



## So what if you had to track ALL employees?!

---

As a result of Covid-19 travel restrictions, employees are now working from home under varied arrangements around the globe.

Siobhan McDonnell, Tax Manager at Tracker Software Technologies, considers the tax and social security implications which may arise.

# So what if you had to track ALL employees?!

**Q**uarantine measures have forced a huge number of people to switch to remote working. However this shift introduces new tax and social security compliance issues, as Siobhan McDonnell, Tax Manager at Tracker Software Technologies discusses.

The Covid-19 pandemic has forced many employers to request that their employees “work-from-home”. This has and will result in many companies considering allowing employees to work from home on a regular basis including big tech giants like Facebook and Twitter making public announcements to that effect<sup>1</sup>.

Facebook have just recently advertised for a Remote Work Analytics Director which suggests that the company definitely sees this as the new norm and are looking at ways to roll out their policies and procedures for this new group of employees<sup>2</sup>.

This new group of mobile employees brings with it many corporate tax, legal, payroll, human resources and other issues that need to be addressed. In this article I will discuss some of the tax issues around this new global mobility employee group and how knowing where your employees are on a real time basis helps in reducing the company’s overall global mobility tax risk.

Companies in creating a remote employee policy will need to consider the tax and social security issues around having temporary versus permanent remote employees, domestic versus international remote employees and employees who travel while working remotely. One thing becomes certain that if your workforce is going mobile then you as an employer will need to track and monitor the location of ALL your employees no matter where they are.

The Covid-19 pandemic highlighted the fact that even temporary domestic remote employees can create tax reporting and withholding requirements for their company. Take for example a US employee who lives in one state but works for an employer in another US state. In general, the state where an employee lives will be the state where they are considered tax resident and hence will be subject to individual state Income taxes there.

However, state withholding taxes from employment income is typically based on where employees work. If an employee lives in one state but works in another, the employee is generally subject to withholding rules of the work state. However, the employee could take a credit for taxes paid to the work state against tax liability otherwise owed to the home state. If an employee changes their principal work state, this may require employers to process and implement new withholding certificates even if it is for a temporary period. But not all states follow this general rule.

Some states use the “Convenience of the Employer” test, which subject a remote employee to state tax based on their employer’s location if the employee is working from home for their own convenience rather than the employer’s necessity. These include Connecticut, Delaware., Nebraska, New York, and Pennsylvania.

During the Covid-19 pandemic many employees who had principally worked in a state other than their home state now find themselves working from their home state. In this scenario, there is no change to withholding from employment income if the states have a reciprocal agreement allowing the home state to have tax authority regarding withholding.

If there is no reciprocal agreement, the home state’s withholding requirements typically apply instead of the former primary work states. A new withholding certificate and new withholding would be needed. If an employee is working in a state other than their principal state of residence or their principal work state, and they reach that state’s threshold number of workdays, if such a threshold has been adopted for withholding, the employer will be required to register and withhold payroll taxes for that employee in that state.

Some US States announced that a temporary presence of teleworking employees due to the Covid-19 pandemic will not create nexus and hence state withholding tax requirements as outlined above. These include Georgia, Indiana, Iowa, Massachusetts, Minnesota, Mississippi, New Jersey, North Dakota, Pennsylvania, South Carolina, and the District of Columbia. Other states announced that they will not change nexus standards regarding teleworking or have not addressed it. For example, Maryland will not change how it analyses for nexus, but it “will consider the temporary nature of a business’ interim workplace model and employee deployment in light of the current health emergency in making a nexus determination”<sup>3</sup>. Even when dealing with states that provided nexus exceptions, business should be aware that if teleworking becomes the new normal, any temporary nexus



1. <https://www.cnet.com/news/the-new-work-from-home-policies-at-facebook-twitter-apple-and-more/>  
2. <https://www.facebook.com/careers/jobs/1654599014696593/>  
3. Maryland Tax Alert 04-1420B

waivers will not provide long-term protection. Results from a recent survey conducted by Bloomberg Law reported that of the 47 states surveyed, 36 states said that an out of state corporation with one to six employees telecommuting from their home state would trigger economic nexus and create a tax liability<sup>4</sup>. Therefore, employers need to know now where these employees are and maintain adequate records to that effect to maintain any tax position that they may take.

