 10008, art. 10 (Costa Rica).

59. *Id.* art. 14.

60. *Id.* art. 15.

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The most attractive benefit from a tax perspective is that any income generated from digital nomad activities is not considered Costa Rica-source income, and therefore is not subject to taxation under Costa Rican Law.⁶¹ The Costa Rican tax system is based on the “territoriality principle,” whereby only income derived from Costa Rican sources is subject to Costa Rican income tax.⁶² Costa Rica-source income is defined as any income derived from services rendered, goods located, or investments used within the Costa Rican territory.⁶³ This definition means a tax is also imposed on occasional or continual revenues derived by legal entities or individuals within the national territory, regardless of the citizenship or residence of the recipient of such income.⁶⁴

Thus, it is likely that both legal entities and individuals in Costa Rica will be taxed based on territoriality, meaning that only income derived from local sources should be subject to taxation, regardless of the citizenship or residence of the recipient of such income.⁶⁵ Tax rates for individuals range from zero percent up to twenty-five percent,⁶⁶ so being able to remain in the country and work for up to two years without being taxed is a very attractive incentive for remote workers and their employers.

The Digital Nomad permit is vital for people wishing to work remotely from Costa Rica.⁶⁷ Anyone attempting to skirt the permit requirements will meet a hard and harsh time limit of three months, as opposed to the twenty-four months available with the permit. Most individuals are only allowed to stay for ninety days on a tourism visa.⁶⁸ More importantly, the Costa Rican Income Tax Law establishes that an individual becomes a tax resident after spending 183 days,⁶⁹ consecutive or not, in Costa Rica, during the same fiscal year. Thus, even if a worker’s income is derived from foreign sources, they may accidentally become a tax resident and run the risk that the Costa Rican Tax Authorities would consider all of their income as Costa Rican-sourced and attempt to tax it as such.⁷⁰

All foreign employers who are aware that they have employees or contractors working from Costa Rica are advised to require those workers to

61. *Id.* art. 16.

62. Daniel Araya, *Global Tax Guide to Doing Business in Costa Rica*, DENTONS, <https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in/costa-rica> [<https://perma.cc/U6QM-XZGN>] (last visited Mar. 28, 2023).

63. Ley No. 7092, 19 May 1988, Ley Del Impuesto Sobre La Renta [Income Tax Law] LA GACETA, DIARIO OFICIAL [L.G.], art. 1 (Costa Rica).

64. *Id.*

65. *Id.*

66. *Id.* art. 15.

67. Ley No. 10008, art. 15 (Costa Rica).

68. *Visas, Residences, Permits*, EMBAJADA DE COSTA RICA EN WASHINGTON DC, <http://www.costarica-embassy.org/index.php?qNde/72#1> [<https://perma.cc/UX93-66MF>] (last visited Mar. 28, 2023).

69. Ley No. 7029, art. 2 (Costa Rica).

70. *Id.*

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provide them with a copy of their Digital Nomad permit to avoid incurring mirroring liabilities.

The Law is an important instrument to attract individuals to Costa Rica. It is designed to tempt people to live and work in the country for up to two years to help reactivate the Costa Rican economy. Unfortunately, it is unclear if the government's investment strategy will be successful yet because of the delay in the implementation of related immigration regulations. But the country remains optimistic, and as of the publication of this article, Costa Rica's international travel numbers are reaching – and possibly on track to exceeding – the record-high number of visitors seen in 2019.⁷¹

E. NEW ZEALAND

New Zealand's geographic remoteness from its trading neighbors caused the country to be an early adopter of international remote working, for both inbound and outbound work. This article considers New Zealand's key domestic tax changes in the 2022 calendar year affecting remote workers under two specific scenarios:

- (1) *Scenario One*: New Zealand tax residents travelling abroad while continuing to work for their New Zealand employer; and
- (2) *Scenario Two*: Tax residents of foreign countries coming to work in New Zealand while continuing to work for their foreign employer.

