Work anywhere, together

Global tax compliance considerations

Notice

The following information is not intended to be “written advice concerning one or more Federal tax matters” subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Contents

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Our perspective

Today's reality

> The 'new normal' isn't necessarily a world without working in an office; it's just a world where we **focus on the work instead of the office.**

" **A lot of people have learned that they can work at home."**

— Warren Buffet

" **Crowded corporate offices with thousands of employees may be a thing of the past. We've proven we can operate with effectively no footprint"**

— CEO, Morgan Stanley

" **…we can work in different ways, and as a result, the company does not need all its global offices."**

— CEO, Mondelez International

" **The notion of putting 7,000 people in a building may be a thing of the past."**

— CEO, Barclays Bank

" **75% of TCS employees will permanently work from home by 2025."**

— CEO, Tata Consulting.75

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The case for change

Today's reality

Working remotely is **straining IT and challenges** the work-from-home culture

Physical offices are empty – reconfiguration, barriers, and '6 foot offices' are expected

The **workforce is creating its own virtual offices** based on their delivery needs

Organizations are finding their **current service delivery model** too rigid or severely lacking

Tomorrow's opportunity

$7+ trillion to be invested in making work more digital by 2023*

Lower real estate costs by up to $10,000 per employee per year**

Higher productivity and **lower turnover** from reductions in commute time and better work/life effectiveness

More resilient service delivery models that can quickly react and flex as business realities change

* Worldwide Semiannual Digital Transformation Spending Guide, 2019, IDC
** Advantages of Agile Work Strategies For Companies, 2020, Global Workplace Analytics

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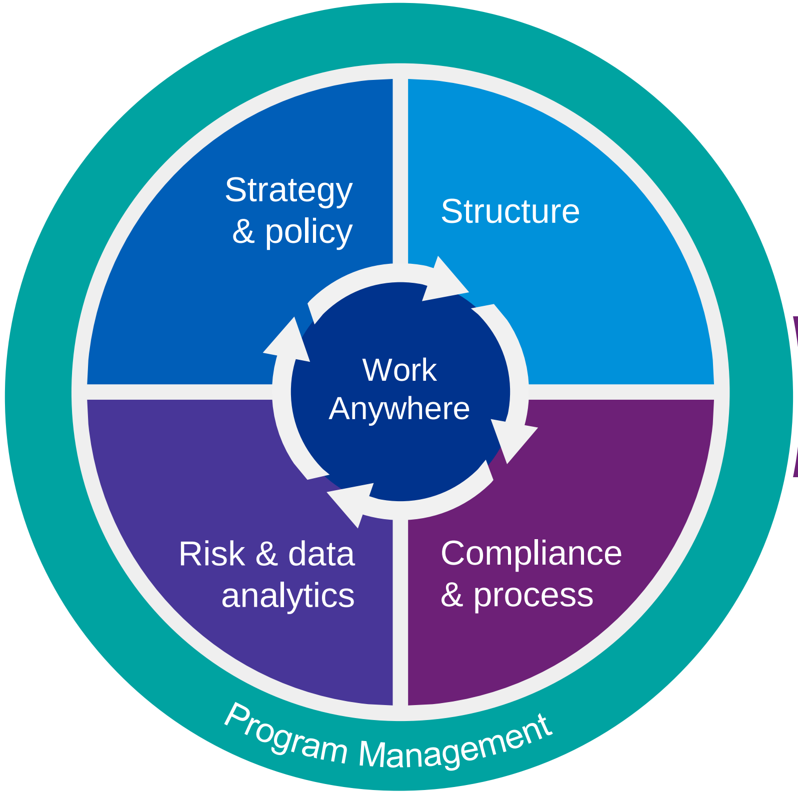
Work anywhere, together — A module based approach

The approach builds off your key priorities and can be all encompassing or can focus on a more specific need



Strategy & policy — A clear, documented strategy aligned with your business and talent priorities while minimizing organizational risk and supporting compliance, health & safety, and business operations.

Structure — An organizational structure that may allow you to operate in a tax compliant manner, anticipating global, and local compliance requirements.

Compliance & process – An automated and enabled process to assist with managing complex global tax and regulatory requirements based on employee location, value, and service considerations.

Risk & data analytics — An automated solution that aides location and services based tracking and detailed cost analysis of the new model, risk assessment, and quantification and measure of return on investment.

Program management — A deliberate and considered approach to initiating change and managing transformation.

Stakeholder considerations

Employee	Corporate Tax	Global Mobility	HR & Legal	Payroll & Finance	Business
— Employee experience (i.e., attractiveness, additional filings or taxes) — Location preference — Compensation & benefits — Social security & mandatory benefits	— Organization chart & entity network — Permanent establishment & state nexus — Value attribution & inter-company documentation — Risk monitoring & assessment — On-going compliance management — Licensing & regulatory considerations	— Tracking & identification — Income tax residency/tax home determination — Tax filing and payment compliance — Certificate of coverages (CoCs/A1s) — Exchange control regulations	— Industry benchmarking & alignment — Talent acquisition, retention & development — Health & safety — Compensation, benefits & expense policies — Policy & documentation — Immigration & employment law — Employment/ assignment documentation — Data privacy & cyber considerations — Works councils and trade unions	— Employment tax, state and local taxes — Domestic and international payroll reporting and withholding — Documentation maintenance — Cross-charge considerations — Accounting & reporting considerations (i.e., FIN 48, FAS5)	— Business strategy & future vision — Industry approach — Cost management — Sustainability

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Global tax compliance considerations

Key compliance areas

International Corporate Tax

U.S. State & Local Tax

Individual Income Tax

Social Security

Payroll & Employment Tax

Global Rewards/ Compensation & Benefits

Why now?

Employees have been “telecommuting” for years, why is now the time to devote resources and capital to addressing the related tax implications to our organization?

A: The impact of COVID-19 brought about, arguably, the most dramatic and rapid change to the global workforce that we have seen since World War II. A recent survey estimates that the share of remote workers in the U.S. has quadrupled to nearly 50% of the nation’s workforce.** It is clear that cross-border remote work arrangements will be more prevalent going forward.

A: Such a drastic shift of an organization’s human capital footprint could significantly impact the organization’s overall global tax profile.

*******Erik Brynjolfsson, et al, “COVID-19 and Remote Work: An Early Look at US Data”, April, 2020.*

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International corporate tax

Work anywhere, together – International corporate tax considerations

Executive Summary

- Where remote employees work can impact the corporation, including:
  - Taxable presence (or "Permanent Establishment") for the employer in the employee's working country
    - Taxable presence is defined under the local law of each country
    - In some cases, may be a income tax treaty between the two countries that addresses PE
    - Important to know the activities performed by the employee in each applicable location
  - Allocation of profits under global transfer pricing rules
    - Location of where critical functions are performed may impact global profit allocations
    - Key considerations are the functions performed, assets owned, and risks controlled by the legal entity
    - Certain functions may result in significant shifts of taxable profit between countries
      - Functions such as control over the development and enhancement of IP, products, services, and other technologies; directing business strategy, sales and marketing strategy; and other
  - Agency
    - An agent can create a taxable presence for its principal if the agent holds itself out as representing the principal

Work anywhere, together – International corporate tax considerations

Where employees work can impact the corporation, including:

- The employer: In addition to the employment tax and withholding issues, traveling employees working outside of their home country may create a **taxable presence (or "Permanent Establishment")** for their employer in that country; and
- The entire corporate group: The location where critical functions are performed may impact the **allocation of profits** under global transfer pricing rules

Taxable presence:

- Countries generally impose corporate income tax on an entity if it has a taxable presence in such country
- Taxable presence is defined under the local law of each country. In the US, courts have focused on three factors:
  - If the foreign person maintains a **continuous** presence,
  - Conducts **considerable** activities, and
  - Carries on business with **regularity**
- It is important to know the **activities performed by the employee,** the length of time such activities are performed, and the **relative importance of such activities** compared to the activities performed in the home country

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International Corporate Tax Considerations (cont'd)

Agency:

- An **agent** can create a taxable presence for its principal if the agent holds itself out as representing the principal
- Even if a person is legally an "independent agent," for tax purposes an agency may be created if the agent is *economically dependent* on the principal (e.g., does the agent represent any other companies, or only the principal?)

Permanent Establishment:

- In certain cases, the business may be resident in a country that has an income tax treaty with the country where the employee is working remotely
- If the treaty eligibility requirements are satisfied (e.g., the Limitation on Benefits provision), then the legal entity may be taxable in the country where the employee is located (the "host country") only if there is a **permanent establishment**
- Generally, a **permanent establishment** includes an **office or fixed place of business** and the activities of a **dependent agent**
- Only income that is treated as **attributable** to such permanent establishment would be subject to tax in the host country
- It is important to know the **nature of the activity performed**

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Treaty risk factors for employees in the U.S.

