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Cross-border workers and working from home

Workers must in principle commute regularly across the border to qualify as cross-border workers. During the Covid-19 pandemic, Switzerland found mutual solutions with most neighbouring countries to temporarily break the strict rules. However, most of these have now come to an end.



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Taxation and social security

There are considerable risks for employers and employees in permanently implementing working-from-home arrangements for cross-border workers. Working from home can have significant implications, especially in the areas of tax law and social security law. During the Covid pandemic, rules existed with most neighbouring countries that temporarily lifted the requirement for mandatory commuting days for cross-border workers falling under double taxation agreements (with France, Germany, Liechtenstein, Italy). However, most of these rules have been repealed meanwhile, so the rules that applied before the pandemic apply once more.

In the case of social security, the «flexible application of EU social security rules» applies within the framework of the bilateral Agreement on the Free Movement of Persons and the EFTA Convention. Since working from home or teleworking has now become established throughout Europe, the coordination of national social security systems should also take this fact into account in the future. The European Union has therefore extended the duration of this regulation until 30 June 2023. This means that cross-border workers who work from home remain under their employer's social security system. As of 01 July 2023, the regular system in place before the pandemic will apply again. This means that an employee who spends at least 25 percent of their working hours working from home will fall under the social security system of their state of residence. However, it would be very welcome if a permanent, flexible solution could be continued here. Negotiations on this are ongoing.

The agreement with France

Switzerland and France have recently agreed on a permanent solution for the taxation of income relating to time spent working from home: From 01 January 2023, up to 40 percent of an employee's working hours per year can be completed at home without having any impact on which state has the right to tax employment income – this is especially true for cross-border workers.

Specifically, the agreement states that taxation rights remain in the state where the employer's business is located if the telework performed in the employee's state of residence does not exceed 40 percent of their working hours. In return, the rules provide for appropriate financial compensation to the employee's state of residence. In practice, this means that for a person working full-time across a 5-day week, they can spend a maximum of 2 days per week working from their home in France or Switzerland. However, this addendum still must be signed and subsequently ratified by both states before it actually enters into force. Until then, France and Switzerland have agreed to apply the provisions of the addendum to the working-from-home rules within the framework of a mutual agreement.

With regard to which state is responsible for the taxation and social security of cross-border workers from France, the development described above is very welcome and will make everyday business considerably easier for the companies concerned. However, it should be remembered that any French regulations in the area of corporate taxes may be applied regardless; for instance if French tax authorities consider the employee's home office to constitute a permanent business establishment. We therefore recommend clarifying the tax situation in advance, especially in the case of executives with decision-making powers.

The situation with the other neighbouring countries

The agreement with Germany for the duration of the Covid pandemic expired on 30 June 2022. Since then, cross-border workers have been

subject to the same working-from-home rules as before the pandemic. Those who regularly spend time at their place of work continue to be cross-border workers. Cross-border worker status is maintained if the employee travels to and from work in Switzerland at least once a week, or at least five days a month. If the employee does not commute regularly, the right to tax income from employment is no longer based on cross-border worker rules. The agreement with the Principality of Liechtenstein has also expired (31 March 2022). There has never been a special agreement with Austria.

The agreement with Italy expired on 31 January 2023. This is because there are no longer any restrictions on the free movement of persons in either country due to Covid-19. As a result, anyone who works even one day in their state of residence (Italy) must pay tax on the income from this day in Italy.

It is very regrettable that it has not been possible to find a solution with these other neighbouring countries similar to the one with France. Double taxation agreements do not take sufficient account of today's flexible working models, and assume by default that everyone is working in their employer's office. However, the solution that is envisaged in the area of social security gives hope that tax rules might also be modernised.

Tags: Steuerberatung, Grenzgänger, Vorschriften, Sozialversicherung, EFTA, Besteuerung, Covid, Pandemie