大成 DENTONS

Digital Nomads

Challenges and opportunities, navigating the EU regulatory considerations for financial services firms

DECEMBER 2020

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QuickTake

COVID-19 has provided a catalyst for digitalization of firms, including financial services firms, as well as a transition to a new dynamic in working arrangements. Working from home has gone widespread and many have also considered whether remote working could be rolled-out to them being based further afield and possibly more permanently. Certain countries as well as tourism operators have begun to court those that can and who are looking to swap their home working arrangements for temporary "workcations" and/or longer-term Digital Nomad arrangements. While some of this might be welcome for financial services firms, employees as well as a breadth of new host state countries, it also poses some new types of risks.

These can range from financial services regulatory risks, employment and tax considerations for employers inasmuch as it does for individuals embarking and/or returning from such arrangements. Financial services firms will want to conduct risk reviews of how this new environment may affect them in terms of opportunities as well as risks and how to benefit from this new development in how financial services firms and their employees work.

The COVID-19 pandemic has put pressures on financial services firms and staff to work from home[1] (**WFH**) and do so for longer. This new dynamic is gathering pace courtesy of recurring restrictions on working from the traditional office and/or due to rolling lockdowns. Increased digitalization offers new opportunities near and further afield. These trends are likely to continue as many jurisdictions may have to grapple with prolonged pandemic preparedness.[2] This shift in working patterns has redefined the typical financial services operating model for many firms and for some even how their three lines of defense (**3LoD**) operates.[3]

Those that can engage in WFH have, in most instances according to numerous surveys, suggested that they would like to continue to do so once the present pandemic passes. While this certainly does not signal the end of office-centricity[4] it marks an opportunity[5] for some firms and individuals as well as a shift in many office employees having a workspace in the office in addition to one at "home".[6] Different environments favor different kinds of work and some employees will be more and more inclined to find solutions to work from the right place at the right moment.[7]

Moving for work, working across borders nor expatriate ("expat") postings are certainly not new. Many successful financial services firms are heavily reliant on the mobility of their talent and leadership as well as on similar measures adopted by their own service providers. Companies hire expats for various reasons such as attracting talent, transferring knowledge and experience globally and equally having people who can be trusted in faraway financial centers as their eyes and ears on the ground.

The rise of the Digital Nomad has expanded and gone mainstream both in the EU's Single Market and in non-EU often more exotic jurisdictions. So too has the shorter from workcation. A number of jurisdictions in 2020 have announced or even begun to implement changes to domestic legislation ranging from immigration, employment and even tax laws to encourage EU and non-EU persons to come to their countries to WFH there. This courting of a whole new class of workcation tourists, or those possibly looking to stay longer such as "Digital Nomads"[8], aims to bolster revenues for the domestic economy where these were dampened by COVID-19.[9]

1 Importantly, "home" may mean different things to different people and at different times. As an example, a person's home for purposes of an employer might be, for sake of example, Luxembourg (or any other financial center) during the working week but the family home might be further afield, including in a different country.

2 See coverage from our Eurozone Hub on considerations for financial services firms faced with prolonged pandemic preparedness here as well as our original coverage on "looking beyond the lockdown" here as well as updates to this series on our Eurozone Hub page

3 See coverage from our Eurozone Hub on shifts in the 3LoD model and key considerations available here.

4 Indeed many studies suggest that some employees do miss the office amenities and social aspects even if they enjoy the freedom of WFH.

5 The main argument for WFH being a "win-win" situation for employers and employees is that a company sending staff home permanently can save operational costs and office rent whereas employees save money and time because they do not need to commute to work as well as can possibly optimize childcare responsibilities.

6 which also raises questions on employers' responsibilities beyond just occupational health and safety.

7 Deep working i.e., tasks that might require a lot of focus might be better served at home and collective tasks might be in the office.