All section references are to the Income Tax Act 2007 (ITA)⁷² and all clause references are to the Taxation Annual Rates for 2022–23, Platform Economy, and Remedial Matters Bill (No 2-2022).⁷³ New Zealand's domestic tax provisions generally require its employers to withhold tax on remuneration, non-cash benefits, and certain superannuation contributions to employees under the Pay as You Earn (PAYE) system, pay fringe benefit tax (FBT) and employer's superannuation contribution tax (ESCT) (together referred to as tax deduction obligations).⁷⁴ Employees must pay New Zealand income taxes if the income is earned in New Zealand.⁷⁵ Further, an employee is liable for income tax in New Zealand, regardless of

71. Ana M. López, *Inbound Tourism Volume in Costa Rica 2010-2022*, STATISTA (Feb. 28, 2023), <https://www.statista.com/statistics/816547/costa-rica-number-of-tourist-arrivals/> [https://perma.cc/G2W6-7JFY].

72. See generally Income Tax Act 2007 (N.Z.).

73. See generally Taxation Annual Rates for 2022–23, Platform Economy, and Remedial Matters Bill 2022 (161-1) (N.Z.).

74. Commentary on the Taxation (Annual Rates For 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) [hereinafter Commentary], Inland Revenue 43 (2022).

75. Income Tax Act, s YD 4(4) (N.Z.).

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where the income is earned, if the employee is a New Zealand tax resident.⁷⁶ These requirements may be modified by a Double Tax Agreement (DTA).⁷⁷

Legal changes have affected New Zealand tax residents travelling abroad while continuing to work for their New Zealand employer. Typically, a New Zealand employer's tax deduction obligation only ceases if the employee becomes a non-resident for tax purposes.⁷⁸ But, a special rule applies to trailing payments, for example, a bonus relating to the employee's work in New Zealand that is paid after the employee leaves the country.⁷⁹ Such trailing payments are still subject to New Zealand tax deduction obligations even if the employee is no longer a tax resident.⁸⁰

Receipt of a trailing payment can have an unintended follow-on New Zealand tax effect.⁸¹ Specifically, if the employee receives a current period non-cash benefit with respect to their employment abroad, that non-cash benefit is also subject to New Zealand FBT.⁸² The 2022 Taxation Bill proposes to correct this unintended FBT effect. Under the new law, the employer will not be subject to FBT on non-cash benefits provided whilst working abroad, assuming the non-cash benefit does not relate to the employee's time spent in New Zealand.⁸³

The legal changes also affect residents of foreign countries working for their foreign employer while living in New Zealand. Foreign employers and employees temporarily working in New Zealand will not have a tax deduction obligation or income tax liability, respectively, if the employee's presence in the country is below the domestic tax exempt threshold of ninety-two days, or the relevant DTA threshold which is typically 183 days.⁸⁴ When the employee's presence in New Zealand exceeds these time thresholds, then the respective tax deduction obligations and employee income tax liabilities commence on the first day (commencement) of the employee's presence in New Zealand.⁸⁵ For example, an employer may choose not to deduct PAYE from payments made to an employee scheduled to work on a project in New Zealand for ninety days. If, due to unforeseen project delays, the employee is in the country for ninety-three days (assuming no DTA concessions apply), then the employer will be in breach of its tax deduction obligations and will be required to pay the core tax plus

76. *Id.* ss BD 4, CE 1; *see also* Inland Revenue, Operational Statement: Non-Resident Employers' Obligations To Deduct PAYE, FBT And ESCT In Cross-Border Employment Situations, ¶ 3 (Dec. 1, 2021).

77. Income Tax Act, s BH 1(2) (N.Z.).

78. Commentary, *supra* note 74, ¶ 4, at 2.

79. *Id.* at 59.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*; Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2) [hereinafter Taxation Bill] 2022 (164-3), cl 28 (N.Z.).

