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NAVIGATING THE LEGAL LANDSCAPE OF DIGITAL NOMADISM: A SWISS PERSPECTIVE ON COMPLIANCE RISKS AND HR STRATEGIES

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1. Introduction

Digital nomadism has reconfigured the geography of work, allowing employees to remain professionally active while living and traveling across borders. While this offers unmatched flexibility and lifestyle benefits, it also challenges traditional legal frameworks. From a Swiss legal standpoint, the extraterritorial presence of employees raises nuanced issues of taxation, labor law, social security, immigration, and data protection. Therefore, companies must balance flexibility with legal compliance to avert liability and reputational harm.

This article¹ aims to provide an overview of the challenges digital nomads face and suggest strategies to mitigate risks.

2. Taxation Risks: The Permanent Establishment Determination

One of the most pressing concerns for Swiss companies employing digital nomads is the risk of creating a permanent establishment (PE) abroad. Employees working remotely for Swiss entities may inadvertently trigger corporate tax liabilities in the host jurisdiction. Moreover, if such work occurs from within another Swiss canton, international PE risks may also arise due to cantonal tax law discrepancies [2; 9].

2.1. Taxation Risks – Case Study *BGE 2C 678/2013, 2C 680/2013, Urteil vom 28. April 2014*

Background. A. worked in Saudi Arabia for B. AG from March 1, 2009, to August 31, 2011. Before and after this period, he was a tax resident of U./TG, Switzerland [7].

¹ During the research, such AI tools as ChatGPT 4.0 and Perplexity, were used for the search of the most relevant sources and translating them from German to English.

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The Dispute. The Thurgau cantonal tax authorities determined that A. remained a tax resident in Switzerland during his time in Saudi Arabia. A. contested this, arguing he had established tax residency in Saudi Arabia. The Thurgau Cantonal Administrative Court ruled in favor of A. The tax administration of the canton Thurgau then brought the case before the Swiss federal court [7; 9].

Determination of the Place of Residence. The court emphasized that tax residency is determined by the “center of life interests.” This involves both objective (physical presence) and subjective (intent) factors. When assessing this, the court considers all aspects of an individual’s life, including professional, family, and social ties. In international cases, the court acknowledges that maintaining some ties to the home country is common and doesn’t automatically negate a change in tax residency. The court stated that the simple fact of keeping a home in Switzerland does not mean that the center of life interests is in Switzerland. The Federal Supreme Court upheld the decision of the Thurgau Cantonal Administrative Court. It concluded that A. had indeed shifted his center of life interests to Saudi Arabia during his work assignment [7].

2.2. Taxation Risks – Case Study BGE 138 II 300

Background. A pensioner, married to a Swiss wife with an apartment in Switzerland, deregistered from Switzerland to live as a “world traveler” on a boat. His wife visited him there regularly [6].

The ruling. The Federal Supreme Court ruled that he could not be deregistered from Switzerland due to the lack of a new residence. Nobody wants to live permanently on the boat. In addition, his age and his wife/apartment suggest a return to Switzerland [6]. Thus, the Court applied another approach to the determination of the place of residence in this case. And the way the place of residence may be interpreted also must be taken into consideration.

Hence, companies must conduct tax risk assessments prior to approving remote work arrangements abroad and consider implementing mechanisms, such as time limitations and approved countries lists, to minimize PE and dual residency exposure [9].

3. Social Security and Labor Law Considerations

Social security affiliation and labor law compliance are equally critical. Under the Agreement on the Free Movement of Persons (ALCP) and the EFTA Convention, social security contributions are due in the country of work. However, the COVID-19 pandemic prompted temporary leniency, allowing cross-border teleworkers to remain affiliated with their home country’s system despite remote work abroad [3; 5].

As of 1 July 2023, Switzerland and several EU/EFTA countries signed a new framework agreement allowing employees to telework from their country of

residence for up to 49.9% of their working time while remaining subject to the Swiss social security system. This agreement aims to maintain coverage consistency and avoid dual contributions [3; 4].

