



# The impact of COVID-19 on international mobility

April 2020

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# A new way for “business as usual”

We have lived in a world where freedom of movement was common practice. Business trips arranged and taking place the following day and opportunities to work from abroad or go on assignment were part of “business as usual”. What we are seeing now is certainly not something we have seen before, nor what anyone would have predicted 12 months ago.

Over the past few years discussion has been dominated by the growing desire of business to get the right talent to the right places and the new generations’ desire for globalization.

COVID-19 pulled the handbrake on the global movement of people and brought unexpected challenges for global mobility. Companies were not ready for this sudden stop nor were they ready for the impact of this crisis.

Companies are focusing on finding out where their people are and on doing what is necessary to protect them and their families.

This sounds simple enough. However, many companies do not have technology in place that determines the location of employees. And this is critical because the measures needed to protect them are changing each day as conditions and emergency protocols evolve in their respective countries or regions.

**What are the next steps we should think about now, with regard to mobile workers?**



Where are my staff?

Are they safe?

Can you work there?

Ensure staff have the right to work.

What will it cost?

Understand the tax exposures and obligations.

Is it legal?

Act consistently with employee rights.

Manage cashflow

Cost containment and capacity measures.

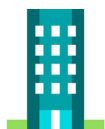
# Income tax and tax residence

The COVID-19 pandemic has forced governments to take unprecedented measures such as restricting travel and implementing strict quarantine requirements.

As a result of these restrictions, in many cases, mobile workers are unable to work in the state in which they would normally work. Thus, some of them work from home or can no longer work at all and are on various forms of leave / unemployment.

These situations raise some difficulties with regard to international taxation or applicable social security legislation, which we will discuss below.

## Permanent establishment



*Activity carried out by employees in a country other than the one in which they normally work should not create a permanent establishment for the employer in that other country.*

Many companies are concerned that, during this period, their employees are working in states other than those in which they normally work (at home, or elsewhere) and that this activity could create a permanent establishment for the employer in that state. This would obviously trigger additional tax obligations for the company in that state.

The Economic Organization for Cooperation and Development (OECD) has clarified that this type of activity represents a temporary and exceptional change of place of activity following the COVID-19 crisis and therefore should not entail a permanent establishment risk.

## Place of effective management



*Carrying out the activity of the company's executives in a country other than the one in which the activity was normally carried out should not lead to a change in the place of effective management and therefore of the company's residence.*

The COVID-19 crisis may raise concerns about a potential change in the "place of effective management" of a company as a result of a relocation, or inability to travel, of chief executive officers or other senior executives. The concern is that such a change may have as a consequence a change in the company's residence under relevant domestic laws and affect the country where a company is regarded as a resident for tax treaty purposes and thus its liability to tax.

The OECD has clarified that a temporary change in the location of the chief executive officers and other senior executives is an extraordinary and temporary situation due

to the COVID-19 crisis and this change of location should not trigger a change in residency for the company.

## State aid



*Income received by employees from the employer, where state aid was received, is taxable in the state where the activity would normally have taken place.*

Where a government has stepped in to subsidize the keeping of an employee on a company's payroll during the COVID-19 crisis, the income that the employee receives from the employer should be attributable to the place where the employment used to be exercised.

According to the OECD, the payments that employees are receiving in these circumstances most closely resemble termination payments, which should be attributable to the place where the employee would otherwise have worked. In most circumstances, this will be the place the person used to work before the COVID-19 crisis.

Such payments could be technical unemployment benefits paid by a Romanian employer. According to the above, in the case of employees who before the COVID-19 crisis were working abroad, this technical unemployment benefit should be taxed in the host state, even if the employee is currently in Romania.

## Tax residence



*COVID-19 is unlikely to affect the tax residence of mobile employees given the tie-breaker rules for determining tax residence according to the treaties.*

Tax residence will continue to be analyzed according to the criteria in the applicable double taxation treaty.

When a person is considered a tax resident in two states, according to domestic law, the role of double tax treaties is to determine in which of the two states the person will be considered a tax resident in the end. And in this sense, according to the treaties, the state in which the person has a permanent home must be determined. If there is permanent housing available in both states, the state in which the person has their center of vital interests will be determined. If the center of vital interests cannot be determined, the state of residence will be the state in which the person habitually resides. Here the OECD has clarified that when determining the habitual abode, a sufficiently long period of time should be considered, not just the period of the COVID-19 crisis or the period immediately following the crisis.

