

Did You Know? Having Remote Employees May Create Unexpected Tax Exposure.

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Introduction

Remote work has changed where businesses find talent. Less obvious is that it may also change where businesses become taxable. For many businesses, approving a remote working arrangement is largely an operational decision, with considerations often centred on productivity, collaboration, data security and employee wellbeing. Yet where an employee performs their duties can also have legal and tax implications that are easily overlooked.

Under Nigerian law, a remote employee does not automatically create tax exposure for an employer. Depending on the facts, however, such arrangements may give rise to payroll obligations, corporate income tax implications, or even a Permanent Establishment (PE). As flexible working continues to reshape the workplace, understanding these risks is becoming an important aspect of business governance rather than merely tax compliance.

Why Can Remote Employees Create Tax Exposure?

A company's tax obligations are not determined solely by where it is incorporated. They may also depend on where its business activities are carried on. Consequently, when employees work from different jurisdictions, the employer's tax position may also change. This distinction is particularly relevant in cross-border remote work arrangements. While an employee working remotely from another state within Nigeria may not typically trigger international tax concerns like Permanent Establishment, it can still trigger significant domestic compliance obligations, such as Pay-As-You-Earn (PAYE) remittances and potential state-level registration requirements. Conversely, an employee working from another country, or a foreign employee working remotely from Nigeria, may subject the employer to a completely different jurisdiction's tax and regulatory framework, necessitating a more complex risk assessment.

The potential implications generally fall into three broad categories. First, the employer may become subject to payroll or employment-related tax obligations in the jurisdiction where the employee performs their duties. Secondly, the arrangement may affect the employer's corporate income tax position. Thirdly, depending on the employee's role and activities, the arrangement may create a Permanent Establishment, exposing the employer to additional tax and reporting obligations. The question, therefore, is not simply where an employee works. It is whether the work performed from that location creates a sufficient connection between the business and the jurisdiction in which those activities take place.

The Permanent Establishment Question

One of the most significant tax considerations arising from cross-border remote work is the possibility of creating a Permanent Establishment. Broadly, a PE is a sufficient taxable presence that permits a jurisdiction to tax certain profits of a non-resident enterprise. Traditionally, this concept was associated with physical offices, branches and other fixed places of business. Today, however, evolving work patterns have prompted greater scrutiny of whether remote working arrangements may produce the same outcome.

That does not mean every remote employee creates a PE. The position under the Nigeria Tax Act (NTA) 2025 is more nuanced. The mere fact that a non-resident company employs a person resident in Nigeria does not, without more, constitute a Permanent Establishment. The assessment instead turns on the particular facts of the arrangement. Relevant considerations for determining a Permanent Establishment include:

- **Contractual Authority:** The employee's authority to negotiate or conclude contracts on behalf of the company;
- **Operational Role:** The nature and function of the activities performed by the employee;
- **Customer Base:** Whether the employee primarily serves customers within the jurisdiction;
- **Business Presence:** Whether the employee's location effectively functions as a base for the enterprise’s operations; and
- **Permanence:** The duration and stability of the remote working arrangement.

Where an applicable Double Taxation Agreement exists, its provisions may also influence the analysis. If a business has no office in Nigeria, can it nevertheless become taxable here because one employee works remotely from Nigeria? In some circumstances, the answer may be yes. Equally, there are many situations in which the answer will be no. The distinction lies not in the existence of remote work itself, but in the legal and commercial substance of the employee's activities.

Practical Considerations for Employers

The tax implications of remote work extend beyond the question of Permanent Establishment. Depending on the circumstances, employers may also need to consider PAYE obligations, employee tax residency, employer withholding responsibilities and compliance with applicable employment and immigration requirements. These obligations may arise independently of whether a Permanent Establishment exists, reinforcing the need to assess remote working arrangements holistically rather than through a single tax lens. As remote and hybrid work continue to shape modern business, employers should consider adopting a structured approach to evaluating cross-border remote work requests.

Before approving such arrangements, businesses should consider where the employee will be working, the duration of the arrangement, the functions the employee performs, whether the employee has authority to negotiate or conclude contracts, the customers they primarily serve, and whether the arrangement could trigger tax registration or other regulatory obligations in another jurisdiction.

For example, businesses should pause where an employee is expected to work from another country on a long-term or indefinite basis, particularly where that employee performs core business functions, negotiates or concludes contracts, manages key client relationships, or generates revenue on behalf of the employer. Similarly, arrangements under which an employee primarily serves customers in the jurisdiction from which they work may require further legal and tax assessment. A short-term remote working arrangement approved for convenience is unlikely to raise the same issues as a permanent relocation. Likewise, where an employee's home office effectively becomes an extension of the employer's business operations, additional tax considerations may arise. These considerations are not intended to discourage workplace flexibility. Rather, they enable businesses to enjoy its commercial benefits while managing the legal and tax risks that may accompany cross-border operations.

Conclusion

Remote work is not simply an employment or operational issue; it is also a tax and regulatory consideration. As businesses continue to embrace flexible working models, the question should not only be whether a remote working arrangement is commercially desirable, but also whether it alters the organisation's tax and compliance obligations. Identifying those issues at an early stage enables businesses to preserve the benefits of flexibility while reducing the risk of unexpected liabilities.

References:

1. The Nigeria Tax Act, 2025.
2. OECD Model Tax Convention on Income and on Capital (Condensed Version), Article 5 (Permanent Establishment).
3. OECD Secretariat, *Analysis of Tax Treaties and the Impact of the COVID-19 Crisis* (3 April 2020).

Editorial note: This publication is intended as a general overview and does not constitute legal or tax advice. The position of a particular business should be assessed against the applicable legislation, regulations, its proposed activities and current regulatory guidance. Please see contact details below for further information.

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