84. Income Tax Act, s CW 19(1) (N.Z.).

85. COMMENTARY, *supra* note 72, at 45.

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penalties and interest calculated from the first day in the ninety-two-day period.⁸⁶

The 2022 Taxation Bill proposes a number of amendments, including the introduction of a sixty-day grace period.⁸⁷ The grace period applies where an employer has taken reasonable measures to comply with their tax deduction obligations, but nonetheless, the employee has breached the relevant day's threshold.⁸⁸ In this case, no penalties and interest will apply if the employer corrects and pays the required amount of tax within a defined sixty-day grace period.⁸⁹

V. Puerto Rico

The lockdowns implemented around the world due to the COVID-19 pandemic caused Puerto Ricans who had left the island for work to return and perform their work remotely from Puerto Rico. It also caused individuals who had never lived in Puerto Rico to become interested in moving to Puerto Rico to work remotely. This trend caused the foreign employers of these individuals to worry about (1) whether the activities of such employees would render them engaged in a trade or business in Puerto Rico (ETB-PR) and (2) whether they had any local tax compliance requirements with respect to the salaries paid to such employees for services rendered from Puerto Rico.

Regulations issued under Section 1062.01 of the Puerto Rico Internal Revenue Code of 2011, as amended (PR Code), provide that salaries subject to Puerto Rican income tax withholding include the remuneration for services rendered in Puerto Rico by an employee of a foreign entity (i.e., an entity organized outside of Puerto Rico) regardless of whether or not such foreign entity is ETB-PR.⁹⁰ Non-ETB-PR foreign entities with this determination must register as employers for Puerto Rico income tax purposes and comply with the related income tax withholding, remittance, and withholding obligations.⁹¹ Salaries paid to employees working in Puerto Rico are subject to Puerto Rican income tax withholding,⁹² as well as U.S. Social Security and Medicare tax withholding.⁹³

Thus, when employers have an employee who is working remotely from Puerto Rico, that employee may cause a foreign employer to be deemed ETB-PR due to their working activities—although this is highly dependent on the duties and position of the employee in question.⁹⁴ Pursuant to local

^{86.} *Id.* at 45-47.

^{87.} *Id.* at 46.

^{88.} *Id.*

^{89.} *Id.*; Taxation Bill, cls 16–18, 91 (N.Z.).

^{90.} P.R. Internal Revenue Reg. 1062.01(a)(1)-1(g).

^{91.} *Id.* §§ 1062.01(a)(1)-1(g)(1).

^{92.} P.R. LAWS ANN. tit. 13, § 30271(b).

^{93.} 26 U.S.C. § 3121(a), (e) (2022).

^{94.} P.R. LAWS ANN. tit. 13, §§ 1062.01(a)(1)-1(g).

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regulations, certain *de minimis* services rendered in Puerto Rico through employees that are residents of Puerto Rico will not render a foreign corporation ETB-PR.⁹⁵ *De minimis* services are those services that are not substantial compared to all the activities conducted by the foreign entity, and that require the utilization of a minimum of the entity's resources.⁹⁶ The determination of whether services are *de minimis* is based on the facts and circumstances of each case.⁹⁷

Act 52-2022, approved on June 30, 2022 (Act 52), amended the Puerto Rico Code definition of the term "trade or business" to include, for taxable years beginning after December 31, 2021, the concept of "remote worker" for purposes of determining whether such individual's employer is ETB-PR.⁹⁸ The term "remote worker" is defined as an individual who performs services as an employee for the benefit of a nonresident person (Remote Worker).⁹⁹ For these purposes, the term nonresident person includes: (1) an individual who is not a resident of Puerto Rico; (2) a trust whose beneficiary(es), grantor(s), and trustee(s) are not resident of Puerto Rico; (3) an estate whose decedent, heir(s), legatee(s), or executor(s) are not, or, in the case of the decedent, have not been residents of Puerto Rico; or (4) a foreign entity.¹⁰⁰ In this context, the term services includes only services that do not have a nexus with Puerto Rico rendered to an employer that complies with the provisions of section 1010.01(a)(40)(D) of the PR Code.¹⁰¹