Activities in the United States	Exempted Activity	Low Risk Activity	High Risk Activity
Use of facilities solely to store, display or deliver merchandise	X		
Maintenance of a stock of goods belonging to an enterprise solely for the purpose of storage, display or delivery, or solely for the purpose of processing	X		
Maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information	X		
Advertising and supplying information	X		
Conducting business through an independent agent or broker	X		
Merely owning the shares or membership interests in a US legal entity treated as a corporation for US federal income tax purposes	X		
Stewardship activities	X		
Attending conferences and exhibitions		X	
Discussions with clients over specific trade terms		X	
Procuring raw materials for purposes of manufacturing or refurbishing		X	
Maintaining or leasing an office in the US in the name of the Foreign Corporation			X
Regularly utilizing the same workspace in the US, including the use of the office of another company, regularly working from the same hotels or conferences spaces, etc.			X
Negotiation of key contractual terms (either by Foreign Corporation employees or agents of ForCo)			X
Concluding, signing, or closing contracts in the US (either by Foreign Corporation employees or agents of ForCo)			X

**Note - All factors must be taken into consideration when performing a treaty analysis – no single factor is determinative.

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Transfer pricing – Allocation of global profits

In general:

- Global transfer pricing relates to the allocation of profit among related businesses
- Most countries follow rules similar to those documented by the OECD (a notable exception is Brazil)
- Key considerations in the allocation of profit are the **functions performed, assets owned,** and **risks controlled** by the legal entity

Functions to watch for:

- Certain functions related to the Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) of Intellectual Property may result in significant shifts of taxable profit from one country to another
- Although OECD guidance looks to the economic employer (rather than geographic location), if a traveling employee/remote worker creates a PE, profit could be shifted
- This may include functions such as:
  - Control over the development and enhancement of IP, products, services, and other technologies; directing business strategy, sales and marketing strategy; and other functions
- *When key employees are working remotely, it is important to include international tax and transfer pricing professionals to determine the potential impact on the corporation*

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U.S. State & local tax

Work anywhere, together — U.S. SALT considerations

Executive Summary

Corporate income tax

- **Employee presence could affect nexus**
- **Employee activities may disrupt PL 86-272**
- **Employee presence can affect apportionment**
  - Traditional factors
  - Sales factor sourcing
    - Cost of performance vs. market based
- **Possible filing method and election impacts**

Sales and use tax

- **Employee presence could affect nexus**
- **Additional compliance/collection responsibilities follow**
- **Proper allocation of tax applied by user location**
- **Potential impact on company procurement**
  - Use in different locations, accruing properly
  - Possible new structure for long-term

Other considerations

- **Impact of remote workers on local incentive agreements**
  - Are employment levels affected?
  - Are there clawback provisions
  - Potential mitigation strategies
- **Impact on tax department operations**
  - Returns, payments, audits, document movement, etc.
  - Location of tax department operations
  - Ability to address controversy and reporting

Local taxes

- **Possible new local business license tax and fee obligations**
- **Potential changes in liability for taxes based on payroll or where service is performed**
- **Potential property tax obligations if employees provided equipment**

Work anywhere, together — U.S. SALT considerations

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A little history …

Some states have addressed whether having a telecommuting employee creates corporate income tax nexus – those states include:

New Jersey

- A foreign corporation that regularly and consistently permitted one of its employees to telecommute full-time from her New Jersey residence was doing business in New Jersey and subject to the New Jersey corporate income tax.
- *Telebright Corp. v. Director, Div. of Taxation,* 424 NJ Super. 384, 38 `A3d 604 (App. Div. 2012).

Idaho

- A corporation that had an employee with no customer-facing function located in Idaho was engaging in activity supporting the taxpayer's commercial business activity and the company was subject to the Idaho corporate income tax.
- Idaho State Tax Commission Ruling No. 0-704-071-680, 6/22/2018.

California

- An out-of-state taxpayer was subject to California's corporation franchise tax based on the in-state activities of an employee who worked from her home and provided consulting and recruiting services.
- *In the Matter of the Appeal of: Warwick McKinley Inc.,* Docket No. 489090, California State Board of Equalization (January 11, 2012).

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State nexus considerations

Organizations should analyze the impact of remote employees on their nexus footprint and consider an approach taking into account:

— General state nexus rules

— State-specific COVID-19 guidance (short-term focus)

Important considerations:

- Physical presence of employees in a state generally provides the state with jurisdiction to impose corporate income and franchise taxes
- Many states have adopted an economic nexus factor presence standard asserting nexus over a taxpayer if its sales, property, or payroll in the state exceed a certain threshold. Will temporarily remote employees cause taxpayers to exceed any of these thresholds?
- Taxpayers with P.L. 86-272 positions should also consider whether the activities of temporarily remote employees exceed the scope of P.L. 86-272.
- A handful of states have released guidance providing that the presence of remote employees due to COVID-19 will not alone cause a taxpayer to establish nexus in the state. In certain cases, nexus relief is only available during the official state of emergency period.
  - Need for documentation to support no nexus positions taken related to temporarily remote employees due to COVID-19.

State apportionment considerations

Will having remote employees affect a company's sales, payroll, and property factors?

— In states that have a cost of performance rule for sourcing receipts from sales of services, or a rule that looks to where services are performed, employees working in a different state may affect apportionment
  - A company's sales factor in market-based sourcing states may also be affected if its customers' employees are working remotely (e.g., if the benefit of the company's service is received at a different location due to remote employees)

— Generally, the payroll factor is determined based on where the employee works and is an all or nothing test (i.e., an employee's payroll will be attributed entirely to one state)
  - In practice, many companies attribute payroll based on where an employee's compensation is reported for state unemployment insurance purposes

— A company's property factor may also be affected by the presence of company-owned property where remote employees are located (e.g., work laptops)

— A few states (e.g., MA, MS, ND, PA) have provided guidance on how temporary remote employees may affect apportionment during the COVID-19 state of emergency

Local tax implications

Although remote work may most significantly affect companies that are located near state borders, having employees "telecommute" may affect local tax liabilities

Los Angeles Business Tax

— Generally based on a business' gross receipts; Certain receipts are sourced to the city based on where services are performed

— "When the gross receipts are derived from or attributable to activities engaged in within and without the City, gross receipts shall be allocated in a manner that is fairly calculated to determine the amount of gross receipts derived from or attributable to engaging in business in the City. This allocation shall be made on the basis of payroll, value and situs of tangible property, general expense, or by reference to any of these or other factors, or by another method of allocation that will fairly determine the amount of gross receipts derived from or attributable to engaging in business in the City." LAMC § 21.49(c)(4). *See* LAMC §§ 21.43(g)(3), 21.49(b)(1), 21.193(7).

San Francisco Gross Receipts Tax

— Gross receipts are generally apportioned to the city based on the average of payroll and sales

New York City Unincorporated Business Tax

— Business income may be allocated to the city based on the average of the taxpayer's property, payroll, and gross income in the city

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State and local tax incentive agreements

States and localities offer significant tax incentives for investment, contingent on maintaining (on-site) employment. None of these agreements anticipated a global pandemic forcing extended office closures.

Know Your Incentive Agreement

- What are the employment thresholds?
- Clawback provisions? Force majeure?
- Who *must* take action?

Mitigation Strategies

- A local, coordinated strategy
  - Proactively engage the issue . . . you are not alone
  - Economic analysis: updates to original and objective alternatives for compliance
- Example of New Jersey Grow Program

Everyone Wants to Resolve Favorably

- Businesses want to protect on-site investment and continued tax incentives
- States and localities want reliable investment based on budgeted incentives

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Individual income tax

Work anywhere, together – Individual income tax considerations

Executive Summary

- Where remote employees live and/or work can impact:
  - The personal tax obligations of the employee:
    - Remote workers may trigger income taxation in multiple taxing jurisdictions:
      - May be subject to double tax
      - More complex personal filings including relief from double tax:
        - Tax treaties
        - Domestic tax concessions (e.g., Foreign tax credits)
  - The corporation/employer:
    - The payroll & social tax obligations of the employer (*addressed in later sections*)
    - Company policy may provide for tax assistance/support

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Work anywhere, together — Individual income tax

Where a remote worker lives and/or works:

— Affects the personal tax obligations of the remote worker
— May expose the remote worker to taxation in multiple jurisdictions on the same income
— May expose the remote worker to a higher effective tax rate than “home” country tax system
— Affects the payroll obligations of the employer (*addressed in later section*)

Residency:

— Many countries impose tax on an individual’s worldwide income on the basis of “residency”
  - Countries differ in criteria establishing tax residency
    — Often based on days of physical presence in the country
    — Differing laws means it is possible to be tax resident of multiple countries/be taxed on worldwide income by multiple countries.