# Taxing salary income

Salary income should continue to be taxed in accordance with the provisions of the applicable double taxation treaty, even if this could lead to complications.

If the employee works in a state other than that in which he or she habitually works, the applicable tax treatment may change. Employers may have additional withholding obligations and employees may also have a new or increased tax liability in the state of residence.

## Pay attention to tax residence!

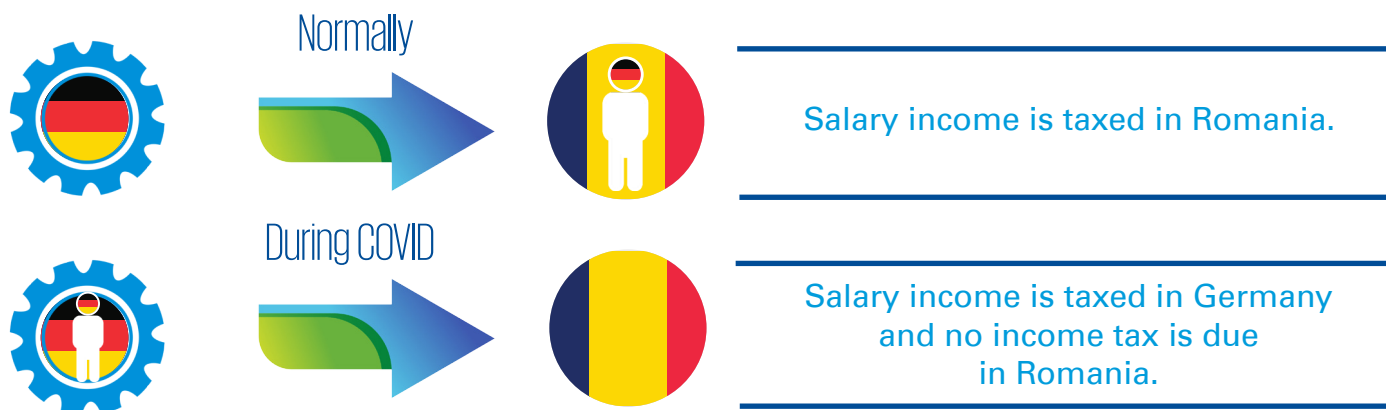
### Secondment from Germany to Romania (German tax resident)

If a German employer assigns a German tax resident for a period of two years to Romania, normally the salary income is taxable exclusively in Romania.

If during the crisis the employee works from home, from Germany, for the company in Romania, according to

the tax treaty, the salary income is no longer taxable in Romania. The right to tax rests entirely with Germany.

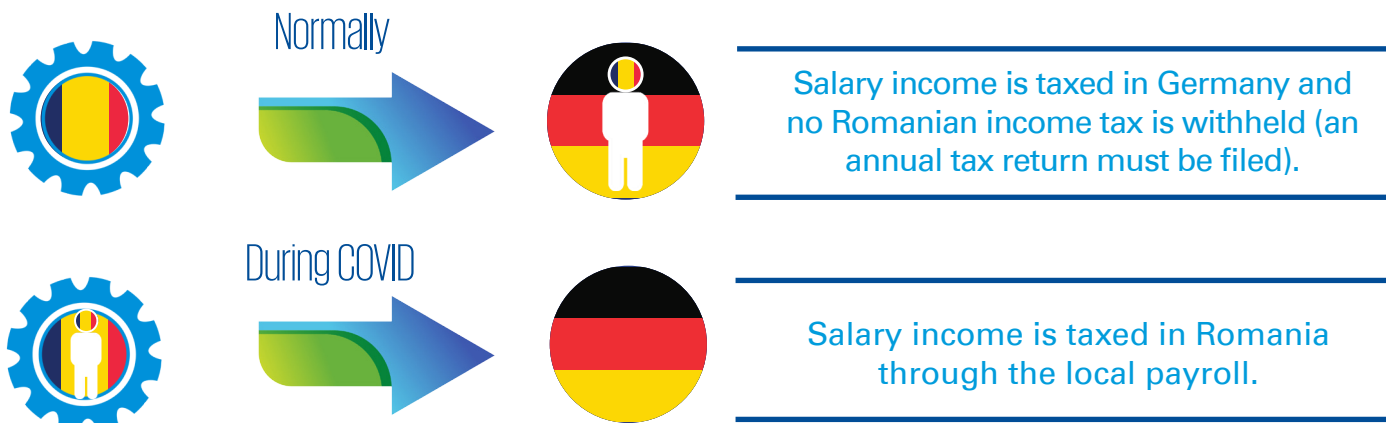
In order to make this change in the way salary income is taxed, both companies need to know the implications and act in a coordinated manner.