Pursuant to Section 1010.01(a)(40)(D) of the PR Code,¹⁰² for taxable years beginning after December 31, 2021, foreign employers that maintain Remote Workers in Puerto Rico will not be considered ETB-PR, only if:

- (1) At no time during the taxable year does the foreign employer have an office or other fixed place of business in Puerto Rico;
- (2) At no time does the foreign employer have an economic nexus with Puerto Rico;
- (3) The foreign employer is not considered a merchant for sales and use tax purposes;
- not an officer, director or majority shareholder of the foreign employer;
- (5) The services provided by the Remote Worker are provided for the benefit of customers or businesses of the foreign employer that do not have a nexus with Puerto Rico; and

95. P.R. Internal Revenue Reg. § 1231-1(d)(1)(ii)(A)–(G).

96. *Id.* § 1231-1(d)(1)(ii).

97. *Id.* § 1231-1(d)(1)(ii)(G).

98. *See generally* Act No. 52-2022 of June 30, 2022, H.B. 1367 (amending P.R. Internal Revenue Code § 1010.01(a)(40)(D)).

99. *See generally id.* (amending P.R. Internal Revenue Code § 1010.01(1)(42)); P.R. LAWS ANN. tit. 13, § 30041(a)(42).

100. P.R. LAWS ANN. tit. 13, § 30041(a).

101. P.R. Internal Revenue Code § 1010.01(a)(40)(D).

102. Act No. 52-2022 of June 30, 2022, H.B. 1367 (amending P.R. Internal Revenue Code § 1010.01(a)(40)(D)).

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(6) The foreign employer reports the income paid to the Remote Worker on a Federal W-2 Form or on a Form 499R-2/W-2PR (“W-2 Form”).¹⁰³

Foreign employers that allow employees to carry out their work remotely from Puerto Rico will not have an economic nexus with Puerto under the law even when:

- (1) The Remote Worker’s home office is necessary for employment or is a condition for employment;
- (2) There is a business purpose to allow the Remote Worker’s home to be used as his or her office;
- (3) The Remote Worker is required to perform some basic duties of his or her work from a location of the employer; and
- (4) Some of the expenses of the remote worker to have the office to work from home may be reimbursable by the employer.¹⁰⁴

Instead of being subject to Puerto Rico income tax withholding by the employer,¹⁰⁵ salaries paid to remote workers are subject to the payment of estimated taxes by such workers.¹⁰⁶ Remote workers are eligible for a foreign tax credit for the amount of any income and excess profits tax paid or accrued during the tax year to any possession of the United States or any state of the United States on salaries earned for services rendered in Puerto Rico.¹⁰⁷ The Secretary of the Treasury shall establish the necessary regulations to limit this credit only to states and territories of the United States whose source of income rule in the case of wages is based on the employer’s residence or place where the employer conducts business.¹⁰⁸

The amendments introduced to the PR Code by Act 52 create a special regime for remote workers whereby they are essentially treated as independent contractors with salaries reported in a W-2 Form.¹⁰⁹ By shifting the tax compliance burden to the remote worker and creating a safe harbor where foreign employers are not considered ETB-PR because of worker activities in Puerto Rico, current laws make it easier for foreign employers to allow their employees to work remotely from Puerto Rico.¹¹⁰

103. *Id.* (amending P.R. Internal Revenue Code § 1010.01(a)(40)(D)(VI)).

104. *Id.* (amending P.R. Internal Revenue Code § 1010.01(a)(40)(D)(ii)(IV)).

105. P.R. LAWS ANN. tit. 13, § 30271(b).

106. Act No. 52-2022 of June 30, 2022, H.B. 1367 (amending P.R. Internal Revenue Code § 1061.20(g); P.R. LAWS ANN. tit. 13, § 30260(g)).

