

A person's hands are shown typing on a laptop keyboard. The laptop is open on a wooden table. The background is a scenic landscape with rolling hills, dry grass, and a few trees under a clear sky. The text is overlaid on the image.

INTERNATIONAL TELEWORKING AND VISAS FOR DIGITAL NOMADS

THE ULTIMATE GUIDE

VISAS FOR DIGITAL NOMADS IN SPAIN

International teleworking

What must be taken into account for international teleworking?

What obligations are there for the employer and for the teleworker?

- Employment, social security and tax aspects of international teleworking.
- The need to register in Spain.
- Procedures and documentation.

If you have any questions or want more information on our services free of any obligation, [do get in touch with us and we'll be happy to help.](#)

Although unregulated, international teleworking is full of opportunities. We have been watching this possibility of working remotely and from anywhere in the world for a few years.

However, the crisis generated by COVID-19 has exponentially increased this way of working. Once the pandemic is over, **requests from employees for international teleworking** and even hiring ex novo by companies will increase (that is: hiring someone directly as an international teleworker).

For now, the closest thing to an international teleworking regulation are **the Digital Nomad Visas**. These are types of visas that some States have implemented and that allow workers to carry out their teleworking service if they meet certain conditions (generally, prove minimum income, have some medical insurance, etc.).

In Spain, the Government is preparing a modification to the immigration law to accommodate this specific profile of international teleworkers, both in the form of employee and self-employed worker, thus responding to the huge number of digital nomads who choose Spain as their country of residence. In addition, and in the same vein, the Government is considering offering tax incentives.

WHAT IS INTERNATIONAL TELEWORKING?

In the absence of official regulation, we could define international teleworking as that form of organization and/or performance of work using **information technologies** within the framework of a contract or an employment relationship from a country other than the one where the company that hires the worker is established. At the same time, it is important to take into account **three aspects** when we talk about international teleworking:

- It is considered to be a **voluntary practice** for both parties.
- This situation means that **the company must meet certain organizational needs** and that the employer meets certain **obligations**.
- It is born from **the personal needs** of the working person and not in order to develop a professional activity for the country of destination.

DIFFERENCES BETWEEN INTERNATIONAL TELEWORKING AND POSTING

If a professional is temporarily transferred by their company to a country to develop a specific professional activity for a limited time for a company located in that State, we would be talking about an international posting and not international teleworking.

They are two scenarios of different legal nature and therefore with different legal effects.

There are two realities that must be differentiated:

1. **International posting** is driven by the company, has an essentially temporary element, and the fruits of the work revert to the destination country. This concept is necessarily regulated at the EU level through **the Social Security Regulations** and the Directive on Posted Workers, and outside the EU through international social security agreements and the immigration legislation of each country.
2. In **international teleworking** the change of place of work is due to the interest of the professional, meaning it is indifferent where the work is carried out, given that the work does not change. In addition, since it is not linked to a specific service, it does not necessarily presuppose a limited time period. As a consequence, the directives governing the posting of workers cannot be applied to international teleworking.

EMPLOYMENT ASPECTS OF INTERNATIONAL TELEWORKING

In accordance with international law, the employer and the employee **can choose the applicable law** that regulates the employment contract of the international teleworker.

At the European level, both the Rome Convention (for contracts signed between January 1, 1993 and December 16, 2009) and the Rome I Regulation (for contracts signed after December 17, 2009) establish that the applicable national law is that **agreed by both parties** or, failing that, that of the country in which or from which the worker habitually performs their work with regards to the contract. In the absence of the foregoing, the law where the contracting establishment is located will be applied or, finally, the law of the State where the contract has the closest ties may become applicable.

Notwithstanding the foregoing, a basic premise that has been established is that if the law that has been agreed and which applies to the employment contract is different from that of the country where the work is carried out, this **will not imply that the worker is deprived of the minimum provisions of the law that applies in the place/State of the provision of services**. In other words, the working conditions determined in the employment contract will only prevail over local labor legislation as long as they are more beneficial for the worker.

Taking into account these **applicable rules**, in an international teleworking scenario where the employer does not temporarily transfer an employee to another country to perform a service in that country, but instead the employee voluntarily moves to another country to work from there, the country of habitual provision of services cannot be any other than the country of residence of the employee.

Therefore, as we have commented, the worker under the international teleworking regime cannot be deprived of the labor rights recognized by the collective agreements and the labor legislation in their country of residence, regardless of the legislation applicable to the employment contract.

In the same sense, the employment relationship will be linked to the country of residence of the teleworker, and with it, **the legal obligations that this country determines for the employer**.

