Labour mobility during COVID-19 crisis (3/18/20)

Nowadays, performing your job responsibilities outside your home country is a generally accepted practice. Workers are often posted to work for other group companies abroad. Also, people searching for better jobs go to work abroad for shorter or longer periods. Such relocation of labour should always be assessed from a tax law perspective because staying in another country may affect the person's tax residence. This article explores some tax issues that may arise because of the COVID-19 lockdown.

Legislation on cross-border employment

Double tax treaties[1] define criteria for determining the residence country or the host country entitled to tax a person's employment income (article 15 of the treaty). In general, employment income is taxed in the person's residence country unless work is carried out in the other country and certain criteria are met. In other words, the country in which the person physically performs the job duties for which they receive employment income can also have taxation rights if certain criteria are met, including the number of days spent in the country.

If the other country is entitled to tax the employment income, the residence country should either exempt it or deduct the foreign tax paid from the local tax charge (article 23 of the treaty) yet not below what would be payable in Latvia. Section 24(7) of the Personal Income Tax Act also provides for exempting such income.

How the COVID-19 crisis affects the tax resident status of individuals

The present circumstances could give rise to two scenarios.

Scenario 1: Before the emergency situation was declared, a person temporarily worked outside their home country and stuck there because of the COVID-19 crisis.

Comment: Given the emergency situation, the person is unlikely to become a resident of the host country in which they would be staying temporarily. It is possible, of course, that under the national law the person would qualify for tax residence criteria, for example, based on the number of days spent. In this case, too, however, for treaty purposes the person is likely to retain their residence in their home country because they would retain a stronger link to the home country (e.g. the person has a permanent domicile available in their home country, with their centre of vital interests lying there, such as their family). This temporary relocation should not, therefore, affect their tax resident status.

However, if the person has a closer link to the foreign host country (e.g. they had planned to work there for only five months but ended up relocating with their family) then any prolonged stay in the foreign host country because of the COVID-19 lockdown can affect the person's resident status under the treaty as well.

Scenario 2: A person carries out their job duties in their current home country and has become a tax resident there but temporarily returns to their previous home country because of COVID-19 (i.e. the person repatriates only because of the COVID-19 crisis). The person might have retained their tax resident status in their previous home country under its national law or the person might qualify as a tax resident of this

country again on their return.

Comment: Temporary return to their previous home country as an exception is unlikely to affect their tax residence, but this situation should be assessed in the light of national and international law.

Several countries have already issued guidelines for determining resident status affected by COVID-19. The UK, for example, has issued special rules stating that any days spent in the UK in these emergency circumstances will be ignored in determining the person's residence.

While the Latvian tax authorities have yet to issue such guidance, any problematic situations are unlikely because in general the registration or deregistration of Latvian tax residence does not take place automatically, with the State Revenue Service making such decisions on the basis of appropriate documents.

How the COVID-19 crisis affects payroll taxes

If the country in which the job duties were performed before the emergency situation loses its taxation rights because of the change of resident status, the employers and workers may face an extra administrative burden. Employers may retain the withholding obligation (under local requirements), which would no longer be based on taxation rights under the treaty rules. So either this obligation should be temporarily suspended or a special tax refund mechanism set up. For the worker this would mean some new or wider tax filing and payment obligations in their residence country.

Thus, if the worker permanently works in country X but repatriates to country Y because of the COVID-19 crisis and continues to work from their home for the employer of country X, then their employment income for payroll tax purposes is still attributable to country X. This is how the OECD interprets the phenomenon of remote working due to COVID-19.

Government support measures for cross-border workers

Support measures adopted or offered by several countries (such as idleness benefit) aim to keep as many workers as possible employed by their current employer. According to their substance, such payments would be more consistent with compensations paid on the termination of employment. According to the OECD Model Tax Convention commentaries,[2] such employment income would be attributable to where the employee worked before, i.e. the country in which the person was employed before the COVID-19 crisis.

[1] Double tax treaties based on the OECD Model Tax Convention
[2] Article 15 commentary, paragraph 2.6