107. Act No. 52-2022 of June 30, 2022, H.B. 1367 (amending P.R. Internal Revenue Code § 1051.01(a)(5)); P.R. LAWS ANN. tit. 13, § 30201(a)(5).

108. P.R. LAWS ANN. tit. 13, § 30201(a)(5).

109. Act No. 52-2022 of June 30, 2022, H.B. 1367 (amending P.R. Internal Revenue Code § 1010.01(a)(40)(D)(IV)).

110. *Id.*

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VI. Spain

A. SPANISH NON-RESIDENT INCOME TAX RULES¹¹¹

The Spanish Tax Administration has referred to teleworking in several binding tax rulings.¹¹² Although the administration concluded that the non-resident company was not acting through a permanent establishment in Spain (under domestic provisions and article five of the OECD Model Tax Convention),¹¹³ the lack of background functions carried out by the employee in Spain means that those precedents do not constitute a clear guidance on how future rulings may be applied related to remote workers.

In previous cases, the Spanish Tax Administration made a distinction based on whether the employees developed internal or external tasks linked to a business activity of their employer that were related to the core business of the company.¹¹⁴ In some cases, a reference to the business operative in the Spanish market has been considered as a relevant factor.¹¹⁵

The most recent precedent is the binding ruling, V0066-22, dated January 18, 2022, where the Spanish Tax Administration addressed the issue of an individual from the United Kingdom that was stuck in Spain during the COVID-19 pandemic, and after the first period of lock-down unilaterally decided to stay in Spain even though the employer required his return (thus triggering the employee's termination).¹¹⁶ It was concluded that the United Kingdom employer did not act through a permanent establishment in Spain.¹¹⁷ Factors that contributed to this conclusion included; the circumstances surrounding the pandemic; the availability of premises for the worker in the United Kingdom; and that the company did not reimburse any expenses connected with remote work.¹¹⁸ The Spanish General Directorate for Taxes made an express reference to the Commentaries in article 5 of the

111. Revised Nonresident Income Tax Law (R.D.L. 2004, 5) (Spain).

112. *V1305-15*, DIRECCIÓN GENERAL DE TRIBUTOS [THE SPANISH DIRECTORATE GENERAL FOR TAXATION] (Apr. 28, 2015), https://petete.tributos.hacienda.gob.es/consultas/?num_consulta=V1305-15 [<https://perma.cc/W9UM-Q4B7>]; *V3794-16*, DIRECCIÓN GENERAL DE TRIBUTOS [THE SPANISH DIRECTORATE GENERAL FOR TAXATION] (Sept. 9, 2016), https://petete.tributos.hacienda.gob.es/consultas/?num_consulta=V3794-16 [<https://perma.cc/PK9P-E4L2>]; *V3286-17*, DIRECCIÓN GENERAL DE TRIBUTOS [THE SPANISH DIRECTORATE GENERAL FOR TAXATION] (Dec. 27, 2017), https://petete.tributos.hacienda.gob.es/consultas/?num_consulta=V3286-17 [<https://perma.cc/W72K-MXNZ>].

113. *Articles of the Model Convention with Respect to Taxes on Income and on Capital*, 8–10, OCED (Nov. 21, 2017), <https://www.oecd.org/ctp/treaties/articles-model-tax-convention-2017.pdf> [<https://perma.cc/ZZS4-BLSS>].

114. *V1983-20*, DIRECCIÓN GENERAL DE TRIBUTOS [THE SPANISH DIRECTORATE GENERAL FOR TAXATION] (June 17, 2020), https://petete.tributos.hacienda.gob.es/consultas/?num_consulta=V1983-20 [<https://perma.cc/7C8M-EP5G>].

