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EFFECTS OF THE COVID-19 CRISIS ON THE TAXATION OF EXPATRIATS, CROSS-BORDER WORKERS AND PROFESSIONAL SPORTSMEN AND WOMEN

The COVID-19 crisis has prompted states to adopt exceptional measures to halt the spread of the disease: quarantines, restrictions on international travel and suspension of non-"vital" economic activities. Cross-border workers and persons working abroad were particularly affected by these circumstances: The former may have had difficulty in continuing to travel to the country where they normally work. The latter may have had difficulty returning to their country of origin on the dates scheduled. In this paper we examine the impact this situation may have on their taxation from an international perspective.

In an earlier article we analysed the extent to which the containment measures could affect the tax residence of individuals. In the present analysis, we focus on a different and more specific issue: the taxation of the labour income of the cross-border or expatriate worker on the basis of his or her non-resident status in the state where he or she works. Double taxation agreements usually resolve this situation in the following way: employment income is generally taxed only in the state in which the employee is tax resident, provided the following three conditions are met: (a) the employee does not remain in the state of destination for more than 183 days in any twelve-month period, (b) the wage is paid by an employer who is not resident for tax purposes in the state of destination, and (c) the wage is not borne by a permanent establishment of the employer in the state of destination. If one of the three conditions are not met, the income from employment may also be taxed in the state of destination, which means that the company must register for tax there and deduct the employee's wage in accordance with the tax rules of that country.

Persons working abroad

The COVID-19 crisis may particularly affect the first of these requirements. The comments on the OECD Model Tax Convention indicate that the calculation of the 183 days should also take into account the absence from work due to illness during which the worker must remain in the state of destination, except in the exceptional case where this prevents the departure of the worker which would have occurred in the absence of the illness. Consideration could be given to whether the same criterion and exception could also apply to workers living abroad who would not normally have reached the minimum period of 183 days, but who will do so, taking into account the duration of quarantine and the restrictions on international travel. In contrast to the case of tax residence (which takes into account the criteria of habitual residence and makes it possible to exclude exceptional situations or those caused by force majeure events), the article on labour income refers only to objective data on the number of days spent in the state of destination, including short-term interruptions to work, such as those caused by strikes, lock-outs, delays in receiving supplies, public holidays and vacations. All the indications are therefore that all days of stay are counted, and all the more so if the worker continues to work from home in the state of destination.

Cross-border workers

In the case of cross-border workers, i.e. workers who are resident in one country, including for tax reasons, and who usually travel to work in another country, even on a daily basis, the problem may be the other way round: Under normal circumstances, their salaries may be taxed in the state where they work because they exceed the minimum of 183 days (if the worker stays in that state for even the smallest part of a day, this is considered to be a full day's presence). But quarantine, border closures and suspension of non-"vital" activities may have forced them to telework, so they may not reach the minimum period. In such a scenario, the state of destination could lose the right to tax the salary and should refund the deductions already made. The OECD Secretariat, in its note *Analysis of Tax Treaties and the Impact of the COVID-19 Crisis,* calls on states to co-ordinate among themselves to reduce the costs - particularly the administrative costs - that companies and workers may incur as a result of these forced changes in the place of work. The Spanish tax authorities have yet to comment.

State salary replacement

In response to the economic crisis triggered by the pandemic, many countries have adopted economic stimulus packages that provide for payments in favour of workers whose employment has been suspended by force majeure (in Spain, the well-known ERTEs). For the purposes of double taxation agreements, these payments are treated as compensation and are therefore taxed where the salaries they replace would have been taxed in the same way.

Professional sportsmen and women

There is hardly any area of life that is not affected by the current crisis, not even professional sport. All official competitions have been suspended and there are only a few months left before the new transfer period begins, especially in football.

According to most double taxation agreements, the salary of professional athletes can be taxed in the state where they play, even if they do not have their tax residence there. However, taxation in the first-mentioned country may differ depending on whether the player has his tax residence there or not. In Spain, for example, the salaries of a player who is not tax resident in Spain are taxed at a fixed rate of 19% (for players tax resident in the European Union, Iceland or Norway) or 24% (for players tax resident in other countries), while the salaries of a player tax resident in Spain can be taxed at up to 45%.

For example, an extension of a season may mean that a player from a Spanish club whose contract expired this season and who wanted to sign with a foreign club will be tax resident in Spain in 2020, which may lead to double taxation in certain cases. As we can see, the resumption of official competitions is not only a sporting matter, but many other factors, including taxation, depend on it.

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