European Union – EU Task Force Considers Tax Implications of Remote Work

After two meetings, a European Union (EU) task force investigating the taxation of remote workers appears to be relying on a solution in which countries regulate taxation of remote workers bilaterally, it has been reported.[1] This is contrary to the proposal of the European Economic and Social Committee to work towards establishing a "one-stop-shop" for the taxation of remote workers and revenue sharing between the country of the employer's residence and the country of the employee's residence.[2]

Several participants in the EU task force reportedly believed that the right forum for solutions to the tax implications of remote working is the Organisation for Economic Cooperation and Development (OECD).[3] The OECD is expected to take up discussion about tax issues concerning cross-border teleworking later this year where the focus may be on implications of remote working for corporate taxation (permanent establishment, PE).

WHY THIS MATTERS

It is reasonable to expect that future discussions on the topic of remote working will focus on the issue of when a home office might trigger PE and thereby attract liability to corporate taxation in the jurisdiction where that home office is located.

EU member states have different perspectives on how to address the impact of remote working on taxation. Finding solutions in this area is a difficult and sensitive balancing act. Various stakeholders, including international companies, unions, and interest organisations may have a stake in developments taking place in this area and may wish to take an active part in the discussions.

Context

The current Belgian Presidency of the EU announced their commitment to work with, among other things, taxation rules for cross-border teleworking.[4] A task force has been looking into the taxation of remote worker and a meeting is expected to take place at the end of April.

The meetings are attended by representatives from 18 EU member states, EU Commission, OECD, Norway, Switzerland, and the United Kingdom.[5]

Highlights from the Discussions in the EU Task Force

- Consequences of budgetary implications of remote working are currently not quantifiable. A general assumption is that the country of the employer is positioned more advantageously than the country of the employee's residence. However, such a conclusion will rest on applicable bilateral agreements, which have various thresholds for when taxation is triggered in the country of the employee's residence. The task force suggested that member states review their agreements and thresholds for when taxation in the country of the employee's residence is triggered.

- Reviewing thresholds is impacted by member states' different perspectives. Some member states aim to attract cross-border teleworkers while others do not have the same inclination. This could be the reason why regulating the impact of remote working on taxation has not moved to the point of adopting common rules, or even common principles for remote working, which had been a previously-stated goal.[6]

- The burden of proof regarding where the work is done may be left to local legislation, as this process varies considerably from member state to member state.

The OECD has established in the commentaries to the articles of the model treaty that the existence of a PE depends on whether home office or premises that constitute the workplace of the remote worker are at the disposal of the employer.[7] In November 2023, the Netherlands and Belgium concluded a bilateral agreement to clarify implications of remote working on PE.[8] It is clarified in the agreement that home-working generally does not trigger PE. However, if the employee does not have an office or other location available for work, the home office is considered to be at the disposal of the company, which can trigger PE, when all the facts and circumstances are assessed.

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The EU task force is scheduled to host its last meeting at the end of this month. The outcome of their work could be proposals for solutions to the taxation of remote work, but many issues remain open making such outcome difficult. It is possible that the mandate of the task force will be extended.

Regardless of their results, work done by the task force could be used for whatever work the OECD intends on this topic later this year.

Since data concerning the impact of remote work is scarce, it is important that all relevant stakeholders consider the potential impact and consider engaging with the work being done in this area.

FOOTNOTES:

1 See *tax notes*, EU Talks on Remote Workers Show Progress Is Possible on PEs, 8 April 2024 (accessing this article may require log-in). *Please note that by clicking on this link you are leaving the KPMG website for an external site (non-KPMG, non-governmental), that KPMG is not affiliated with nor does KPMG endorse its content. Use of the external site and its content may be subject to the terms of use and/or privacy policies of its owner or operator.*

2 *GMS Flash Alert* 2024-054, 13 March 2024.

3 See footnote 1.

4 Belgian Presidency of the Council of the European Union, Programme, First half of 2024, p.18.

5 See footnote 1.

6 Eurofound: Telework in the EU: Regulatory frameworks and recent updates, 1 September 2022, p. 64.

7 OECD: Commentaries on the Articles of the Model Tax Convention, 2010, p. 93.

8 *GMS Flash Alert* 2023-251, 21 December 2023.

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