# The Balancing Act Of The 'Borderless Workforce'

**The opportunity to 'work from anywhere' remains highly attractive in the talent market and continues to encourage organisations to provide the workforce the flexibility to work when and where they choose, whilst enabling organisations to seek and deploy candidates with the right skills from across the global talent market. Thus, organisations are increasingly exploring the feasibility of a 'borderless workforce' as a solution to this challenge.**

However, this approach should be considered against the backdrop of adherence to a complex and evolving web of international tax, legal, and regulatory requirements. With this in mind, might a 'border of choice' approach be more feasible?

## Understanding The 'Why'

Understanding the driving force behind the desire for 'borderless' contracts for top talent is key to developing effective solutions.

Historically, a period spent working at HQ was considered a crucial stepping stone for future leaders and key talent in large, well-established organisations - almost a prerequisite for climbing the corporate ladder.

The pandemic fundamentally shifted practices in the labour market by proving that employees can thrive while working remotely and more flexibly. This realisation fuelled a demand for employee autonomy. Ambitious individuals may still aspire to top HQ roles but now seek to influence or define the terms. For example, declining to relocate to HQ in favour of commuting cross-border from their home country. This represents a significant departure from previous norms.

Anecdotally, we have seen an uptick in organisations enquiring whether their workforce can move towards becoming 'borderless'. We see this desire from both the employees and employers. Drivers typically include:

- Responding to the changing expectations of employees who increasingly value location-independence
- Attracting and retaining top talent by offering unparalleled flexibility
- Facilitating a truly 'global workforce' strategy, enabling talent acquisition from anywhere in the world.

## Navigating The Challenges

As all HR, Tax and Mobility professionals know, due diligence is crucial in any location where an employee will work for any period of time. For this reason, several key challenges make a truly 'borderless workforce' difficult to manage in a compliant manner. We have outlined some key challenges below. This is not an exhaustive list, many other areas should be considered such as employer duty of care, benefits and insurance cover, cost, longevity, scalability, immigration, transfer pricing and indirect tax.

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### 1. Tax And Social Security Obligations

Where an employee physically works has implications for both the individual and their employer. For an employer, an employee's work may potentially trigger tax and social security obligations that can become incredibly complex to manage across multiple locations.

Whilst 'global roles' are not new, they traditionally involve close tracking of work activities and associated costs across borders, with the employee generally remaining tethered to a specific home country.

Theoretical 'borderless' arrangements without a habitual home base have the potential to significantly increase the complexity of tax and social security obligations, particularly if guardrails are not in place relating to the countries that can be worked from, and for what duration.

A parameter could be something as simple as de minimis thresholds which trigger a due diligence review, e.g., 'X days' can be worked in a particular country before requiring a compliance review. However, such thresholds are normally based on risk appetite rather than actual tax and social security regulations and do not completely remove non-compliance exposure. Some locations will have a day one withholding obligation. Broad policies like this are typically also only practical from a risk perspective where the individual is remote working for a short period of time and a strong treaty network can be relied upon.

Additional considerations apply such as the tracking and monitoring of these individuals. Notwithstanding reputational risk, and the cost of recourse and/or specialist advisor fees to resolve non-compliance and support with tax authority enquiries, failure to address employment tax responsibilities could result in interest and penalties.

### 2. Employment Law Rights

Navigating the diverse landscape of international employment law, with each country's unique regulations including legislation related to minimum wage, working hours, pensions and termination obligations, presents a significant hurdle for organisations managing a globally dispersed workforce.

Unlike some other areas of the law, it is typically not possible for the parties to 'contract out' of applicable law. Instead, a careful legal assessment should be carried out on a case-by-case basis to determine what laws will apply to the individual for the appropriate contractual documentation to be put in place.

In many cases, this will mean putting in place an employment contract which is governed by the laws of the country with which the employee has the strongest connection.

Whilst it may be possible to design a core contract that is adaptable for most locations, supplemented by country-specific addenda, this would require careful management for each jurisdiction where an employee triggers local employment rights.

There is particular risk to organisations where disputes occur, particularly where the organisation has not considered employment protections beyond the employee's contractual home base, including minimum notice periods, enforceability of post termination restrictive covenants and the courts which will have jurisdiction.

### 3. Permanent Establishment risk

Depending on the specific circumstances of an employee's work in each country, a Permanent Establishment (PE) could be created for the organisation in multiple countries. This could lead to additional corporate tax liabilities and costs of managing these PEs.

The OECD published updates to its tax treaty guidance on 19 November, 2025, with additional clarity on where remote workers may create a PE. The new commentary proposes a two-part test: assessing the length of time activities are undertaken in the country, and then, where this is failed, considering if there is a commercial reason for the business to have an operation in that country.

Whereas this new guidance is helpful, it is unclear how widely or quickly it will be adopted, or its application to historic cases, and so PE risk should still be reviewed on a country-by-country and role-by-role basis; however, organisations may be able to sign off certain roles as having low PE risk based on the role architecture of the organisation.

Even where an organisation can get comfortable that no PE is created, careful management would still be required, with appropriate documented guardrails put in place, and regular monitoring.