8 While the term "Digital Nomad" does not have a defined legal meaning in EU law or regulation, nor in and indeed most national legal or regulatory regimes nor in most national tax codes, the term, first popularized in 1997, refers to those persons pursuing, over a continued period of time, a location independent i.e. nomadic working lifestyle (as opposed to an expat who is usually resident in one country), often reliant on WiFi dependent ICT (including cloud-computing and voice over IP) solutions to facilitate remote working, often based in co-working spaces and/or co-living arrangements. Historically, Digital Nomads tended to originate from more economically developed jurisdictions (including in the EU-27) and then based remotely in locations and/or jurisdictions (often different to that of their habitual residence or citizenship) with more economical costs of living and/or more favorable climate or higher quality of life and lifestyle. While there is an absence of precise figures on EU-27 citizens that would be considered Digital Nomads, including those in financial services, there are estimates as to the United States, where in 2018 there were approximately 7 million citizens that were Digital Nomads, an increase from approximately 4 million the year before.

9 Some EU-27 Member States are also assessing this as a strategic option given the infringement actions the EU Commission has taken against notably Cyprus and Malta investor citizenship schemes, details of which are available here and here. It should be noted that a Digital Nomad visa scheme is very different to the investor citizenship schemes.

The term Digital Nomad[10] itself was often reserved for entrepreneurs, freelancers or employees working for start-ups, information and communications technology (**ICT**) firms, FinTech firms and various other experts that were engaged in "remote working" beyond WFH, often in locations and jurisdictions other than their habitual residence. With COVID-19's continued impact large U.S. technology firms announced that remote work, WFH and even digital nomadism were becoming part of permitted and permanent working options for personnel. Some firms have even actively encouraged employees to relocate, including internationally, if the arrangement worked with their role and responsibilities. The concept of what is "home" and where it might be for a period of time, becomes a more fluid notion as workcation and Digital Nomad arrangements take root.

Increasingly EU financial services firms' senior management, key function holders and control function staff or generally "those that can" were in 2020 swapping what may be the spare room, the study or the sofa and coffee table for space in safer and possibly sunnier (or even perceived safer) environs. Remote working, WFH, or "workcations"[11] from what would ordinarily be a place of holiday destinations may continue to gather pace in 2021. For many the logic is that "if you are going to work from home indefinitely, why not make a new home in and exciting and exotic place". A number of holiday and vacation rental websites have already begun to shift their offers to entice persons to switch WFH to "work from a hotel". Many short-term operators such as hotels and vacation home rentals are changing their strategy to focus on long-term stays given emerging global consensus that the COVID-19 economic recovery and demand for "traditional" tourism will take longer to recover and possibly in a different form.

Other proponents of WFH have also pointed to the environmental benefits that may arise from less commuting while others have pointed to the fundamental benefits that remote-working can have for greater levels of equality in the job market, notably for those balancing child-care responsibility. Productivity may also rise, as studies suggest that some employees working remotely, work longer than colleagues in the office, although this comes with a warning that employers have begun to address in reminding employees about their need to balance commitments appropriately.

Unless financial services firms can identify, mitigate and manage the range of risks that are specific to and might arise if Digital Nomad's arrangements are not subject to pragmatic policies and dialogue with staff to avoid misconceptions and mismanagement, the feasibility of these arrangements could be disrupted or even disallowed altogether. Some have (rightly or wrongly) called for specific taxes on WFH.[12] Consequently, missteps on managing WFH and Digital Nomads could be detrimental to firms during what remain difficult times and might open up regulatory, employment law, litigation and reputational risks. This Client Alert assesses some of these considerations and looks at how financial services firms may want to act to identify, mitigate and manage "Digital Nomad Risk".

10 Prior to the onset of COVID-19 Digital Nomads were typically seen as younger travelers in ICT and creative fields, often co-working and co-living with likeminded individuals of "millennials".

11 The term loosely refers to a hybrid between work and vacation, namely working (on a WFH basis), in an exotic location, during daylight or agreed regular hours and enjoying what the location has to offer in the off-hours. Swapping, London for Lisbon or Frankfurt for Fiji or Hounslow for Hawaii are examples of this. Digital Nomad arrangements make the workcation more permanent.