Income/wage “sourcing”

— Many countries impose tax on income earned in/sourced to that country

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Individual income tax — General considerations (continued)

Potential Double Taxation

— May occur where countries have competing claims of tax residency, or

— Where a remote worker is a tax resident of one country but works in another country

Tax Treaties

— Bilateral agreements between two countries, assign taxing right based on residence/source to alleviate double tax

— In the case of two countries with a treaty in place, could be relief from specific negative tax consequences of remote work (e.g. tie-breaker for tax residency country, pension contributions, general relief from double taxation)

Company Tax Policy

— In general, individual income tax returns/filings are the responsibility of the employee as is paying the tax liability

— However, as a matter of company policy, company could provide some measure of tax assistance/support to cross-border remote workers (e.g., tax return preparation assistance, tax reimbursement/tax equalization policy, etc.)

Deeper dive on U.S. individual income tax implications

U.S. Individual Income Tax: Outbound

Overview

U.S. citizens or permanent resident

— Taxed on worldwide income

— No matter where paid or earned

— May lead to taxation in multiple jurisdictions

Common U.S. tax concessions to relieve double taxation

— Foreign earned income exclusion

— Foreign tax credit

Foreign earned income exclusion (FEIE)

Exclusion for income that is

— Foreign (i.e., earned abroad)

— Earned (i.e., income other than salary/wages not eligible).

Income exclusion:

Maximum of

$107,600 for 2020

Housing exclusion

30 Percent of income exclusion

16 Percent base

— Higher for selected locations

Prorated exclusion allowed for part year abroad

Qualified individual

— Tax home must be abroad, and

— Bona fide resident (BFR) test

— Physical presence test (PPT)

Foreign earned income exclusion (FEIE)

Credit is allowed for foreign tax paid on foreign-source income.

Credit is lesser of foreign tax or U.S. tax on foreign source income:

- What is a tax?
- What is foreign source?
- How is U.S. tax on foreign source income calculated?

Credit is figured by category of income – “Baskets”:

- Passive basket
- General basket

Excess credit can be carried back one year, then forward ten years.

Can be credited on paid or accrual method:

- Once accrual is elected, it must be used for life.

Reimbursed travel expenses

Generally, travel expenses are includible in income

One major exception:

— Reimbursed travel expenses related to "temporarily away from home" business trips are not includible in income

Temporarily away from "home"

Location of remote worker's tax home is a facts and circumstances determination:

— Generally principal place of business

— If no principal place of business, tax home may move with remote worker (not away from home)

- Result: reimbursed travel expenses includible income

U.S. Individual income tax: Inbound

Taxation of resident aliens

Resident aliens are taxed in the same manner as U.S. citizens.

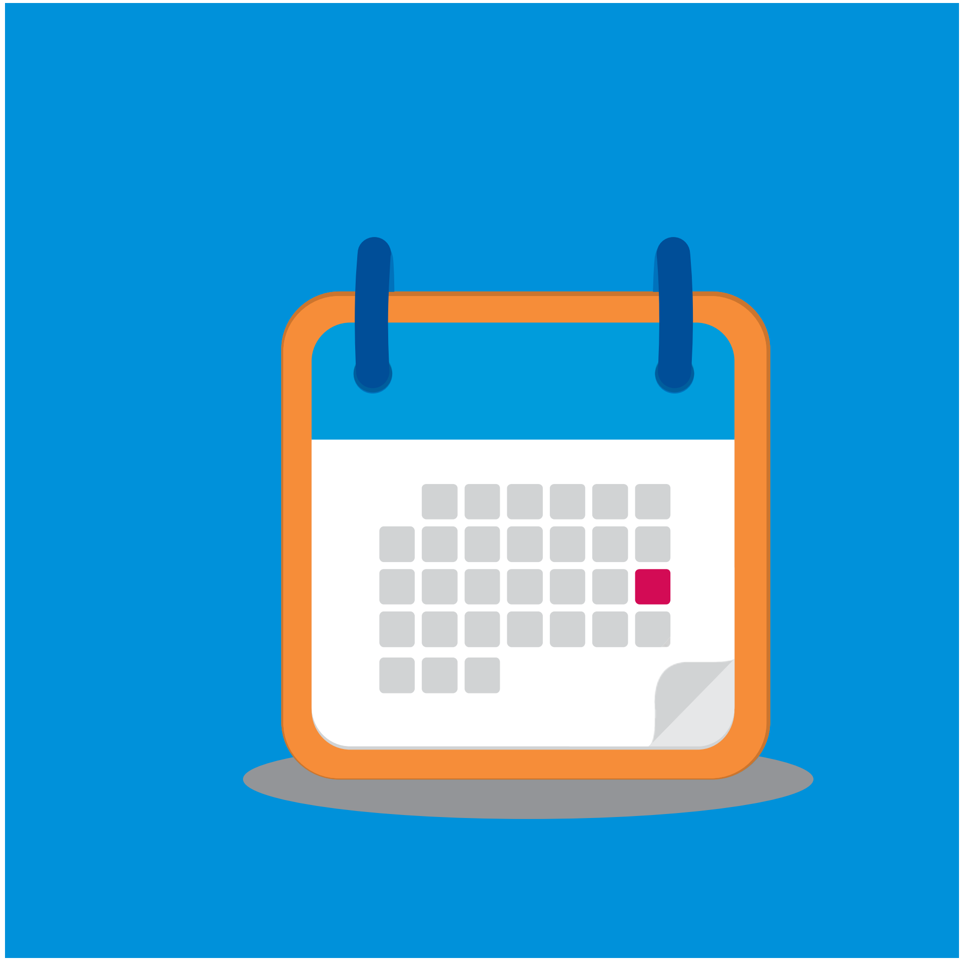
- All income from all sources worldwide is taxed.
- Allowed more deductions/credits than a non-resident.
- Allowed to benefit from married filing joint (MFJ) tax rates

Taxation of nonresident aliens

- Nonresident aliens are subject to U.S. tax only on their U.S. source income.
  - Income from a U.S. trade or business (including wages) is taxed at graduated rates.
  - All other income is taxed at a flat rate:
    - 30 percent, unless the Internal Revenue Code or a treaty reduces rate
- Generally allowed fewer deductions
- Married filing joint (MFJ) status not available
- In year of transition, “dual status return” is filed
  - Part-year nonresident
  - Part-year resident

Determining tax residency

- Permanent resident test (“Green card” test)
- Substantial presence test (SPT):
  - 31 days in current year, and
  - 183 days or more over last 3 years
  - Calculation:
    - 100 percent of days in current year
    - 1/3 of days in prior year
    - 1/6 of days in second prior year



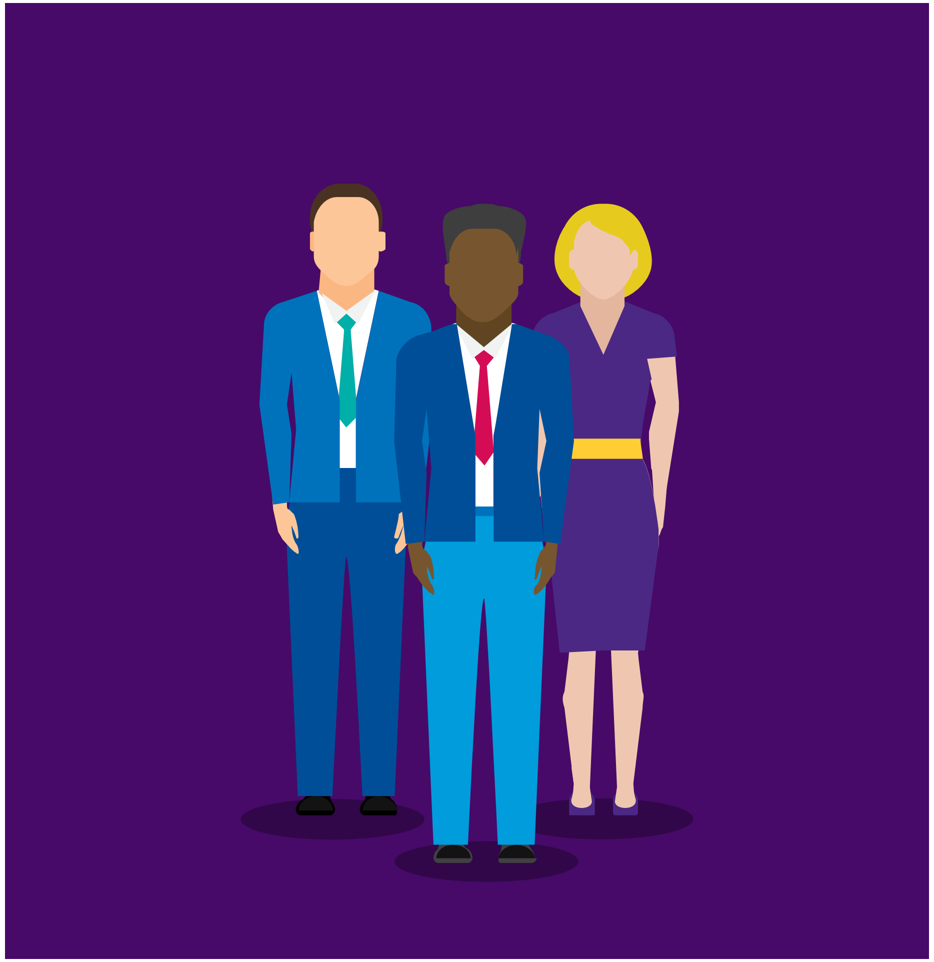
Determining tax residency: Exceptions

Closer connection exception:

- Present in the United States fewer than 183 days in current year
- Maintains closer connection to other country
- This exception is not available for green card holders.

Students and trainees:

- Days on valid F, J, M, or Q visa do not count.
- Earnings while on such status are exempt from U.S. tax.
- Certain conditions must be met.



Residency start & end dates

- First day present in the United States on a valid green card
- First day present in the United States in a year that SPT applies:
  - Ten-day de minimis presence allowed
- Same rules for residency termination
- No lapse rule
- Expatriation – Exit tax:

Applies to former citizens and long-term green card holders	Tax motivation not required	Applies if net worth is > $2 million (not indexed for inflation) or average tax liability for five past years is > $165,000 (2018 amount)	Tax on gain as if all property had been disposed of, and tax on current value of pensions and other deferred income

- Prior to 2008, exit tax did not apply:
  - Instead, nonresident tax was extended to redefine more income as U.S. source (particularly capital gains).

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U.S. Income tax treaties

Residency "Tiebreaker"

Breaks the tie when a person is considered a resident of both countries under their domestic laws:

— Permanent home

— Center of vital interest (personal and economic ties)

— Habitual abode

— Citizenship

— Competent authority

Income from Employment

General Rule:

— Remuneration for employment is taxable in the country of residence.

— Amounts are also taxable in the other treaty country if the income is derived from services performed in the other country.

Exception:

— Not taxable in other treaty country if

- Worker is not present in host country for more than 183 days
- Remuneration is not paid or borne by a resident of host country or by a permanent establishment the employer has in the host country.

U.S. Income tax treaties (continued)

Pensions

- In general, pension distributions are taxable only in country of residence.
- Most treaties do not cover pension participation:
  - Some allow deductions for contributions to foreign pensions.
    - Employer contributions would not be taxable in this case.
  - Some provide that accrued income in account is not taxed.

Savings Clause

The United States reserves the right to tax its citizens as if the treaty did not exist:

- Residents are usually also covered—defined by treaty, not U.S. law
- Exceptions
- Does not alter taxation of nonresident aliens

May necessitate "treaty resourcing"

U.S. Income tax treaties (continued)

Nondiscrimination

— A country cannot impose tax on citizens of the other country differently than it taxes its own citizens:
   - Classic example: BFR test of foreign earned income exclusion
   - Applies to tax, not administration of tax
   - Does not help nonresident aliens

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Social security

Work anywhere, together — Social security considerations

Executive Summary

- Where remote employees work can impact the social security tax obligations of the employee and the employer:
  - Social security coverage and benefit eligibility varies by jurisdiction:
    - Remote workers may trigger social tax obligations for themselves and their employers in multiple jurisdictions
    - Where services are performed impacts benefit eligibility and level of benefits
  - Totalization Agreements coordinate social security coverage and benefits, alleviate double tax

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Work anywhere, together — Social security

Social security coverage varies by jurisdiction

— A remote worker may be covered under the social security regimes of multiple jurisdictions, exposing both the worker and the employer to social security taxation in multiple jurisdictions

Benefit eligibility varies by jurisdiction

— Many jurisdictions tie eligibility for social security retirement/pension/old age benefits to work history
  - Remote workers may not qualify for a full benefit (or any benefit) in their home country or host country; or
  - May qualify for partial benefits in a number of jurisdictions depending on work history

— Other benefits offered vary across jurisdictions (e.g., unemployment insurance, family benefits, parental benefits, etc.)

Totalization agreements

— Bilateral agreements between countries that coordinate social security coverage and benefits
  - Eliminate double social tax
    — Territorial rule: Generally subject to laws of coverage in work location
    — Detached worker exception: Remain covered by home country if sent to host country for 5 years or less
  - Certificate of coverage or A1 certificate

— Fill gaps in benefit protection for workers who divide career between countries

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U.S. Social security totalization agreements

Australia	Germany	Norway
Austria	Greece	Poland
Belgium	Hungary	Portugal
Brazil (10/1/2018)	Iceland (3/1/2019)	Slovakia
Canada	Ireland	Slovenia (2/1/2019)
Chile	Italy	Spain
Czech Republic	Japan	Sweden
Denmark	Korea (South)	Switzerland
Finland	Luxembourg	United Kingdom
France	Netherlands	Uruguay (11/1/2018)

https://www.ssa.gov/international/totalization_agreements.html

Deeper dive on U.S. Social Security/FICA implications

FICA on outbound assignment

U.S. person employed abroad by American employer is subject to FICA, unless …

Not a detached worker under totalization agreement

U.S. person employed abroad by foreign employer is not subject to FICA, unless …

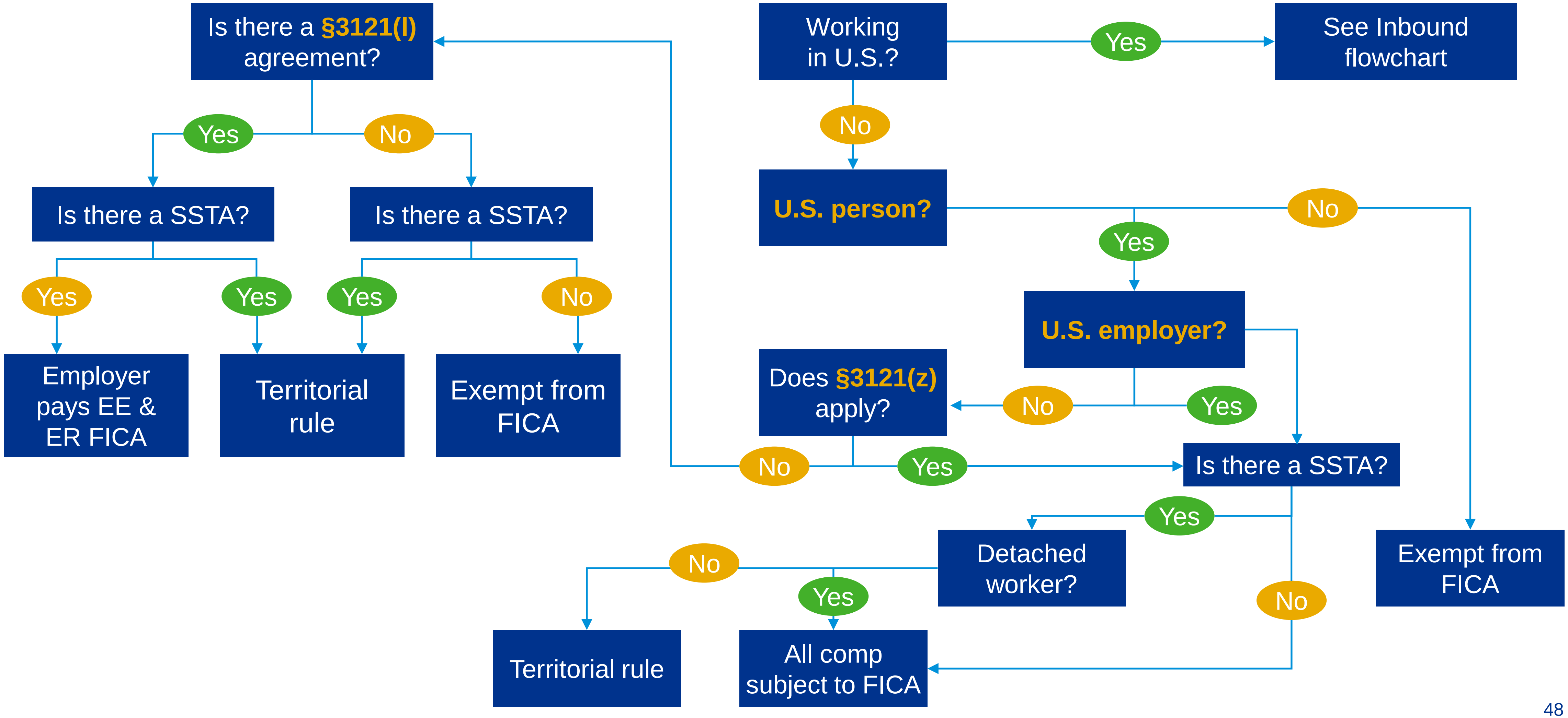
Detached worker under totalization agreement

