

Joint Webinar: Residency and Taxation of Individuals

COVID-19 Tax and Employment Regulation in Russia, Germany, the UK and the US

June 30, 2020

4 PM — 6 PM MSK time (UTC/GMT +3 hours)

Working language: English



Russia



Labor matters: remote work and hiring of expatriates during restrictions period

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Current regulation of remote work in Russia (chapter 49.1 of the Labor Code)



- Work out of the office or subdivision of the employer, when employer – employee cooperation exercises through the Internet (**special type of labor contract**)



- Exchange of the documents, familiarization with the internal regulation and other cooperation shall be organized with an **enhanced encrypted and certified digital signature** of the employee and employer



- Labor contract on remote work shall regulate, *inter alia*, conditions of providing the employee with the equipment, programs, information protection measures and other things connected with the job and/or compensation for using the employee's equipment and other costs connected with the job

Current regulation of remote work in Russia (chapter 49.1 of the Labor Code)



- Employer's **responsibility for occupational safety is limited** by the following:

- Investigation and reporting about work accidents and occupational diseases
- Execution of the orders and recommendations of the state authorities
- Social insurance from work accidents and occupational diseases
- Familiarization with the safety regulations



- An **employee can be fired** by the decision of the employer **in cases stipulated in the labor contract** (regular employees – only cases stipulated in the Labor Code)

Urgent regulation during COVID period

- Problems of current regulation: two months prior notification for changes of the work conditions without consent of employee, obligatory receiving of certified digital signature, etc.
- Recommendations of Rostrud and Ministry of Labor and Social Development:
 - Legal status of these recommendations
 - Possibility of **temporary remote work** during the limitation period
 - Conditions of remote work, time limits, documents exchange procedure, list of employees transferred to remote work, etc. shall be established in **the order of the employer**, employees shall be familiarized with this order (no separate agreement is needed)
 - No changes in salary



Future of these recommendations

Changes in law connected with regulation of remote work

- Introduced bill on changes to Labor Code # 973264-7 (before first reading in the low chamber of Parliament)
- Proposed changes:
 - Possibility of temporary remote work and mixed type of work (regular + remote)
 - No obligation of using certified digital signature for exchange of the documents connected with work (way of documents exchange shall be described in internal regulations)
 - Simplified procedure of introduction remote work and mixed type of work in case of “force major” (introduction by the internal regulation, **employees consent is needed**, but rule of two-months prior notification is cancelled for this situation)
- Significant changes of this bill are possible

Remote work outside of Russia

- Position of Rostrud (letter dd. Feb. 26, 2016 #T3/437-6-1) and Ministry of Labor and Social Development (letters dd. July 27, 2016 #17-3/B-292, dd. April 15, 2016 #17-3/OOГ-578), etc. – **remote work** of Russian citizens and/or expats **outside of Russia contradict to** articles 13, 312.3 of **the Labor Code**, because:
 - employer cannot organize safety conditions required in accordance with the Russian law,
 - Labor Code doesn't have legal force outside of Russia.
- However, (1) this interpretation is disputable, (2) we haven't faced any cases about imposing administrative responsibility in such a situation.
- Recommendation of state authorities for such a situation – **services agreement**. Risk – recognition of this services agreement as a labor contract.

Opening Russian border for some categories of foreign citizens

- Decree of the Russian Government dd. June 6, 2020 # 1511-p canceled limitations for:
 - Citizens of countries with no visa regime in accordance with the International treaties
 - Members of families of the Russian citizens (spouse, parents, children, adoptive parent and adopted, etc.)
 - Persons with a permanent residence in Russia
 - Persons participating in adjustments and maintenance of equipment produced abroad (shall be included in the special list of the Federal Security Service and Ministry of Internal Affairs)
- Decree of the Russian Government dd. June 25, 2020 #1671-p canceled limitations for:
 - High-qualified workers included in the special list of the Federal Security Service and Ministry of Internal Affairs (effective labor contract and work permit are needed)