12 A controversial proposal was put forward on a tax for those WFH (see on page 32 onwards here) to compensate for the loss of income that would arise when staff are WFH and local businesses and other service providers directly or indirectly benefitting from the traditional work environment lose out from revenue. The tax, which is suggested to be levied upon the employer, and paid for days when WFH outside government directed lockdowns, would amount to EUR 7.50 per day. The estimated tax revenue of EUR 15.9 billion per annum could "…fund a EUR 1,500 grant to the bottom 12 per cent of people in the country who have a standard of living of EUR 12,600 (after adjusting for the size of their household). It should be noted that this proposal largely runs counter to almost every fundamental principle of tax legislation and is certainly unlikely to garner political support. The German government has notably suggested an introduction of a legal right to at least 24 days of WFH per year for full-time employees.

Key principles and recent developments

In the EU-27, the free movement of persons (residency by contrast is linked to an actual job or prospect of a job in that EU member State) as well as the freedom to establish and provide services are two of the four fundamental freedoms of the EU's Single Market complementing the freedom of movement of capital and free movement of goods. There are no EU law nor financial services regulatory restrictions that cut across the EU's four fundamental freedoms in defining where staff must WFH. While cross-border commuting for work or indeed working across borders (as an expat or otherwise) are all long-established and steadily growing arrangements for many, they may not equate to the definition of a Digital Nomad.

Despite the shutting of some borders during the March 2020 lockdown, the COVID-19 crisis and the catalyst to digitalization in many ways has rekindled the interest of staff but also for some firms the allure of Digital Nomad arrangements. Mobility in times of COVID-19, despite wide-scale social distancing and decoupling from a traditional office based working environment, may be a boost for some financial services firms, notably in fostering greater creativity and job satisfaction for those facilitating Digital Nomad arrangements.

While a number of non-EU jurisdictions[13] have a depth of experience and a breadth of incentives in attracting non-resident entrepreneurs or highly-qualified staff to set-up for a temporary or more permanent period in their jurisdictions, EU-27 Member States, excluding some exceptions have so far lagged behind. This is set to change. Estonia, building on its existing "E-Residency" program[14] launched its own Digital Nomad Visa, which may prove a model for many others to follow.[15]

Croatia and Cyprus have responded to calls, mostly form local tourism operators and efforts from major EU-headquartered tourism as well as vacation rental and home firms to boost occupancy, by putting forward more concrete proposals for their own Digital Nomad visas as well as to push for a fast(er)-track for applications by EU-27 and non EU citizens (including for freelance workers and the self-employed) for temporary or permanent residency in a specific EU jurisdiction. Iceland, not in the EU, but in the European Economic Area and the European Free Trade Association is moving forward with its own family friendly initiatives and long-term visas for non-EU/EEA teleworkers.[16]

Then there are other EU Member States, such as Greece, who are going a step further, also as part of its new economic policy and efforts reverse the brain drain, one of the most acute in the EU-27 during the 2008 to 2012 financial crises. Greece is aiming at attracting foreigners (notably UK nationals) by offering tax incentives to assist in turning around the country's performance following a decade-long debt crisis that has caused a cost of 25% of economic output already and with a further decline in GDP expected due to COVID-19.[17]

13 Notably Barbados, Bermuda, Anguilla, Dubai (United Arab Emirates), Georgia and the Cayman Islands, Mauritius as well as, to a certain extent Aruba, have Digital Nomad Visa programs or friendly terms to attract, predominantly U.S. and other foreign nationals. A number of the Caribbean jurisdictions and Bermuda have very high costs of living in addition to other local issues or restrictions on trips in and out of the new Digital Nomad's home for the period it has the visa.