## Clear Differences In Risk Appetite

There can be widely varying organisational appetite to the idea of borderless work. Some organisations, particularly startups and those less mature businesses, are truly embracing a flexible approach to employee location, demonstrating a high-risk tolerance for potential compliance considerations. This risk-tolerance can be influenced by several factors, one being their early-stage, often pre-profit status, potentially rendering PE corporate tax liabilities immaterial. However, we note that implications such as registration, filing and penalties may not be immaterial. Other organisations are driven by the ethos that the right talent takes priority above all else. Greater potential volumes of remote workers, which can be the case for larger organisations, can further amplify the complexity of managing tax and legal compliance for the workforce.

## What Does Legislation And Guidance Say?

Government legislation and guidance has traditionally lagged behind evolving work practices, and there have to date been limited published views on individuals working outside of countries where they are legally employed or not formally seconded to. Following the November publication of the OECD's PE guidance, other questions on remote working issues, including employment tax obligations and personal tax and residence questions, are expected to be dealt with in future projects, with the scope of this work due to be agreed in the first half of 2026. Potential government focus in this area and related regulation may therefore be forthcoming over the next couple of years, which will need to be carefully considered in line with global talent strategies.

Legislation is rarely issued at a regional or bilateral level, with national laws still generally prevailing. As detailed above, employers are at the mercy of a plethora of national laws when allowing their employees to work freely cross-border. This makes designing contract wording and implementing employment protections unfeasible for a truly borderless work arrangement.

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## 'Border Of Choice' As A Pragmatic Approach?

Ultimately, an individual's physical presence will continue to determine and/or influence applicable employment laws, tax, and social security liabilities.

Allowing individuals to work under truly 'borderless' contracts without any geographical constraints, moving as often as they like to whichever location, may not yet be practically achievable whilst also appropriately and effectively managing compliance and risk.

A more practical approach may be a 'border of choice' policy and related decision-making process, whereby employees select a 'home location' which is their habitual home, while retaining some flexibility to work elsewhere, which can be varied in line with defined parameters and guardrails. For example, the individual can spend up to 30 days working in a country with which their 'home' location has a double tax agreement, being able to switch their home country as desired every 'X months or years'. Whilst still requiring due diligence and monitoring, a potential arrangement like this may be much more manageable from a resource, cost and risk perspective.

Here are some of the levers which can help operationalise a 'border of choice' instead:

- **Clear Policy and Decision-Making Process:** Establish clear guidelines on work location flexibility considering all cross-function implications (How often can they move? Are there sign off processes? Are there restricted locations?), outlining the process for due diligence and compliance when an employee wants to work from a new location
- **Robust Tracking and Monitoring:** Implement systems to track employee locations to manage tax, social security, and employment law compliance
- **Global Reward Policies:** Develop compensation and benefits structures which can potentially be adapted to local markets whilst remaining fair and competitive
- **Centralised Control and Management:** Establish a centralised oversight of globally mobile employees to ensure consistent policy application and manage compliance effectively, which can extend to the centralisation of employment contracts in one entity i.e. a Global Employment Company structure
- **Technology Solutions:** Leverage HR technology to streamline processes, track employee locations, and manage compliance obligations; and
- **Core Employment Contracts with Local Addenda:** Explore implementation of a core 'global contract' with rights and benefits meeting the employment law requirements in the primary location, with an accompanying addendum addressing specific employment law requirements for a secondary country where the employee may trigger employment law rights, if necessary.

## Insight From Organisations

In June 2025, we held our GlobalForce2025 Client Forum and were joined by a range of talent and mobility leaders from different sectors. One of the sessions explored further what 'borderless' might mean in a world that can feel increasingly isolationist and it was clear that there is a real paradox at play in trying to deliver 'borderless' work, reward and movement within a business. Some key themes were agreed upon:

- Borders do exist; thus, it's a case of finding approaches that limit friction in movement (immigration of course being a key factor here)

- Mobility can struggle to justify costs associated with borderless work arrangements, highlighting the need for better ROI metrics. Some participants noted that current methods focus too heavily on employee sentiment rather than tangible business results/value. Whilst flexible work can be seen as a potential talent attraction and retention mechanism, this needs to be demonstrably linked to business success; and
- The feasibility of 'borderless' work varies significantly across industries with sectors like Energy & Resources having a higher proportion of jobs dictated by location/geography.

This topic will surely continue to be a hot topic, further debated and explored.

While truly 'borderless' arrangements may not be wholly feasible in the current landscape, organisations could explore 'border of choice' models that balance desired flexibility with corporate responsibility.

This requires a strategic approach that includes clear policies, robust processes, monitoring and appropriate decision-making processes. By embracing a pragmatic approach and collaborating with experts to navigate the complexities, organisations can create a flexible and compliant work environment that retains and attracts top talent in today's globalised world.

**CLARE FAZAL**
Director, Global Employer Services, Deloitte LLP
T: 020 7007 0284
E: cfazal@deloitte.co.uk

With over 15 years of experience working in global mobility compliance and advisory, Clare specialises in cross-border employment strategies, supporting organisations with global expansion, talent deployment and international talent acquisition.

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