

Corona crisis - Cross-border home working

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The outbreak of the current pandemic has presented huge challenges to multi-national organisations. Securing the health and welfare of all people has of course been the top priority. Employees are also now working at home at a scale that has never been experienced before. What does this mean for employer and employee compliance?

Income/ Wage Taxes

The general rule for international employment scenarios, if a Double Taxation Treaty is in place, is as follows:

If a person who is a (Treaty) tax resident in one state and works in another state, the salary is taxable in the other (working) state except all of the following conditions are met:

1. Employee does not stay for more than 183 days in any 12-months-period in the state he works.
2. Employee does not have an employer in the state he works.
3. Employer does not have a permanent establishment in the state the employee works.

The above are, roughly explained, rules of the OECD Model Convention. Bilateral Double Taxation Treaties have to be reviewed for country specific details.

Counting of 183 days as above may be influenced in case of illness of an employee or by restrictions beyond their control. In most of the countries up to now no special "Corona rules" regarding counting exist so that general rules apply.

Some countries understand this issue for their national rules - and have made statements to comment on what happens with regards to domestic tax residency

where a stay is exceeded as a result of COVID (UK and Ireland are just two examples). In other countries there are no special rules so general rules continue to apply.

Besides the above in some countries special rules for commuters/frontier workers apply.

force majeure, and can therefore lead to the application of an effectively agreed force majeure clause. Otherwise, the legal regulations come into effect.

Employers of mobile employees should therefore, consider the following:

- If an employee works in the state where they are a tax resident under the applicable Double Taxation Treaty (in general, the state in which they have as their centre of vital interests, is often the state where the family lives), every single working day is taxable there. This means that if someone in general works 100 % in the state where their employer is seated, now moves back to their home state because of the COVID-19 situation, and works in their home office, the salary is partly taxable in the home country. Withholding and compliance needs should be reviewed.



- In many Double Taxation Treaties there are special rules for commuters/ frontier workers. Some of the Treaties define commuters as the way that a minimum of working days must be performed in the other country, some define a maximum of working days in the home countries. This should be reviewed. On April 3rd, 2020 the German Federal Ministry of Finance announced that negotiations with other states get started – which are intended to prevent the special situation in the context of the COVID-19-crisis from leading to a change in the taxation right which is not intended. The aim is to qualify the activity in the home office as if it had been carried out at the usual place. The first result already have been published: special regulations for COVID-19 scenarios apply for German/Dutch commuters/frontier workers.

In April 2020, the OECD published general guidance regarding the above, with some general hints, asking member countries to be open to finding solutions to lessen the impact of COVID-19, on companies and individuals engaged in international employment. The OECD also announced that they are currently working with countries to mitigate the unplanned tax implications, and potential new burdens arising due to effects of the COVID-19 crisis.

Types of employees that may be affected

When setting up tax and social security scenarios for employees with international background such as:

- expatriates to other countries
- expatriates from other countries

- employees who live and work in different countries
- employees who work in more than one country
- employees working locally with families abroad
- commuters/ frontier workers.

It is always important to know:

- Where do the employees work (which country/countries – which percentages)?
- In which countries do the employees have a domicile?
- In which country (can only be one) do the employees have their centre of vital interests?
- Which employer pays and bears the salary?

The above defines:

- Which country an employee is liable for social security in principle.
- If an employee can stay in his home country social security system.
- In which country or countries the salary is taxable.

In the current situation with shutdowns in many countries due to COVID-19, many people will be working in home offices. If the home office is located in the same country that the employee works in general, then there should be little change with regards to taxes and social security.

But what if the home office is in another country than where the employee usually works? What happens if, as an example, your expat who usually 100% of the time works in your country and just returns home for the weekend, now goes back to their family, who lives in their home country and works at home?

Social Security

All scenarios in which work in home offices is performed in another country comparing to where the work is usually performed, such as:

- Certificates of coverage from non-EU countries
- A1 for multistate-workers (EU/EEA/ Switzerland)
- A1 for secondments (EU/EEA/ Switzerland)
- Exemption agreements (EU/EEA/ Switzerland)
- Scenarios in countries without social security treaties.

For many mobile employees, an A1 (EU/ EEA/Switzerland) or certificate of coverage is applied, which determines the social security system in which they stay. For EU/ EEA/Swiss multistate workers special rules apply which, besides others, refer to the fact that the employee works for more than 25% in their home country or not.

As people are now working in their home offices, in their home countries, the 25% threshold for multistate workers may be exceeded.

Scenarios which were described within applications for exemption agreements, now may differ because of work in home offices.

Maybe upcoming secondments for which A1's or certificates of coverage are already applicable for, will start at a later date.

Many EU countries already have announced that working in home offices caused by the COVID-19 situation would not have an impact on the 25% threshold for multi-state workers, and that A1's for upcoming secondments will stay valid for a limited period of time.

The situation for bilateral social security agreements (outside EU/EEA/Switzerland) up to now, is not clear.

A statement has been announced by the “GKV-Spitzenverband” (umbrella organisation of German social security authorities) (RS 2020/167 of 17.03.2020), which has not yet been published (status 09.04.2020). According to this announcement, the corona crisis should not have any effect on the above-mentioned regulations - at least from a German perspective - and any applications submitted will remain valid for a limited period.

Labour Law, Work Safety and Data Protection

Employers should bear in mind that in many countries labour law requirements for work in home offices exist. Besides this work, safety and data protection should be focused on.

Conclusion

Without doubt, the COVID-19 pandemic has disrupted the way globally mobile employees work. Mobile employees temporarily working in home offices may be affected by tax regulations and some also by social security rules which have not yet caught up with the situation, and issued clarifications and exemptions.

Employers should ensure they know the location of their home workers and review cases where mobile employees work in home offices, which is not in their usual terms of business.

For more information about the potential impact COVID-19 may have on your globally mobile staff, please contact Claudia Haege or your RWT advisor.

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