Working across borders: the meaning of ’fully remote’

Employment Tax | International Tax | Personal tax

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The *Malyk* case highlights the tax, social security and permanent establishment risks of overseas remote working, emphasising early specialist advice.

Key Points

What is the issue?

The *Malyk* case highlights the distinction between employment law and tax obligations when employees work overseas. Even where remote working arrangements are contractually sound, employers may face unexpected tax and social security liabilities.

What does it mean to me?

Tax advisers need to consider the potential PAYE, social security and permanent

establishment implications of overseas working arrangements, alongside employees' personal tax residence and obligations under relevant double tax treaties.

What can I take away?
Early specialist advice is essential when employers receive overseas working requests. Coordinating tax, social security, immigration and HR advice, alongside clear documentation and communication, can help identify risks before arrangements are approved.

In the case of *Malyk v Teleperformance Contact Ltd* (Case No. 6018900/2024), an employment tribunal recently upheld the dismissal of an employee who relocated to France despite her employer's concerns about the tax and legal implications of the move. The tribunal found that her 'fully remote' contract did not give her the right to choose which country she worked from.

The case of *Malyk*

Iryna Malyk had worked as a Regional Finance Business Partner for Tele-performance since May 2022. Her contract identified her home office as her principal workplace but did not explicitly prohibit working overseas. Following the closure of the company's Bristol office, she worked entirely from home.

In June 2024, Malyk requested permission to relocate to France, where her husband had secured employment. Her employer refused, citing legal, tax and financial concerns associated with employing someone in France under a UK contract. Malyk maintained that her remote working arrangements entitled her to work from any location.

Despite the refusal, she relocated to France in July 2024 and continued working. She did not conceal her move, believing that she was acting within her contractual rights.

Teleperformance instructed her to return to working in the UK. When she refused, disciplinary proceedings followed, culminating in her dismissal in August 2024 for 'some other substantial reason', rather than gross misconduct.

The tribunal upheld the dismissal. It found that Malyk's contract, considered as a whole, required her to work from her UK home. The tribunal accepted that the employer had legitimate concerns about the tax and legal implications of employing someone in France under a UK contract, as well as the potential additional costs of overseas employment.

The issues to consider

The case highlights the importance of both clear management and thorough contract drafting. However, for tax advisers, it is worth reviewing for a different reason. It is a reminder that employment law and tax considerations are not the same, and that an employer can get one completely right while still facing significant exposure on the other.

The tribunal's finding tells us nothing about what would have happened to the employer's tax and social security position if the contract had permitted overseas working, or if the employer had simply agreed to the move.

A business can have a properly drafted contract, management approval and an employee who has followed all the correct procedures, and still face payroll, social security and corporation tax exposure that it never saw coming. The contractual and tax questions must therefore be considered separately, something that employers may not appreciate when an overseas working request is first raised.

The employer's exposure

Three areas of potential exposure tend to arise together once an employee begins working from another country, and they are worth treating as distinct advice points rather than folding them into a single 'check with HR' conversation.

PAYE and payroll

HMRC's starting position is that an employer may need to continue calculating and deducting PAYE income tax on payments made to an employee working abroad, regardless of where they are based.

National Insurance works differently, with the rules depending on the destination country and the nature and duration of the move. For a posting to a country with no EU, EEA, Swiss or other reciprocal social security agreement with the UK, an employer generally continues to deduct UK Class 1 NICs for the first 52 weeks of a genuinely temporary posting, provided the usual conditions are met, including that the employee was ordinarily resident in the UK before leaving.

That 52-week rule does not generally apply to a move to the EU, the EEA or Switzerland, which are governed instead by separate social security coordination arrangements, discussed below.

Social security coordination

For employees working in an EU member state, the position is governed by the Protocol on Social Security Coordination in the UK-EU Trade and Cooperation Agreement. Where an employer sends an employee on a genuinely temporary posting, the Protocol allows the employee to remain subject to UK National Insurance for up to 24 months, as evidenced by an A1 certificate from HMRC. Separate arrangements, with their own time limits, apply to Switzerland and the EEA states.

These temporary provisions do not apply to a move that is permanent or open-ended from the outset, which is closer to what was happening in *Malyk*.

