KPMG

GMS Flash Alert

2020-230 | May 13, 2020

Belgium – Arrangements for Taxing Cross-Border Workers with Germany, Netherlands

Belgium has concluded mutual agreements with respectively the Netherlands and Germany prevent cross-border workers from being adversely affected by the COVID-19 pandemic.[1]

WHY THIS MATTERS

Due to the travel restrictions caused by COVID-19 measures, cross-border workers face the risk their employment income would become fully taxable in the state of residence.[2] The mutual agreements with the Netherlands and Germany aim to ensure that cross-border workers will not suffer any tax disadvantages by working from home. Days worked from home will be assimilated with days worked in the country where the individual would normally have worked. This means that, despite working from home, the employment income can continue to be taxable in the state of work.

Context

Based on the income tax treaty Belgium concluded with respectively the Netherlands and Germany, employment income is taxed in the country where the activities are performed, with few exceptions. Without derogation, cross-border workers that are forced to work from home during the COVID-19 pandemic could suddenly no longer be taxed by the country where they work, but in their country of residence.

To avoid that cross-border workers would experience negative tax consequences as a result of the COVID-19 pandemic, days worked from home during the COVID-19 pandemic will be regarded as days spent working in the country where the employee would normally have worked.

This so-called "fiction" only applies for days worked from home because of measures taken by the governments of the contracting countries, or local subdivision, to combat the COVID-19 pandemic. The principle cannot be applied on days where the cross-border worker would normally have been working from home or in a third country.

How State of Work Can Maintain Taxing Rights in this COVID-19 Situation

Individuals wanting to make use of the fiction will have to do this in a consistent manner in both countries. The fiction can only be applied insofar as the income is actually taxed in the work state. This means that the income must be included in the basis for calculating the taxes due in the work state.

The individual will have to keep the necessary supporting documents. The agreement refers to a written confirmation from the employer.

The fiction applies to days worked from home between March 11, 2020 to May 31, 2020, but may be extended until the end of the following calendar month, subject to agreement by both contracting countries.

The agreement between Belgium and the Netherlands also clarifies that if an employee stays at home for one or more working days without working but continues to receive a remuneration, the remuneration will be taxed according to the same working pattern as if the employee had worked.

KPMG NOTE

The intention of the agreement is to provide clarity on the income tax situation of individuals working in one country whilst residing in the other country and that are now forced to work from home during the COVID-19 pandemic.

More careful consideration should be given to the situation of individuals working in more than one country or individuals that regularly worked from home or in third countries prior to the COVID-19 pandemic.

FOOTNOTES:

1 See the Belgian government website (in French) concerning coronavirus-related support measures in cross-border situations with the Netherlands (also with Germany, see link in lower-left margin) at: https://finances.belgium.be/fr/particuliers/international/accords_internationaux/pays-bas .

2 For related coverage, see the following issues of GMS *Flash Alert*: 2020-219 (5 May 2020), 2020-191 (23 April 2020), 2020-155 (6 April 2020), and 2020-149 (3 April 2020).

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional or the following professional with the KPMG International member firm in Belgium.

Carolien Van Echelpoel
Tel. + 32 (0)2 708 47 96
cvanechelpoel@kpmg.be

The information contained in this newsletter was submitted by the KPMG International member firm in Belgium.

www.kpmg.com

kpmg.com/socialmedia

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to http://www.kpmg.com.