14 See further details here and here.

15 Estonia's Digital Nomad Visa program is unique in that it targets non-EU-27 remote working employees or freelancers whose job role allows them to work from anywhere. In order to be granted a new visa, applicants must evidence they are earning at least EUR 3,504 per month and provide evidence, including client lists, proving their professional role. Once an applicant is granted a visa, they may reside in Estonia for up to 12 months, including up to 90 days of travel across the EU's Schengen Area. The Estonian visa also aims to plug the legal loophole that many Digital Nomads face in not being permitted to work legally in the EU countries they visit.

16 Which permit applicants and their families to stay in Iceland for more than six-months. This aims to attract those that can also assist Iceland spearhead its economic recovery.

17 Greece already maintains a program to attract wealthy investors (minimum investment EUR 500,000) through a flat tax rate program (EUR 100,000) applied to those investors who qualify and who shift their tax residency (minimum of six months must be spent in Greece). This is in addition to an existing program that applies reduced rates for foreign pensioners (flat income tax rate of 7% for foreign pensioners who transfer their tax residence to Greece). The new incentive, which is open to non-Greeks, regardless of nationality as well as Greeks returning from abroad, is to promise that salaried staff or the self-employed will, for a period of 7 years for any new positions created in Greece in 2021, benefit from half of their income that would be subject to Greek income tax, will be treated as be tax-free. Greece's current tax rate of 44% on earnings over EUR 40,000. Persons who have been a tax resident in Greece for seven out of the past eight years will be excluded. This new incentive is expected to be voted on before the end of 2020 and would come into force on January 1, 2020.

For some financial services firms, experience in large-scale WFH and remote working arrangements can be financially rewarding provided that appropriate measures are taken in a proactive and timely manner. That being said, financial services firms do face a number of considerations when staff decamp to different locations. While considerations are specific to each type of firm and specific to relationship with individual staff members, some common issues can range from:

1. for financial services firms – corporate tax liability[18] (including permanent establishment considerations) and insurance coverage issues inasmuch, perhaps more fundamentally, the strategic steering of the financial services firms as well as the question of how and where financial services (and ultimately regulated activity) is being performed and whether this is appropriately permissioned, controlled and supervised by the relevant supervisory authorities; and
2. for Digital Nomads – questions in relation to employment law (including friction of an incoming Digital Nomad perhaps being viewed by a jurisdiction as taking away a job from a local resident), adequacy in the home jurisdiction and while abroad in terms of insurance (of all types, as well as notably international health insurance, notably in light of COVID-19) coverage as well as personal tax issues, visa and immigration questions, including the legality of being in a jurisdiction on a tourist visa or without a working permit and working remotely as well as more generally having to comply with differing local laws and regulations (including financial services regulation in the target jurisdiction where the Digital Nomad is based).

More fundamental questions may also arise for firms and their staff as to when exactly a WFH and/or "workcation" arrangement, whether formalized and governed by a set policy (if any) in place by the firm or more casual consensus, transforms into a Digital Nomad arrangement? Equally, what issues arise when a Digital Nomad's "Wanderlust" prompts a change of location?

18 It should be noted that some recent thought leadership contributions from November 2020 (notably as set out by the accomplished research team from a major systemic financial institution, available here from page 32 onwards) have even gone so far as to suggest that those that can avail of WFH should be subject to a tax levied on employers to compensate for loss of tax revenue linked to workers' expenditure for consumer goods and services as well as less employment and revenue for those serving the traditional office worker. The rationale for this is that those workers that benefit from direct financial savings on absence of travel costs, external lunches, expenditure on work clothes may equally be accompanied by indirect (often unseen) costs that benefit the local economy around the office location had the worker been in the office. The proposal, whilst daring and bold, and prefaced on the line of argumentation that governments "have always backsolved taxes to suit the social environment" suggests that any tax should "only apply outside the time when the government advises people to work from home (of course, the self-employed and those on low incomes can be excluded). The current proposal (which is not in any means binding or endorsed by any competent rulemaking authority) suggests a 5% tax rate for "higher-than average incomes" i.e., in the US, over USD 55,000, in the UK, over GBP 35,000 and in Germany, over EUR 40,000. While this may be simplistic, the economics, as proposed, work out to "just" EUR 7.50 per day, which for some if comparable to the cost of their lunch – we would note that this may be comparable, in some jurisdictions with local municipal and/or tourist taxes, where these are levied, often on hotel and rental accommodation invoices.

