INTERNATIONAL REMOTE WORK

TAX IMPLICATIONS FOR COMPANIES AND EMPLOYEES

I. A NEW LABOUR LANDSCAPE

In our rapidly evolving global labour landscape, remote work has become a central theme and a defining feature of the modern workforce. As employees and employers increasingly engage in occasional or permanent cross-border remote working, this fundamental shift, which has been strongly fuelled by the pandemic, has led to a number of complex challenges. International remote work brings with it a new level of complexity that involves, in particular, considerations of compliance with foreign labour laws, including social security obligations and tax implications for both companies and remote workers.

This newsletter looks at the subtleties of cross-border remote working from a tax perspective and examines the complex considerations that need to be borne in mind by both employers and employees. We address the tax implications of cross-border work and cover topics such as tax residency, double taxation agreements, permanent establishments and income tax deduction obligations.

II. DEFINITION OF INTERNATIONAL REMOTE WORK

Remote work is a form of work where employees complete their tasks in whole or in part from a place outside the traditional office. This location can vary and ranges from the comfort of one's own home (also referred to as a home office) to alternative locations such as co-working facilities and remote job hubs (or elsewhere). Remote work is mainly characterised by the fact that employees have the right - because this is provided for or agreed by law or by a (collective) agreement - to choose their place of work in whole or in part, either completely or limited to certain days per week/month per year or certain seasons. International remote work is work performed from a country other than the employer's country of residence.

1. DIFFERENCES FROM THE INTERNATIONAL SECONDMENT OF EMPLOYEES

The international secondment of employees is more a matter of the employer's mandate - which is assumed by the employee - to perform work outside their usual workplace and country for a certain period of time: The employee must travel to a specific location abroad for a limited period of time, which is often dictated by the requirements of a work project or training programme. Unlike remote work, location flexibility is generally not possible when posting employees to another location, as the work or training locations and times are fixed in advance, which is voluntary and basically not dependent on location.

2. DIFFERENCES FROM "WORKATION" AND "BLEISURE"

In this newsletter, we deal with international remote work performed by employees from abroad on a permanent basis and deliberately exclude arrangements and situations where the work is performed from abroad on a temporary or ad hoc basis, for example the so-called "workation" (working from home from a foreign environment for a certain period of time, e.g. a fixed holiday location or a trip with different destinations) or "bleisure" (the extension or combination of a business trip with a private trip). This is essential because if the employee does not acquire tax residency in the country in which he lives and works that goes beyond that of his place of residence (and the place of residence of his employer), the tax consequences described below are generally not triggered for either the employer or the employee. The same generally applies to social security obligations.

III. TAX CONSEQUENCES FOR THE EMPLOYER

If the work is performed by the employee from another country in which the employee permanently resides, this can have various tax consequences for the employer.

1. INCOME TAX DEDUCTION

Irrespective of the activities performed by the employee working abroad, his employer is generally obliged to deduct income tax on the employee's salary in the country of residence of the employee, i.e. to withhold income tax from the salary and declare and pay it to the local tax office. In these cases, one refers to a so-called permanent establishment for income tax purposes of the employer in the employee's country of residence.

In order to be able to pay these taxes in the employee's country of residence, the employer must be officially registered in this country, which usually requires the issuance of a tax identification number, sometimes also the appointment of a tax representative and inclusion in a system of electronic reporting by the country's tax authorities and other administrations.

2. ESTABLISHMENT OF A PERMANENT ESTABLISHMENT FOR CORPORATION TAX PURPOSES

Companies with their registered office in one country that have a fixed place of business in another country through which all or part of their business activities are carried out have a so-called 'permanent establishment' in that other country and are generally liable to pay corporate income tax in said other country on the profits attributable to the permanent establishment.

Both the national tax laws of each country and the bilateral agreements on the avoidance of double taxation (DTAs) deal with the concept of a permanent establishment and set out a number of criteria to clarify when such a permanent establishment exists. Art. 5 of the OECD Model Tax Convention contains a definition adopted by most DTAs, which is then interpreted in detail in the official commentaries. Depending on the nature of the activities performed by the employee in the country in which he/she lives and works, his/her responsibilities and functions in the company and the fact that he/she is authorised to represent the employer and conclude contracts on its behalf, the company has a permanent establishment in that country and is therefore subject to local corporation tax. This should be examined very carefully on a case-by-case basis.

Is the employee's 'home office' a fixed place of business? A fixed place of business is basically any location that is used by employees regularly and permanently for business activities. But beware! The tax authorities of certain countries interpret the term "fixed place of business" in connection with the home office quite broadly and the decision criteria vary greatly from country to country, which can lead to uncertainties and tax disputes on this essential topic. The commentary on the OECD Model Tax Convention, according to which a "home office" is a fixed place of business if it is regularly and permanently used by the employee for business activities and the activity is carried out there at the instigation of the Employer, serves as the basis for the decision. In this case, the company has the right of disposal over the home office, which leads to the creation of a permanent establishment, as it can be assumed that the home office is available to the company. If, however, the employee is provided with a workplace on the company's premises (for example, in the office), the employer has no power of disposal over the home office, even if the employee carries out a large part of his/her work there, which means that no "home office permanent establishment" is established in this case for this sole reason.

On the other hand, the company must carry out its main activity in whole or in part from such a location. The concept of a permanent establishment would therefore as a rule be excluded if a fixed “home office” is only maintained for the purpose of carrying out another activity of a secondary or preparatory nature for the company.

3. VAT LIABILITY?

If the place of residence or home office of an employee based in one country establishes a permanent establishment for a company based in another country, the company must generally register for VAT in the employee’s country of residence and apply for a tax number from the competent tax office. The company is then subsequently assigned a VAT number by the tax office.

