European Union – EU Task Force Looks to OECD for Solutions for Taxation of Telework

During its presidency of the European Union, Belgium set up a task force to discuss taxation of telework (remote work).[1]

On 3 June 2024, the Belgian Policy Unit of the Cabinet of the Minister of Finance organised an event to present work done by the task force and to discuss the issue of taxation and telework in general.[2] The task force did not find a consensus about possible solutions for appropriately taxing telework, but highlighted that issues about taxation of telework are global and not only European.

For this reason, the task force found that the Organisation for Economic Co-operation and Development (OECD) might be the better forum to examine the issues and come up with solutions in this area. (For prior coverage, see *GMS Flash Alert* 2024-085, 12 April 2024.)

WHY THIS MATTERS

Flexibility in working arrangements provides multiple possibilities for employers and employees and it is often seen as a vital element in talent attraction and retention.

However, the tax treatment of income earned during telework – not to mention the social security, labour law, and corporate taxation (permanent establishment) aspects – can be tricky and can have an inhibiting effect on flexibility and attracting talent, depending on how it is treated.

The OECD will continue to work on solutions in this area and it is reasonable to expect it to launch initiatives concerning the taxation of telework in future.

Context

The task force organised by the Belgian presidency aimed to launch an open discussion without any binding agreement about issues connected to the taxation of telework. The task force hosted three meetings with participation by representatives from 20 EU member states, three non-EU countries, the EU Commission, and the OECD.

The task force covered:

- the taxation of income earned during telework in another jurisdiction,
- the presence of permanent establishment during telework, and
- evidence required by tax administrations to document telework in another jurisdiction.

The task force did not reach a common position; moreover, it will not issue official EU documents about its meetings. As mentioned above, it pointed out that, since the issues concerning the taxation of telework are global and not only European, the OECD would be an appropriate forum for further examination of the issues and proposals. Further, the task force suggested continuing their meetings beyond the Belgian presidency as a supplement to work that would be done by the OECD.

Highlights from the Cross-Border Worker Colloquium

Definition of Telework

Before the task force on the taxation of telework presented its work, the OECD delivered a presentation of its own findings about the taxation of teleworkers, clarifying that when it discusses "teleworkers," that refers to employees who are working physically from a jurisdiction in which they may be a tax resident, using information and communication technologies – to remain connected – for purposes of carrying out work for a business that is resident in another jurisdiction.

In addition to the definition above, the OECD outlined the following scenarios for telework abroad:

1. **Permanent teleworking abroad** – employee resides in one jurisdiction where he/she teleworks for an employer resident in another jurisdiction.
2. **Hybrid teleworking abroad** – employee resides in one jurisdiction where he/she works some of his/her time for an employer resident in another jurisdiction (cross-border teleworker).
3. **Temporary teleworking abroad** – employee teleworks temporarily from another jurisdiction (typically on holiday, visiting with relatives, etc.).

Taxation of Income Earned During Telework in Another Jurisdiction

The task force considered four solutions for taxation of telework:

1. **Threshold rule**: Here, the task force proposed implementing a minimum number of teleworking days for when taxation of income would be triggered in the jurisdiction where telework is performed.

   The task force found, among other things, that this proposal carried several negative consequences. The jurisdiction where telework is performed would potentially lose considerable revenue if the threshold is set high; tax authorities would be faced with an increased workload having to map (and document) working days; there would be a risk of tax disputes; there would be an administrative burden on employers and employees to provide information about (and documentation for) telework which could be significant; and teleworking would be limited/restricted by a threshold. This would also entail stakeholders experiencing a radical change in case a threshold is (found to be) exceeded.

2. **Taxation in the country of residence:** The task force considered a solution where the country of the employee's residence would have an exclusive right to tax his/her entire income (working days and teleworking days). This solution is simple and it would diminish the workload on all stakeholders.

3. **Taxation in the country of employer/source:** This solution proposes that the teleworker's entire income (working days and teleworking days) be taxed exclusively in the country of the employer/source of income. This solution would not limit teleworking days, it would limit the workload on all stakeholders, and there would be no risk of tax disputes.

4. **Taxation in the country of residence while tax withholding is in the country of employer/source:** In this proposed solution the task force believed, among other things, that the administrative burden would be lower for all stakeholders. However, the country of the employer/source of income would lose tax revenue yet would have to withhold taxes.

The task force highlighted that a major issue in the discussion about taxation of telework is a lack of data about teleworking. Reliable data about teleworking would provide insight so that legislators could steer around any changes to taxation of telework with detrimental effects that could lead to imbalances and negative budgetary implications for countries.

Further, the task force emphasised that whatever changes to taxation may be considered, the administrative workload for public administration, companies, and employees should be an integral part of such discussions and processes.