115. *Id.*

116. *V0066-22*, DIRECCIÓN GENERAL DE TRIBUTOS [THE SPANISH DIRECTORATE GENERAL FOR TAXATION] (Jan. 18, 2022), https://petete.tributos.hacienda.gob.es/consultas/?num_consulta=V0066-22 [<https://perma.cc/8S7F-4LKX>].

117. *Id.*

118. *Id.*

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OECD Model Tax Convention (and, in particular, to the OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis, and paragraphs 18 and 19 to Commentaries to article 5 of the OECD Model Tax Convention).¹¹⁹

**B. SPANISH PERSONAL INCOME TAX PROVISIONS: SPECIAL
INPATRIATES REGIME¹²⁰**

Another relevant issue would be whether remote workers could be deemed to acquire Spanish tax residence status. Because there are no specific rules applicable in these situations, the general tax residence criteria under Spanish Personal Income Tax rules apply.¹²¹ Remote workers generally meet the permanence and economic test criteria, unless the tie-breaker rules under the relevant Tax Treaties tip the balance to the origin country.¹²² They would then be considered ordinary residents subject to worldwide taxation in Spain.¹²³ Thus, the regime entails that only Spanish-sourced income and capital gains will be subject to taxation at domestic tax rates.¹²⁴ Conversely, employment income is taxed worldwide (fixed rate of twenty-four percent up to €600,000 and forty-seven percent onwards).¹²⁵

To make moving to Spain a more attractive option for key employees residing abroad, the current Spanish tax inpatriates regime will likely be modified¹²⁶ to broaden the terms to include friendlier regulations under a special regime applied to “digital nomads.”¹²⁷

In particular, the residency requirement would be deemed to be fulfilled if the employee is granted an International Teleworking Visa,¹²⁸ which will allow eligible applicants to reside and work in Spain for up to one year. International Teleworking Residence Permits will grant work and residence rights for up to two years.¹²⁹ The regime could also be extended to inpatriates’ spouses and children under specific requirements.¹³⁰

119. *Id.*

120. Personal Income Tax Law art. 93 (R.C.L. 2014, 26) (Spain).

121. Personal Income Tax Law art. 9 (R.C.L. 2006, 35) (Spain).

122. *Id.*

123. *Id.*

124. *Id.*

125. *New ‘Start-up Law’ Aims to Encourage Entrepreneurial Activity in Spain*, OSBORNE CLARKE (Jan. 31, 2023), <https://www.osborneclarke.com/insights/spain-new-start-law-aims-encourage-entrepreneurial-activity-spain>, [<https://perma.cc/4MP5-EMSG>].

126. Bill to Promote the Ecosystem of Emerging Companies (B.O.E. 2021, 81) (Spain.).

127. Digital nomads are employees that work for a foreign company providing their services remotely through the exclusive use of computer and telecommunication systems and resources, provided that they have not lived in Spain during the five tax periods before moving to Spain (currently ten years). *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

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Inpatriate individuals would also be subject to the new state Solidarity Tax on High Fortunes¹³¹ that is likely to enter into force for tax year 2022 on the assets located in Spain exceeding €3 million, with tax rates ranging from one point seven percent to three point five percent (above €10.7 million).¹³² This tax is likely to have a greater impact for inpatriates that are resident in regions with friendly wealth tax regulations (e.g., Madrid and Andalusia).

VII. United States Remote Workers

A. BACKGROUND

The United States has made minimal changes at the federal and state level regarding the taxation of employees working remotely since the COVID-19 pandemic.¹³³ Non-U.S. resident remote workers living in the United States are potentially subject to U.S. federal and state income taxes as well as taxes on their payroll such as social security and unemployment taxes.¹³⁴ Furthermore, because of the U.S. worldwide taxing system, U.S. citizens and tax residents living outside the United States are generally still subject to U.S. federal income taxes albeit with multiple income exemptions and tax credits.¹³⁵