Companies that are registered for VAT purposes in a country are generally obliged to submit an advance VAT return or declaration on a monthly or quarterly basis. In addition, after the end of the calendar year, a VAT return or a summary report must be submitted.

IV. TAX CONSEQUENCES FOR THE EMPLOYEE

In the case of permanent remote work abroad, the employee generally becomes tax resident in the country of work and loses their tax residency in the country in which they previously lived and worked for his/her employer. The majority of national tax laws stipulate that a person becomes tax resident in that country if he or she spends more than 183 days per calendar year in the territory of that country. However, in some countries it is sufficient to fulfil other criteria (e.g. to have a permanent home in the country) to be considered a tax resident, which may lead to conflicts of multiple tax residences. The double taxation agreements contain criteria for the resolution of such conflicts (so-called “tie-breaker rules”): In addition to the actual stay in the country or the fact of having a permanent home, the so-called centre of vital and economic interests is also taken into account in cases of doubt. In the case we are dealing with in this newsletter, the employee has his/her habitual abode in a country other than that of his/her Employer, i.e. lives there for more than 183 days, and is therefore resident for tax purposes in that country. However, tax residency in the year in which the residence is changed (the year in which the employee leaves or returns) must be carefully examined, because if the requirement to stay in the country for more than 183 days in a calendar year is not met, tax residency in that country is generally not established and the tax consequences mentioned in this newsletter do not apply.

Tax residency in a country triggers so-called unlimited or personal tax liability in the country of residence:

- **Income tax** must be declared and paid: Income tax is payable on the employee’s global income (from employment, entrepreneurial activity, real estate, savings, etc.), regardless of where it is earned. In order to avoid double taxation in the countries of origin of the income (e.g. from rental income abroad), the bilateral DTAs in force between most countries contain some rules, although these do not always completely eliminate double taxation.

- **Other local taxes**: The employee may be liable to pay other taxes that only apply to tax residents or that apply differently to non-residents. These are, in particular, taxes associated with the ownership of assets (e.g. wealth tax) or the ownership or use of real estate or other property.

- **Formal tax obligations**: The employee may also be obliged to fulfil various tax obligations that concern tax residents only or in another way, e. g. the obligation to disclose their assets (overseas) for tax audit purposes, the obligation to report certain purchases or transfers of assets, etc.

- **Exit tax:** The loss of tax residency in a country may result in the obligation to pay an exit tax in that country. In principle, this obligation only applies to, or has a greater impact on, those who are self-employed or engaged in business activities in the country of origin at the time of loss of tax residence, and its effects can usually be mitigated or eliminated in the event of a return to that country.
- **Inheritance and gift tax:** In most countries, inheritance and gift tax is levied on

taxpayers who are tax resident in the country in question, even if the inherited or gifted assets are not located in that country. Since there are very few bilateral double taxation agreements for these particular taxes and these taxes have high rates in some countries, the tax burden can be significant.

V. BONUS: WHAT ABOUT SOCIAL SECURITY CONTRIBUTIONS?

Not to be forgotten is the obligation to make contributions to the social security system of the country in which the employee works. As a rule, in the case of permanent remote work, this obligation cannot be circumvented and the social security system of the country of origin cannot be maintained, and both the employer and the employee must register with (and pay contributions to) the social security system of the country in which the work is performed. The European regulations that allow contributions to be retained in the country of origin only apply to international remote work if all the conditions for this are met, the first of which is the temporary nature of the posting, which in principle indicates a different scenario from international remote work (see the differences between remote work and posting of employees, workation and bleisure above).

VI. SUMMARY

Cross-border remote work poses complex tax challenges for both employers and employees, blurring traditional tax boundaries. For employers, this concerns aspects such as income tax withholdings and corporation tax for the business income attributable to the establishment. For employees working abroad on a long-term basis, this results in personal tax obligations, including income tax, local taxes and additional tax formalities. Social security contributions are usually due in the host country.

In order to successfully overcome these tax challenges, it is essential to seek advice from an international expert.

CONTACT

Austria
Christoph Luegmair
C.Luegmair@scwp.com

Bulgaria
Cornelia Draganova
Cornelia.Draganova@schindhelm.com

China
Marcel Brinkmann
Marcel.Brinkmann@schindhelm.com

Czech Republic/Slovakia
Monika Wetzlerova
Wetzlerova@scwp.cz

France
Maurice Hartmann
Maurice.Hartmann@schindhelm.com

Germany
Bernhard Heringhaus
Bernhard.Heringhaus@schindhelm.com

Hungary
Beatrix Fakó
B.Fako@scwp.hu

Italy
Andrea Piasente
Andrea.Piasente@schindhelm.com

Poland
Anna Derdak
Anna.Derdak@sdzlegal.pl

Romania
Stefan Pisargeac
Stefan.Pisargeac@schindhelm.com

Spain:
Fernando Lozano
F.Lozano@schindhelm.com

Turkey
Beril Duman
Beril.Duman@gemsschindhelm.com

Publisher, media owner, editorial office: Lozano Schindhelm SLP | Conde de Salvatierra 21 | E-46004 Valencia | VAT. No.: ESB97548135, registered in the Commercial Register of Valencia, T. 8034, L. 5327, H. V-101900 | Tel: +34 963 28 77 93 | valencia@schindhelm.com | Lozano Schindhelm SLP is a member of Saxinger Schindhelm Services SE, Alliance of European Commercial Law Firms. | All information is subject to correction in spite of careful processing and cannot replace individual advice in individual cases. The liability of the authors or the publisher is excluded.