An employee working regularly across two countries is dealt with under separate multi-state worker rules. These rules are more complex than a single habitual-residence test, taking account of where a substantial proportion of the employee's activity is carried out, alongside other factors relating to the employer and the employee's residence. The position must be assessed against the particular circumstances rather than relying on a general rule of thumb.

Employers may need to seek specialist advice. Getting the certification wrong risks social security liabilities arising in both jurisdictions, which is precisely the situation the employer in *Malyk* was concerned to avoid when it referred to unofficial working.

Permanent establishment

This is the exposure employers are least likely to have considered, and the one with the largest potential downside. A home office used by a single remote employee

can, in certain circumstances, create a permanent establishment for the employer in that country, bringing the business within the scope of local corporation tax on profits attributable to that presence.

The OECD's commentary, updated in 2025 to address remote and hybrid working, now considers the extent to which the home is used for the business, generally finding that it does not constitute a fixed place of business where it is used less than half the time over a 12-month period.

Where use exceeds that threshold, the question becomes whether there is a genuine commercial reason for the employee to be working from that country, such as directly engaging with customers, suppliers or associated enterprises there, rather than for reasons of simple personal convenience. However, the assessment remains dependent on the particular circumstances, rather than the threshold operating as a definitive test.

There is also a separate route to permanent establishment exposure through the dependent agent test, which can catch an employee who habitually concludes contracts on the employer's behalf, or who habitually plays the principal role leading to contracts routinely concluded without material modification. This does not depend on a fixed place of business. Permanent establishment risk therefore requires specialist tax advice, rather than being left solely to an employment lawyer or HR team.

The employee's own position

The employee's personal tax position is a separate exposure again, and one that an employer may regard as 'the employee's problem', until it affects payroll, benefits or an indemnity clause. An employee who moves abroad can become tax resident in the new country under its own domestic rules, and may also need to be assessed against the UK's statutory residence test to establish whether UK tax residence has been retained for the relevant tax year.

Where there is a risk of dual residence, the relevant double tax treaty's residence tie-breaker provisions, rather than a simple day-count, will usually determine residence for treaty purposes.

The position depends on the treaty and the particular circumstances, and advisers should resist the temptation to reduce residence to a simple ‘183 day’ rule of thumb test. A separate 183-day test can also appear in the employment income article of some treaties, affecting the taxation of income from short-term overseas work, rather than residence itself. The two should not be conflated.

Where this leaves the advice conversation

The practical difficulty is often one of sequencing, rather than the complexity of any individual issue. An employee typically raises a relocation request with their manager or HR first, which means the conversation starts, and is sometimes concluded, on employment law terms, long before a tax adviser is involved.

Malyk is a useful illustration of this. The manager who initially tried to explain the position to Malyk referred only to vague ‘legal and tax issues’ without further detail, and the tribunal noted that providing more specific information earlier would have been helpful. This highlights the importance of involving specialist advisers before responding to a request, rather than after an arrangement has started or a dispute has arisen.

Advisers are well placed to encourage employers to adopt some practical safeguards before any request is agreed. Every request to work from another country should be considered by tax, social security, immigration and HR specialists. In some cases, data protection issues could arise. It is worth establishing early whether the proposed arrangement is genuinely temporary, with a fixed return date, or effectively open-ended, since the two are governed by different rules and carry very different risk profiles.

Local advice in the destination country matters just as much as UK advice, since payroll registration, social security contributions and any permanent establishment exposure may need to be assessed under local law as well as from a UK perspective. Any agreement should be put in writing, including who bears any additional tax or social security costs. Employers should understand that a UK governing-law clause does not necessarily settle the employment law position, since working habitually overseas can still engage mandatory employment protections in the host country.

As *Malyk* illustrates, if a request is refused, the employee should receive a clear explanation of the reasons, rather than a general reference to ‘legal and tax issues’.

A client that can point to early, specific advice, properly documented and clearly communicated to the employee is in a considerably stronger position if the arrangement subsequently leads to a dispute or an HMRC enquiry.

In conclusion

Malyk was decided on a question of contract interpretation, and the tribunal's reasoning says nothing directly about the employer's tax liabilities. Nevertheless, the case provides a useful reminder that an employer whose actions are upheld by an employment tribunal can still face unresolved payroll, social security or permanent establishment risks. Bringing tax advice into the conversation when a relocation request is first raised, rather than once a dispute is underway, can help employers identify and address these risks before problems arise.

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