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2023 AILA/GMS ANNUAL GLOBAL MIGRATION FORUM: CONFERENCE HANDBOOK



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PREFACE

Welcome to the *2023–24 AILA GMS Annual Global Migration Forum: Conference Handbook*, prepared as a supplement to this year’s Forum in Orlando, FL. We thank the Forum Subcommittee for all their hard work planning for this event. In light of a significant paradigm shift in global migration and employment practices, spurred on by the pandemic and impacted by continuing geopolitical crisis, the panels for this Forum seek to consider current regional migration trends and developments, the rise in remote work opportunities and benefits, digital nomad visas, increased support of nontraditional family units, relocation of employees from war zones, increased government compliance and enforcement in global migration, enhanced use of technology in practice, and more. We hope the articles will be an excellent resource for practitioners to deal with this new evolving landscape of global migration law and practice.

The AILA Global Migration Section (GMS) would like to thank: the 2023 GMS Forum Subcommittee (in particular Gabriela Lessa and Shannon Donnelly); the Forum support staff at AILA National (in particular JJ Area and Alexis Kreun); all the contributing authors; and the book editors for finding time within their busy work schedules. Thanks to all who contributed to make this *Handbook* not just a resource for the Forum, but a useful reference guide for the future practice of global immigration law.

ABOUT THE EDITORS

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Maria Lianides Celebi is Senior Partner and head of the Immigration Department at Bener Law Office in Istanbul, Turkey. Ms. Celebi has been listed in *Who's Who Legal* for Corporate Immigration & Employment Lawyers from 2010–2022 (2021–22 as *Thought Leaders Global Elite*, 2015 & 2016 as *Most Highly Regarded*). Within AILA, she is Immediate Past Chair of the Global Migration Section, and previously Chair (2011–2014), Chair of the Rome District Chapter (2008), and a member of the International Ops and Ethics Committees. She is the Turkey member for the Alliance of Business Immigration Lawyers and Past Chair of Ius Laboris Immigration International Practice Group. She has authored a white paper and articles on U.S. and Turkish immigration law and has spoken at numerous international conferences. She is the recipient of the Rome District Chapter Ed Gudeon Memorial Service Award. She has been a California Bar member since 1993.

Vishal Chander is Managing Attorney of The Chander Law Firm, where he focuses on the United States immigration needs of multinational companies, foreign investors, persons of extraordinary ability, and other priority workers. Vishal advises companies and individuals on immigration issues related to key employees, foreign investment, and expansion of U.S. operations. Vishal is a graduate of Southern Methodist University School of Law in Dallas, Texas. He is admitted to practice law in the states of Texas and New York. He is admitted before the U.S. District Court for the Northern District of Texas, the Fifth Circuit Court of Appeals, and the U.S. Supreme Court.

Pavan Dhillon is an experienced Canadian immigration attorney licensed in British Columbia and New York. Dedicated to exceptional client service, she specializes in strategic yet practical advice in all areas of Canadian immigration, including temporary and permanent residence applications. For over 15 years, Pavan has excelled at providing customized Canadian immigration solutions to companies and individuals in her specialized cross-border immigration practice.

Shannon Donnelly is a partner in Morgan Lewis' Washington D.C. office. She is co-head of Morgan Lewis' immigration practice, the lead partner for the Global Immigration Practice, and a member of the Labor and Employment group focusing on global mobility and immigration. Shannon counsels on the immigration implications of corporate restructurings and change management, as well as reductions in force. She also provides integrated cross-border advice, counseling, and strategic planning on immigration issues. Shannon's clients come from a variety of industries, with a focus on the financial industry technology, economic consulting, manufacturing, healthcare, and media sectors. Shannon has over 20 years of U.S. business immigration law experience, and approximately 10 years of global business immigration experience. She serves as a relationship partner and service manager for a variety of organizations with U.S. and global business needs.

David Garson has been practicing immigration law for 32 years and is certified by the Law Society of Ontario as a Specialist in Immigration Law. He is a past chair of the Canadian Bar Association – Ontario, Immigration and Citizenship Section. He is currently a member of the American Immigration Lawyers Association (AILA), a past chair of the AILA Canada Chapter, and a past chair of the Continuing Legal Education Committee of the Young Lawyers Division – Canadian Bar Association. He is a past co-programme coordinator for the immigration section of the Canadian Bar Association – Ontario.

