

Working from home during Covid-19: employment income taxes (1) 1/43/20



Director, Tax, and Head of Pan-Baltic
People and Organisation Practice, PwC
Latvia

Irena Arbidane

Travel restrictions due to Covid-19 are affecting not only our plans to relax abroad but also trips we take for business purposes. For some workers this means having their regular business trips cancelled and spending more time videoconferencing, while others have their normal place of work changed. We can work from home for foreign as well as local companies. This article explores some aspects of employment income taxation for employees physically working abroad because of pandemic-related restrictions.

A couple of examples:

1. A Latvian-resident employee cannot go abroad and is working for their foreign employer from home in Latvia;
2. A foreign-resident employee spends a long time in Latvia working for their foreign employer.

General rules

Latvian employment income taxes include personal income tax ("PIT"), mandatory national social insurance ("NSI") contributions and solidarity tax, each governed by a special piece of legislation. If a person carries out their duties in Latvia, all three taxes are generally payable in Latvia.

However, international law provides for exclusions from this principle. When it comes to determining an obligation to pay PIT, we need to consider effective double tax treaties ("DTTs"), while Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems comes into play for NSI purposes. Obligations to pay PIT and NSI are not always consolidated in one country. For example, there may be cases where PIT is payable in one country and NSI in another.

How to determine residence

Determining the worker's residence is key for PIT purposes and one of the first steps in applying PIT properly.

To be recognised as a Latvian tax resident under Latvian law, a person has to meet one of the following three conditions:

1. A declared place of living in Latvia;
2. Spending 183 or more days in Latvia in any 12-month period that starts or ends in the tax year;
3. A Latvian citizen employed abroad by the Latvian government.

A person can be resident in only one country at the same time. If someone can be considered a tax

resident in two countries at the same time (i.e. if both Latvia and the home country treat the person as their tax resident) then we need to examine the DTT between the two countries. The situation is to be resolved by invoking article 4 and evaluating the DTT conditions consecutively.

It is important to remember that the person's tax residence is a variable. A Latvian tax resident who does not have this status according to data held by the State Revenue Service, because they have moved to live and work abroad, can again become a Latvian tax resident under general procedure.

The OECD has made recommendations for taxation during the Covid-19 pandemic, one of which relates to determining tax residence. As the Covid-19 pandemic represents an emergency, living abroad because of Covid-19 restrictions should not be affecting the person's tax residence status unless it is habitual in nature and continues after those restrictions are lifted.

In this case, if Latvia and the foreign country treat the person as their resident under the DTT at the same time, the OECD recommendations could be invoked. However, those are merely guidelines that Latvia has yet to comment on, so we would advise against relying on their application without obtaining approval from the Ministry of Finance or the State Revenue Service.

An obligation to pay PIT

PIT is usually payable in the country where the person carries out their duties. An exclusion is made by DTT article 15(2) allowing the person to continue paying PIT in their residence country if the following conditions are met at the same time:

1. The person does not spend more than 183 days in the other country in any 12-month period;
2. The income is neither paid by a resident of the other country nor attributed to a resident of that country or to a permanent establishment.

Accordingly, a non-resident carrying out their duties in Latvia for a foreign company can avoid paying Latvian PIT if their stay in Latvia does not exceed 183 days in any 12-month period.

An obligation to pay NSI

As with PIT, the NSI principle includes an obligation to pay NSI in the country where the worker carries out their duties. Regulation 883/2004, which can be applied only by EEA countries and Switzerland, makes an exclusion for worker postings. Also, the bilateral social security agreements Latvia has signed, for example, with Russia and Ukraine provide for a similar treatment.

If the employer posts a person to work in another member state while keeping their employment contract and paying NSI in the worker's home country, NSI can be avoided in the country where the person physically carries out their duties (e.g. a Latvian employer posts a person to work in Germany). This arrangement can generally last 24 months (with the option of extension).

(to be continued)

Upcoming events

On 3 and 4 December 2020, we will be looking at changes to the payroll tax treatment in *PwC's Academy* seminar "*Personāla nodokļu piemērošana COVID-19 apstākļos.*"