State unemployment taxes most also be considered. In general, US states follow the following rules in attributing unemployment taxable wages:

- 1 If an employee works primarily in one jurisdiction, wages will be attributed to this state for unemployment taxes.
- 2 If there is no primary jurisdiction and the employee performs duties at the base of operations of the company, attribute the wages to this state.
- 3 If there is no base of operations. Attribute to the jurisdiction from which the employee's work is directed and controlled.
- 4 If no jurisdiction contains a place of direction and control, attribute to the employee's residence if the employee works there.
- 5 If no jurisdiction applies under the four steps, jurisdictions typically let employers choose to attribute work to 1 jurisdiction.

Companies in adopting a remote employee policy may allow them to work in entirely different countries. Some of the tax issues that need to be addressed include whether a remote employee will create a taxable corporate presence for the company in that jurisdiction. Income tax treaties can modify how these rules apply; but these treaties only cover income taxes, not taxes such as social security, payroll, and value-added taxes.

The OECD have issued guidance on the tax consequences arising from an employee's presence due to the Covid-19 pandemic urging countries to take reasonable tax positions on the creation of Permanent Establishments (PE) and changes to the employees residence status when working remotely due to the pandemic but this is only guidance and countries are not required to follow it. Some countries such as Australia, Ireland and the UK have announced relaxed measures on how they view an employee's presence due to the pandemic, but companies need to be mindful that many countries have not, and it waits to be seen whether these follow the OECD's guidance. In any event, post Covid-19, if a remote employee policy is implemented, companies' processes may need to include an advanced corporate tax review of any taxable presence that may be created by its remote employees. In order to be able to do this review, companies will need to have a firm understanding of where their employees are and for how long.

The social security position is also complex and depends on what agreements are in place. The general rule is that employee and employer social security obligations arise in the country in which the employee is physically carrying out their duties. However, there are exceptions to this rule in the European Economic Area (EEA) and Switzerland which follow the EU Social Security regulations and allow employees to continue paying social security in their home country rather than their host country provided certain conditions are met and a valid A1 Certificate is in place. The rules in relation to social security outside the EEA and Switzerland will depend on whether there is a social security agreement in place between the two jurisdictions. If there is an agreement in place, it may be possible for the employee to continue paying social security in one jurisdiction over another provided certain conditions are met and a valid Certificate of Coverage is in place. If there is no agreement in place, there maybe an obligation to pay social security in both jurisdictions.

What is glaringly obvious from the above short analysis is that if a company adopts a remote employee policy, tracking and monitoring of this new mobile workforce will become extremely important. Employers will need to know on a real time basis where their employees are ( not just their mobile workforce ) and what are the risks associated with it. Adequate records will need to be kept on all employees in relation to any tax positions taken. If your company is considering implementing a remote employee policy and are looking at ways as to how to track and monitor your employees, please reach out to us at GT Global Tracker or one of our partner providers ( [www.gtglobaltracker.com/partners](http://www.gtglobaltracker.com/partners) )

Our tool allows employees who work remotely document daily where they are and what activities they are performing. It issues alerts to interested user groups in your organisation including tax, social security, payroll and immigration which have been tailored based on the jurisdiction your employees are in. If employees are working on site or visiting work or client sites infrequently we also have a feature for contact tracing so employees can indicate what colleagues they interacted with during that visit.

**SIOBHAN MCDONNELL** is Tax Manager at Tracker Software Technologies, managing the Tax Rules Engine within the tracking tool. With a combination of experience in Big4 Tax firms and Industry experience in the US and the EU, Siobhan spends her day monitoring changes in tax legislation and practice, converting that data into rules based alerts within the tool. For more information on how to use technology to manage your business travellers please visit [www.gtglobaltracker.com](http://www.gtglobaltracker.com) or contact Siobhan via email: [siobhan@gtglobaltracker.com](mailto:siobhan@gtglobaltracker.com).



Questions? Contact Tracker Software Technologies:

T: +353 86 810 8156  
W: [gtglobaltracker.com](http://gtglobaltracker.com)

4. Bloomberg Tax Law