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Jessica Jensen practices immigration law (U.S. and Canadian) and corporate Canadian law. She maintains a Foreign Legal Consultant permit from the Law Society of Manitoba, allowing her to practice U.S. law in Manitoba. She is licensed in the States of Minnesota and North Dakota as well as the Province of Manitoba in Canada. Jessica is the immediate past chair of the AILA Canada Chapter and currently serves as a CBP Liaison, Prairie Region as well as the AILA Minnesota/Dakotas Chapter. She has served on the AILA Investment and Finance committees as well as the AILA Global Migration Section Audiovisual and Membership subcommittees. She speaks regularly at AILA chapter and National events on immigration for Canadians, U.S. Department of State and consular processing, and cross-border application issues.

Elizabeth Long is a partner with Long Mangalji LLP, and specializes in the area of Canadian immigration law for companies, entrepreneurs, and skilled workers. She is a Certified Specialist in Citizenship and Immigration Law and frequently presents and advises on immigration issues to organizations, universities, Members of Parliament, and the media. Elizabeth holds a JD from the University of Toronto and a LLM from Osgoode Hall, York University.

Ericka McFee is a solo practitioner and owner of McFee Law Offices, P.C. Prior to launching her own practice in 2016, she worked for a firm handling business immigration matters for multinational corporations. She currently handles nearly all aspects of immigration law and has been gradually expanding into family law with divorce and Special Immigrant Juvenile Status (SIJS) predicate orders. Ericka is an active member of the AILA Chicago Chapter, currently co-chairing the Chicago Volunteer Legal Services *pro bono* immigration clinic. She also serves on the Board of Directors for Justice Entrepreneurs Project and Inner-City Education. Outside of her professional pursuits, she is an amateur hockey player and bassist.

Gary McIndoe has practised UK-inbound immigration, nationality and refugee law for more than 25 years. His first taste of work in his field was at the Home Office, where his role included policy work on the return of Hong Kong to Chinese control in 1997. He founded Latitude Law in 2007; the firm has grown steadily since then and currently has a 15-strong legal team undertaking a full range of immigration work. Gary is registered as a foreign lawyer with the Brussels Bar. He is an AILA International Associate and has contributed to panels at the organisation's global and European conferences in recent years. He is chair of trustees of Electronic Immigration Network, a charity providing information services in the sector, and a patron of Middle Eastern human rights charity Salam DHR.

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Anita Ninan is a dual-licensed attorney admitted to practice in Georgia (USA) and India. She is founder and principal attorney of Ninan Legal LLC, a boutique U.S. immigration practice law firm. She focuses her practice on U.S. business immigration and nationality law as well as global mobility, with previous international work experience in a British multinational bank and national U.S. law firms. Anita currently serves as AILA GMS Steering Committee Chair, having served previously as vice chair, chair of the Consular Liaison Subcommittee, and on the GMS Publications and Conference subcommittees. She is a Board Member of the Georgia Indo-American Chamber of Commerce (GIACC), having served as its immediate prior chair and president for four

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Chetal Patel is head of immigration at Bates Wells in London, UK. She specializes in business immigration with a particular focus on employment-related matters, work visas, visits to the UK, and options for HNWs and those of extraordinary talent. Chetal also provides strategic post-Brexit-related advice to businesses and individuals. She has an interest in immigration compliance and the impacts of the UK's hostile immigration environment. She is a frequent lecturer and writer in these subject areas both nationally and internationally. She also provides commentary to journalists on business immigration-related matters. Her clients operate in a variety of sectors and she has experience in acting for well-known media figures, high-net-worth individuals, start-ups, charities, and multinational companies. Chetal is an active member of AILA GMS and has held various positions over recent years. She currently serves on the AILA GMS Steering Committee and is the Membership Subcommittee Chair. She is also a member of the IBA. She is recognized in legal directories for her work, including *Best Lawyers*, *Who's Who Legal*, *Chambers High Net Worth*, *Chambers and Partners*, *Legal 500*, and *Spears 500*.

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Nicola Tiffen is a partner at Duncan Cotterill, one of New Zealand's largest law firms. She leads Duncan Cotterill's national immigration practice, which has lawyers in all three of New Zealand's main cities. Nicola has over 20 years of experience in the field of immigration law. She advises on all aspects of New Zealand immigration law, assisting both individuals and corporate entities. Nicola is the chair of the New Zealand Association of Migration and Investment, which is New Zealand's largest body representing the country's immigration lawyers and licensed advisers. As such, she regularly meets with senior immigration officials and the Minister to provide feedback on policy and operational matters. Nicola is also on the Board of the British New Zealand Business Association and the convenor of the Canterbury Women's Legal Association.