Special regulation of migration issues with regard to COVID limitations

- Suspension of terms for the period from March 15, 2020 to **Sept. 15, 2020** (+184 days) concerning the following documents: permanent residence, temporary residence, **visa**, etc.
- Suspension of terms for the period from March 15, 2020 to **June. 15, 2020** (+ 92 days) concerning the following documents: **work permit**, permit to engage foreign workers, patent, etc.
- Foreign citizens had the possibility to work at the territory of Russian without work permit or patent during the period from March 15, 2020 to June. 15, 2020
- At the moment there is possibility to apply for a work permit for foreign employees present in Russia, no possibility to apply for a work permit for foreign employees abroad

Russia



Russian taxation of individuals at COVID-19 period and recent developments

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Foreign Bank and non-Bank Accounts Reports

Requirements related for foreign accounts are applicable to Russian citizens and foreign citizens having a residence permit in Russia, provided they do not spend overseas more than 183 days per calendar year.



To file notification on opening / closing / change of requisites of foreign accounts within 1 month;



To file on annual basis cash-flow report on foreign accounts (with certain exceptions) by the 1st June the following year. 2019 report filing deadline **has been extended to 1st December 2020**.

Tax residence determination



TAX RESIDENTS

Individuals spending in Russia
183+ days in a 12-months period

TAX NON-RESIDENTS

Individuals spending in Russia
less than 183 days in a 12-months period

No changes due to COVID-19
related move restrictions

Controlled Foreign Companies (CFC) at COVID-19 period



Russian tax residents (irrespective of citizenship) are obliged:

- To file **notification on participation** in a foreign company, if share of participation exceeds 10%;
- To file **CFC report on annual basis** if, inter alia, share of participation in CFC exceeds 25%;
- To **pay tax** on revenue generated by CFC (with certain exceptions).



No changes due to COVID-19 related move restrictions

Taxation of (accidental) tax residents

Tax residence for PIT purposes shall be determined on the basis of **calendar year** rather than 12-months period.



- Russian tax residents are taxable on **worldwide income at the 13%** tax rate.



- If provisions of the effective Double Tax Treaty allow, individual may be treated as resident of a foreign country. Most likely applicable to “accidental residents” whose **center of vital interests remains outside of Russia.** However, Russian source income (e.g. income for work performed in Russia irrespective of payroll location) is subject to taxation in Russia.

Taxation of (accidental) tax non-residents



- Russian tax non-residents are taxable on **Russian source income at the 30% tax rate.**



- Periods of absence associated with medical treatment and/or education **can be excluded from non-Russian days** but supporting documents shall be in place.



- Income received for **work in Russia is subject to Russian taxation**, unless provisions of the Double Tax Treaty allow to exempt it.

If an individual staying in Russia needs to perform activities for the benefit of a foreign company...



The individual may apply **special regime for self-employed individuals** and pay 6% tax. This option is applicable to those whose income does not exceed RUB 2.4 mln (exceeding amount is subject to taxation on regular basis). Also, this regime is currently available not in all regions of Russia.

Nota Bene. If individual performs work duties as regular employee, the tax authorities may reconsider the status and treat income as regular employment income taxable on a general basis.

Tax and Social Security Contributions reliefs associated with COVID-19

- As of 1st April 2020, small and medium enterprises (in accordance with the registry) are allowed to apply **decreased rates of social insurance contributions** to part of remuneration exceeding minimum wage. Decreased rates are as follows:



- obligatory pension insurance contributions – 10%;
 - obligatory social insurance contributions – 0%;
 - obligatory medical insurance contributions – 5%.
- 2019 Personal Income **Tax filing deadline has been extended** to 30th July 2020. Corresponding tax payment deadline has not been extended and remains 15th July 2020.

Measures proposed by Vladimir Putin on 23rd June 2020



- To **increase personal income tax rate** as of 1st January 2021. The tax rate of 15% shall be applicable to **income exceeding RUB 5 mln**. Regular tax rate of 13% shall still be applicable to income below the cap.



- To grant option to pay **special one-off payment of RUB 5 mln** instead of tax on revenue of controlled foreign companies (CFC). For the payers, no CFC related reports shall be required.