§ 3121(l) agreement

Nonresident alien employed abroad by any employer is not subject to FICA, unless

Detached worker under totalization agreement

Who is subject to FICA?—Outbound



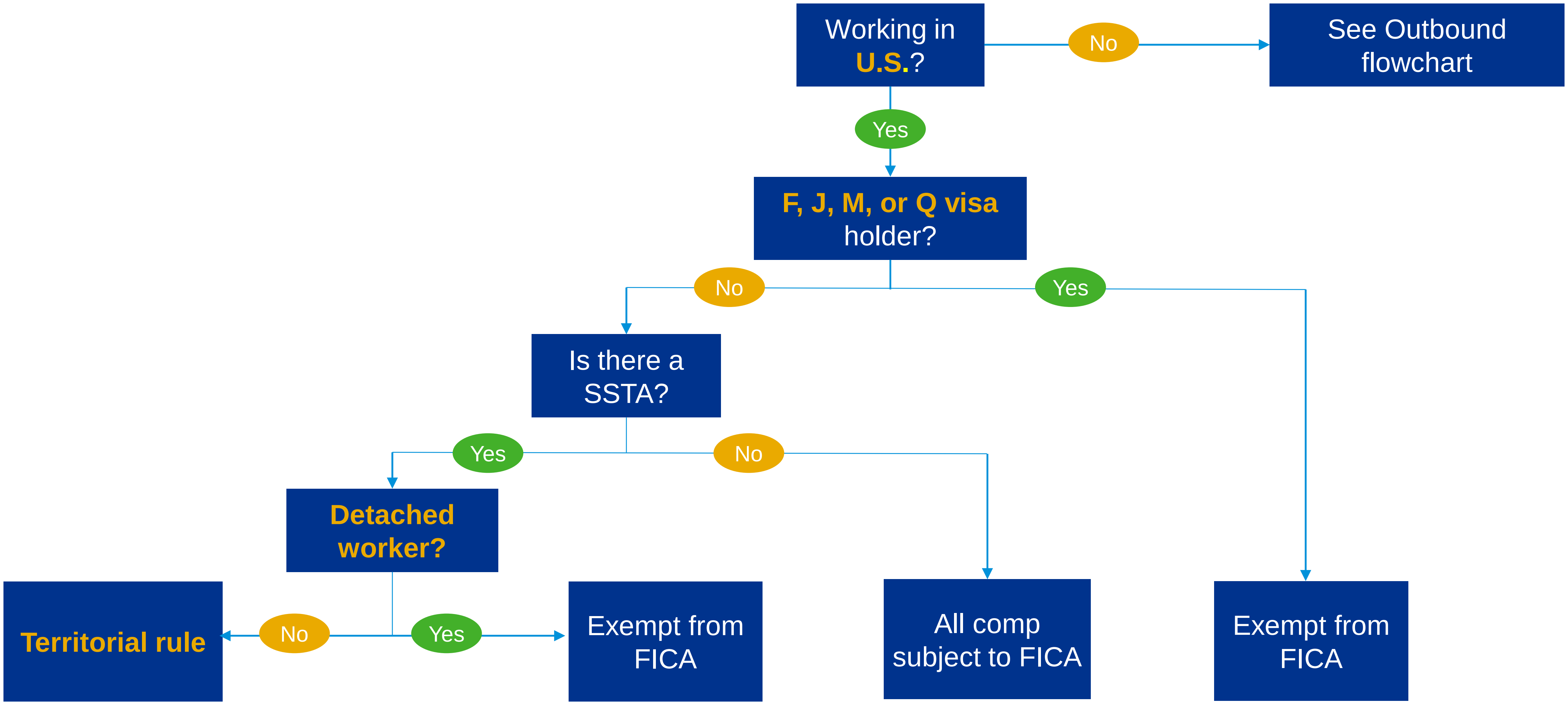
FICA on inbound assignment

Service provided in the U.S. by any person for any employer is subject to FICA, unless …

— Detached worker under totalization agreement

— Nonresident alien on F, J, M, or Q visa

Who is subject to FICA?—Inbound



U.S. retirement benefits for former residents

Worker must have at least 40 coverage credits

- If work was also performed in a country that shares totalization agreement with U.S., credit from other country count
- Must have at least 6 U.S. coverage credits
- Actual benefit takes into account only wages subject to FICA

U.S. will pay retirement benefit to residents of many countries

- Direct deposit to foreign bank accounts available

U.S. totalized benefit calculation

- If worker has at least 40 coverage credits, benefit is calculated without regard to totalization agreement
- Windfall elimination provision could apply if worker also qualifies for a foreign social security benefit
- Windfall elimination provision does not apply if worker qualifies for a foreign social security benefit only by applying a totalization agreement

https://www.ssa.gov/international/payments_outsideUS.html

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Payroll & employment tax

Work anywhere, together — Payroll & employment tax

Executive Summary

- Where remote employees work can impact the payroll tax obligations of the employee and the employer:
  - Withholding and reporting obligations can be tied to:
    - where services are rendered;
    - the residency of the employee; and/or
    - in some states, the “regular place of employment” or “regularly assigned work location”
  - Employee remote working in nonresident location may also trigger reporting and withholding obligations
  - Organizations should consider whether they have payroll and withholding accounts in multiple jurisdictions that can facilitate the reporting requirements and if not, what is their risk-tolerance for payroll noncompliance
  - In addition to withholding, employers may also need to pay other required taxes such as unemployment insurance
  - Tax qualification in employment location may not align with physical work location for the purposes of employee benefit plans
  - The concept of “telecommuting” for purposes of work anywhere and the reporting of employer paid home office expenses can differ location to location
  - Corresponding individual reporting requirements and implications such as double taxation and cash flow issues should be addressed

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Tax withholding – the basics

Requirements and obligation of employer

- General rule is to withhold and report in the location where services are performed
- However, this varies by state – withholding and taxation can be based on:
  - “Regular place of employment” or “regularly assigned work location”
  - Examples: New York, Connecticut, Massachusetts, and Pennsylvania
- Base withholding location on information self-reported by employees as well as HR info

Wage sourcing rules

- General rule is income is sourced to location where employee performs services
  - Again, varies by state and could be based on regular place of employment/work location
- Taxation may also be required in an employee’s resident location
- Nonresident employees traveling to different locations may have tax withheld in those locations as well as residence and work locations

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Payroll & employment tax (continued)

What are some organizational considerations?

— What are the employee and employer tax reporting and withholding obligations in each location?
  - Can reciprocity or a treaty be leveraged to minimize withholding and/or double tax implications?

— How broad is your current employment footprint?
  - Do you have payroll and withholding accounts in multiple jurisdictions that can facilitate the reporting requirements?
  - If you do not have a footprint in a location, what is your organization’s risk-tolerance for payroll noncompliance?

— How will the remote employee be supported from an individual compliance perspective?

— Would a global employment company help facilitate global compliance for locations with no physical corporate presence?