Digital Nomad Visas and Remote Work Permits: The Nomad's Perspective

by Anita Ninan, Haider Hussain, Ingrid Baracchini, Rodrigo Tannus Serrano, and Lise Gran

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Haider Hussain is a Partner at Fragomen overseeing the Middle East and North Africa region. Haider has an extensive array of experience within the Middle East with a primary focus on the immigration regulations and procedures in the UAE, Saudi Arabia, Bahrain, Egypt, and Morocco. Over the years, Haider has partnered with corporate entities across multiple freezones in the United Arab Emirates; namely, Dubai International Financial Centre (DIFC), Dubai Development authorities, Dubai Multi Commodities Authority, Jebel Ali Freezone etc, and Abu Dhabi on various merger and acquisition projects. He has assisted in testing and providing feedback to DIFC on the roll out of their immigration portal. In addition to the UAE, Haider also works with semi-government organizations in Saudi Arabia. Haider is responsible for developing and implementing sustainable immigration programs in coordination with the HR and mobility departments for start-ups, small and medium enterprises, and large multinational corporations across various industries, including information technology, hospitality, education, power generation, engineering, and manufacturing within the ever-changing immigration landscape in the Middle East and North Africa region.

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INTRODUCTION

Who is a digital nomad? The *Oxford English Dictionary* defines a digital nomad as "a person who earns a living working online in different locations that they choose for themselves." Similarly, the *Merriam Webster Dictionary* defines such a person as "someone who performs their occupation entirely over the Internet while traveling." At the time of writing this article, about 54 countries globally offer some kind of digital nomad visa or remote work permit. This article will discuss the evolution of digital nomad visas and remote work permits and the acceleration of these visa streams, particularly after the COVID-19 pandemic. As global migration practitioners, it is important for us to be aware of differences across these various visa

streams, including processing requirements and tax, employment, and immigration compliance issues for companies, employees, independent contractors, and freelancers, as well as implications of corporate presence and overlapping social security systems, if any.

DIGITAL NOMAD VISAS OR REMOTE WORK PERMITS: EVOLUTION

As we know, the COVID-19 pandemic has caused extreme turbulence in labor markets worldwide. In the United States, for instance, as per the U.S. Bureau of Labor Statistics, the unemployment rate more than quadrupled, reaching 14.7 percent in April 2020. In 2021, 47 million Americans voluntarily quit their jobs. This phenomenon of mass job quitting has been called the “Great Resignation.” Several factors, such as increased government stimulus payments, health concerns, and childcare issues, are thought to have spawned changing attitudes toward work, both in the United States and globally. Additionally, travel lockdowns worldwide due to the pandemic necessitated companies and businesses to embrace flexible work arrangements and new organizational models, including remote work. Furthermore, technology innovations over the years have steadily enabled companies to access global talent unlimited by geography. On the other hand, the near-complete shutdown of tourism and business travel during the pandemic caused a severe shortfall in government revenues, accelerating the development of new visa streams for digital nomads and remote workers who are not entering the local workforce of countries.

However, as countries promote their digital nomad visas, tax rules have not always caught up, which leaves employers, employees, independent contractors, and freelancers to determine their tax liability within these new immigration frameworks. Immigration issues, while at the forefront of the immigration lawyer’s concerns with outbound assignments, are not the only critical factors for employers and employees with such positions. This article examines and provides a foundation of core employment and tax issues that immigration lawyers need to identify for an outbound assignment involving these new visa schemes, focusing on employment agreements, payroll systems, and income tax and social security tax compliance in the United Arab Emirates (UAE), Brazil, Columbia, and Sweden.

UNITED ARAB EMIRATES (UAE) PERSPECTIVE

Background

The Remote Working Visa scheme, first announced in March 2021,¹ opened to applicants later in the same year. The scheme allows foreign nationals to work remotely for their overseas employer while living in the United Arab Emirates (UAE) for up to one year, with the possibility of an unlimited number of renewals if the applicant continues to meet the criteria at the time of renewal. The government has seen the remote work program as a way to support UAE’s economy when many industries were in a recession due to the COVID-19 pandemic. Employers have utilized the Remote Working Visa to support their employees who may be subject to a conflict in their country or parking location due to unsuccessful applications in the receiving country.

Digital Nomad Visas: Requirements, Processing, and Benefits

Details of the program include:

- **No sponsorship requirement:** Remote Working Visa applicants are not subject to a sponsorship requirement in the UAE (or a local employment contract). Instead, they must have worked for their current home country employer for at least three months prior to the submission date of the visa application.
- **Minimum salary:** The applicant must earn a minimum salary of USD 3,500 per month (or equivalent in a foreign currency).
- **Other requirements:** The applicant must have health insurance valid in the United Arab Emirates and must provide a confirmation letter from the employer that they have no

¹ <https://www.fragomen.com/insights/remote-working-visa-to-be-introduced.html>.

objections to the applicant working remotely from the United Arab Emirates, among other conditions.