- To provide **lower rates of social insurance contributions for IT companies**. The effective rate is 14%, the planned rate is 7.6%. On a separate but related basis – corporate income tax for IT companies shall also be decreased to 3%.

USA



The U.S. response to COVID-19

Richard Tonge

Principal, Global Mobility Services, Grant Thornton LLP

Closing of borders



- January 31, 2020 – ban on inbound travel from China (PRC) for non-US citizens, quarantine for individuals returning from Hubei
- February 29, 2020 – similar ban effective for Iran
- March 11, 2020 – ban on inbound travel from European Schengen Area for non-US citizens, self-isolation for those in contact
- March 14, 2020 – European ban extended to the UK and Ireland
- March 17, 2020 – European flight travel limited to 13 US airports
- March 17-18, 2020 – Immigration application meetings for new authorizations cancelled globally
- March 20, 2020 – Canada and Mexico tourism ban comes into effect

Recent Events



- April 22, 2020 – Presidential Proclamation limits entry into the US for new applicants for certain visas
- June 22, 2020 – Presidential Proclamation extending travel ban for visa applicants
- June 2020 – resurgence of COVID-19 in states such as California and Texas. Internal state-to-state travel bans expand with the addition of the tri-state area

COVID-19 scenarios for U.S. employees



- What did we anticipate that we've seen happen?
- Employees stuck overseas and unable to return
- Employees choosing to move country during the pandemic
- Assignments extending longer than expected
- Employees return to the U.S.

How has the U.S. responded?



Existing Tax & Social Security Provisions

- Double tax treaties
- Totalization agreements
- Extension of domestic legislation



COVID-19 Specific Tax Measures

- Filing and tax payment extensions
- Stimulus payment to taxpayers
- Residency days exception
- Treaty days exception
- Income exclusion exception

Extensions and stimulus



- Extended filing deadline to July 15th from 15th April
- Extended payment deadline for 2019 balancing tax payments
- Extension applies to Quarter 1 and Quarter 2 estimated payments
- Similar extensions across States
- Economic Impact Payment
 - \$1,200 per individual
 - \$500 per qualifying child
 - Phase out over income thresholds

Residency and treaty

- The IRS issued Rev. Procs. 2020-20 and 2020-27 to address potential tax challenges and uncertainty facing internationally mobile employees impacted by COVID-19 and their employers
- The guidance addresses individual federal tax residency, the availability of relief under U.S. double tax treaties, and qualification for income exclusions in alleviating unintended tax consequences for international employees
- Rev. Proc. 2020-20 contains relief for individuals who are present in the U.S. and who are regarded as non-resident aliens or would be were it not for the impact of COVID-19 on their travel
- Rev. Proc. 2020-20 provides that individual may exclude up to 60 days of their COVID-19 emergency period from the substantial presence test, which is treated as a medical condition meeting the medical condition exception
- Rev. Proc. 2020-27 also allows individuals to exclude up to 60 days from counting towards relevant treaty articles that would exclude employment income from Federal tax

Income Exclusion

- Rev. Proc. 2020-27 provides that days spent in the U.S. as a result of COVID-19 will not prevent individuals from qualifying for exclusions from gross income under Section 911's foreign earned income exclusion
- Individuals can exclude up to \$105,900 of income from their 2019 federal taxable income (\$107,600 in 2020) if they qualify for the exclusion under either:
 - The bona fide resident test – they are resident in a foreign country for an uninterrupted period including at least a complete U.S. tax year
 - The physical presence test – they are present and working in a foreign country for at least 330 days in a 365 days period (this does not need to be 330 consecutive days)
- Qualifying dates of departure from the foreign country apply – on or after December 1, 2019 in China, globally on or after 1 February, 2020, and before 31 July 2019. The taxpayer must have been present in the country before the starting date and had a 'reasonable expectation' they would have remained there were it not for COVID-19.

Corporate risk

- FAQs published by the IRS on March 5, 2020 outlined relief for individuals undertaking business in the United States and may otherwise be considered to have a US ‘trade or business’ or a permanent establishment.
- A person may choose an uninterrupted period of up to 60 calendar days, beginning on or after Feb. 1, 2020, and on or before April 1, 2020, to exclude from the USTB or U.S. permanent establishment determination.
- Qualifying dates of departure from the foreign country apply – on or after December 1, 2019 in China, globally on or after 1 February, 2020, and before 31 July 2019. The taxpayer must have been present in the country before the starting date and had a ‘reasonable expectation’ they would have remained there were it not for COVID-19.

What next with COVID-19?



- Second and Third waves of the pandemic in 2020?
- Sustained pandemic into 2021?
- Extended border closures to 2021?
- Longer term working remotely

- Can the 'new normal' be considered 'force majeure'?
- Are the measures sufficient?

The potential impact...



- Is the 60 days exemption enough?
- What could the longer term impact be for employees displaced and disrupted by the pandemic?

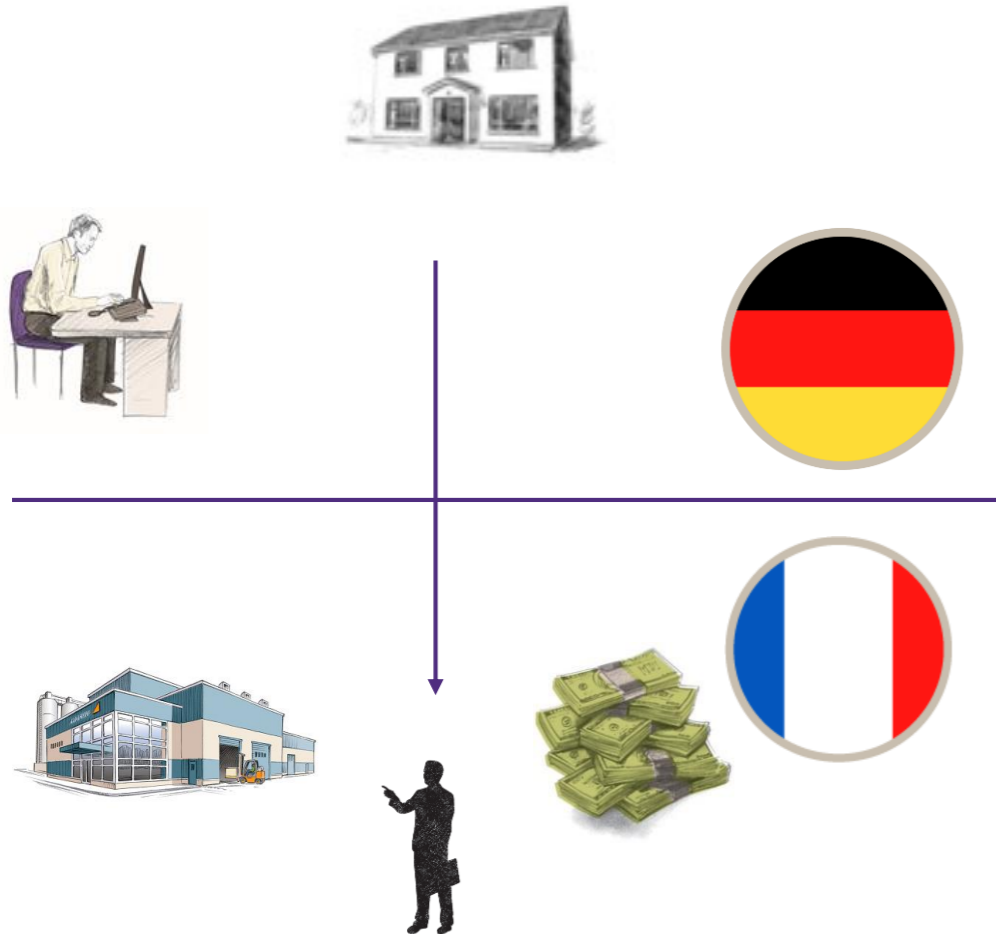
Germany



Marco Schader

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Tax implications for cross border workers/expatriates working in their home country Germany due to closed borders



- Wages for working days in a foreign country, in which the employer is resident, are usually taxed in that country
- Wages for working days in their home country, Germany, are usually taxed in Germany
- Performing more working days in the home office than usual leads to an **increase of the taxable base in Germany**. Depending on the tax rate in the respective countries this can lead to a significant higher or lower overall tax burden for cross border commuters
- Particularly workers who commute daily from their place of residence to work in another country are affected by the current exit restrictions imposed by Covid-19
- Special Tax Treaty exemptions for cross border movers (i. e. for Austria, France, Switzerland) might be lost due to the increased non-return days (limit for non return days 45 Austria, France – 60 Switzerland)

Performing more working days in Germany means a higher portion of the salary will be taxed in comparison to the Pre-Covid-19 situation or the special cross border status will be lost

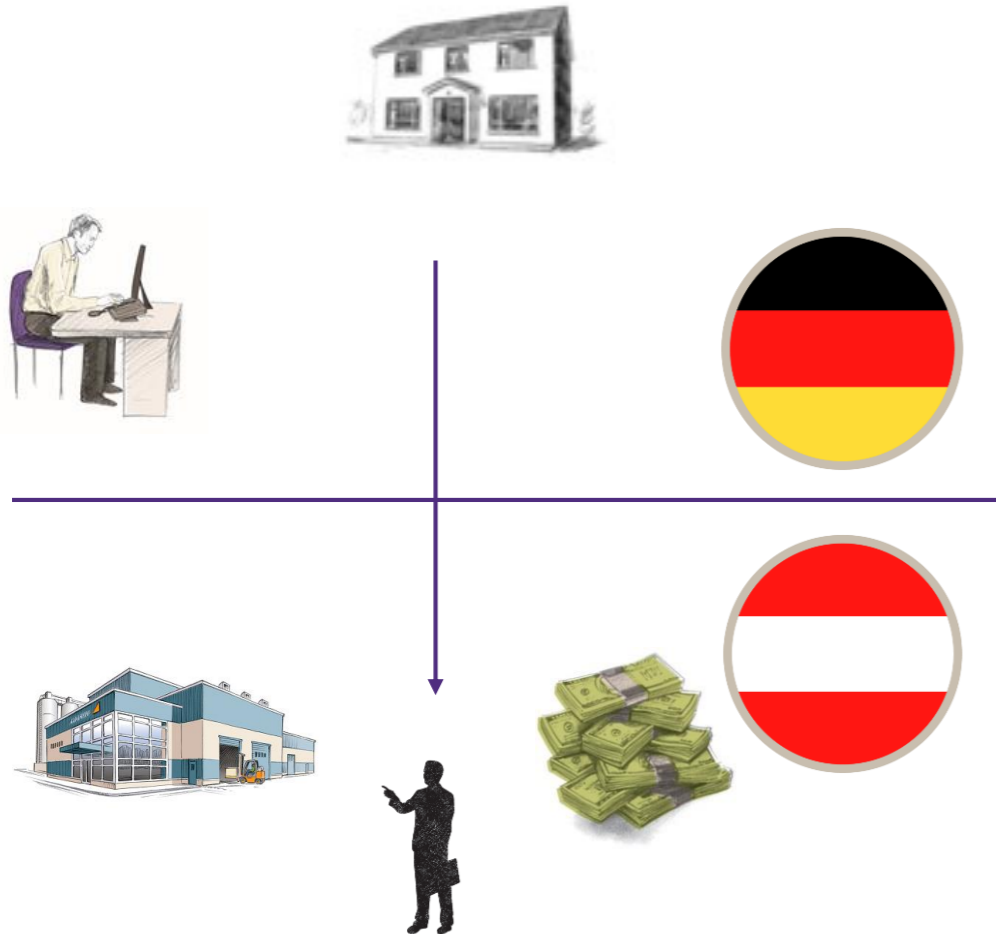
Announced measures of the German Ministry of Finance to ease these implications



Austria, Luxembourg, the Netherlands, Belgium, France, Switzerland: deemed place of work

- Working days made in the home office due to the Covid-19 pandemic are not counted as non-return days or days worked in the residence country, Germany, but counted as working days in the country in which the work would have been performed without the Covid-19 measures
- Thus the deemed place of work concept is not valid for working days, which would have been performed in the residence country without the Covid-19 measures (e.g. contractual agreed home office working days)
- Employees are obliged to keep appropriate records
- Generally the agreements are now extended from month to month

Announced measures of the German Ministry of Finance to ease these implications - Example

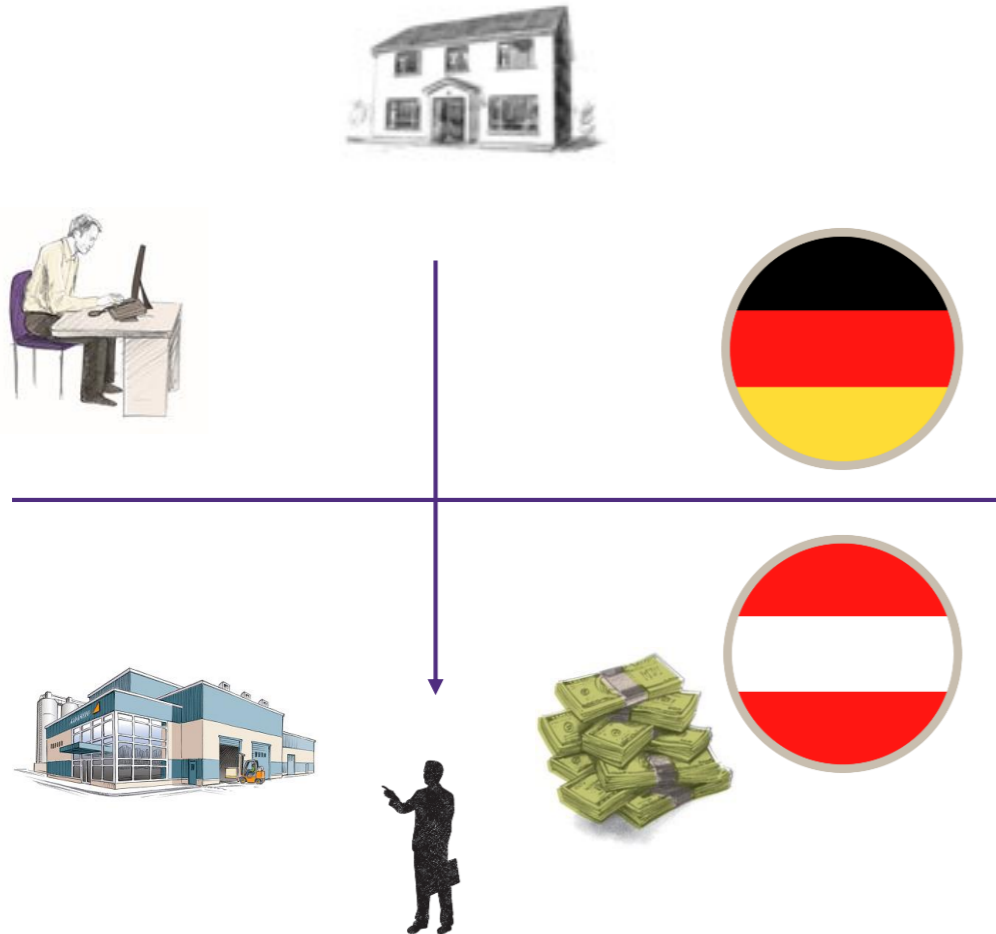


Example 1: Double Tax Treaty Austria

Employee G has his residence in Germany 10 km from the Austrian border. He works for an Austrian employer. His place of work in Austria is 5 km from the border. G returns daily to his place of residence in Germany.

Result: G exercises his activity in Austria, he stays in Austria for more than 183 days and he exercises his activity for an employer resident in Austria. However, G is a cross-border commuter, as his residence and place of work are both within 30 km of the border. The wage is therefore taxed in Germany, the country of residence.

Announced measures of the German Ministry of Finance to ease these implications - Example



Example 2: DTT Austria without a Covid-19 special regulation

Employee G (as in example 1) no longer returns daily to his residence in Germany due to Covid -19, but works for 10 weeks (5 days per week) in his home office.

Result: By crossing the 45-day limit, G loses his status as a cross-border commuter for the entire year. The salary is thus taxed in the country of employment, which means that Germany only retains the right of taxation for the 50 days in the home office. Austria is permitted to tax the Austrian working days.

With Covid-19 regulation: G does not cross the 45 day limit as the home office working days were deemed as Austrian working days

Required actions



- Checking payroll obligation for employees in Germany being taxed in Germany due to COVID-19
- Checking eligibility for the deemed place of work concept and preparing the underlying documentation
- Review tax residency position of employees assigned to foreign countries, but being kept in Germany due to the lockdown
- Checking Permanent establishment risk caused by employees working in Germany

Other Covid – 19 tax measures in Germany for individuals



- Simplified application for deferment of tax payments
- Income tax prepayments can be reduced upon application, if income tax prepayments were made and a refund is likely
- Social Security amounts can be deferred upon application, if other supporting measures are exhausted
- Tax free Corona bonus up to EUR 1,500. This covers special benefits that employees receive between March 1st, 2020 and December 31st, 2020. Precondition: allowances and benefits are paid in addition to the wages owed in any case
- One-off child bonus for 2020 in the amount of € 300, which will be treated in the same way as child benefit for tax purposes. The child bonus should be paid out in full if a child is entitled to child benefit for at least one month

Short-time working allowance

Overview short term work regulation in Germany

I. Requirements for receiving short-time working allowances

- **Substantial interruption of the business including loss of wages and salaries**, which is temporary and inevitable. In general, the loss of working time has to concern at least one third of the employees, with the loss of wages and salaries amounting to 10% to 100% of the gross remuneration as a result of the reduction of the working time due to short-time work.
- **Company requirements:** minimum of one employee
- **Personal requirements of affected employees:** employment subject to compulsory social security insurance and not subject to grounds for exclusion, e.g. termination of the contract or existence of cancellation agreement, employees participating in professional training in full-time with remuneration, outworkers, trainees and inactive employments (e.g. parental leave).
- **Notification** of the Employment Agency [Agentur für Arbeit] by due date, and submission of the required request by due date.
- **For foreign employers:** registered office in Germany

II. Mandatory agreement with employees

- Short-time work requires a contractual basis
- In case employees refuse to consent, a notice of termination of the contract with the option of altered conditions of employment ("Änderungskündigung") is feasible to implement shorter working times. However, in this case the employee continues to be entitled to remuneration until expiry of the period of notice.

Short-time working allowance

Overview short term work regulation in Germany

III. Procedure for short-time work and short-time work allowance

Stage 1: Notification of the loss of working hours to Employment Agency

Caution! As a rule, short-time allowances are only paid starting in the calendar month in which the Employment Agency receives the notification.

Stage 2: Application for short-time allowances

An application for short-time working allowance must then be submitted to the employment agency in whose district the payroll accounting office responsible for the employer is located (3 months limit).

IV. Duration and amount of the short-time working allowance

- The short-time working allowance is to be granted in the amount of **60 % or 67 %** (for employees with dependent children) of the loss of net earnings calculated on a flat rate basis, i.e. the difference between the remuneration of the respective employee in case of normal working hours (target remuneration) and the remuneration of the respective employee in case of short-time work (actual remuneration).
- As a rule, short-time allowances may only be granted for a maximum of **12 months**. Extension of the duration to **24 months** by means of a regulation is currently planned and shall be issued with regard to the corona virus, soon.

UK



COVID-19 Key Tax Implications

Heather Smallwood

Director, Global Mobility Services, Grant Thornton UK LLP

HM Revenue & Customs ("HMRC") announcements

Employment and personal tax filing, reporting and payment extensions

- Self Assessment 2nd Payment on Account for 2019/20 UK tax year can be delayed from 31 July 2020 to 31 January 2021 without interest and penalties
- Submission of 2019/20 Short Term Business Visitor returns – deadline extended from 31 May to 31 July 2020
- Deadlines for applications for the new “special PAYE arrangements” for 2020/21 extended to 17 July 2020
- No extension to other employer 2019/20 reporting such as forms P11D annual returns of non-cash payments and benefits (6 July 2020) and application for a PAYE Settlement Agreement (5 July 2020)
- The introduction of the new off-payroll working rules (“IR35”) rules delayed for 12 months to 6 April 2021

HM Revenue & Customs ("HMRC") announcements

Impact on the Statutory Residence Test

Days spent in the UK due to the coronavirus can be treated as “exceptional circumstances” and disregarded when calculating days spent in the UK if:

- Individual is quarantined or advised by health care/public health guidance to self-isolate in the UK as a result of the virus
- Advised by official Government advice not to travel from the UK as a result of the virus
- Is unable to leave the UK as a result of the closure of international borders
- Asked by their employer to return to the UK temporarily as a result of the virus

HM Revenue & Customs ("HMRC") announcements

Allowances and expenses for employees working from home – the following can be provided tax free (provided no significant private use)

- Reimbursement of broadband fees
- Provision of laptops, tablets, computers and office supplies
- Payment or reimbursement of up to £4 per week (£6 per week from 6 April 2020) for additional household expenses
- Provision of a salary advance or loan up to £10,000 in a tax year is not taxable without need to keep receipts

HM Revenue & Customs ("HMRC") announcements

Tax treatment and business implications of furloughed employees

- Coronavirus Job Retention Scheme ("CJRS") introduced in March
- To support businesses retain staff where "severely impacted" by the virus,
- Companies could furlough employees who met the conditions and the government would pay 80% of the employee's salary each month up to £2,500 but employees not allowed to work while furloughed
- Scheme closed to any employees not already on furlough as at 30 June and is to be slowly phased out.
- Some part time work allowed from 1 July under new "flexible" rules and scheme will close at the end of October.
- Inbound expatriates to the UK qualify for the CJRS if all of the conditions are met, i.e. on a UK payroll, included on an RTI submission before 19 March and "an employee" of the UK business submitting the claim. HMRC accept that assigned or seconded employees on a UK PAYE scheme = employees for the purposes of the CJRS.
- HMRC also make it clear that businesses should only access the scheme where they can not maintain their current workforce without doing so. If a UK employer can continue to recharge an overseas entity then HMRC consider it ineligible to use the scheme
- Expecting to see considerable HMRC review activity around use of the scheme, particularly around fraudulent claims and how companies decided that they were "severely impacted".

HM Revenue & Customs ("HMRC") announcements

Permanent Establishment and other considerations

- Displaced employees working from home could create a PE risk for their employer
- Risk profile depends on the specific facts of the case including seniority of the individual, activities and role being carried out by the employee, the countries involved and the duration
- OECD has released guidance but domestic laws and Double Tax Treaties need to be considered
- Where the person displaced is a director of the business or other strategic decision maker, this could also impact the company's residence
- Potential residence and tax implications for the individual employee in the country they are temporarily in
- There may also be an obligation to register for payroll withholding in the location where the employees is temporarily working

BREXIT



- A recap that UK formally left the EU on 31 January 2020
- Key employee-related implications for immigration and social security
- Currently in the agreed transitional period so “business as usual” which is due to end on 31 December 2020 but negotiations continue
- Per withdrawal agreement individuals “shall be covered for as long as they continue without interruption to be in one of the situations...involving both a Member State and the UK”. What does this mean for existing assignees with A1 certificates? Can the existing rules apply beyond 31 December 2020?
- UK has a series of underlying reciprocal agreements with individual member states but many are 40+ years old and inadequate for modern working practices
- No change to the rights and status of EU, EEA and Swiss citizens currently living and working in the UK until 30 June 2021.
- Individuals can apply to the EU Settlement Scheme where criteria are met

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