B. RESIDENCY

Non-U.S. workers in the United States fall into two categories depending on time spent working in the United States: resident aliens and non-resident aliens.¹³⁶ Residency in the United States is determined by the number of days in the United States.¹³⁷ A good rule of thumb is that spending over half of a year in the United States can result in U.S. residency.¹³⁸ A U.S. resident, regardless of whether they are a United States citizen or resident alien, is taxed on their worldwide income.¹³⁹ A non-resident alien is taxed only on their U.S.-source income.¹⁴⁰

131. The new Tax will be included in article 3 of the Draft Law for the establishment of temporary taxes to energy and credit institutions and approving the Solidarity Tax on High Fortunes. See Law proposal for the establishment of liens temporary energy and credit institutions (B.O.E. 2022, 271) (Spain).

132. *Id.*

133. See generally Jeanne Sahadi, *Working Remotely in a Different State than your Employer? Here's What that Means for Your Taxes*, CNN (Mar. 1, 2022), <https://www.cnn.com/2022/03/01/success/state-income-tax-ramifications-remote-work/index.html> [https://perma.cc/NB75-SWCA].

134. See generally I.R.C. §§ 861, 862(a)(3), 863, 864(b), 865(g).

135. See generally I.R.C. §§ 1, 61.

136. *Id.* § 7701(b)(1).

137. *Id.* § 7701(b)(2).

138. *Id.* § 7701(b)(3)(B).

139. *Id.* § 1, 61.

140. *Id.* §§ 861(a)(3), 862(b), 863(a), 864(b), 865(a)(1).

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Because non-U.S. persons residing in the United States are taxed on their worldwide income, a remote worker who works outside the United States for an extended period of time (but not such a significant amount of time as to lose residency status) may owe taxes to two countries.¹⁴¹

The United States provides a tax credit for foreign taxes paid on income that has been taxed in both countries, but higher rates in the United States can still result in U.S. taxes.¹⁴²

C. REMOTE WORKERS FOR NON-U.S. COMPANIES

Because both non-U.S. residents and U.S. residents are taxed on income earned while in the United States, employers should withhold employment tax on their wages.¹⁴³ The employer should report the income to the United States and a portion of the income paid will need to be withheld and remitted to the United States.¹⁴⁴ If not paid, the employer is liable for that amount.¹⁴⁵ The individual employee is responsible for apportioning their income due to time spent elsewhere, if a non-resident, and obtaining foreign tax credits, if a resident.¹⁴⁶

D. STATE LEVEL TAXES

In the United States, employees are also typically subject to taxes at the state level, including state income and state unemployment taxes.¹⁴⁷ States generally only tax income actually earned in such state, so, unlike federal taxes, income earned outside the U.S. usually does not result in state taxes.¹⁴⁸ Employers need to register and withhold for these state taxes, which are typically administered across multiple branches of government.¹⁴⁹

141. *Id.* § 7701(b)(1).

142. *Id.* §§ 901, 903-09.

143. *Aliens Employed in the U.S.*, INTERNAL REVENUE SERV. (Aug. 3, 2022), <https://www.irs.gov/individuals/international-taxpayers/aliens-employed-in-the-us>, [<https://perma.cc/P3QU-3YAC>].

144. I.R.C. § 3402(a)(1)(A)–(B).

145. *Id.* § 3509.

146. *Foreign Tax Credit Compliance Tips*, INTERNAL REVENUE SERV. (Jan. 13, 2023), <https://www.irs.gov/individuals/international-taxpayers/foreign-tax-credit-compliance-tips> [<https://perma.cc/H9DD-45YQ>].

147. *Taxes and Working Remotely in a Different State*, JUSTIA (Mar. 2023), <https://www.justia.com/covid-19/taxes-and-covid-19/taxes-and-working-remotely-in-a-different-state/#:~:text=CA%20worker%20may%20have%20tax,a%201099%20DNEC%20independent%20contractor> [<https://perma.cc/M5AG-C7XK>].

