
INCOME TAX

Combatting Corporate Tax Risk in the Age of Remote Work

Author: David Livitt

David Livitt currently serves as Global Practice Leader, Business Traveller & Remote Worker Solutions at Global Tax Network. He has more than 20 years of experience in the area of mobility tax working with multinational companies of all sizes, assisting them and their employees to navigate the complexities that come with global mobility programs. With a view to managing corporate and employee individual tax compliance, there has been a growing trend to assist companies with their short-term business traveler and remote worker populations to develop global governance structures, policy design, process management, and technology-enabled solutions. David has successfully led and implemented a number of such global business traveler projects.

This paper examines the rising tax and compliance risks growing out of remote work trends, analyzes best practices that corporate entities can use to track employee whereabouts, and outlines the most prevalent techniques for adjusting corporate travel policies to an increasingly remote workforce.

COVID-19 and growing remote work trends are shifting where and how employees work. The traditional nature of business travel is morphing, and corporations need to know where their employees are working in order to ensure tax compliance and risk avoidance. However, privacy laws, costs, cultural considerations, and other factors are restricting the modern company's ability to track employees outright via GPS. What's more, the nature of remote work is both triggering enhanced tax enforcement and casting heavy administrative burdens on managers who attempt to navigate tax laws using traditional processes. This paper examines the rising tax and compliance risks growing out of remote work trends, analyzes best practices that corporate entities can use to track employee whereabouts, and outlines the most prevalent techniques for adjusting corporate travel policies to an increasingly remote workforce.

Business travel has taken on a radical transformation throughout the last decade. An estimated 36.2 million workers will make up the global workforce by 2025.[1] This shift toward remote work has allowed employees to move freely across U.S. state and international borders. However, although remote work is increasingly popular, it opens corporations and employees up to tax and compliance risk. Without proper remote work tracking and management procedures, corporations are exposed to an increased risk of tax violations, withholding mistakes, internal compensation misalignment, and duty of care missteps. At the same time, enforcement agencies and legislative bodies are moving toward more stringent global work monitoring and are implementing more strict reporting standards. This paper examines the growing tax and compliance risks facing corporations in the shifting work landscape, discusses the current legal and enforcement trends among global enforcement entities, and proposes an actionable plan that corporations can implement to mitigate risk.

The Shift Toward Remote Work

To understand the growing need to track employee whereabouts, it's important to examine the shifting nature of work in general. Traditionally, business travelers operated as a defined group that included employees who were temporarily sent to a location for a business purpose. However, with the emergence of remote work, the business traveler group has expanded to include “work from anywhere” employees. This relatively new class of employee is becoming more prevalent. Evidence suggests business travel is shifting to include a more mobile and more global workforce. PwC's U.S. Remote Work Survey[2] , which polled 133 executives and 1,200 U.S. workers during the COVID-19 pandemic, found 83 percent of employers and 71 percent of employees reported remote work has been a success. Additionally, 74 percent of those same workers say they would like to work from home at least twice per week when they go back to the office full-time.

That move toward remote work is echoed in other studies. A Gallup study found nearly 7 in 10 employees conducted work from home during the pandemic[3] . What's more, economists predict 36.2 million workers will work remotely by 2025[4] , nearly double the number working remotely pre-COVID-19. For corporate entities, the global shift toward more remote work is making it increasingly challenging to know where employees are. As employees work across borders, both U.S. state and international, there's an increasing burden to monitor compliance and tax obligations—with few ways to do so.

Corporations Lack Tracking Mechanisms in a Risky Global Environment

The shift to a global workforce is exposing corporations and employees to significant risk, including reputational damage, compliance violations, lost compensation, and duty of care failures. Moreover, corporations at large appear to be underprepared and ill-equipped to track and manage remote employees at the current moment. According to a joint 2020 International Business Travelers Benchmark Report, only 58 percent of companies have a single global travel policy.[5] The same survey found 51 percent of companies rate their tracking abilities as “inadequate.” These trends are alarming when considering the potential risks companies face both domestically and internationally as their employees work across borders. Here is background on the most prevalent risks arising out of an untraceable remote workforce.