— If you are able to operationalize payroll in all locations, how will it be administered?
  - Could include a ‘shadow’ or ‘split’ payroll approach
  - Approach for currency exchange/forex rates
  - Differing payroll cycles and/to tax year-ends

Other payroll considerations

- Global reporting of employee benefit plans – tax qualification in employment location may not align with work location
- Commuting expenses
  - How will the organization support the remote worker when traveling to and from work and employment location?
  - How will these expenses be treated from a tax and payroll reporting perspective?
- Home office expenses
- In addition to income and social taxes, are there any other payroll related taxes in the employment and work locations that need to be implemented such as unemployment insurance
- U.S.-specific: Coordination with state corporate income tax nexus requirements
- Year end reporting (i.e. U.S. Federal/State Forms W-2) reporting and consistency

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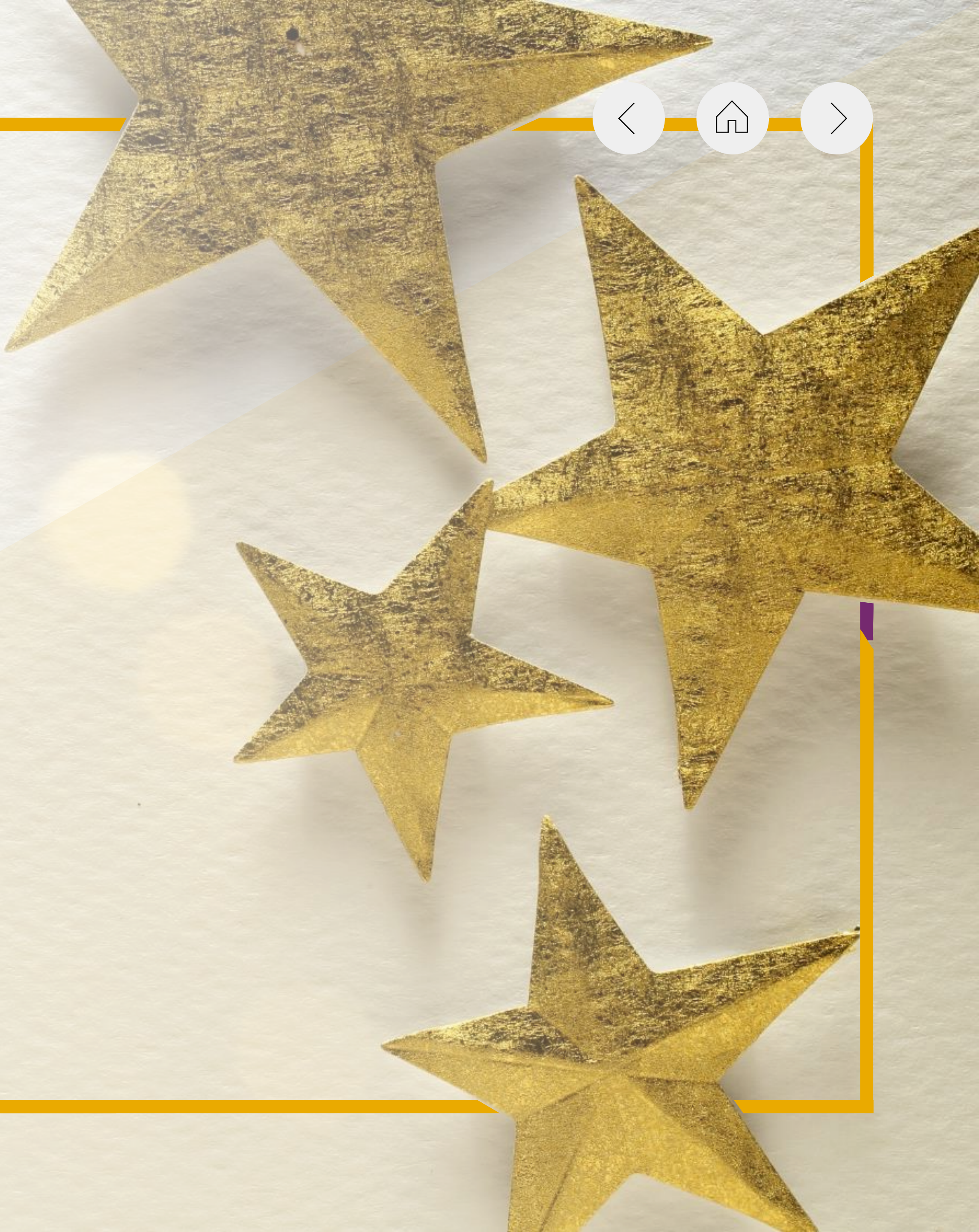
Global rewards/ compensation & benefits



Work anywhere, together — Global Rewards/ compensation & benefits

Executive Summary

- Work Anywhere compensation and rewards structuring should consider the following:
  - salary levels and employee benefit plans (e.g. medical, pension) offered across work anywhere locations
  - employee choice programs
  - employee assistance to support work anywhere such as child/eldercare programs, parental leave, flexible work arrangements, and equipment/allowances that facilitate remote work (e.g., computers and peripherals, home office equipment, Wi-Fi)
  - Likely be designed to attract, retain, and incentivize talent needed to achieve business and strategic objectives
- To achieve a successful structure, the following actions may be taken:
  - Market, benchmarking, and peer group analysis to establish salary guidelines
  - Quantifying impact to total compensation costs
  - Feasibility and due diligence to assess tax and regulatory implications and requirements/ongoing compliance
  - Potential vendor assistance required
  - Assess talent workforce needs against overall business/strategic objectives
  - Alignment with organizational environmental, social, and governance objectives
  - Employee communication strategy and workshops

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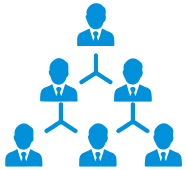
Work anywhere, together — Global rewards/ compensation

	Reward-related considerations	Action steps
Compensation & Benefits	— Establishing salary levels for eligible positions across Work Anywhere locations — Determining medical, pension, and other benefits to be offered/required across Work Anywhere locations — Considering employee choice programs to enable employees to select their mix of salary, LTIP vehicles, and benefits-in-kind — Data collection and analysis — Company disclosures	— Market, benchmarking, and peer group analysis to establish salary guidelines — Quantifying impact to total compensation costs — Identification and feasibility of tax preferential compensation & benefits structures — Assessing employment and labor law implications — Works Council negotiations — Potential vendor assistance with identifying/collecting data — Potential vendor assistance with disclosure language

Work anywhere, together — Global rewards/ compensation

	Reward-related considerations	Action steps
Employee assistance and support 	— Offering child/elder care programs to support virtual workforce — Parental leave — Flexible work arrangements (beyond work location flexibility) — Providing equipment/allowances to facilitate Work Anywhere (e.g., computers and peripherals, home office equipment, Wi-Fi) — Employee Experience	— HR policy formation addressing Work Anywhere, Together policies & protocols — Employee communication strategy and workshops — White glove service for senior executives around tax positions, employee communications about implications
Workforce alignment 	— Attracting, retaining, and incentivizing talent needed to achieve business and strategic objectives	— Assess talent workforce needs against overall business/strategic objectives — Long-term incentive and equity program design to drive business imperatives — Feasibility and due diligence to assess tax and regulatory implications and requirements/ongoing compliance — Alignment with organizational environmental, social, and governance objectives

Some or all of the services described herein may not be permissible for KPMG audit clients and their affiliates or related entities.

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Appendix 1: Example personas

Meet Kevin

Role: IT Consultant

Tenure: 7 years

I can do my job from anywhere, I just want to do it well, and feel valued.

Demographics

- **Type:** Employee
- **Citizenship:** U.S.
- **Location (current):** U.S. from the office
- **Location (requested):** U.K. from anywhere
- **Generation:** Millennial
- **Job Level:** Manager

	Today	Tomorrow
Income Tax	Kevin spends one hour to file his federal and state tax returns by April 15th each year	Does Kevin also have a filing requirement in the U.K. in addition to the U.S. filings to consider?
Social Security	Each pay-period Kevin and his employer pay into the U.S. social security system	Does this have an impact on Kevin's social security contribution? Will a certificate of coverage be required?
Employment and payroll tax	All Kevin's wages were reported on U.S. payroll, he contributed to his 401(k), and his withholdings were in line with federal and state liabilities	Does Kevin's employer need to report and withhold employment taxes in the U.K.? If so, what payroll reporting and withholding is necessary?
Corporate Tax and PE attribution	Kevin worked in the U.S., for the benefit of the U.S. company – U.S. taxes were due on the generated revenue	Everything remains the same, expect now he sits in the U.K. – is the U.S. company now perceived as doing business in the U.K.? How do you allocate costs and revenue?
Immigration and employment law	What about immigration? Non factor!	As a non-EU/EFTA citizen Kevin will need a U.K. work visa – how does this happen without a U.K. employer? How long is it good for?

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Kevin – Potential tax considerations

	Typical considerations	Work Anywhere considerations
Income tax	— Residency rules (number of days, citizenship, etc.)	— While its employee's obligation to file personal tax returns, will working in a country different than country of employment lead to additional/complex filings?
Social security	— Country of residency/citizenship	— While Certificate of Coverage may exempt Social Security, do other taxes still apply? — On retirement, how and from where will the individual claim benefits?
Employment and payroll tax	— Typically driven by location of employer and workplace	— Will the "tax home" change for employment tax? — Will the employer need to report and withhold in another country?
Corporate tax and PE attribution	— Services performed and value created	— Will remote work expose the employer to PE risk? — How will revenue be allocated? — What documentation is necessary to safeguard the company?
Immigration and employment law	— Citizenship and work authorization	— Does the employee have appropriate visa? — Is a local sponsor/entity necessary?