- **Application process:** Foreign nationals can apply for the Remote Working Visa in-country or from outside the United Arab Emirates online or through accredited typing centers (for those in Abu Dhabi).
- **Application fee:** The government fee is approximately USD 81 (excluding the medical examination and Emirates ID card (National ID fees).
- **Processing times:** The expected processing time is five to seven days.
- **Dependents:** Remote Working Visa holders may sponsor residence permits for their dependent spouse, children, and parents.

Corporate Presence and Permanent Establishment Issues

In a situation where an individual is performing work in the UAE on a Remote Working Visa and the employer has no existing operations, the employer can be exposed to a risk of permanent establishment, perhaps not for standard income tax, as this does not exist in the UAE; however, there could be a possible trigger for fixed establishment for value-added tax (VAT) purposes.

Managing the Premature Conclusion of the Assignment

Premature conclusion of an assignment will trigger the individual to notify the immigration authority by way of an official submission of a visa cancellation application. Once the visa is cancelled, the individual will be free to leave the UAE. It is important that the individual ensures that they clear all their outstanding dues, conclude any contractual agreement, and notify their bank before leaving the country to ensure they do not face any unforeseen issues upon their return to the UAE in the future.

Surviving Overlapping Home and Foreign Country Social Security Systems

To maintain payroll compliances, the employer in the home country would possibly need to inform the social security authority about the employee's change of location. This may result in additional filings for the employer in the home country. From a UAE standpoint, the individual will not be getting any social security benefits; as a result, the individual should be mindful of continuing their social security benefit in the home country, where applicable.

Immigration Compliance Landscape for Independent Contractors and Freelancers

Freelancers and independent contractors will be able to work from the UAE without a local employment contract and benefit from the UAE's digital infrastructure and location as a travel hub in the Middle East, as long as they are not working for the benefit of a local entity establishment in the UAE. In countries where remote work is unregulated, workers and employers may unknowingly put themselves at risk of noncompliance with many aspects of the law, exposing them to possible fines or other penalties, depending on the country. Importantly, repeated noncompliance with regulations may result in employers losing their rights to hire foreign labour, including in the UAE.

BRAZIL PERSPECTIVE

Digital Nomad Visa—Processing Requirements

The Digital Nomad Visa was created in Brazil by Resolution 45/2021,² which was issued by the National Immigration Board with the goal of granting permanent residency to foreigners who can work online from abroad for foreign employers and who wish to reside in Brazil for a period of two years.

² <https://www.in.gov.br/en/web/dou/-/resolucao-cnig-mj-sp-n-45-de-9-de-setembro-de-2021-375554693>.

Article One of Resolution 45/2021 states the definition of a digital nomad as “an immigrant who, remotely and with the use of information and communication technologies, is able to carry out his work activities in Brazil for a foreign employer.”

The first step in obtaining a Digital Nomad Visa is to apply for a visa at the Brazilian Consulate, or if the individual is already inside Brazil as a tourist, to apply via the MIGRANTEWEB digital platform.

The individual will need to submit the following documents³ to the consular authority or upload them to the MIGRANTEWEB platform:

- 1) Online form;
- 2) Valid passport for six months or more and a copy of the identification page;
- 3) Passport-style photograph;
- 4) Birth certificate or marriage certificate;⁴
- 5) Criminal police clearance issued by the country of origin;⁵
- 6) Proof of residence dated from the last 12 months, such as a certificate of residence, or invoices, bills, or other documents in the name of the interested party showing the applicant’s address;
- 7) Travel insurance/health insurance valid in Brazil, or a Medical Assistance Certificate in Brazil (for Portugal citizens);
- 8) Proof of being a digital nomad (must present all three documents):
 - a. Statement by the applicant attesting to the ability to carry out their professional activities remotely, through information and communication technologies;
 - b. Employment contract that proves a relationship with a foreign employer; and
 - c. Proof of means of subsistence, from a foreign paying source, in a monthly amount equal to or greater than \$1,500 USD or availability of bank funds in the minimum amount of \$18,000 USD.

After the visa is issued by the Consulate, or approved by MIGRANTEWEB, the individual will need to register in person with the Federal Police by providing the same list of documents so that they can receive a permanent residency card valid for one year that can be extended for one more year.