Duty of Care One major reason corporations need to track employees is safety. The COVID-19 pandemic has shed light on a growing responsibility of corporations to care for employee safety. Financially, corporations have already been heavily penalized for not providing a safe work environment. According to a release by the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), the U.S. government has issued just under $4 million in citations directly related to the coronavirus since December 2020.[6] Although the pandemic has brought duty of care to the forefront for many employers, the extent of workplace laws reaches well beyond the singular event. In the U.S. employees are protected by the Occupational Safety and Health Act (1970). More specifically, Section 5(a)(1) sets a standard for duty of care wherein employers are required to give employees a workplace that is absent of "recognized hazards" and spaces that are likely to cause "death or serious physical harm."[7] With these duty of care standards firmly in place, it isn't difficult to see how not knowing an employee's whereabouts can increase a corporation's legal risk. To properly implement emergency procedures and take the appropriate precautions to prepare employees for sudden or predictable events, including political unrest, natural disasters, or other hazards, corporations need to know where employees are working.

Regulatory and Compliance Needs There is no single standard for tax reporting and filings that encompass all U.S. states and countries. In some cases, tax obligations shift depending on the number of work visits an employee makes to a given location within a given time frame. Violating tax laws or underreporting taxes can result in a range of consequences for both corporations and employees, including fines, legal penalties, and jail time. Beyond the direct tax responsibilities that corporations face, regulatory and compliance responsibilities for global employees can also extend into broader areas, including social security reporting obligations, immigration laws, one-off tax rules, and global equity compensation requirements.

Reputational Risk Violating international laws and rules can directly impact a company's reputation, especially when corporations employ high-profile figures or have C-suite executives who are working overseas. Still, beyond the obvious dangers high-profile employees face, there is a more internally facing reputational risk that can grow among a spread-out, untrackable workforce. That is the danger of becoming known as a company that does not allow or facilitate remote work. As a recent report by Buffer suggests, remote work is increasingly popular among the general workforce.[8] Without employee tracking, it's difficult for corporations to set up remote work policies that set ground rules for remote work. It also prohibits the corporation from properly adjusting compensation to fit local taxation or account for region-specific influences on an individual's compensation package.

U.S. Domestic Tax Considerations, Risks, and Concerns

Domestically within the United States, employees are moving across state lines to work. Yet, corporations and employees are expected to uphold tax reporting obligations that follow the individual laws of different tax jurisdictions. There are several risks corporations need to consider as their employees travel across borders for work, including trends toward stricter tax enforcement for remote employees. This section calls out several legal trends that appear to indicate momentum toward stricter tax laws for corporations with mobile employees.

The Wayfair Decision

There are growing concerns rising out of the business community regarding domestic mobility among employees. One case that's at the root of these growing challenges is the Wayfair decision. In the United States Supreme Court case *South Dakota v. Wayfair, Inc.*,[9] the court ruled 5-4 in favor of the state. The court ruling set a standard that requires out-of-state sellers to gather and remit sales tax when sales are made to in-state consumers. The ruling established this responsibility even in instances where the seller does not have a physical presence within the state of the consumer.

U.S. State Response to Wayfair

In response to the Wayfair ruling, several states are now relying on an economic presence standard in order to create a sales tax nexus. Here are a few examples of nexus and how it is adding pressure for corporations and employees to report taxes for multiple jurisdictions:

Implications for Multistate Employees Under the Wayfair ruling, employees may be required to account for multiple withholding obligations. For instance, if a California resident travels to Arizona and works in Arizona for six months while the employer has nexus with California, it triggers several withholding obligations:

(1) Because the employee has exceeded the 60-day Arizona threshold, Arizona withholding is required.

(2) California withholding is also required, along with an income tax credit withheld for the work state of Arizona.

Responsibilities in Multistate Filings The responsibilities for multistate employees can vary substantially from state to state. In the example above, the employer will need to calculate the California income tax on the same wages. From there, if the California tax amounts to a greater total, the employer must withhold an amount equal to the difference between the income tax of the two states. In this instance, if California tax is lower than the Arizona tax, California tax doesn't need to be withheld.

Nexus Presence Standards

Individual states have also indicated that even a single employee's presence within a state may be enough to establish nexus and trigger withholding obligations. In a 2012 Virginia Tax Commission Ruling,[10] the state ruled a single sales employee's out-of-state employer was obligated to withhold Virginia income tax from compensation paid to the employee because the employee's presence within the state established nexus.

Proposed Legislation

In addition to the recent Wayfair court decision, there have been several proposed tax measures raised in recent U.S. legislation. These proposed acts could impact a corporation's reporting obligations for workers conducting business across state lines even further:

- The Mobile Workforce State Income Tax Simplification Act would establish a 30-day threshold before a state could impose income tax on a nonresident employee's wages.

This legislation has been introduced in Congress a number of times since 2006, the latest being during the 117th Congress.[11]

- The Model Mobile Workforce Statute was adopted by the Multistate Tax Commission (MTC), an intergovernmental state tax agency, in July 2011. It sets the threshold at which a state may not require withholding or individual income tax filing on nonresident employees' wages at 20 workdays. States now have the power to decide whether or not to adopt the model law. So far, only one state has done so: North Dakota.[12]

International Tax Considerations

As the remote workforce grows and corporations have few ways to monitor where their employees are working globally, there's a mounting push toward stricter enforcement. At the same time, countries are adopting new legislation to curb the effects of global travel and redefine business travel in general. This section examines recent tax laws that point to increasingly stringent international reporting obligations for employees and corporations.

Canadian Tax Law and Breaking from the 183-Day Rule

There has long been a rule of thumb running throughout business travel that suggested business travel as a nonresident only needed to be reported after 183 days of work within a given country. However, the "183-day" rule is no longer adequate in an increasingly global work environment. Business travel activity in Canada, the UK, and the U.S. all have moved toward stricter policies for global business travel.

Canada Bill C-21

House of Commons Canada Bill C-21[13] gives the Canada Border Services Agency (CBSA) the authority to gather personal information on people exiting Canada. The agreement allows for additional information sharing between the CBSA and CRA, as well as allowing information sharing between U.S. and Canadian internal agencies. In addition to increasing the ability to capture worker information, C-21 also reinforces several reporting requirements and obligations:

- There is no minimum threshold for income tax withholdings, meaning obligations can exist from the first day an employee begins work in Canada.
- Employers with employees working in Canada are required to file a T4 information return that reflects all amounts paid to employees.
- The employee will need to file a Canadian income tax return for income that exceeds the amount exempted under treaty provisions.

Canada Bill C-21 is in step with broader trends throughout the globe of increasing audit capabilities. At the same time, it suggests international work laws for global employees extend well beyond the traditional 183-day benchmark.

EU Posted Workers Directives (PWD)

The European Union's Posted Workers Directives serve as another set of international laws that call for advanced employee tracking and reporting. Under the directive, a "posted worker" is set to include an employee who carries out work in an EU member state outside of the state they normally work within. To date, the EU has established three Posted Worker Directives, with several noteworthy implications.[14]

- Prior notification: Most EU member states now expect foreign employers to report postings before the first day of work.
- Liaison person: Companies are required to designate a liaison person for labor inspections. Additionally, in some countries, an assigned contact is needed in order to conduct collective bargaining with social partners.
- Retention of documents: Employers are obligated to retain employment documents. Examples include contracts, schedules, and payment slips.
- Social security certification: Employees are required to apply for a social security certificate in order to stay on their Home country's social security system. This certificate is needed in order to be exempt from social security payments within the country where the employee is working.

Employee Tracking Considerations: What's Reasonable, What's Not

In order to obtain critical data for tax compliance as the global workforce becomes increasingly untethered, employee tracking is needed. At the same time, there is GPS technology available that would allow companies to track employees at any time. However, there are several problems corporations face if leaders choose to use GPS tracking to monitor employee whereabouts. Here are some considerations corporate leaders need to keep in mind as they craft employee tracking policies:

(1) Employee emotions: Prior to setting up employee tracking policies, it's important for corporate leaders to consider the social and emotional implications attached to invasive policies. Overly intrusive policies that infringe on an employee's privacy should be scaled back to avoid negative attitudes toward the company.

(2) Personal boundaries: There is no clear-cut standard of privacy that reaches across all people. Therefore, it's important to consider the most prevalent privacy culture shared across a given company's culture prior to implementing tracking procedures.

(3) Employee expectations: Some employees may be willing to share personal information, whereas others may view that same personal data as sacred. That's why corporations should conduct surveys and discussions to determine a baseline of reasonable expectations prior to implementing employee tracking policy or technology.

U.S. Privacy and Tracking Laws

Employers also need to consider privacy laws before setting up an employee tracking policy. Beyond privacy standards set by the Fourth Amendment, federal law around employee tracking remains relatively vague. As a result, in the U.S., it's generally left up to individual states to determine individual data privacy laws. Thus far, state law trends suggest employers should at least give pause before tracking employees outright—especially if the plan is to do so without consent. Here are a few cases shaping the direction of employee privacy trends within the U.S.:

State Vehicle Tracking Statutes and Laws

Employee tracking is not forbidden outright in blanket legislation. However, there are statutes that suggest it could lead to legal violations. For instance, employers that use tracking devices may violate state tort laws set by Illinois statute enacted in 2014.[15] These laws prohibit employers from using electronic tracking devices in some instances. An employer could violate state tort laws if the employer tracks employees without their knowledge or consent. However, there have been cases where employers have been allowed to track company-owned vehicles without the knowledge of the employee. For instance, in *Elgin v. Coca-Cola Bottling Co.,*[16] an employee sued his employer after learning his company placed a GPS device on the company vehicle he had been driving. The court ruled against the employee, explaining that the vehicle was owned by the company and the information that the employer sought was limited to the whereabouts of the company-owned vehicle. Similar tolerance for employee vehicle tracking was set by *Tubbs v. Wynne Transport Services Inc.*[17] Ultimately, these cases suggest an employer is allowed to install a GPS tracking device in a vehicle owned by the business in some instances. Still, some states have made it a crime to track a vehicle's location without the vehicle owner, or employee's, consent. According to the National Conference of State Legislatures, Delaware, Illinois, Michigan, Rhode Island, Tennessee, Texas, and Wisconsin have deemed installing location tracking devices on vehicles without the owner's consent illegal.[18] Additionally, California, Hawaii, Louisiana, Minnesota, New Hampshire, North Carolina, and Virginia hold broader tracking laws that prohibit electronic tracking of a person's location without their consent—whether on a vehicle or in any other form.[19]

With this gray legislation hanging over GPS tracking, employers may want to practice caution and consider giving employees notice before using GPS monitoring of company equipment.

Laws Regarding Phone Tracking

Phone tracking appears to be another gray area when it comes to current legislation. However, *Arias v. Intermex Wire Transfer*[20] suggests the practice could be at least controversial for employers. In the case, the employee sued her employer after she was let go for removing a GPS tracking app from a company-owned phone. The case was later settled out of court. Again, the Arias case suggests companies should practice caution when considering tracking company-owned phones or apps within phones. It's also worth noting that laws regarding employers tracking employees who are using their personally owned property remain a vague area of law thus far.

Proposed Solutions

It's advised that corporations take a three-pronged approach in order to properly track employees, address shifting risk, and avoid reputational damage. The proposed solution is to consider process, policy, and technology. This section discusses best practices for implementing each solution into a revised risk-management solution.

Policy Creation

In order to account for the risk arising from an increasingly global workforce, an important first step is determining categories of global workers. Especially with the recent shifts in business travel, defining business travelers by assignment or work style will help corporate leaders recognize what information they need to be tracking in order to remain compliant and violation-free. Here are some common work groups to consider:

> (1) Traditional mobile employees: Traditional mobile employees typically include short-term business travelers, employees who are on assignment, workers who have been transferred to a physical location across borders, or commuters.
>
> (2) New mobile employees: New mobile employees are remote workers or “work from anywhere” employees. This category of employee generally includes both domestic and international workers, as well as temporary and permanent remote work employees.

Once a corporation has established what categories mobile employees fit into, it's worth drilling even further into remote work details. As mentioned prior, details such as length of work within a location and specific state or country laws can have a substantial effect on the employee and employer's tax withholding and reporting obligations. Here are some guiding questions to ask when forming a mobile work policy:

- What will be the duration of remote work? Reporting obligations often depend on whether your remote employees are permanent or temporary workers. In all cases, it's important to track the number of days an employee will be working within any given jurisdiction. As shown in the earlier cases of Canada Bill C-21 and U.S. domestic nexus cases, even temporary remote workers may be subject to withholding and reporting obligations.
- Is the remote work being completed in a domestic or international location? Because different states have different tax laws, employees may be subject to additional withholding or payroll requirements, depending on their U.S. location. International locations may also come with additional compliance concerns, including social security, immigration, and country-specific tax laws.
- Are remote workers temporarily moving? If employees are moving freely between international or state borders, corporate leaders need to understand the specific obligations for each location employees work within. In order to set policy that protects against violations and ensures employee safety, corporations should consider country- and state-specific reciprocity agreements, immigration requirements, or other rules that are unique to the jurisdiction.

Process Creation to Address the Global Workforce

Process creation is important in order to avoid overwhelming departments or overlooking employee actions. Corporate leaders should recognize the potential for interdepartmental overlap when managing remote workers. For instance, depending on the scenario, managers may need to understand everything from immigration and tax law to compensation, social security, or value-added tax (VAT) obligations. A suggested first step in setting up remote work policies is establishing who is in charge of what information. It's also best practice to designate a single person to run the corporation's employee tracking efforts. Although designated employee tracking leaders will likely need to access cross-departmental expertise, creating a single source for tracking efforts can focus remote policy and enforcement.

