



❖ Does Brazil apply the economic employer concept for the establishment of wage tax withholding obligations?

In principle no.

The Brazilian legislation set that the employer is the company that, assuming the risks of the economic activity, hires, pays and manages the services. Further, the legislation provides that the direct employing company is responsible for withholding the applicable taxes from an employees wage.

However, it is important to mention that Brazilian Labor Courts understand that the actual relationship held by the hiring company and the services providers prevails upon the way such contractual relationship was formalized (i.e. service agreement). In all events, a judge will always analyze the existence of the factual elements that characterize an employment relationship and, if they are present, the contractor may claim the recognition of his employment relationship with the company and the consequent payment of all labor rights and social contributions provided by law and the withholding of the respective taxes.

The characteristics of an employment relationship, mentioned above, are the following:

- ❖ **Services rendered on a personal basis:** work that is directly rendered by the same person at all times, at the company retaining the services' establishment or not. The risks increase if it such person is given a badge, a work desk, work supplies, access to the company retaining the services' telecommunication system, is allowed to use the hiring company's e-mail, etc.;
- ❖ **Payment in consideration for the services:** an amount paid for the services rendered;
- ❖ **Subordination:** service provider lacks autonomy and the company retaining the services directly supervises and commands the work rendered by the service provider. The subordination is also noticed in the event of the so called "structural subordination", that is, the submission of the service provider to the organization and the development of the company retaining the services' business structure, regardless of whether the service provider is subject or not to the direct orders of the company retaining the services; and
- ❖ **Continued services:** work done on a permanent and continuous basis, regardless of whether they are rendered on daily basis or not.

The most important criterion from the list above is the subordination, which means how much the company retaining the services interferes in the activities developed by the service provider. If the service provider is free from company retaining the services' management, just following the retaining company's general business objectives and strategies contractually agreed, the subordination for purposes of charactering an employment relationship is harder to demonstrate.

❖ Is the concept implemented into national law or is it applied via practice or based on administrative instructions?

Based on the Brazilian Labor Code and detailed court decisions.

❖ When did your Country adopt the economic employer concept?

Not Applicable.

❖ Is there a threshold of days that an employee can work in your country for a domestic client without meeting the requirements of an economic employer?

Yes.

❖ If so, how many days and for which period?

Employees who work for up to 183 days in Brazil and do not have a purpose of remaining in Brazil for a definite basis are not considered taxpayers in Brazil.

❖ Is the formal employer obliged to register and pay wage taxes?

Yes. In an employment relationship, the employee is obliged to pay taxes, considering that taxation occurs through the withholding by the employer (provided by law)

❖ Can the economic employer register and report wage taxes on behalf of the formal employer?

No.

❖ Comments regarding the impact of the "economic employer concept" on individuals that travel for work to your country, i.e., increased administrative requirements etc.? Do the companies experience these requirements as burdening?

Not Applicable



CONTACT
Marcello Pedrosa
Demarest

mppedroso@demarest.com.br
Tel: +55 11 3356 1818