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**France:
France and cross-border workers in the context of COVID-19**

Overview

Agreements between France with Belgium, Germany, Switzerland, and Luxembourg, respectively, have been extended through 31 December 2020. The mutual-agreement procedure provided in each of the respective tax treaties was used to agree upon common position to exclude from home-country taxation compensation related to “exceptional” COVID home working. The French tax administration announced on 31 August its extension through 31 December 2020.

What is the change?

Workdays carried out in a taxpayer’s country of residence as a result of COVID-related measures may be considered as days worked in the country in which the taxpayers would have carried out his or her activity.

What does the change mean?

- With respect to Belgium, Germany, or Switzerland:
 - Individuals who work from home, who *would have otherwise* habitually worked in the other country, and who would *not* have engaged in homeworking in the absence of specific COVID measures:

Individuals making such election to exempt income in France should be in a position to provide employer certification, as well as proof of taxation in the country of employment.

- Frontier workers (as per the treaty definition) also benefit from specific tolerances when assessing if they meet the threshold of days they can work outside of their habitual work country.
- With respect to Luxembourg:
 - French Homeworking days resulting from COVID-related measures are not taken into account for the 29-day limit for exclusive taxation in Luxembourg.
- Home-working situations outside of the scope of these mutual agreements could potentially lead to taxation in such country. For example, a non-resident of France who does not habitually carry out employment activity in France, and who works from a secondary residence in France, could generate French taxation on such employment income.

The agreement has been extended to apply to workdays exercised between 14 March through 31 December 2020.

The tax authority web links are:

- Suisse Accord Amiable
URL : https://www.impots.gouv.fr/portail/files/media/10_conventions/suisse/suisse_accord_amiable_covid19.pdf
- Belgique Accord Amiable
URL: https://www.impots.gouv.fr/portail/files/media/10_conventions/belgique/belgique_accord_amiable_covid19.pdf
- Allemagne Accord Amiable
URL: https://www.impots.gouv.fr/portail/files/media/10_conventions/Allemagne/Allemagne_accord_amiable_covid19.pdf
- Luxembourg Accord
URL: https://www.impots.gouv.fr/portail/files/media/10_conventions/luxembourg/accord_covid-19_fr_lux.pdf

Deloitte's view

These mutual agreements are a welcome simplification for employees and employers who are concerned by the tolerance, and we applaud the extension of these agreements to 31 December 2020.

The mutual agreements are specific and numerous situations remain unsolved; it is therefore necessary for employers to keep track of the populations that are / were displaced to assess their obligations. In addition, the employer will need to issue certificates to the concerned employees in order to benefit from the tolerance.

It is important to note that no agreement was published with regards to other European countries where workers were displaced from or to (such as the UK, Spain, the Netherlands...) and the agreement with Italy ceased on 31 August 2020. We therefore recommend carrying out a full review of the employee's whereabouts and of the corresponding employer and employee obligations, in order to ensure compliance in France and the other concerned countries.

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Poland:

Implementation of posted workers directive changes into the local legislation

Overview

On 4 September 2020, important changes to the Polish Act on posting of employees in the framework of the provision of services came into force. The changes are implementing into the Polish legislation provisions of the Directive (EU) 2018/957 of the European Parliament and of the council of 28 June 2018, amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The below alert focuses only on the most important changes of foreign employer's obligations while posting workers to Poland.

What is the change?

Postings up to 12 (or 18) months: Within the period of up to 12 months, the minimum employment conditions for an employee posted to Poland should not be worse than the minimum employment conditions in the areas specifically mentioned by the act on posting of workers (*e.g.*, with regard to maximum work periods and minimum rest periods, minimum paid annual holidays, statutory remuneration, etc.).

The extension of the period in which these criteria should be met up to 18 months is going to apply upon submission of a *motivated notification* to the National Labour Inspectorate made by the foreign employer until the lapse of the initial 12-month period. For postings that were ongoing on 4 September, the minimum conditions will apply automatically until the assignment reaches 18 months, without the need to file the motivated notification.

The minimum criteria in the area of remuneration of the employee posted for a period of 12 (or 18) months will cover not only the statutory minimum pay, but also *other statutory elements of remuneration* resulting from the labour law or other provisions regulating the rights and obligations of employees.

Posting over 12 (or 18) months: The employer is obliged to ensure that *all* applicable terms and conditions of employment that are enforced by the Polish labour law or other binding provisions on remuneration (not only those in the areas mentioned by the Polish act on posted workers) are met, with specific exceptions. For postings that were ongoing on 4 September and the length of which has already exceeded 18 months at that point, the broader minimum conditions will apply to them from that date.

When calculating the period of the posting for the purpose of the above-mentioned provisions, the cumulative duration of the posting should account for the periods of subsequent postings of employees replacing other posted employees, if they perform the same task at the same place.

Other changes regarding foreign employer's obligations and competencies of the National Labour Inspectorate:

- The scope of posting documentation that should be kept is going to cover additional information on statutory withholdings and confirmation of net salary payment, as well as enable the identification of specific items of remuneration.
- The National Labour Inspectorate is obliged to report to European Commission all cases of persistent delays in providing by authorities of other countries information related to handling abuses or possible cases of unlawful activities regarding the posting of workers.
- The tax law has been amended to provide the National Labour Inspectorate access to data covered by fiscal confidentiality under specific circumstances.
- The notifications and motivated notifications can be filled to the National Labour Inspectorate in Polish or in English not only on paper but also electronically. The forms are available on the authorities' websites.

Deloitte's view

The amendments of the regulations on international position of employees in Poland follows the requirements resulting from the council Directive (EU) 2018/957 of the European Parliament and of the council of 28 June 2018. These regulations lay down stricter rules regarding the right balance between the need to promote the freedom to provide

services on one hand and the need to protect the rights of posted workers on the other. Our recommendation for international companies is to review the worldwide assignees and business travelers coming to Poland in order to ensure compliance with amended regulations and make appropriate adjustments to their mobility policies. At the same time, we draw attention to the fact that the above-mentioned obligations concern not only employees posted from other EU countries, but also the employees posted to the territory of Poland from anywhere in the world.

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