Finally, as mentioned earlier, the task force concluded that the forum to find global solutions to and launch initiatives about taxation of teleworking is the OECD. At the same time, as was noted above, the task force proposed to continue working on this topic as a supplement to the OECD's work.

Teleworking and Creation of Permanent Establishment (PE)

The task force stated that there is a considerable uncertainty when it comes to determining whether a home office in the employee's country of residence can create permanent establishment (PE) and thereby trigger liability for the employer to pay corporate taxes to the country of the employee's residence. (For prior coverage, see *GMS Flash Alert* 2024-085, 12 April 2024.)

During the discussions about PE in a telework context, it became apparent that countries have very different approaches to the topic. In general, the issue was raised concerning implementing various interpretations of rules for PE that could lead to the creation of many "micro" PEs, something that ought to be avoided, the task force stated.

Telework ought to create a considerable value to the employer for it to be subject to corporate taxation; otherwise, there is a risk of many PEs with limited or no value being taxed. This sort of administrative burden around tax compliance could lead to no or very limited tax revenue – an undesirable outcome.

The task force then presented a recently concluded Dutch-Belgian Agreement that clarifies when telworking can trigger thecreation of PE.[3]

Main Features of the Agreement

- A worker who teleworks less than 50 percent of his/her working time in a jurisdiction does not lead to the creation of a material PE.

- Three types of telework are identified:
    - Occasional teleworking (no PE creation);
    - Structural teleworking with a possibility of working onsite (no PE creation);
    - Structural and compulsory teleworking constitutes a PE (use of the home office on a continuous basis and the employee is required to work from home).

Here, the task force clarified that “required work from home” includes situations in which the employer no longer provides sufficient office space for all workers, so the worker in fact does not have free access to the employer’s premises, and situations where the worker lives so far away from the employer’s premises that the worker cannot use office premises regularly.

Further, the task force highlighted that the OECD should update its commentary on the model convention[4] and extend its description of “work from a home office” to include teleworking that is more than something a worker often uses “only for preparatory and auxiliary activities.”

Evidence for Teleworking

This topic was touched upon briefly, underlining that practices for requiring documentation for telework differ a lot from country to country. In some cases, excessive requirements might be imposed for documentation in respect of teleworking days, while tax administrations in other countries are satisfied with, for instance, a “calendar overview” of working days. No conclusions were made on this issue, but it was mentioned that countries should seek to achieve a more harmonised approach.

MEIJBURG & CO. INSIGHTS

The OECD has scheduled several meetings for the rest of 2024 in working parties that will deal with the taxation of telework.[5] Priority for the OECD seems to be the link between PE and teleworking. It is reasonable to expect the OECD will make updates to its commentary to the model convention that will specifically refer to teleworking. This could happen fairly soon, perhaps early 2025, if not before.

Issues concerning the taxation of telework are essential to labour mobility, including talent attraction and retention. The lack of reliable data about cross-border telework is a significant obstacle in respect of finding solutions for how to appropriately treat telework for tax purposes; but this will not prevent the OECD from launching initiatives and proposing solutions

It should be mentioned that several participants at the cross-border worker colloquium encouraged the OECD to look at all issues concerning the taxation of telework, rather than dealing with them separately.[6] Therefore, the OECD may wish to not only focus on PE, but also broaden the scope to include the taxation of personal income earned during telework in its deliberations.

Other participants encouraged the OECD to consider harmonisation of taxation and social security. In this respect, it was mentioned that the threshold in the Framework Agreement for Social Security would be a reasonable threshold to implement for telework across tax and social security.[7]

FOOTNOTES:

1 Council of the European Union: The Belgian Presidency Programme, 2024.

2 SPF Finances - FOD Financïen: Cross-border workers colloquium, 3 June 2024. (Please note, slides used during the presentation(s) and recordings are not available at this point in time).

3 See Meijburg & Co., "Agreement on the concept of ‘permanent establishment’," (8 December 2023).

4 OECD: Model Convention with Respect to Taxes on Income and on Capital, 21 November 2017.

5 This commitment was noted during the colloquium (see footnote 3) (slides used during the presentation(s) and recordings are not available at this point in time).

6 SPF Finances - FOD Financiën: Cross-border workers colloquium, 3 June 2024. (Please note, slides used during the presentation(s) and recordings are not available at this point in time).

7 For related coverage, see the following issues of *GMS Flash Alert*: 2024-020 (23 January 2024) and 2023-143 (17 July 2023). The Framework Agreement for Social Security stipulates that social security coverage remains in the country of the employer when a worker works less than 50 percent of his/her time in his/her country of residence.

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