LEGALQUOTIENT

USA · INDIA · CANADA · UAE

FREE GUIDE · Payroll

Paying Across Borders

The four separate questions every cross-border hire raises, and why the payroll answer rarely matches the income tax one.

Cross-border payroll: paying someone who works in another country

Payroll & mobility · Published by Legal Quotient Consultants

Cross-border payroll: paying someone who works in another country

One employee working in another country raises four separate questions with four different answers: where the employment income is taxable, where payroll withholding is owed, which country's social security applies, and whether the employer now has a taxable presence there.

Who this is for

- Employers with a first hire in another country, or an employee who has moved without asking.
- Finance and people teams operating a remote-first policy across borders.
- Employees who have been told their pay arrangement is "fine" and want to understand the exposure.

Four questions, and why they diverge

Where the income is taxable is generally decided by where the work is physically performed, modified by the applicable treaty's employment article, which can exempt short assignments on defined conditions. Where payroll withholding is owed is a domestic administrative question and often has a lower threshold than the taxability question, which is why an employer can be required to withhold on income that turns out not to be taxable.

Social security is coordinated separately by totalization or social security agreements, which are not part of the tax treaty and can point at a different country entirely. And the employer presence question is a corporate one: staff performing work in a country can create a permanent establishment for the employer, which changes the employer's own tax position.

Because the four are decided by different instruments, the answers routinely differ. Assuming one answer covers all four is the single most common structural error in cross-border employment.

Withholding and registration for the employer

An employer with an employee working in another country generally has to register there for payroll purposes, withhold under local rules and remit on the local cycle, and file the local returns and year-end statements. That is true even where the employer has no other presence and no local entity.

Where the treaty is expected to exempt the employee from tax in the work country, several systems allow the employer to apply for a waiver or reduction of the withholding rather than withhold and let the employee reclaim. Canada has an application for a waiver in respect of non-resident employees working temporarily in Canada, and a separate route for reducing withholding at source where the eventual liability will be lower. Both are advance applications. Our page on theemployee withholding waivercovers the Canadian one.

Social security and the certificate that avoids paying twice

Without coordination, an employee sent to work in another country can be liable to contribute to both countries' systems on the same earnings. Social security agreements solve this by assigning coverage to one country and providing a certificate of coverage that evidences it, which the employer keeps and produces on request.

The certificate has to be applied for, generally before or at the start of the assignment, and it is specific to the person, the assignment and the period. Retroactive applications are sometimes possible and are always harder. Where no agreement exists between the two countries — which is common for the Gulf corridors — double contribution may simply be the outcome and needs to be priced into the assignment. Our page onsocial security and totalization certificatescovers the mechanics.

The two shortcuts, and what each one costs

The first shortcut is paying the person as a contractor. Whether someone is an employee or a contractor is decided on the substance of the relationship in each country, and the two countries can reach different answers on identical facts. Getting it wrong exposes the employer to back withholding, contributions, penalties and interest, and in some systems to a punitive characterisation of the contractor's own company. Our page onemployee versus contractor in both countriessets out the tests.

The second shortcut is an employer of record. It solves the registration and payroll problem genuinely, and it does not solve the permanent establishment problem: the question of whether the employer has a taxable presence turns on what the person does, not on who runs the payroll. A senior person concluding contracts through an employer of record can still create a presence for the real employer. Our page onemployer of record tax riskcovers the limits.

A remote work policy is a tax document

Once employees can work from anywhere, someone will. Each country an employee works from can create withholding, registration, social security and presence questions, and the employer usually finds out at year end or not at all. The realistic control is a policy: which countries are permitted, for how many days, with what approval, and what the employee must report.

The other half is day tracking. Almost every relief and threshold in this area is measured in days, and an assertion about days without records is not a position. A simple, employee-maintained calendar with employer oversight is worth more than any amount of retrospective reconstruction.

Setting up a cross-border employment properly

Answer all four questions before the first payment, because unwinding a payroll is harder than setting one up.

1. **Establish where the work is physically performed** By day and by country, including planned travel. This is the input to every other answer.

2. **Test taxability under the treaty** Apply the employment article, including any short-assignment exemption and its conditions. Note that satisfying it does not remove the withholding question.
3. **Determine the withholding and registration duty** In the work country, on its own thresholds, and apply for a waiver in advance where the treaty is expected to exempt the income.
4. **Settle social security** Identify the applicable agreement, apply for a certificate of coverage before the assignment begins, and where no agreement exists, price the double contribution into the cost.
5. **Test the employer's own presence** What the person actually does — contract authority, customer-facing sales, premises — and whether it creates a taxable presence for the employer.
6. **Document and track** An assignment letter or contract that matches reality, a day-tracking method, and a calendar for the payroll filings and the certificate renewals.

Papers to gather

What a cross-border payroll review needs:

- Employment contract or assignment letter, and any secondment agreement.
- Where the employee will physically work, by country, with expected days.
- The employee's residence and citizenship, and their family's location.
- Compensation details including equity, bonuses, allowances and benefits in kind.
- The employer's existing registrations and presence in the work country.
- Any employer of record or agency arrangement, with its contract.
- A description of the employee's duties, especially any contract authority.
- Existing certificates of coverage or waiver applications, with dates.

Where it goes wrong

- **Treating one answer as four** Treaty exemption from tax does not remove the duty to withhold, and neither addresses social security or the employer's own presence. Each question needs its own answer and its own paperwork.
- **Reclassifying an employee as a contractor to avoid payroll** The characterisation follows the substance, the two countries can disagree, and the exposure sits with the employer plus penalties and interest. It also tends to surface when the relationship ends badly.
- **Relying on an employer of record for the presence question** It solves payroll and registration. It does not answer whether the employer has a taxable presence, which depends on what the person does rather than on who processes the pay.

Questions this raises

Our employee moved abroad and kept the same pay. Is that a problem?

Usually yes, in at least one of the four dimensions. The work country may require registration and withholding, social security coverage may need to be assigned by certificate, and the employee's duties may create a taxable presence for the employer. None of it is fatal, and all of it is easier addressed early.

If a treaty exempts the employee from tax, do we still have to withhold?

Frequently yes, unless a waiver is obtained in advance. Withholding is an administrative obligation with its own thresholds, so an employer can be required to withhold on income that ultimately is not taxable in that country.

What does a certificate of coverage do?

It evidences that social security contributions belong to one country rather than both for a defined person and period, under the applicable agreement. It is applied for rather than assumed, ideally before the assignment starts, and it is specific to that assignment.

Does using an employer of record remove our tax risk?

It removes the payroll registration and processing problem, which is real value. It does not answer whether your company has a taxable presence in that country, because that turns on what the employee actually does on your behalf.

What to do next

For a first hire, the useful deliverable is a four-question memo for that specific person and country, with the registrations and applications it implies. For an existing arrangement, the same memo run backwards tells you what is already exposed.

We set up cross-border payroll, run the waiver and certificate applications and handle the ongoing filings at a fixed fee agreed before work starts. Seepayroll for a foreign employee in Canadaand thepayroll setup fee page.

Legal Quotient Consultants

Cross-border and international tax. Fixed fees agreed in writing before work starts, quoted from your own documents.

United States: 5243 Strathmore Ave, Kensington MD 20895
Canada: 381 Front St W, Toronto ON M5V 3R8
India: A-1/2, Shakti Nagar Extension, Ashok Vihar, Delhi DL 110052

contact@lqconsultants.com · +1-416-619-0068 · +91-989-909-9030