

Update on the international tax implications for “cross-border workers” and expats during COVID-19

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Background

To combat the COVID-19 crisis, exceptional measures have been implemented by the Belgian and other governments. Some of these measures, like **home-teleworking, have a direct taxation impact for many employees who are in principle traveling for multinational companies**. They are often, since months now, prohibited from travelling and forced to spend their working days in their State of residence and to perform full time ‘telework’ from their home office.

The fact that these “cross-border workers” must now spend working days at home what, under normal circumstances, would have been (fully or partially) spent in another country, can potentially result in **various unforeseen and extremely burdensome tax implications** for companies and employees, both from an administrative and a financial / cost perspective.

General tax rules with regard to international employment

In application of the general tax rule of the “employment income article” of the double tax treaties (Article 15 of the OECD’s Model Tax Convention), **taxation of employment income is attributed to the work State, but only if the employee is actually and physically performing his or her activities in that State**.

Taxation in the work State will generally be triggered either (1) when the employee exercises his or her professional activities abroad (in the work State) for more than 183 days in a calendar year or any 12 months period, (2) OR when the remuneration is paid by, or on behalf of, an employer in the work State (3) OR the cost of the remuneration for the activities performed abroad is simply borne by a foreign employer or a foreign permanent establishment in the work State.

For example : if now, due to COVID-19, the employment is not exercised physically in the United Kingdom, but from home in Belgium, this income will in principle become subject to income taxes in Belgium (residence State) and no longer in the UK (work State), where the employment should have been exercised in the absence of the COVID-19 crisis. This will have a big tax impact as much higher taxes will have to be paid.

Agreements concluded between Belgium and his neighboring countries (The Netherlands, France, Germany and Luxemburg)

In order to avoid uncertainty and extra costs for employees and employers it has been agreed between Belgium and the tax authorities of our neighboring countries that the **COVID-19 pandemic and its consequences qualify as a situation of “force majeure”**.

This means that for employees who are now working from home (due to COVID-19 measures), these working days should be counted as days performed in the ‘habitual place of work’, notably in the work State, where the employee *would have* physically performed his or her employment activities, in a normal, non-COVID-19 employment situation.

For example : if an employee works normally 60% of his time in The Netherlands, but due to Covid-19 is forced to work from his home in Belgium, he will in principle be taxed on this 60% of his salary in Belgium instead of The Netherlands. However, on the basis of the principle of “force majeure” and the agreement concluded between the tax authorities of Belgium and The Netherlands it will be accepted,

under certain conditions, that these days will continue to be taxed in The Netherlands and not in Belgium.

On the basis of these agreements, there **will by consequence be no impact on the tax position of the concerned employees**. This will avoid a significant additional administrative burden for Belgian companies in terms of payroll obligations and other related formalities. However, only agreements have been reached with The Netherlands, France, Germany and Luxemburg (see website of the Ministry of Finances for more details). The mutual agreements are applicable to working days during the period as of March 11, 2020 until at least December 31, 2020. Please note that the Belgian tax authorities request an attestation from the employer as well as a proof that the days outside Belgium have been taxed (see FAQ of the Belgian tax authorities of 17 June 2020 for further details).

Quid however for employees who normally work also in other countries ?

What are the tax implications for employees normally working outside The Netherlands, France, Germany and Luxemburg ?

Unfortunately no agreements have been made between the tax authorities of Belgium and other countries. This has as a consequence that the normal international tax rules with regard to international employment stay applicable. As mentioned above, an employee will in general be taxable in the State where he works. If now, due to the COVID 19 crisis he is forced to work from home, he will be taxable in the State where he effectively physically performs his activities (i.e. his home country/residence State).

For example : if an employee has a function in the UK and in Belgium, and normally exercise physically 60% of his time in the UK, but is now working for 100% in Belgium, his full salary will be taxable in Belgium for 100%, if is working from home (Belgium), as no agreement based on “force majeure” has been reached between Belgium and the UK. This will have a big impact on the taxes that need to be paid as taxes are much higher in Belgium than in the UK!

This will also be the same for employees working normally in other countries than or neighboring countries. For employers this means also that payrolls need to be adapted and that discussions could raise with employees who will suddenly will gain less net salary.

However, on April 3, 2020, the OECD Secretariat [issued its recommendations](#) on implications of the COVID-19 crisis on cross-border workers. In this OECD guidance, it is stated that *“exceptional circumstances call for an exceptional level of coordination between countries to mitigate the compliance and administrative costs for employees and employers associated with involuntary and temporary change of the place where employment is performed.”* In this respect, the OECD encourages countries to alleviate the unplanned tax implications and potential new burdens arising due to the effects of the COVID-19 crisis.

However, until now only mutual agreements have been concluded with our neighboring countries (see above). A similar tolerance is unfortunately not expected with other (European) countries.

With regard to the application of the social security, the Belgian National Social Security Office published a decision already in March 2020, in which they confirmed to disregard a temporary change in working pattern due to Covid-19, in order to avoid situations where the competent state for the social security would change (with regard to the application of the EU regulation 883/2004 if an employee is normally working in several States).

What are the tax implications for expats in Belgium who benefit from the special tax status for foreign executives (on the basis of the Administrative Circular of 8/8/1983) ?

For these employees, in principle no application can be made of the double tax treaties that Belgium concluded with other countries (and by consequence no application can be made neither of the above tax agreements concluded with our neighboring countries).

A travel exclusion can in principle, under the application of the expat status, be applied on the days spend outside of Belgium. This means that if an expat is travelling for 25% outside of Belgium, 25% of his salary will be exempted from taxation in Belgium. If however, now due to the Covid-19 crisis, he cannot travel anymore outside Belgium, he will be taxable in Belgium on his total salary, without the tax exemption of travel exclusion.

For this category of employees, until now no tolerance has been foreseen by the Belgian tax authorities. This means that expats, who are working from Belgium during Covid-19 will in principle pay much higher taxes in Belgium. This will have a lot of consequences also for the employer, with regard to payrolls which need to be adapted and discussions that employers may expect with employees on their net salary (as in practice often a net salary is agreed between the employer and the expat).

Conclusion

Only for cross border workers with The Netherlands, France, Germany and Luxemburg agreements have been reached on the basis of a “force majeure” principle which implicates that the days worked at home will be counted *by fiction* as days spend normally in the work state (before Covid-19). There will by consequence be no negative tax implications.

However, for employees who normally work outside these countries (like United Kingdom, the United States, Switzerland,...) no specific agreements with regard to Covid-19 have been concluded . This means that for this category of employees (mostly high level functions) this will have a lot of consequences from a tax point of view. As they work now from home (i.e. Belgium), much more taxes will need to be paid as, on the basis of the international tax employment principle (article 15 of the OECD) the salary is taxed in the work state where the activities are physically performed, even if the “international” function stays the same.

For international companies it is by consequence important to have a look at their “international” employees as home working will become more “normal”, as it can have a big impact on the taxes which need to be paid. As Belgium has for the moment still one of the highest cost for labor in the world, **it will be important that, in order to attract and keep foreign investors in Belgium, the total cost of labor (personal taxes and social security contributions) is reduced by the new government.**

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Brussels, October 12 2020