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Meet Megan

Role: Tax Director

Tenure: 16 years

> **I would still like to be in the office once or twice a week, but I need greater flexibility to attend to responsibilities outside of work.**

Demographics

Type: Employee

Citizenship: U.S.

Role Location (current): U.S. – New York

Role Location (requested): U.S. – Massachusetts (3-4 days per week)/New York (1-2 days per week)

Resident State: Connecticut

Generation: Generation X

Job Level: Director

	Today	Tomorrow
Income Tax Withholding	Megan would likely be subject to New York withholding as it is the state where she is performing services. However, she may also be subject to Connecticut withholding to the extent that the Connecticut withholding tax rate is higher than that of New York.	How should wages be allocated between the three states where she is performing services and residing?
State Unemployment Insurance Tax	Since New York is her primary work location, her wages will be subject to unemployment tax in New York.	How do the state unemployment insurance tax reporting requirements change?
State Payroll/ Corporate Considerations	Considerations are limited.	Does the company need to register as an entity/register for taxes in Megan's Work Anywhere state? Will she have a physical office in her Work Anywhere state? What is the scope of here role? How do these factors play into determination of state nexus?

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Megan — Potential tax considerations

	Typical considerations	Work Anywhere considerations
Income Tax Withholding	— Follow the obligations of the work state, then apply any obligations of the resident state if applicable	— Where is the employee performing services if not the primary work state or the resident state? — What has the employee provided as a resident address on the Form W-4? — Which state is the primary work state in which the employee is coded for payroll/HR? — Will telecommuting regulations apply? — Will the employment agreement be modified?
State Unemployment Insurance Tax	— Review the state unemployment insurance tax requirements	— Revisit the state unemployment insurance tax requirements as the state that the employee's wages are subject to unemployment insurance tax might change — Are there additional taxes (e.g., disability) that should be considered?
State Payroll/Corporate Considerations	— Not applicable since the employee is not performing services in the resident state	— Is the entity registered to do business in the Work Anywhere state? — Are the payroll and corporate tax accounts setup in the Work Anywhere state (if needed)? — Are there additional employee or employer tax considerations in the Work Anywhere state (e.g., Paid Family Medical Leave, local taxes)?

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Appendix 2: "Work anywhere, together" taxwatch polling results

KPMG taxwatch webcast: Work anywhere, together

On June 11, 2020, KPMG' LLP's Tax Global Mobility Services group held a webcast entitled "Work Anywhere, Together" sharing KPMG's perspective on how organizations are addressing the potential tax implications of global remote work arrangements. During the session, KPMG reviewed:

1. **Market Trends and considerations for employees working remotely;**
2. **The potential benefits of developing a Work Anywhere operating model and managing tax risk; and**
3. **Tax considerations of bringing Work Anywhere to life for organizations.**

The session was attended by over 1,000 global mobility and payroll professionals, CHROs, CFOs, human resources directors, CPAs, corporate tax staff, and other business and service providers.

During the session, five polling questions were conducted to gain insight from attendees regarding their organization's current and future Work Anywhere employment arrangements. The results from the polling questions are noted on the following slides.

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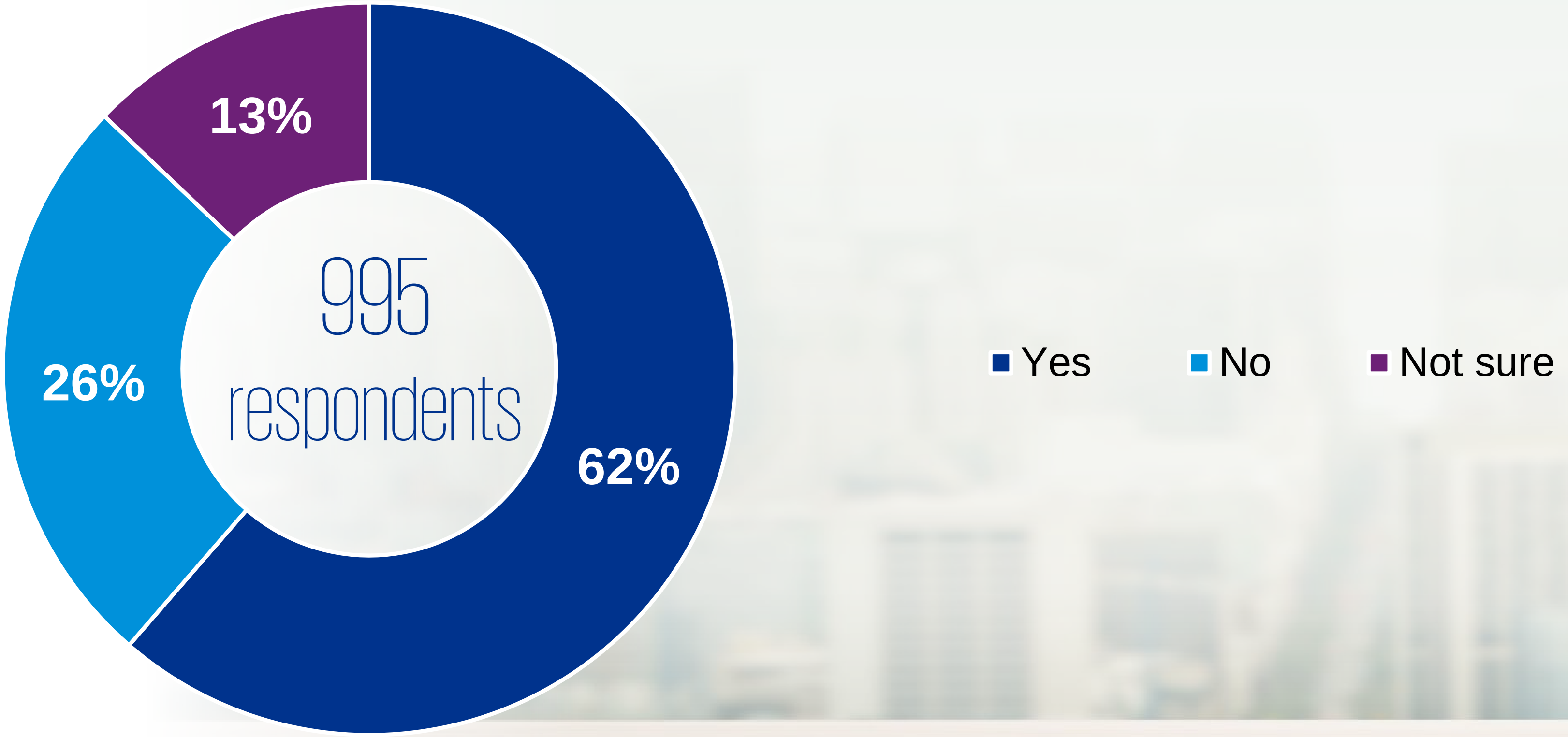
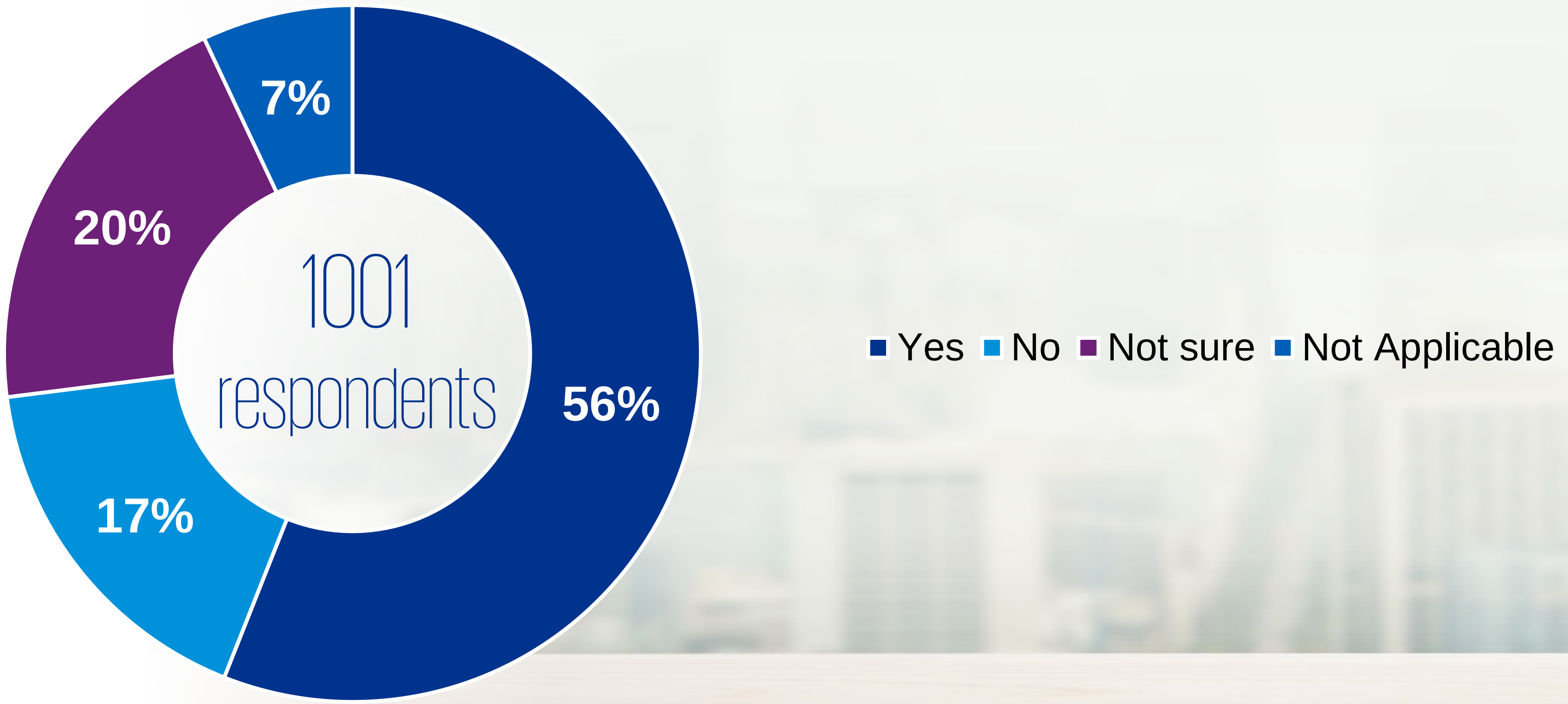
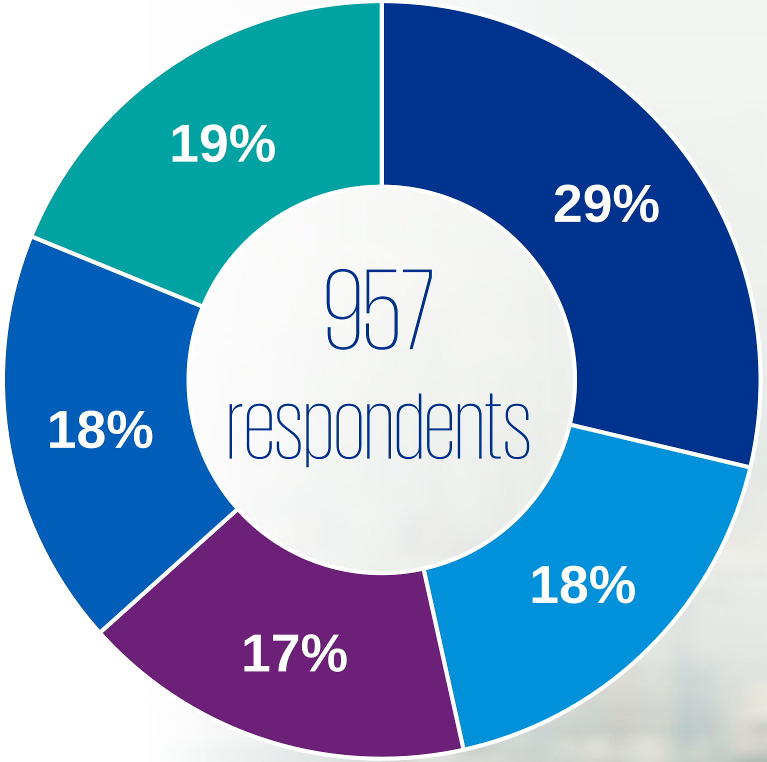
Does your organization currently have a traditional telecommuting/work-from-home policy?