SOCIAL SECURITY ASPECTS FOR INTERNATIONAL TELEWORKING

Unlike the freedom that the parties have to choose the legislation applicable to an employment contract, with regards to social security, in accordance with the principle of territoriality, **an employee must contribute to the Social Security regimes of the country in which they work**, unless an international Social Security agreement in the country or between the countries involved allows for some exception.

Specifically, to determine the applicable national legislation on Social Security in the international teleworking scenario in the European Union, we must take note of the provisions of the Regulation for the Coordination of Social Security Systems within the EU: “The person who pursues an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State.”

There are two exceptions to this principle of territoriality:

- **The posting of workers**, in which case the contribution is maintained in the country of origin. However, as we have commented, international teleworking is not a posting of workers since it is the worker's personal decision to move to another State and not business and/or the development of a specific professional mission in the destination.
- **Multi-State Workers**: that situation in which a worker is simultaneously working in two or more States. In this case, the Regulation establishes that the worker may maintain the Social Security link at source in two different cases, which you can consult [here](#).

Therefore, by way of example, Spanish Social Security legislation will be applicable to a worker who resides and develops a substantial part of their activity in Spain under the international teleworking regime, even if the employment contract has been formalized under the labor legislation of the country of origin.

Once the applicable national Social Security regulations have been determined, the employer's obligations must be established.

INTERNATIONAL TELEWORKING: OBLIGATIONS FOR REGISTRATION AND CONTRIBUTION TO SOCIAL SECURITY

As a general approach there are two obligations for the employer:

1. Social Security **affiliation**.
2. **Payment** of Social Security contributions.

Once the two obligations regarding Social Security are known, the next step would be to determine who should assume these obligations. According to Spanish law, **only the employer can process the mandatory contributions**.

That is to say, the subject obliged to pay the Social Security contributions is the company. What does this suppose?

In an international teleworking scenario in Spain, **the foreign company must register with the Spanish Tax Agency** as a representative office and then obtain an employer number from Spanish Social Security.

This is with regards to Spain. However, other countries establish alternatives to the obligation to register in the country from which the international teleworker works.

Thus, in many countries the figure of **the Employer of Record** is recognized, in which the formal employer (the one who signs the contracts, makes the contributions, pays the wages, and undertakes the withholdings) is different from the real employer (the one who organizes the work of the teleworker, and who benefits from the work carried out by the teleworker).

This Employer of Record, in those countries where it is legal, exempts the real employer from the obligation to register in that country, greatly simplifying international operations. It is worth noting that in Spain there is a figure similar to the Employer of Record, the so-called Temporary Employment Agency, but their services are only allowed in certain scenarios and are always linked to a temporary period that does not correspond with or equate to international teleworking.

TAX ASPECTS FOR INTERNATIONAL TELEWORKING

A teleworker established in Spain will be a taxpayer for the purposes of Personal Income Tax (IRPF) when they are considered a **tax resident in Spain**.

The taxpayer is understood to have their habitual residence in Spain when any of these circumstances occur:

- If they stay more than 183 days, during the calendar year, in Spanish territory.
- If the core of their economic activities or interests lies in Spain, directly or indirectly.

We develop these circumstances in a broader way in this post in which we explain [how tax residence in Spain is accredited](#).

However, it is possible that the international teleworker is considered a tax resident both in Spain and in the country of origin (if so determined by its legislation) for a period of time. This situation produces a conflict of tax residence, which is resolved by virtue of the tiebreaker rules of the corresponding double taxation agreement agreed between both countries.

INTERNATIONAL TELEWORKING: TAX OBLIGATIONS FOR THE EMPLOYEE

- **Form 030:** to notify the Tax Agency of a change of tax address. In this way, they will be correctly registered with the corresponding tax authority.
- **Form 147:** to anticipate the worker's new tax residence and be able to apply it to the payroll. In this way, the worker does not have to wait the 183 days to regularize their withholdings.
- **Form 210:** from the beginning of the provision of services in Spain until the recognition of Spanish tax residence by the Tax Agency, or until the completion of the 183 days, the employee will be considered as a Non-Tax Resident in Spain, and will be a taxpayer with regards to Non-Resident Income Tax (IRNR).
- **Form 100:** when the international teleworker is considered a tax resident in Spain, they will be a taxpayer for the purposes of Personal Income Tax (IRPF) and must pay taxes on their worldwide income (that is, on that obtained anywhere in the world).
- **Form 720:** persons and entities resident in Spain who have or have had some type of relationship with assets and rights located outside of Spain must submit Form 720 as an informative declaration of assets and rights abroad. This information obligation will not be mandatory when the values as of December 31 do not exceed 50,000 euros as a whole.
- **Form 714:** in Spain there is a tax on people's net worth. Those taxpayers whose value of assets and rights is greater than 2,000,000 euros will have to pay this tax.

These are the general aspects of the tax obligations of an employee who works in Spain under an international teleworking regime.

