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Corona measures: potential cross border tax and social security consequences of working at home

Hopefully, the Corona measures that the Netherlands and the rest of the world are taking will be effective enough to also deal with the financial consequences of this pandemic. Some of these measures do not directly relate to tax, but they do have immediate tax and social security consequences. Even though this might not be your first point of concern, it is important to keep this in mind.

One of the measures taken is that individuals are encouraged (and in some countries obliged) to work from their homes. Because of these measures, a vast number of employees that usually works cross-border has shifted their place of work to their homes. Working from home in the home country instead of travelling, or working in the host country, may also alter the tax and social security situation. Below, we outline the most important tax and social security consequences that employers and their cross border workers may face when they work from home.

Tax consequences & 30%-ruling

When cross border workers work from home in the Netherlands, they may end up with a higher Dutch and a lower host country income tax liability. In general, and under certain conditions, the salary relating to these home workdays is taxable in the Netherlands. The salary relating to the work days spent at the office in the host country, is taxable in the host country. Conversely, cross border workers that are non-Dutch tax residents may end up with a lower Dutch and a higher home country income tax liability.

Non-Dutch tax residents with the 30%-ruling who have to work from home in their home country might also lose a part of the 30%-ruling benefit as it can only be applied on employment income that is taxable in the Netherlands.

The 183-days rule also plays a role. Meeting or not meeting the 183-days rule - contrary to what is anticipated - will affect the overall tax liability.

Finally, employers may face payroll/wage tax withholding requirements in the countries where the employees are now performing their work.

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All in all, the overall tax liability might change significantly, for both employers and employees with various advantageous, but also disadvantageous consequences.

Social security consequences

Working from home may also have consequences for the social security position of cross border workers. Based on EU social security legislation, an individual is in principle socially insured in the country where he or she actually works. However, if the individual pursues a substantial part of the activities (i.e. at least 25%) in the home country, he might become socially insured in the home country. The social security position of cross border workers that are socially insured in the host country may change when they work at least 25% of their time in the home country, depending on the expectations for the coming 12 months. This change may then lead to social security implications and obligations for both employers and employees/self-employed persons.

Permanent establishment

The definition of a permanent establishment (PE) is very broad and entails a fixed place of business through which the business of a company is (partly) carried on. In some situations, a home office could constitute a permanent establishment. This is in general only the case if the home office is used on a regular and continuous base for carrying on business activities and in the situation when it is clear that the company has required the individual to work from home. Without going much into detail, a PE may arise in the situation that individuals have to work from home for a longer period because of the measures taken. This can lead to unforeseen tax obligations for both employers and employees/self-employed persons.

Some countries across Europe are already negotiating about the potential impact and possible tax and social security solutions for home workers. Although tax & social security planning might be difficult with all the travel limitations applicable, we advise you to at least monitor this carefully and discuss this with your advisor.

We will keep you updated. Please feel free to contact us for more information.

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