Digital Nomads – a new direction and new opportunities?

A number of governments, including those in the EU, but also the travel operators more generally are in 2020 and beyond looking to capitalize on this shift in working patterns and attract Digital Nomads in a bid to secure the economic benefits that they may bring plus to bolster occupancy in what has been a beleaguered tourism sector. From tax breaks, relaxation on visa requirements and even subsidies the incentives being offered are growing in breadth and competition is heating up.

For a number of jurisdictions that are home to existing or new and emerging "Digital Nomad Destinations", these developments provide a much needed stimulus to the local economy as well as local infrastructure. Examples of this inflow of investment and wider benefits to local economies are evident in increases in ICT, notably fiber-optic cabling being expanded to attract Digital Nomads but also improve services provided to residents as well as economic opportunities for those looking to service the demands of incoming Digital Nomads i.e., from rental accommodation through to entertainment, culture and leisure offerings.

Other drawbacks however may arise in such influx affecting prices of consumer goods and services as well as asset prices, notably real estate both in purchase prices as well as rental prices. Digital Nomads are also greater users of digitalized financial services and FinTech solutions. They may thus need financial products that are capable of travelling with them as they do. This in itself is also pushing innovation for those providers even if, compared to ICT solutions, they may have a long way to still go.

The following sections aim to provide an overview however of some common issues and some proposed paths to secure the benefits that Digital Nomad arrangements might bring while identifying, mitigating and managing Digital Nomad Risks so that it is workable for both parties to an employment contract. It should be noted that for both Digital Nomads and financial services firms, not all are equal and thus considerations may differ for firms as well as individuals.

Financial services regulatory considerations

Financial services firms may wish to consider conducting a full and detailed 360 degree risk assessment of their exposure to and resilience of risk mitigating measures both when drafting a policy on prolonged WFH (a **Homeworking Policy**) generally as well as in respect of a policy on Digital Nomads (a **DN Policy**). As legal requirements naturally vary in different jurisdictions so too the susceptibility to supervisory scrutiny and/or breaches.

Regulatory sanctions for breaches, including those that are inadvertent or unintentional, need to be avoided at all costs and this includes carefully checking the applicable framework of a given country before a Digital Nomad settles there to ensure that what was allowed in the country which served as a base beforehand still holds true in the new "home".

From a governance perspective, a new location could present different potential for conflict and thus would require a change in the management control structure, which needs to be implemented in a DN Policy. Then there are other issues to consider which are perhaps more operational, such as the degree of what needs to be complied with in terms of working arrangements and digital operational resilience.[19]

Financial services firms may want to clearly delineate which jurisdictions are adverse to the strategic steering of the firm and where staff, whether WFH or as a Digital Nomad, should not be based. Moreover, such assessments may also be driven by questions that apply to the firm as a whole and whether any new regulatory perimeter in another jurisdiction is triggered or existing arrangements are altered inasmuch as those that are specific to individuals, their job function and their respective regulated status.

Even with increased digitalization of financial services, geographic considerations are important benchmarks on determining of whether a regulated activity is being delivered in a specific jurisdiction. Geographical considerations are thus important in ascertaining whether a local regulatory perimeter is triggered in that jurisdiction. It is also important in assessing whether such a trigger arises solely by virtue of a Digital Nomad being that jurisdiction or carrying out their job from that jurisdiction, even under a temporary arrangement or whether there are any exceptions for "one-off" transactions. These issues are independent of any tax considerations for the firm and the individual.

Matters requiring review may also arise where it is not clearly documented in a DN Policy or otherwise when and where a certain activity is deemed to take place. As an example, firms that permit a Digital Nomad, via remote access software, to trade financial instruments, whether executing these on behalf of the firm or a client, may need to consider clearly documenting where the regulated activity is deemed to take place. While a firm and its Digital Nomads may be able to make use of certain exceptions, these vary from jurisdiction, inasmuch as they do for transaction type and market sector.