There are exceptions and specific circumstances in relation to each Form, so we recommend **contacting** an international tax specialist in case you want to resolve specific doubts.

INTERNATIONAL TELEWORKING: TAX OBLIGATIONS FOR THE EMPLOYER

Regarding the tax/withholding obligations for the company, we first need to know if the company employing the international teleworker has a permanent establishment in the State where they carry out their teleworking activity:

- **The company does not have a permanent establishment:** a binding query from the General Tax Directorate (V3286-17, of December 17, 2017) establishes that in the event that an entity does not have a permanent establishment or undertake any activity in Spain, **it does not need to apply withholdings on payments to employees.**
- **The company does have a permanent establishment:** this would be the situation in which a foreign company owns another entity on Spanish soil (for example, a limited liability company). In general, the Tax Agency may come to consider that this second entity is a permanent establishment of the company located abroad depending on the activities carried out by the worker on Spanish soil. In this case, it would be highly **recommended to apply withholdings on the payments to the employee.** Although the employee's salary does not constitute a deductible expense for the Spanish subsidiary because the work carried out in Spanish territory is not related to the economic activity of the Spanish company, if an inspection were carried out it could be quite difficult to demonstrate that the employee does not carry out any activity directly or indirectly for the Spanish subsidiary, and it could be understood that the employee works for a permanent establishment in Spain.

Withholdings are applied to the workers' payroll on a monthly basis and the company is **obliged to withhold them and pay them on behalf of the employee** through Form 111 and on a quarterly basis. As for the percentages applicable to withholdings, they will depend on the employee's salary, as well as their family and personal situation. Likewise, the company is obliged to declare **Form 190** annually: that is, the summary of the payments made to the employee, as well as the withholdings applied throughout the year.

INTERNATIONAL TELEWORKING: THE NEED TO REGISTER IN SPAIN

As we have commented at the beginning of this post, to this day international teleworking does not have a specific normative regulation. A similar concept would be **the visas for digital nomads**, but they only operate in certain countries (Estonia, Croatia, Germany, Antigua and Barbuda, and Barbados among others). For example, Croatia gives you permission to reside and work for one year.

It is very important to bear in mind that these practices are neither posting nor multi-state working, so that they **generate a new employment relationship in the country from which the person in question teleworks** (in application of the *lex loci laboris* principle: the person who pursues a professional activity in the territory of a Member State is subject to the legislation of that State).

This situation implies that the obligations of the employer are carried over and need to be fulfilled in the destination country, such as **the obligation to contribute to Social Security, prevention of occupational risks, or the obligation to comply with the specific legislation of the country on teleworking**. In order to comply with the obligation to contribute (and in many cases with the obligation to withhold), the **employer must have a presence in the country from which the person in question teleworks**. How can we link to this contribution?

1. Hiring an **Employer of Record**: in general, in Spain this legal figure constitutes a crime since it is considered an illegal transfer of workers. It is only legal in certain situations.
2. Allowing the worker to make their **own contributions**: this does not occur in almost any country in the European Union because it distorts the conceptual nature of an employed person. In most countries, the Social Security contribution is the sole responsibility of the employer and not of the worker.
3. Establishing a **non-resident entity (representative office) in the country where the teleworker is located**: this operation results in management expenses for the company and may even involve a potential permanent establishment.

As employers, special attention must be paid to international teleworking. GD Global Mobility can help and advise you in case **you need to register a non-resident entity in Spain**.

REPRESENTATION IN SPAIN: PROCEDURES AND DOCUMENTATION

For a company to be represented in Spain, certain procedures must be carried out and the corresponding documentation must be provided.

1. In the first place, the director or representative company must grant powers of attorney to a person residing in Spain, who **may sign all the procedures.**
2. The corresponding **Mercantile Registry certificate**, apostilled and translated into Spanish, must be obtained.
3. A **copy of the DNI of the company representative** in Spain must be provided.
4. The **company must be registered** with the Spanish Tax Agency and obtain a **NIF** through Form 036.
5. The representative of the company, once they have the NIF, must **request a Digital Certificate** in order to allow them to use a digital signature on behalf of the company when dealing with the Tax Agency.
6. The company must **notify the Tax Agency** of the official start of its activities.
7. **A Social Security number/code** must be obtained from the company's employer. This will allow the processing of the contributions on behalf of the employee through a Spanish payroll. The company will need to register with Spanish Social Security and obtain a Spanish Social Security contribution code given that it is the subject obliged to pay Social Security contributions.
8. With the employer's Social Security code, the company **can officially hire the worker.**

In conclusion: international teleworking involves studying and analyzing the migration, employment, tax, and social security aspects of the international mobility of workers.

Taking each scenario into account is crucial so that both the teleworker and the employer are aware of the obligations that arise from this situation.



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