Benefits

The benefits of obtaining a Digital Nomad Visa is that the applicant obtains a temporary permanent residency that allows them to enroll in schools and/or universities, be a tenant, buy and sell city properties in Brazil, start a company or become associated with Brazilian companies, make investments, and open a bank account.

Brazil is a beautiful country with 4,600 km of coastline. It is also a developing country, and the cost of living for a foreign national from a developed country is very affordable. If you can work from a computer from anywhere in the world, in Brazil you will definitely be richer and live much better with your paycheck. You will be able to lease or purchase beautiful homes by the beach. It is also a great place to invest your money. Since interest rates are high, your money provides a greater return than it does in stable or developed countries.

³ <https://www.gov.br/mre/pt-br/consulado-porto/vistos/visto-temporario-xiv-nomade-digital>.

⁴ The birth certificate must have the international model, with Apostille for countries that are signatory to the Hague Convention, or legalized at the Brazilian Consulate if not a signatory to the Convention with a Portuguese translation by a Public Translator.

⁵ The police certificate must be issued by a competent authority, with Apostille for countries that are signatory to the Hague Convention, or legalized at the Brazilian Consulate if not a signatory to the Convention with a Portuguese translation by a Public Translator.

Taxes

Temporary residents, permanent residents, or visa holders with physical presence of more than 184 days must declare taxes in Brazil using the Annual Adjustment Statement, regardless of having assets or income in Brazil.

According to Article 2 of current legislation, the following individuals qualify as residents:⁶

- 1) Individuals residing in Brazil on a permanent basis;
- 2) Individuals who are absent to provide services as an employee to autarchies or departments of the Brazilian Government located abroad;
- 3) Individuals who enter Brazil:
 - a. With a permanent visa, on the date of arrival; or
 - b. With a temporary visa:
 - i. To work under an employment relationship or act as a doctor on a scholarship under the Mais Médicos Program referred to in Provisional Measure No. 621, of July 8, 2013, on the date of arrival; or
 - ii. On the date they complete 184 days, consecutive or not, of stay in Brazil, within a period of up to 12 months; or
 - c. On the date of obtaining a permanent visa or employment relationship, if it occurs before completing 184 days, consecutive or not, of stay in Brazil, within a period of up to 12 months; and
- 4) A Brazilian who acquired the status of nonresident in Brazil and returns to the country with a definite intention, on the date of arrival.

According to Instrução Normativa RFB 2134/2023, Art. 2, an individual residing in Brazil is obliged to submit the Annual Adjustment Statement for the year 2023 if, in the calendar year 2022, they:⁷

- 1) Received taxable income, subject to adjustment in the declaration, the sum of which was greater than R\$ 28,559.70;
- 2) Received income that is exempt, nontaxable, or taxed exclusively at the source, the sum of which exceeds R\$ 40,000.00;
- 3) Obtained, in any month, a capital gain on the sale of assets or rights subject to the incidence of the tax;
- 4) Carried out disposal operations on stock, commodity, futures, or similar exchanges:
 - a. Whose sum was greater than BRL 40,000.00; or
 - b. With calculation of net gains subject to the levy of tax;
- 5) Regarding rural activity:
 - a. Obtained gross revenue in an amount greater than BRL 142,798.50; or
 - b. Intends to compensate, in calendar year 2022 or later, losses from the previous calendar years or from calendar year 2022;
- 6) Had, on December 31, possession or ownership of assets or rights, including bare land, with a total value greater than R\$ 300,000.00;
- 7) Became a resident in Brazil in any month and was in that condition on December 31; or

⁶ <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=15079>.

⁷ <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=129195>.

- 8) Opted for exemption from Income Tax levied on the capital gain earned on the sale of residential properties, if the proceeds from the sale are applied to the acquisition of residential properties located in the Country, within a period of 180 days, counted from the conclusion of the contract of sale, pursuant to Art. 39 of Law No. 11,196, of November 21, 2005.

Every year, the Federal Revenue of Brazil (RFB) publishes a new Normative Instruction with the list of taxpayers obliged to deliver the Annual Adjustment Declaration with slight changes. If the resident in Brazil fits into any of the above options during the calendar year, they are obliged to deliver the Annual Adjustment Declaration in the following year. This means that they may be required to deliver in a given year and not in another, depending on their financial situation and income during the year.