As a result of recent events, has your organization updated its telecommuting/work-from-home policy to enable more flexible employee work arrangements ?

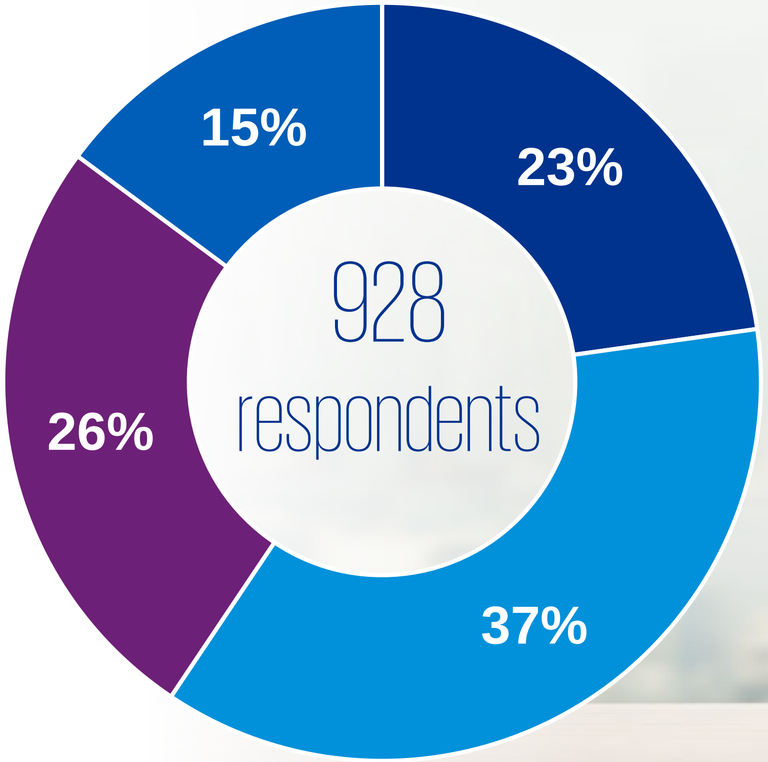


Which of the following areas is your organization's top strategic priority?



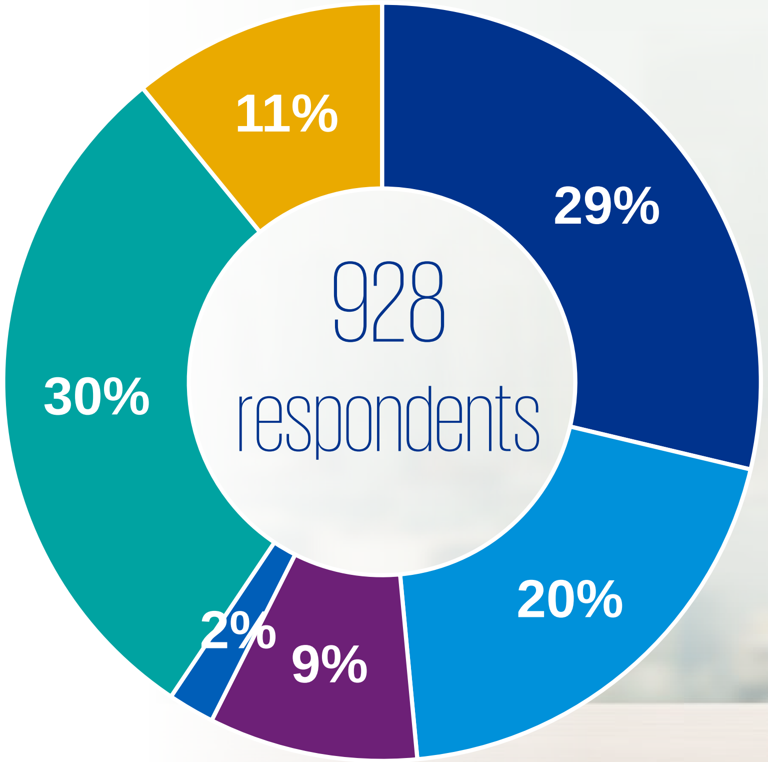
- Talent:
- Risk Profile (tax, immigration, regulatory):
- Flexibility:
- Business alignment:
- Cost management:

Does your organization have a process to review the tax, legal, and other risks potentially created by Work Anywhere arrangements?



- Yes – always:
- Yes – but on a case-by-case basis:
- Not sure:
- Not applicable:

Looking forward, do you see your organization focusing on Work Anywhere as a part of your talent strategy? (928 respondents)



- Yes – within the next 3-6 months:
- Yes – within 6-12 months:
- Yes – within 12-24 months:
- Yes – after 24 months:
- I don't know:
- Not applicable: