

GMS Flash Alert

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Austria - Guidance on Treatment of Wages Connected with 'Home Office' Work

Austria's Ministry of Finance recently released the latest [Information](#) regarding the application and interpretation of double taxation treaties in connection with the COVID-19 pandemic, focusing on treatment of wages in connection with activities performed in one's home office¹. It is essentially based on the OECD Secretariat Analysis² and the [Mutual Agreement](#)³ on the double taxation treaty ("DTT") with Germany.

In general, this includes guidelines with respect to the allocation of taxation rights for income related to work performed in a home office, either under Article 15 of the OECD Model or where specific provisions for cross-border workers are applicable.

Moreover, the allocation of taxation rights for "Corona-short time work" payments is discussed – either taxed under Article 15 of the OECD Model or where applicable under specific provisions, such as Article 18 paragraph 2 of the OECD Model.

Also, payroll matters with regards to "Corona-short time work" are included.

In addition, the information clarifies whether a permanent establishment (PE) for the foreign employer is likely to be established in the residence state of the employee because of work performed in his/her home office.

Finally, matters of construction site PEs are discussed.

WHY THIS MATTERS

The outbreak of the COVID-19 pandemic forced many employees to stay at home and perform their work from their home offices. With cross-border workers, they were not able to return to the country of their employer, but, rather (in most cases) worked from home in their residence state (or in a third country). This caused concern for many taxpayers and their employers regarding the impact that days spent working from a home office in the state of the individual's residence rather than in the regular state of employment, due to the coronavirus crisis, could pose for tax residency

issues and exposure to potential permanent establishment, as well as raise questions about which country has taxing rights over the wages paid to such individuals.

To mitigate the unplanned and complex implications on cross-border workers, Austria has offered some welcome clarification and guidance – especially with relation to Germany (for more detailed information from Germany’s point of view, please refer to GMS [Flash Alert 2020-191](#), 23 April 2020).

In a Nutshell: Taxing Rights, Cross-Border Employees/Commuters, and Work from Home

Regarding the allocation of taxation rights under a provision similar to Article 15 of the OECD Model, Austria follows the OECD Secretariat Analysis, that leads to a split of taxation rights between residence state and work state according to the working days performed in the respective country, unless specific mutual agreements provide for different outcomes. For Austria, this is the case with relation to Germany. Thus, working days in the home office are deemed to have been spent where the employee would have been working without the “crisis” (notification to the employer and competent tax office as well as proof of taxation are necessary).

In addition, with relation to Germany, Liechtenstein, and Italy, specific provisions for cross-border-commuters are in force. In general, employees performing work in one state, but who regularly return home to the other state, will be taxable in their residence state. Thus, days worked in the individual’s home office, which is exclusively “Corona-related” count as “return days” (Germany) – the classification as a “cross-border commuter” shall not be affected by “Corona-related” home office work (Liechtenstein and Italy).

Following the OECD Secretariat Analysis, “Corona-short time work” payments will either be taxed under Article 15 of the OECD Model, i.e., according to the “causality principle” and thus attributable to the state where the employee would have worked. Or, if the respective DTT provides for a specific regulation for statutory social security payments similar to Article 18 paragraph 2 of the OECD Model, such payments can be taxed according to the “state of the fund” principle, as is stated in the mutual agreement with Germany.

Payroll issues arise in case the salary is tax exempt under the DTT – whereas the “Corona-short time work” payment is not (or vice versa). The Information issued by the ministry gives guidelines and examples on how to handle such situations.

Finally, following the OECD Secretariat’s analysis, it is stated that a coronavirus-related home office should not create a PE for the foreign employer, whereas an interruption of a construction site is (nevertheless) to be taken into account in respect of the time limit for creating a construction site PE – again, unless mutual agreements provide otherwise, as is currently the case with Germany.

KPMG NOTE

With regard to the above-mentioned notification to the employer and competent tax office (in order to have working days spent in the home office deemed to be spent where the employee would have been working without the crisis), please note that since it is not clear yet how this documentation should be provided, we recommend keeping a diligent Travel Diary per each working day, stating in which state the work was performed, whether the day was spent in the home office or not; and for home office work days it should be stated whether the work was performed in the home office only due to the coronavirus crisis and - if the latter is applicable – where the respective working day would have been spent without the crisis having happened.

FOOTNOTES:

1 *Information des BMF vom 22.05.2020, 2020-0.271.800. See also Info zur Anwendung und Auslegung von Doppelbesteuerungsabkommen im Zusammenhang mit der COVID-19 Pandemie at: <https://findok.bmf.gv.at/findok?execution=e100000s1&segmentId=ffa68f4e-bff7-4665-8863-ec0fd9656420> .*

2 OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis dated 3 April 2020.

3 *Erlass des BMF vom 15.04.2020, 2020-0.239.636, BMF-AV Nr. 55/2020. Also, see Konsultationsvereinbarung zum Abkommen vom 24. August 2000 zwischen der Bundesrepublik Deutschland und der Republik Österreich zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen betreffend die steuerliche Behandlung des Arbeitslohns von Arbeitnehmern im Homeoffice sowie Kurzarbeitergeld und Kurzarbeitsunterstützung. at <https://findok.bmf.gv.at/findok?execution=e100000s1&segmentId=e3e23f64-9403-48d8-82f2-62cde4ed352e>.*

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