The calculation of taxes relating to income depends also on subjective factors that determine the relationship of the digital nomad between their country of origin and Brazil, and treaties between these countries, especially if they have a non-double taxation agreement between them. Brazil currently has a non-double taxation agreement with 37 countries,⁸ such as Germany,⁹ Canada,¹⁰ Mexico,¹¹ the United Arab Emirates,¹² and Norway,¹³ which deals with issues related to the status of citizens in each country and, mainly, deals with the rules that will rule out the taxation of income by the two nations involved on the same income.

Effective October 1, 2018, an agreement between the United States and Brazil on taxes and coverage was published providing guidelines on the subject.¹⁴ Applying this to the digital nomad visa situation, we can understand that: 1) if you are self-employed and you reside in Brazil, you should pay taxes in Brazil; and 2) if you are employed by a U.S. company, you should continue to pay taxes in the United States, if you are remaining for five years or less.

Corporate Presence and Permanent Establishment Issues

A foreign employer who sends an employee to physically work in a local affiliate or branch in Brazil cannot use the nomad visa for this purpose. The Brazilian branch or an Employment of Record (EOR) or a Local Legal Employer hired for that matter should apply for an employment visa. Brazil uses the criterion of the most favorable law to the employee to govern which rule will govern the contract (Law No. 7,064/82).¹⁵ In this scenario, considering the uncertainties that such rules can generate, depending on the specific case, it is recommended to draw up an employment contract covering all the conditions and particularities that must be observed by the parties.

Given its very nature, the digital nomad visa does not grant any labor rights to a nomad visa holder in Brazil. Since the digital nomad visa stream is a recent introduction, and little explored by doctrine and jurisprudence, several issues involving the provision of services by digital nomads will be debated in Brazilian courts. Accordingly, foreign companies and professionals seeking to use this visa stream must be aware of the potential uncertainties resulting from the legislative gap relating to the digital nomad visa.

⁸ <https://www.gov.br/receitafederal/pt-br/aceso-a-informacao/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao>.

⁹ <https://legis.senado.leg.br/norma/499628/publicacao/15643427>.

¹⁰ http://www.planalto.gov.br/ccivil_03/decreto/1980-1989/1985-1987/D92318.htm.

¹¹ http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/decreto/D6000.htm.

¹² http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2021/Decreto/D10705.htm.

¹³ http://www.planalto.gov.br/ccivil_03/atos/decretos/1981/d86710.html.

¹⁴ <https://www.ssa.gov/pubs/EN-05-10167.pdf>.

¹⁵ https://www.planalto.gov.br/ccivil_03/LEIS/L7064.htm.

COLUMBIA PERSPECTIVE

Digital Nomads vs. Immigration

In recent years, technology has revolutionized the lifestyle of many people. The labor field has not been immune to those changes, and every day it is more common to see how workers and employers join forces to find the desired balance between personal and work life. Currently, thanks to digital tools such as cloud applications, laptops, smartphones, and the internet, among others, it is possible to carry out different tasks remotely, without having to physically stay in the workplace.

As a consequence of the above, the world is experiencing a growth of digital nomads, which can be described as those professionals who bring their “workplace” with them as they work remotely through new technologies maintaining a nomadic lifestyle (“digital nomads”). Digital nomads will be in one place for a short time, and after a cycle, they will move to a city or country where they will continue to carry out their work.

In the Colombian case, Medellín and Bogotá have been the cities that have stood out as preferred destinations for digital nomads due to biodiversity, culture, gastronomy, the comparative low cost of living, multiple coworking spaces, and the possibility of having stable and even free internet in some areas. The increasingly growing number of digital nomads in Colombia forced Colombian authorities to amend the immigration regime to incorporate the rules applicable to them.

Alternatives to Work in Colombia

From the migratory point of view, the immigration regime provides several visas that give authorization to work in Colombia, such as: migrant or visitor visas for having permanent or long-term employment in Colombia, by virtue of a labor relationship or contracting the provision of services with a natural person or legal entity domiciled in the country; migrant visas for being the spouse or permanent partner of a Colombian national; migrant visas for being a national of one of the states parties to the Agreement on Residence for nationals of the states parties to Mercosur or the Andean Community of Nations (CAN); visitor visas to provide temporary services to a natural or legal person in Colombia; and the Resident Visa.

However, those alternatives for foreign workers to provide services in the country, in principle, would not be applicable to most digital nomads, considering they would come to Colombia to enjoy the benefits and diversity, maintaining their contracts abroad, but providing services remotely from Colombia. These are very particular conditions that would make most types of visas not applicable.