In the example above, considerations may also need to be taken on how to account for arrangements where a Digital Nomad prepares the trade order in a financial instrument, but the actual execution takes place in the firm's habitual jurisdiction or another in which it is permissioned under the relevant financial services regulatory regime to conduct activity. All of these issues are independent of any considerations of where the transaction is actually executed on a trading venue (including OTC) or ultimately where it is booked by the firm and/or the financial instruments are custodied. While in most instances existing rules and arrangements may already be able to accommodate such issues, they vary by jurisdiction and the situation could become a bit more complicated where time zone differences mean orders are routed differently.

19 See also our series of dedicated coverage from our Eurozone Hub on the EU's digital operational resilience regime available here.

In a number of EU jurisdictions as well as the UK, various job functions and the individuals carrying out that function are subject to rules and/or supervisory expectations that are binding upon the individual in addition to the regulated firm. This approach, which was spearheaded by the UK, while it was still a member of the EU has been emulated by a number of other jurisdictions, notably Ireland. It may be indeed an area that will become further harmonized at the EU-level with a similar regime applicable across the EU-27.

Financial services firms, as well as individuals, when assessing a DN Policy and Digital Nomad arrangements in general, will need to be cognizant of the fact that where a person travels, those rules and supervisory expectations go with them. In short, a person exercising a Senior Management Function under the UK's Senior Managers and Certification Regime or say under the Central Bank of Ireland's Control Functions and Pre-approval Control Functions regime and looking to undertake such activity will have those rules travel with them as they move. This may pose a problem in certain circumstances as these rules were not designed with prolonged WFH let alone Digital Nomad arrangements in mind.

Then there are issues around data protection. With an emphasis placed on privacy and secure transfer of information, with a variety of regimes applicable outside of the EU, financial services firms may also expose themselves to potential liability and reputational damage if Digital Nomads extend where data is being processed and possibly where arrangements are exposed to different risks than if data were processed in a traditional working environment, including domestic WFH arrangements. Digital Nomads may be based in a new country but the way they use and process information may remain the same or change based on their location.

Employment and pension law considerations

It is advisable to develop a Homeworking Policy covering work abroad and to communicate this to the workforce. Even if it is only intended to apply during the COVID-19 pandemic, or it is subject to review as things return to normal, a policy setting clear expectations of what is permissible in terms of working abroad will help to avoid potential conflicts later down the line. Key factors include – how to notify/request permission to work abroad and for how long, the ability to require an individual to return to the country where the physical office is located, hours of work (if the individual will be based in a different time zone), any changes to salary (especially if the individual is moving to a country where the cost of living is significantly higher or lower) and alerting staff to potential tax considerations.

It is typical for both an employee's contract of employment and their statutory employment rights to be governed by the jurisdiction in which the physical office is located. Matters can become more complicated however, where an individual works for an extended period of time in another jurisdiction, particularly where that jurisdiction offers more favorable employment protections. Although not an absolute solution, it is usually sensible to inform the employee that it is not intended their working abroad should change the laws that govern the working relationship. However, it may not be possible to contract out of certain local law protections and specific advice should be sought to ensure that the employer is not falling foul of core local employment rights such as those relating to working time, holiday and pay.

While certain EU efforts have sought to promote the portability of pension arrangements, through the voluntary Pan-European Personal Pension Product (**PEPP**) (operating alongside existing cross-border occupational pension schemes), pension arrangements and access to occupational pension schemes typically do not travel well. This is an issue that many expats and their employers have long required to take dedicated legal and financial advice on in order to understand the implications on existing arrangements and the available options. For Digital Nomads and their own retirement planning (in a tax efficient manner) the same considerations are likely to apply.