Nevertheless, it is vital to note that bilateral agreements do not cover all countries. Therefore, in countries without such arrangements, digital nomads may face double social contributions or loss of Swiss social benefits. This risk necessitates pre-approval processes and the use of third-party services such as an Employer of Record (EOR) to ensure local compliance [3; 5].

Additionally, host countries often have mandatory labor law provisions such as minimum wage requirements or employee termination rights, which may apply even if the employment contract is governed by Swiss law. Employers must therefore scrutinize the territorial scope of foreign labor protections, especially when the duration of remote work is prolonged [4].

4. Immigration and Work Authorization

From an immigration perspective, remote work often breaches the conditions of tourist visas, which typically prohibit gainful activity. Swiss contracts may not be recognized as valid work authorizations in many jurisdictions. Complicating matters further, Switzerland currently lacks a dedicated digital nomad visa, leaving employees vulnerable to compliance breaches abroad [1].

Thus, employers must require their remote workers to obtain appropriate visas and, where necessary, secure local authorization for employment. While the EU and certain countries offer specific digital nomad visas, Swiss nationals and employers must remain vigilant in confirming eligibility and ensuring that work conducted abroad is lawful [1].

5. Data Protection and Cybersecurity Challenges

Remote work amplifies cybersecurity vulnerabilities and introduces data protection compliance issues. Swiss companies are subject to both the Swiss Data Protection Act (DPA) and, in many cases, the EU General Data Protection Regulation (GDPR). Employees operating in jurisdictions with weaker legal frameworks may inadvertently compromise sensitive information [2; 5; 8].

To counter these risks, companies must adopt IT governance protocols, such as mandatory VPN use, encryption tools, and geo-fencing restrictions on data access. Moreover, policies should restrict remote work in countries with inadequate data protection standards. Failure to do so could expose companies to regulatory sanctions and reputational harm [8].

6. Case Study: The Swiss Digital Nomad Lifestyle

A popular Swiss news media portal once wrote about the experiences of Swiss citizens, exemplified by Chantal Wyss and Marvin Meyer, who work remotely from various countries while maintaining ties to Switzerland, showing the lifestyle

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complexities under scrutiny. Although their mobility facilitates personal freedom, it also generates compliance ambiguities in tax, labor law, immigration, and data protection. Such cases demonstrate the need for a structured digital nomad policy that balances individual autonomy with corporate and legal accountability [8].

This case also shows what challenges digital nomads face:

- Navigating visa requirements and potential “grey zones” regarding work permits – digital nomads are gainfully employed in a host country while holding a tourist visa, which is not a work permit.
- Managing tax obligations and potential liabilities.
- Maintaining adequate health insurance coverage abroad.
- Dealing with practical issues like reliable internet access and technical equipment.
- Addressing financial planning and potential bank account issues.
- Overcoming homesickness and building a new social and professional network.
- The unpredictable challenges that come with running a business from abroad.

7. Strategic HR Recommendations

In light of the above, Swiss employers should consider the following strategic measures:

- Develop a digital nomad policy: define approved countries, time limits (e.g., 90 days per country), and compliance protocols.
- Conduct risk assessments: before authorizing remote work, assess potential PE, tax residency, and social security implications.
- Use employer of record (EOR): delegate compliance management in high-risk jurisdictions to third-party providers.
- Require immigration compliance: ensure remote workers obtain appropriate visas and comply with host-country requirements.
- Enforce data protection measures: implement secure communication channels and restrict work from jurisdictions with poor data laws.

8. Conclusion

The rise of digital nomadism presents both opportunities and legal challenges. For Swiss companies, compliance with domestic and international obligations requires a multidimensional approach involving tax, social security, immigration, and data protection considerations. While the flexibility of digital work can drive employee satisfaction and global outreach, it must be underpinned by rigorous legal frameworks and HR strategies. Only then can companies harness the full potential of the digital nomad lifestyle without incurring undue legal and financial risks.

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