Special Regime Applicable to Digital Nomads

Considering the lack of regulation applicable to digital nomads, the Ministry of Foreign Affairs issued Resolution 5477 on July 22, 2022 (“Resolution 5477”), which established new provisions on types of visas, application processes, and issuance, among others. One of the main changes to the Colombian immigration regime introduced by Resolution 5477 is the inclusion of the Visitor Visa for Digital Nomads. Therefore, since October 21, 2022, the date on which the new immigration regime entered into force, those foreigners, who as independent or labor-related, wish to enter to provide remote work or teleworking services from Colombia, through digital media and the internet, exclusively for foreign companies, or to start a digital content or information technology venture of interest to the country, may request and obtain a Visitor Digital Nomad Visa before a Colombian consulate abroad or directly before the Ministry of Foreign Affairs. Among others, the applicant must meet the following requirements: demonstrate through bank statements that they have a minimum income equivalent to 3 SMLMV (approx. USD 770) during the last three months, and a health certificate insurance with coverage in Colombia against all risks in case of accident, illness, maternity, disability, hospitalization, death, or repatriation, for the time planned to stay in Colombia.

The validity of this multiple entry visa is for up to two years; the authorized stay is the same time for which it is granted, and allows beneficiary visas for the spouse, permanent partner, and children of the holder. Likewise, it is established that the holder of this visa may not work or carry out any paid activity with a natural or legal person in Colombia. Furthermore, it should be noted that according to Resolution

5477, this visa will apparently only be applicable to those foreigners who are exempt from short-stay visas to enter Colombia, such as those listed in Resolution 5488 of 2022.

Similarly, nationalities that do not require a short-stay visa may enter without a visa and remain in Colombia with an entry and stay permit granted by Migración Colombia. With this permit, digital nomads will be able to stay in the territory for up to 90 days (continuous or discontinuous), extendable for another 90 days, as long as the activities they carry out do not generate payments from Colombian companies. Despite the foregoing, to date, it is not certain whether this type of activity can be carried out through a tourist permit (PT), integration and development permit (PID), or permit for other activities (POA), since these permits currently do not specifically allow these types of activities.

Thus, the pronouncement of the competent authorities must be awaited to define if individuals with these permits will be authorized to carry out digital nomad activities with the aforementioned permits or if, on the contrary, a permit will be created soon that explicitly authorizes the execution of these activities.

Other Considerations

Another aspect to highlight is the possibility of obtaining a foreigner's identity card, an identification document for foreigners in Colombia, which can only be obtained after the issuance of a visa. This identification document is of great importance, since it allows the opening of bank accounts, affiliations with the social security system, and the contracting of mobile telephone and internet services, among others.

This new visa regime does not contain any specific tax regulation applicable for digital nomads. That said, a person is considered fiscally a resident in Colombia if they remain in the country (continuously or not) for an aggregate period of time of 183 days within a period of 365 consecutive days, which could result in tax obligations of payment of income tax or simply an income tax declaration. Additionally, the Visitor Visa for Digital Nomads is a good option, considering that Colombia is an attractive destination, and it is a visa for which requirements are easy to meet and processing times are short as compared to other jurisdictions. Accordingly, Colombia and this visa option would qualify for consideration as a suitable “parking jurisdiction” for foreign nationals who are applying for visas in other jurisdictions, like the United States, where processing times are long and approvals are not easily guaranteed.

NORWAY PERSPECTIVE

Introduction

The Norwegian authorities are paying attention to the development of digital nomad visas in other countries, especially in the region. However, at the time of this article, Norway has not yet launched or started working on a specific digital nomad visa. Therefore, those who desire to work remotely from Norway must find a way to do so within the framework of the ordinary visas and/or residence permits. The requirements are normally divided into three different groups based on citizenship—citizens of the Nordic countries; citizens of the EU/EEA countries; and citizens of other countries (third-country citizens).

Immigration

Citizens of the other *Nordic countries* can work remotely in Norway without entering the local workforce. Apart from an obligation to report their address in Norway to the Norwegian authorities, there are no visa and/or residence permit requirements for these individuals.

While Norway is not part of the European Union (EU), it is part of the EU's internal market through the European Economic Area agreement (EEA) between the EU countries on one side and Norway, Iceland, and Lichtenstein on the other. The internal market concerns “the four freedoms”—free movement of goods, services, capital, and people—and sets out obligations for Norway in this regard when it comes to immigration.

