KPMG

GMS Flash Alert

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Germany – Mutual Agreements on Frontier Workers with Austria, Luxembourg, and The Netherlands

As recently announced by the German Ministry of Finance,[1] Germany has now concluded mutual agreements with Austria,[2] Luxembourg,[3] and the Netherlands,[4] about the taxation of frontier workers in light of circumstances presented by the COVID-19 pandemic.

WHY THIS MATTERS

Due to the travel restrictions caused by COVID-19 measures, frontier workers face the risk of losing specific tax reliefs granted by the state of work (in this case, Germany). The mutual agreements therefore aim to ensure that frontier workers will not suffer any tax disadvantages by working from home (i.e., outside Germany) for a limited period of time. This also means that, despite working from home, the employment income can continue to be taxable in the state of work (i.e., Germany).

Context

Employees living outside Germany but working in Germany are, generally speaking, taxable in Germany on their employment income as non-tax residents. These frontier workers may be eligible for specific tax reliefs (e.g., joint filing, child-related allowances) that are normally only available for German tax residents. One main criterion in order to benefit from these tax reliefs is that at least 90 percent of their total income is subject to German income tax (German-sourced income) within one calendar year.

Due to the travel restrictions (e.g., border closures, travel bans, repatriations, 'stay at home' policies) caused by the COVID-19 pandemic, the allocation of the taxation right between Germany and the state of residence would have changed under the provisions of the applicable tax treaties.[5] As the number of German work-days decreases, the German-sourced income might not exceed the threshold of 90 percent of the total income for calendar year 2020 anymore. Potentially, this would have led to a significant loss of tax benefits granted based on German legislation (e.g., higher tax brackets due to loss of joint filing possibilities for married taxpayers).

Relief under New Mutual Agreements

To help make sure frontier workers currently working from home are still eligible for tax benefits granted by the state of work, the aforementioned mutual agreements have been concluded. These agreements stipulate that home work-days are – for a limited period of time – *deemed* to be spent in the state where the work would have usually been exercised. This means that the employment income related to work-days spent at home due to COVID-19 measures can remain taxable in the state where the usual place of work is located.

For all three mutual agreements, this special ruling is initially applicable for the period from 11 March until 30 April 2020. However, it is automatically extended until the end of the following month(s) until one contracting state has terminated the bilateral agreement.

KPMG NOTE

In light of the new mutual agreements with Austria, Luxembourg, and The Netherlands, it is recommended that affected frontier workers verify whether the conditions for taxation as a German tax resident, in general, and the eligibility for specific tax benefits, in particular, continue to be met. These benefits may be available not only via the annual 2020 German income tax assessment, but also for monthly German wage tax withholding purposes already.[6]

Furthermore, it will be necessary to provide evidence regarding which work-days are performed at home due to COVID-19 measures and would have normally been exercised in the other state. The employee should keep track of these days in a travel diary and highlight COVID-19-related home work-days. In addition, a certificate issued by the employer confirming the work-days spent at home due to COVID-19 measures is required.

This is a nuanced and potentially complex matter and to determine appropriate next steps, consultation with a professional tax adviser or your KPMG contact is recommended.

FOOTNOTES:

1 Press release from the German Ministry of Finance "Covid-19: Sonderregelungen für Grenzpendler*innen" dated 3 April 2020 (in German).

2 See the Circular dated 16 April 2020 (in German) from the Ministry of Finance "Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und der Republik Österreich vom 15. April 2020; Besteuerung von Grenzpendlern und Grenzgängern."

3 Ministry of Finance Circular "Verständigungsvereinbarung zwischen der Bundesrepublik Deutschland und dem Großherzogtum Luxemburg vom 3. April 2020" dated 6 April 2020 (in German).

FOOTNOTES continued:

4 Ministry of Finance Circular "Konsultationsvereinbarung zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande vom 6. April 2020" dated 8 April 2020 (in German).

5 With regard to the Double Tax Treaty Germany/France, additional home work-days do not change the allocation of taxation rights on employment income.

6 For example: Application for German wage tax class III (applicable for married taxpayers).

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New Article in *Mobility Matters*!

"COVID-19 – Potential Impact on Expatriate Travel and Tax Costs"

By Melissa Duffy and Carolyn Chambers, KPMG International member firm in South Africa

So much is changing every day as the impact of COVID-19 transforms the way we live and work. With travel restrictions, travel bans, border closures, "stay at home" and "shelter in place" policies, implemented to stem the spread of COVID-19, business patterns and employee work routines, and places of work, have been turned on their heads. As Carolyn Chambers and Melissa Duffy, KPMG professionals in South Africa, explain, this could lead to immigration status disruptions and increased tax costs. Read the article.

Contact us

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