Digital nomad boom calls for international tax law reform 3/36/23


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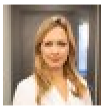
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Remote work has become a standard form of employment, as evidenced by increasing numbers of people choosing jobs with the option of working from home. This drives workforce globalisation, with technology allowing people to work anywhere in the world without changing their home. Remote work also allows people to change employers rather quickly. A digital nomad is one who takes maximum advantage of remote work. Despite their popularity, however, these new arrangements pose tax risks for workers and their employers alike. Many tax experts and researchers are therefore convinced that extensive and comprehensive reforms need to be devised in this area as soon as possible to prevent the current tax rules from lagging behind the trends in the international labour market.

Working remotely abroad involves various tax risks that cause additional costs, for example, a permanent establishment (PE) or a change of tax residence for the employer, or additional registration or reporting obligations for administrative or tax purposes. Each of these risks increases the administrative burden and causes extra tax costs.

The current international tax rules require individuals to declare their income (and pay wage taxes) in their country of residence if they spend more than 183 days there in a given 12-month period, or from day one if their salary is paid by a company or a PE located there. In this case the rules place an obligation to pay wage taxes to the foreign country on everyone who is working there, including people working remotely from the foreign country. If there is an effective double tax treaty between the two countries, then risk of double taxation will not arise. However, if the worker becomes a foreign tax resident according to criteria that each country prescribes in its local laws, the person’s worldwide income will be subject to foreign income tax. Each particular situation should be assessed in the light of local laws, double tax treaties and tax authorities’ guidelines. If people work remotely in the long term, this is an even more complex and time-consuming process.

When we analyse various countries’ experience, we need to mention Spain as a country that’s becoming an attractive destination for remote workers due to its up-to-date tax policy. A special tax regime, known as the Beckham law, allows expatriates to work in Spain and pay taxes in non-resident capacity for six years. So far this was applicable only in the case of physical relocation, but from this year it also applies to remote workers if they are not recognised as tax resident in any other country, which allows them to use this regime without coming into conflict with double tax treaties and each country’s national law. In practice this regime is applicable to persons who travel without spending more than 183 days in any country and are not considered tax resident in any other country.

Radhakishan Rawal, a certified accountant at Tax Notes and a former member of the UN Tax Subcommittee, has set out his ideas for reforming the tax rules. A key proposal is to devise the concept of a remote work permanent establishment. This would involve granting PE status to a digital nomad's employer in the country where the nomad is staying if she works there for more than 183 days in any 12-month period. A PE will not arise if this number of days is not exceeded.

This proposal attracted the attention of international organisations after being announced at "Taxation of cross-border teleworkers – possible solutions", a conference held by the European Economic and Social Committee in Tallinn on 4 July 2023. This event saw other tax experts come forward with their visions for adapting the tax laws to the trends in today's labour market.

Monique van Herksen, rapporteur to the UN Tax Committee on the taxation of nomad workers, just like Rawal, proposes a new article in double tax treaties to determine the countries' rights to tax digital nomads and gig workers. She also finds it necessary to prepare new commentaries on the OECD Model Tax Convention and examples of taxing those workers. Also, safe-harbour rules should be introduced for cases when the activities of those workers amount to a PE. She also proposes placing a reporting obligation on the employer for people working abroad – Form DE101 should be filed each year in the country where the employer is actually based. The rapporteur believes this would allow the employer immediately pay wage taxes directly to the relevant country's government.

Piergiorgio Valente, a professor at Link Campus University in Rome, stressed that greater workforce mobility poses challenges to tax and social security policies. One of his proposals is to create a one-stop shop with the tax authorities where digital nomads could find relevant tax information, pay taxes, and obtain all necessary certificates for the tax authority of their residence country. The professor also said we need to encourage cross-border tax compliance by aligning tax document, tax certificate and tax return forms across the EU, translating the information into other official EU languages and expanding the use of modern information technology.

At the moment, the proposed tax reforms seem far away and the road unpredictable, so we'll have to wait for any concrete decisions. Yet the first steps have been taken and similar discussions among researchers, regulators and tax authorities are expected soon. It's important to note that these proposals would have a positive effect on Latvia, as aligning the rules would help attract foreign workers, especially highly qualified experts. This is crucial considering the gap between demand and supply in the Latvian labour market. Employers need to tap into the foreign workforce's potential with all available methods to secure the development of companies and improve Latvia's competitiveness on a wider scale.