Tax considerations

When financial services firms engage in WFH arrangements with their employees, tax implications must always be taken into account. Although the COVID-19 crisis has pushed governments to enact new legislation granting several tax benefits to both individual and companies (such as tax deferrals, deductions and special arrangements with local tax authorities), tax implications for Digital Nomads mainly focus on give a certain flexibility to corporate tax residence and permanent establishment (**PE**) rules, owing to the prolonged stay of some individuals abroad due to travel restrictions.

In April 2020, the Organization of Economic Cooperation and Development (the **OECD**) issued a report analyzing the impact of the COVID-19 crisis in light of double tax treaties. It contains general guidance about how local tax authorities should approach both issues indicated above to manage the temporary situations where company's workers or directors stay for a longer period in jurisdictions other than the one the physical office is located.

A summary of the OECD's main conclusions are as follows:

REGULAR PE CONCERNS

The fact that someone is working from home in a different jurisdiction should not imply any PE concerns. Such individuals are typically doing so as a result of government directives: it is considered a force majeure event, not an enterprise's requirement. In addition, WFH does not meet the permanency requirement for PEs, and the enterprise has no access or control over the home office.

AGENCY PE CONCERNS

The OECD Double Tax Convention Model requires that the dependent agent's PE activities must be "habitual" in concluding contracts on behalf of the enterprise. As a result, if an employee or agent works in a different jurisdiction for a short period only because of a force majeure event and/or government travel restrictions and this extraordinarily impacts his or her normal routine activity, this is unlikely to be regarded as habitual.

CORPORATE TAX RESIDENCE – "PLACE OF EFFECTIVE MANAGEMENT" CONCERNS

Given that many European countries rely on the place of effective management as a criterion (amongst other considerations) to determine a company's tax residence, some board meetings or high management decisions ought to be taken in a different jurisdiction due to travel restrictions. In this case, the OECD's main opinion is that during the COVID-19 pandemic if an enterprise's director works and takes decisions from "home" in a different country because of a force majeure event and/or government directives, this should not relocate the place of effective management of the enterprise to that jurisdiction. Once again, this is justified due to the extraordinary measures taken by governments, so if holding board meetings or other high management meetings abroad is only explained due to travel restrictions, it is unlikely that such situation will create any changes to an entity's residence status under a tax treaty or relocate the place of effective management to that other jurisdiction.

Nevertheless, the OECD also suggests that affected firms carry out a thorough analysis of these matters, as they are heavy reliant on several facts and circumstances. Following the OECD's recommendations, some local tax authorities have issued further guidance in order to match national rules with regional developments. As a result, most countries (like the UK and Ireland) have followed the OECD's approach, as it is quite understandable to grant some flexibility to rules in this particular and exceptional situation. A focus on facts and circumstances is still preferred when assessing the possible relocation of tax residence, as well.

Still, there are a few countries whose tax authorities have not yet issued guidance regarding these matters. Ordinary rules still apply, and such should be followed by a thorough and careful analysis. For example, although the German tax authority has issued some guidance regarding cross-border workers, no regulations have been issued regarding directors holding board meetings in Germany because of travel restrictions. Even though harmonized guidance across the EU would be welcome, the process is not yet complete as there are still many countries where relevant tax guidance has not been issued to date.

General considerations for Digital Nomads

Not all Digital Nomads are alike. Pressures may well depend on the work that they perform, for whom, when and in what format inasmuch as how they are employed, on what contractual and monetary basis and whether they have dependents. There are some common items that they may wish to consider, namely:

1. **how and what issues may arise in a Digital Nomad's interaction with office and/or remote working colleagues in a firm in the home jurisdiction** and whether any additional protocols, whether documented or not need to be followed as well as how to deal with work-life balance, any stigmas/resentment amongst colleagues and how best to evidence compliance with a company cultural values;
2. **proactively monitoring the red tape in the respective jurisdictions**, including changes to how long a Digital Nomad can stay and/or work in a respective jurisdiction including any conditions linked to a visa (if any) as well as the implications on dependents. One area that has been complicated by COVID-19 is the ability for Digital Nomads to undertake visa renewals, including through visa runs, where a Digital Nomad leaves a country briefly in order to renew their visa. For some, the issue has been about how and when they may be able to get back in;
3. **competing pressures in jurisdictions as well as preferences to prevent "healthcare tourism"**, regardless of what insurance and travel return arrangements to the habitual place of residence that have been put in place, certain countries have been protecting own citizens' and permanent residents' access to healthcare over those that are merely temporarily in the jurisdiction whether as Digital Nomads or not. Some measures undertaken by EU-27 Member States and those further afield require non-residents to evidence they have sufficient insurance coverage as well as proof of available funds (or payment of a fee) to cover healthcare costs whether related to COVID-19 or otherwise. In some jurisdictions, certain policymakers and/or the local populace may view a highly-mobile global population as one of the reasons that COVID-19 has spread as it has;
4. **having specific individual emergency planning and being ready to leave earlier than expected if circumstances warrant action**, prolonged pandemic preparedness, responses to emergencies and natural disasters during 2020 have proven that Digital Nomads should work out their own individual financial as well as emergency planning (including consideration of dependents), possibly coordinating this with their respective employer, to ensure that they can return to their habitual residence or another amenable jurisdiction as well as cut ties in a clear, clean and prompt fashion in that jurisdiction in the event circumstances warrant it. COVID-19 has already put pressures on certain expats and some jurisdictions have seen an expat exodus. The "Go or Stay" assessment is one that will likely need coordination between employer and employee; and
5. **having a plan to return back to more traditional WFH or office-centric arrangements**. Due to a number of factors those who have embarked on a Digital Nomad arrangement will also at some point return to their habitual residence and non-Digital Nomad working arrangements. This will require some careful planning both at the foreign as well as home jurisdiction and a detailed timeline for those to work through as part of their returning. This may also place pressures on finding housing, schooling and sorting out a host of other arrangements for those returning.

Financial services firms' policies and procedures, including in any DN Policy and/or Homeworking Policy may want to be drafted to accommodate some of these considerations above.

Outlook

The appeal of Digital Nomad arrangements for financial services firms and their employees are certainly clear. So too are the risks. Careful balancing of factors that are specific to firms and individuals will require a continued and targeted approach in creating arrangements that work generally as well as those that are individual to the needs and circumstances of staff. Evaluation of tax principles will likely require a more proactive and on-going approach so as to facilitate solutions that work for all.

While it is conceivable that the EU may in the future roll-out a comprehensive approach to Digital Nomads and some of the considerations discussed herein – notably tax, which is still a national as opposed to a competence exclusively conferred to the EU, the likelihood is rather that individual EU Member States and non-EU jurisdictions will press ahead on their own. Consequently, financial services firms will want to consider their immediate as well as longer-term strategic options and how best to adjust to this new dynamic.

Dentons' lawyers are assisting a number of firms with their COVID-19 risk assessments and gap analysis as well as updating their prolonged pandemic preparedness. If you would like to discuss any of the items mentioned above, in particular how to forward-plan and benefit from changes as well as how these developments fit into the 2021 priorities of EU financial services supervisors and regulatory policymakers, or how they may affect your business more generally, please contact any of our key contacts from our European Employment, Tax and Global Private Services teams or the wider team from our Eurozone Hub.

Key contacts

Dr. Michael Huertas
Partner, Co-Head Financial Institutions Regulatory Europe
D +49 69 45 00 12 330
M +49 162 2997 674
michael.huertas@dentons.com

Christopher Rose
Partner, Europe Head of Global Private Services
D +49 15 29 00 02 007
M +44 77 404 90 786
christopher.rose@dentons.com

Sarah Beeby
Partner
D +44 20 7320 4096
M +44 7584 204819
sarah.beeby@dentons.com

Thomas Voss
Partner
D +49 69 45 00 12 213
M +49 17 238 40 014
thomas.voss@dentons.com

Celyn Armstrong
Partner
D +44 20 7246 7174
M +44 7917 751622
celyn.armstrong@dentons.com

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