### Secondment from Romania to Germany (Romanian tax resident)

In the case of a Romanian tax resident, seconded by his or her Romanian employer for two years to Germany, normally, salary income is taxed in Germany. In Romania the Romanian employer does not withhold tax and the employee must file an annual tax return.

If, during the crisis, the employee carries out his or her activity from Romania for the German company, the Romanian employer must start to withhold income tax through the local payroll. So there is again a change in the country that has the right to tax



Changes with respect to the country which has the right to tax salary income can be a real challenge, especially

for those employers who coordinate multiple postings in different locations.



# Social security

The restrictions imposed and the recommendations for employees to work from home, where possible, also have an impact on the applicable social security legislation. The European Commission has brought some clarifications on this subject.

As a general rule, the European regulations on the coordination of social security systems continue to apply, but some relaxation is provided so that workers remain insured in the member state in which they were insured before the COVID-19 period.

## Let's first discuss situations where workers pursue activity in two or more member states.

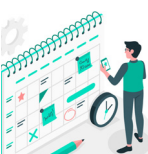
In most cases, the employee resides in a member state and usually works both in the state of residence and in the state where he or she is employed, i.e. the state where the employer is registered.

### Activity in the state of residence is not substantial - the employee works in the state of residence less than 25% of total working time.

In this case, the employee is insured in the member state where he or she is employed and should already have a valid A1 form.

If, during the crisis, the employee works from home, in the state of residence, obviously, the working time in the country of residence will increase, perhaps exceeding 25% of the total working time. Thus, there is a risk that the applicable social security legislation will change.

In this respect, the European Commission has made the following clarifications: in order to determine whether the activity in the state of residence is substantial, a reference period of 12 months must be taken into account. Thus, even if the activity in the country of residence exceeds 25% of the total working time during the crisis, it is important to determine whether this percentage is exceeded in a period of 12 months.



*Therefore, the social security legislation of the state of residence becomes applicable only if the average working time in the country of residence, in a period of 12 months, exceeds 25% of the total working time.*

### Activity in the state of residence is substantial - the employee works in the state of residence more than 25% of total working time

In this case, the employee is insured in the member state of residence and should already have an A1 form.

Restrictions and work from home only lead to an increase in working time in the state of residence.



*Therefore, restrictions and work from home should not have an impact on applicable law.*

## Pay attention to S1 forms!

In the case of activity pursued in more than one member state, the worker has the right to benefit from medical services both in the state where he or she is employed and in the member state of residence, on the basis of a valid S1 form.



*Therefore, during this period, it is all the more important to make sure that mobile employees have valid S1 forms.*

## The next situations we will discuss are those of seconded employees.

### The secondment started before the COVID period and during this period the activity takes place in the host state

In this case, the legislation of the country of origin still applies, according to the A1 form already obtained.

The secondment started before the COVID period but during this period the activity takes place in the state of origin (the employee works from home).

In this case, the legislation of the country of origin applies.

### The secondment started before the COVID period, but during this period the activity takes place in another state, different from the home and the host state.

In this case, the A1 form available may no longer be valid and the applicable legislation may change.



*The employer should check with the relevant authorities whether a new A1 form should be obtained so that the applicable law remains that of the state of origin.*

# Next steps

## Monitoring the legal, tax and immigration implications in each jurisdiction

We recommend that you closely monitor the legal, tax, social security and immigration implications of each jurisdiction in which you have mobile employees.

In some cases, additional obligations may arise for the employee or the employer. By knowing these potential risks you can take action and minimize costs.