148. *Id.*

149. *State Government Websites*, INTERNAL REVENUE SERV. (Nov. 10, 2022), https://www.irs-ein-tax-id.com/?utm_source=google&utm_medium=cpc&utm_campaign=main-irs-general&utm_term=irs%20small%20businesses&utm_content=&gclid=EAIaIQobChMIInPjEk4yW_gIVYhTUAR2HrQ5IEAAYASAAEgKhtvD_BwE [<https://perma.cc/KDC5-CT5R>].

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E. U.S. VISA TYPE MATTERS

Non-U.S. citizen remote workers in the United States could have a variety of visas, and the remote worker's type of visa can also impact U.S. taxation of the worker with some visas allowing for reductions and exemptions of income.¹⁵⁰

F. EMPLOYER TAXES

Remote workers in the United States may also cause their non-U.S. employers U.S. tax issues.¹⁵¹ For example, a non-U.S. employer can be subject to U.S. corporate taxes, among other taxes, when the employer is considered to have a U.S. presence.¹⁵² A remote worker in the United States performing work can create a U.S. presence for their foreign employer depending on a variety of circumstances including what type of work is being done.¹⁵³ A U.S. presence can be a compliance difficulty for foreign employers.¹⁵⁴

The United States has entered many tax treaties with different countries which may affect some of the above generalities such as residency and taxes being assessed on non-U.S. employers for remote workers in the United States.¹⁵⁵

G. SOCIAL SECURITY

In addition to the above discussed income taxes, non-U.S. citizen employees working in the United States will also require withholding income for Social Security taxes, regardless of whether they are considered a resident or not.¹⁵⁶ There may also be treaties affecting Social Security taxes as well.¹⁵⁷

H. CHANGES IN 2022

When the pandemic began, several states passed laws aimed at simplifying income taxes and providing relief for U.S. employees traveling between states; no such rules were passed for federal income and Social Security

150. I.R.C. § 1441(b)(2).

151. *See, e.g., Lewenhaupt v. Comm'r*, 20 T.C. 151, 153 (1953).

152. *See id.* (holding that a U.S. agent had broad general powers to manage taxpayer's affairs and property in United States, including to buy and sell real estate and securities in name of taxpayer).

153. *See generally* I.R.C. § 882.

154. *United States Income Tax Treaties*, INTERNAL REVENUE SERV. (Feb. 7, 2023), <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z> [<https://perma.cc/VR8N-RH6Z>].

155. *See generally* I.R.C. § 3102.

156. *See* INTERNAL REVENUE SERV., *supra* note 143.

157. *U.S. International Social Security Agreements*, SOC. SEC. ADMIN., https://www.ssa.gov/international/agreements_overview.html [<https://perma.cc/8ZZJ-7PBF>] (last visited Apr. 14, 2023).

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taxes.¹⁵⁸ Moreover, the United States federal government proposed legislation related to state level income tax issues (remote workers moving from one to state to another in the United States) but has not addressed international remote employees. One example of proposed federal legislation is the Remote and Mobile Worker Relief Act of 2021, which would include a thirty-day non-resident de minimis withholding threshold.¹⁵⁹ But, as of the publication of this article, this legislation was proposed over a year ago without implementation; also, the provisions related exclusively to state income taxes with no provisions related to federal income taxes.¹⁶⁰

VIII. Conclusion

As remote work becomes increasingly possible and popular, savvy employers will need to closely monitor worker locations to avoid incurring additional tax liabilities. This article provides a sample of changing tax issues in many popular “digital nomad” countries and demonstrates how tax issues related to remote work are evolving rapidly around the globe. Going forward, employers must proactively investigate the tax consequences of sustaining employees who wish to work from other countries because each country has different tax rules, and incurring unintended tax liabilities can be expensive and time-consuming.

158. *See generally* JUSTIA, *supra* note 147.

159. Remote and Mobile Worker Relief Act of 2021, S. 1274, 117th Cong. (2021).

160. *Id.*