Using Technology to Manage the Global Workforce

Technology could be increasingly important as corporations look for ways to track and manage remote employees. This section provides advice for identifying and using effective technology solutions to manage remote employees:

Technology Needs to Enhance Processes

It's unrealistic for corporate leaders to adopt technology and expect it to manage tax or compliance responsibilities for them. Instead, technology needs to work in tandem with processes, policies, and people within the organization. Here are some guiding questions to assist in the technology selection process:

(1) Does the technology address remote work approvals?

(2) Does it fill in the gaps in departments that are under-resourced?

(3) Does it support a centralized process and workflows?

(4) Does it reduce costs or administrative tasks?

Technology as an Organizational Tool

In addition to simply tracking employee whereabouts, technology can serve an important role in collating data and reducing administrative overload. Absent a technical solution, human administrators will face a massive responsibility to understand and monitor tax situations on a case-by-case basis. If the company has employees working freely across the globe, it could mean individuals need to know the unique tax regulations, as well as immigration rules, for all countries. Technology can serve as a substantial workload reducer by monitoring employee locations, total time the employee has spent in an area, tax filing obligations within each jurisdiction, and country- or state-specific payroll reporting needs.

Conclusion

Corporations face intersecting dangers as the workforce becomes increasingly mobile. First, employees are shifting to conduct work across U.S. state and international borders at more frequent rates. Second, the enforcement agencies designated to those work destinations are becoming increasingly interconnected and capable of monitoring work within borders. These converging trends present a growing risk of tax violations, employee safety concerns, and noncompliance. Employee tracking and monitoring have the potential to protect against some risk. However, in order to be a realistic solution, employee tracking is best paired with a broader plan that includes a three-pronged approach: updated process, policy, and technology. By combining employee tracking with updated business travel procedures, corporations will be in better positions to avoid major tax violations, reputational damage, and additional consequences that are likely to grow out of the remote work revolution.

---

1 Adam Ozimek, "Economist Report: Future Workforce," Upwork, 2020, www.upwork.com/press/releases/economist-report-future-workforce.

2 PWC, "PwC's US Remote Work Survey," January 12, 2021, www.pwc.com/us/remotework.

3 Gallup, "Reviewing Remote Work in the U.S. Under COVID-19," May 22, 2020, news.gallup.com/poll/311375/reviewing-remote-work-covid.aspx.

4 Ozimek, "Economist Report."

5 Fragomen, GTN, AIRINC, "2020 International Business Travelers Benchmark Report," 2020, www.fragomen.com/file/19-airinc-biztravelersreport-digitalpdf.

6 "U.S. Department of Labor's OSHA Announces $3,930,381 In Coronavirus Violations." United States Department of Labor, OSHA, Jan. 8, 2021, www.osha.gov/news/newsreleases/national/01082021.

7 OSH Act of 1970 Public Law 91-596, 84 STAT. 1590, 91st Congress, S.2193, December 29, 1970, as amended through January 1, 2004.

8 Buffer, "State Of Remote Work," 2019, buffer.com/state-of-remote-work-2019.

9 U.S. Supreme Court. South Dakota v. Wayfair, Inc., June 21, 2018.

[10] 2012 Virginia Tax Commission Ruling [Virginia Department of Taxation, Ruling No. 12-37, 3-30-12]

[11] H.R.429, 117th Congress (2021-2022): Mobile Workforce State Income Tax Simplification Act of 2021.

[12] Multistate Tax Commission, "Model Mobile Workforce Statute," July 27, 2011, available at www.mtc.gov.

[13] House of Commons of Canada Bill C-21, Second Session, Forty-third Parliament, 69-70 Elizabeth II, 2020-2021, available at https://parl.ca/DocumentViewer/en/43-2/bill/C-21/first-reading

[14] “Employment, Social Affairs & Inclusion.” Posted Workers, European Commission, 2021, ec.europa.eu/social/main.jsp?catId=471.

[15] Illinois Compiled Statutes (ILCS), 720 ILCS 5/21-2.5, 2014,

[16] Elgin v. St. Louis Coca Cola Bottling Co., No. 4:05CV970-DJS, 2005 WL 3050633, at *3– 4 (E.D. Mo. Nov. 14, 2005).

[17] Tubbs v. Wayne Transport Services Inc., No. H-06-0360.

[18] Pam Greenberg, “Private Use of Mobile Tracking Devices,” National Conference of State Legislatures, November 2016, www.ncsl.org/research/telecommunications-and-information-technology/private-use-of-mobile-tracking-devices.aspx.

[19] Ibid.

[20] Arias vs. Intermex Wire Transfer, L.L.C., Case No. 1:15-cv-01101 JLT, United States District Court, E.D. California, 2015.

END OF DOCUMENT -