## Review the provisions of your global mobility policies

Also, in the context of better cost and resource management, mobility policies may need to be revised as a result of the current crisis. In this respect, in some cases the salary packages of mobile employees may require adjustments or certain benefits may no longer be valid.

For all these situations, develop an emergency plan to avoid possible blockages and initiate transparent discussions as early as possible to ensure the best results for both the company and the employees.

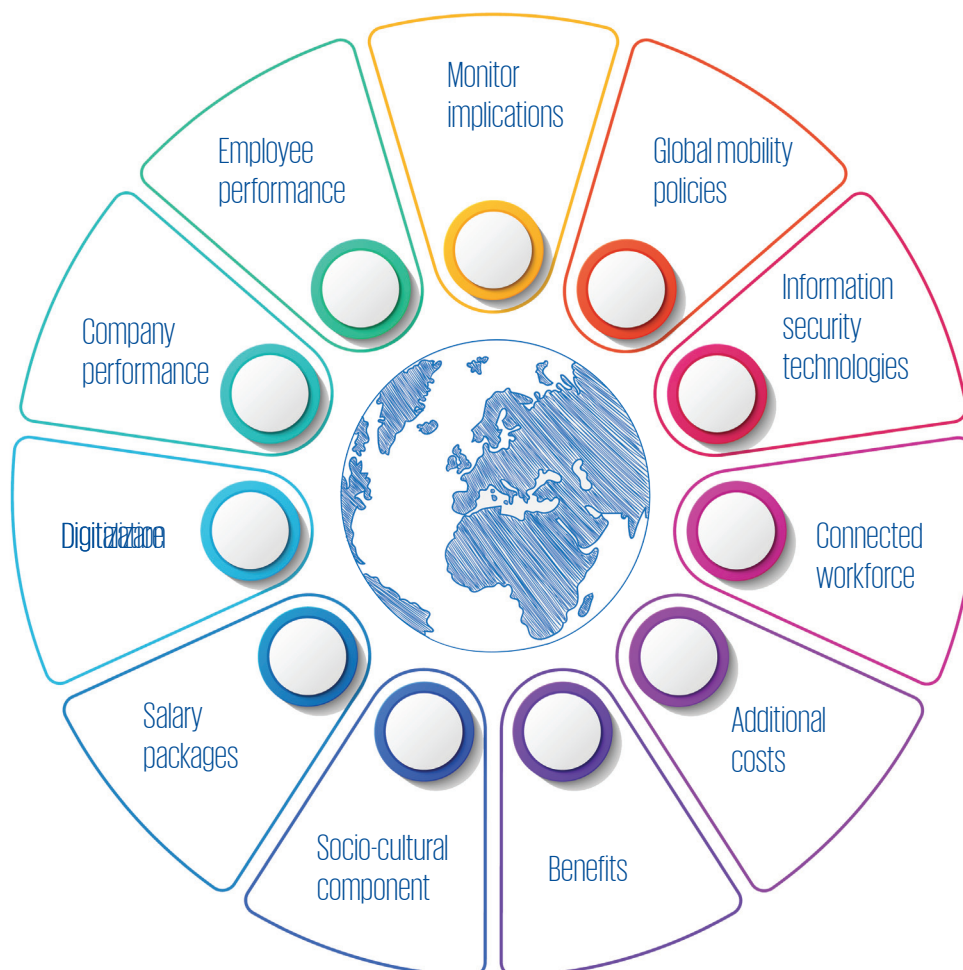
## Improving the employee experience

We've talked a lot about taxes and costs! Let's remember, however, that our goal as employers is to provide the best for our employees while ensuring business continuity.

Employee relations and respect for employees' rights during this period are as important as ever. Communication is absolutely essential. Be accessible to all employees, including those with different concerns or situations. Most likely, mobile employees will also sign up here.

Although there is a lot of advocacy for telework during this period, the reality is that many companies are now approaching this option for the first time. These companies must now adapt logistically, operationally and culturally to a new way of working. And here we refer to all those things that seem small from a functional laptop and a good internet connection to information security technologies or a favorable work environment at home.

All of these have a role to play in keeping the workforce connected, engaged and productive.





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