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Cross-border teleworkers, “Post-covid era – the challenges of teleworking”

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Introduction

- In 2021 ITEM did a B-solution project¹ and a Cross-border Impact Assessment²
- Relation NL-BE, NL-GE and BE-GE
- Cases: € 36,500 and € 55,500, single, married (spouse with and without income, two children)
- Frontier worker compared to neighbour (working and residing in State of residence frontier worker) and to colleague (working and residing in State of work) for 100% and for 40% (State of residence) / 60% (State of work)

¹ <https://www.b-solutionsproject.com/employment?pgid=kpxrje65-bc534e6d-6c42-41da-8570-d88c9a585cc3>

² <https://itemcrossborderportal.maastrichtuniversity.nl/index.html>

An example: 2021 pro-forma calculations / entire year / single / no deductions / income tax (IB) calculations / municipal taxes 7% / including tax credits ([ITEM Cross-Border Impact Assessment - Research - Maastricht University](#))

* Calculations made by Ernst & Young Belastingadviseurs LLP

SSC in employment State	Resident DE BE employer 100% working in BE	Resident DE DE employer 100% working in DE	Resident BE DE employer 100% working in DE	Resident BE BE employer 100% working in BE
Gross salary	€ 55.500	€ 55.500	€ 55.500	€ 55.500
Taxation BE	€ 15.038	€ 0	€ 1.235	€ 15.038
Taxation DE	€ 0	€ 10.077	€ 9.268	€ 0
Premiums	€ 7.730	€ 11.225	€ 11.225	€ 7.730
Opcentiemen reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 32.732	€ 34.198	€ 33.772	€ 32.732
Premiums employer	€ 12.958	€ 12.196	€ 12.196	€ 12.958
Labour costs	€ 68.458	€ 67.696	€ 67.696	€ 68.458

60% in state of work/40% in state of residence

SSC in residence State	Resident in DE BE employer 60% working in BE, 40% D	Resident DE DE employer 100% working DE	Resident BE DE employer 60% working in DE, 40% in BE	Resident BE BE employer 100% working in BE
Taxation BE	€ 10.213	€ 0	€ 6.605	€ 15.038
Taxation DE	€ 4.191	€ 10.077	€ 4.785	€ 0
Premiums	€ 11.225	€ 11.225	€ 7.217	€ 7.730
Opcentiemen Reimbursement	€ 0	€ 0	€ 0	€ 0
Net	€ 29.871	€ 34.198	€ 36.892	€ 32.732
Employer premiums	€ 12.196	€ 12.196	€ 12.958	€ 12.958
Labour costs	€ 67.696	€ 67.696	€ 68.458	€ 68.458

* For Germany: Statutory Pension, unemployment, health and nursing care (incl. Surcharge of 0.25% for employees without children; borne by employee only)

** German social security: Statutory Pension, unemployment, health and nursing care + approx. 2% for U1, U2, Insolvency Fund + workmen's compensation board (rough estimate; borne by employer only)

*** For Belgium resident 8% deduction on income tax considered according to Sec. 11 para 2 of the Final Protocol to the DTT Germany – Belgium

Overview single taxpayer

- + = increase net income employee, decrease premiums/labour costs employer
 - = decrease net income employee, increase premiums/labour costs employer

Working from home €36.500/€55.500	Resident DE BE employer (60% BE, 40% DE)	Resident BE DE employer (60% DE, 40% BE)
Net	-/+	+/+
Premiums employer	+/+	-/-
Labour costs	+/+	-/-

Social security

At European level -> transitory period rules until 30.06.2023 -> no change of social security system from State of work to State of residence in case of working from home
After 01.07.2023 normal rules art. 13 Reg. 883/2004 and art. 14 Reg. 987/2009 applicable = working > 25% in State of residence -> social security system State of residence applicable

Germany-Austria (Rahmenvereinbarung)

Working in two MS -> < 40% in State of residence -> no change of social security system

Taxation

- Agreement Swiss-France (01.01.2023)
- < 40% time working from home -> attribution to State of work
- Loss of revenue for State of residence -> compensation for State of residence

How to continu? Some possible issues

- Art. 15 OECD MC results in a salary split => frontier workers: no access to equal treatment resident tax payer => denying a certain amount of days working from home?
- Constituting a PE for the employer?
- Increase administratieve burden (e.g., dealing with two tax administrations, paying SSC in State of residence employee/employer)
- More discoordination between tax and SSC
- Labour law consequences (e.g., continued payment of wages for two years in the Netherlands and one month in Belgium)
- No 'connection' with collective agreements

Recommendations

- Look at taxation issues in connection with social security issues ('Paris' (OECD) and 'Brussels' (Reg. 883/2004)) => at least coordination between taxation and social security as much as possible
- Make clear what is meant by 'teleworker' => make clear for which employees we need to solve the problem?
 - => use the same definition for tax purposes and SSC
- Use the same definition of PE
- In case of working for one employer: increase 25%-criterion to 40% => if not possible in Reg. 883/2004, then arrangements between MS (Art. 8(2) or Art. 16 Reg. 883/2004)?

Thank you for your attention!