Citizens of an *EU/EEA country* are allowed to work remotely from Norway without entering the workforce for three months. They may work in Norway for more than three months if they do not constitute an unreasonable burden and can register under one of the following six categories: (1) employee of a

company with operations in Norway; (2) self-employed with operations in Norway; (3) family member of an EU/EEA citizen; (4) student; (5) have their own sufficient funds; or (6) be an employee of a foreign company that has an assignment in Norway (posted worker). This is called the EU/EEA registration scheme. The documentation requirement varies with each of the six categories. All categories must submit the documentation to register with the Norwegian authorities within three months of arrival if their stay is for more than three months. Unless the category that the person registered for later changes (e.g., from family member to employee), registration is required only once. An EU/EEA citizen who has stayed and been registered in one or more of the six categories for five consecutive years will normally be entitled to permanent residency.

The categories to register in for an EU/EEA citizen who wants to work remotely in Norway without entering the local workforce will normally be as a family member of an EU/EEA citizen or as a person with sufficient funds. The latter requires documentation of sufficient funds and private health insurance. At the time of submitting this article, sufficient funds is the equivalent of NOK 158,621, or approximately USD 15,060.

All *other citizens* (so-called third-country citizens) must obtain a residence permit that allows them to work remotely from Norway before they can do so, regardless of whether they are entering the local workforce. The two most common types of residence permits in this regard are residence permits for work or for family immigration.

Most of the residence permits in the first category—namely, residence permit for work—require the applicant's work to be (at least partially) in/towards the Norwegian market. Therefore, the employer or the applicant's sole proprietorship (as an independent contractor or freelancer) must either be Norwegian or have an assignment or operations in Norway, for a Norwegian customer or for the company's Norwegian branch. In other words, this type of residence permit requires some activity in/towards the Norwegian market for the applicant to be eligible.

For the second category—family immigration—the application process and requirements depend on whether the family member they are immigrating to Norway with is an EU/EEA citizen or a third-country citizen. In both cases, the applicant will normally be allowed to work in Norway, including remotely, but not enter the local workforce. This means, for example, that a third-country citizen can obtain a residence permit in Norway as the spouse of a third-country citizen and continue working remotely for their employer abroad if they are accompanying their spouse for a posting in Norway.

All persons leaving Norway are obliged to report their move abroad to the Norwegian authorities. This applies regardless of whether they leave before or on the stated end date of their assignment, contract, or expiry of the residence permit.

Labor Law, Permanent Establishment, Tax, and Social Security

Choice of law and jurisdiction are issues that should be addressed in the assessment of whether to send an employee to work remotely in Norway and in the drafting of the contract or assignment letter. Norwegian employment legislation also sets out certain minimum requirements for work and pay conditions for certain types of foreign workers who come to work in Norway—for example, for posted (intra-company transferee) workers.

Another common issue under Norwegian employment and tax legislation is the classification of the worker as an employee or as an independent contractor or freelancer. Contracts should be drafted to reflect the relevant type. If put to the test, the reality of the employer-employee relationship, including how it is practiced, will be decisive for the classification.

The main rule under Norwegian tax legislation is that all income is taxable to Norway from Day One. However, the income may be exempt from tax in Norway according to (the large number of) tax treaties that Norway has with other countries, if the person's stay in Norway is less than 183 days in any 12-month period. Additional conditions normally also apply.

Having an employee working remotely from Norway may lead to a permanent establishment in Norway for the company, and as a result, possible company tax obligations towards the Norwegian authorities. Regardless of whether a company is deemed to have a permanent establishment in Norway, most foreign companies with employees working from Norway must register in certain Norwegian registers for reporting purposes. This applies regardless of whether the employee's work concerns or interacts with the Norwegian market.

A foreigner becomes a member in the Norwegian social security scheme if they have stayed or intend to stay in Norway for more than 12 months. Other thresholds or arrangements may apply under the different international social security agreements that Norway has entered. Membership in Norway's social security scheme entails costs for the employer (i.e., the employer's social security contributions), currently a minimum of 14.1 percent of the employee's salary and other benefits. The social security authority in both Norway and the worker's ordinary country of residence and/or work should be contacted in due time before the remote work in Norway commences to avoid dual membership, and consequently, overlapping payments.

CONCLUSION

This practice advisory has highlighted the nuances in digital visa streams offered in the UAE, Brazil, and Columbia. It draws a contrast with Norway, which does not offer a digital nomad visa stream, but offers certain remote work arrangements within the framework of its ordinary visas and residence permits. It is evident that the myriad new digital nomad regimes, while facilitating access to global talent for companies, have also triggered the need for risk mitigation related to regulatory compliance in various jurisdictions. Companies need to be aware of varying tax implications for such employees, determined by period of stay, as well as employer obligations to withhold wage tax, social security, or both. They also need to be aware of the differing digital nomad visa requirements for different jurisdictions as their employees choose different countries for remote work.