Germany – Temporary reliefs for cross-border commuters during the COVID-19 pandemic

As a result of continued restrictions due to the COVID-19 pandemic, a large number of employees are not able to perform their duties at their regular place of work. Instead, the work is primarily performed in the home office. This situation poses a particular challenge for cross-border commuters, who usually commute daily from their residence across the border to work in another country. This is due to the fact that the taxation of their employment income usually depends on the physical place the work is performed. It is therefore welcome that the German Federal Ministry of Finance (MOF) is proposing and implementing temporary relief measures for cross-border commuters aimed at avoiding unwanted tax consequences in connection with the home office activities. Corresponding bilateral arrangements with Luxemburg, the Netherlands and Austria have already entered into force.

- **Background**
  In order to ensure a preferably uniform taxation of cross-border commuters, Germany has included certain clauses in the Double Tax Treaties (DTT) with several neighbouring countries. Double Tax Treaties are intergovernmental agreements which allocate the taxation rights between countries in case of cross-border activities. In case the conditions of a cross-border commuter regulation contained in the specific DTT are not fulfilled (e.g. by exceeding the number of workdays spent in the residency state in the case of Luxemburg), this regularly results in a different allocation of taxation rights for the underlying employment income.

- **Solution**
  To prevent any unwelcome changes in taxation rights because of the home office activities, the MOF seeks to conclude temporary mutual agreements with the neighbouring countries concerned with the intention to treat the affected employees as if they would have exercised their working duties at their actual workplace.

  The provision specifies that working days for which salary is received and which are only spent in the home office due to the measures taken to combat the COVID-19 pandemic can be deemed (option) to be exercised at the place where they would have been exercised without the COVID-19 measures (fiction of facts).

  It is important to note that this fiction does apply to working days that would have been spent in the home office or in another country anyway.

  The agreements, which have already come into effect, refer to “cross-border workers” in general. Therefore, in our opinion, the relieving measures should not merely apply to daily cross-border commuters but to all cross-border working employees (e.g. employees who usually spent a part of their working activities in the other country).

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Other specifics apply, for example, when salary is received for non-working days spent at home or in the event employees receive short-time allowances.

- **Obligations**
  Employees who wish to make use of the provisions need to fulfil the necessary record requirements. It is envisaged that employers provide a certificate regarding the number of workdays spent in the home office. Furthermore, it is required that the underlying income is actually taxed in the other country.

- **Duration**
  The agreements concluded with Luxemburg, the Netherlands and Austria are to be in effect for the period from March 11, 2020 to April 30, 2020. If they are not terminated, they will be extended for one calendar month at a time. We expect that any subsequent agreements will be worded in a similar manner.

- **Conclusion**
  In our opinion, the intended and partly already implemented agreements are a valuable measure to provide employees with a certain level of security in regard to their personal tax situation in times of national unrest caused by the COVID-19 pandemic.

  Furthermore, these measures help to ensure that employees do not return to their place of work prematurely. However, we consider it advisable both for employers and employees to keep an eye on the validity of these special provisions in order to avoid unwanted tax issues when these governmental measures are reduced. It also remains to be seen to which extent cross-border employees will benefit from the other outstanding mutual agreements.

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