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Employee Cross Border Activities

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Employee Cross Border Activities

In today's world, the operations of companies are becoming increasingly globalised.

Along with companies' high demand for workforce and the requirements of the young generation for flexible work arrangements, this leads to a trend where employees are more and more involved in different kinds of cross-border activities. Companies and employees do not often realise that these activities have consequences for them in tax, social security and labour law terms.

As these activities are currently under higher scrutiny by tax, social security and labour law authorities (subject to high penalties and fines – amounting up to tens of thousands of euros), we would like to point out the possible consequences using several examples of situations we often come across in respect of our clients.



Employee Cross Border Activities

Sometimes the situation is quite straightforward and it is obvious that there is cross-border activity.

An employee of your company is assigned to work abroad or travels abroad on business trips



1 Regional role HR manager



2 Frequent business travelers

But there are also other scenarios where the consequences are less obvious as the employees do not even need to travel between countries.

An employee of your company works from home in a country other than the country where your company is located



3 Home office abroad

An employee of your company is simultaneously employed by other companies abroad



4 Regional executive director

Are any of the above scenarios applied in your company? Are you sure that:

- The employee's activities do not trigger tax obligations for your company or the employee in other countries?
- You pay social security and health insurance contributions for the employee in the right jurisdiction?
- You comply with tax legislation and have all documents required in the event of a potential tax audit?
- All immigration documents are available and you comply with labour law regulations?



Please click on the different scenarios to obtain more information about the possible obligations.



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Regional role HR manager

An employee of your company is temporarily assigned to work abroad



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Regional role HR manager

EXAMPLE

A Czech company employs an HR manager, a Czech national, who should be simultaneously responsible for the HR function in a Slovak fellow subsidiary. According to the initial plan he should spend approximately 3 weeks per month working in the Czech Republic for the Czech entity and 1 week per month working in Slovakia for the Slovak entity. A proportion of his costs should be recharged to the Slovak entity. The manager lives with his family in the Czech Republic.

Potential consequences to be considered and documents needed*	Comments
Tax obligations of the companies	The HR manager will become taxable in Slovakia as of the first day of his activity there. The Slovak company will be obliged to process a shadow payroll from the recharged compensation, remit tax advance payments and file monthly reports to the Slovak tax office.
Tax obligations of the HR manager	Depending on the particular situation the HR manager might be obliged to file annual personal income tax returns in Slovakia. In respect of his Czech tax return, he should declare his total income and exempt the employment income taxable in Slovakia.
A1 certificate	The HR manager and the Czech company should file a joint application for a certificate of coverage (the "A1 certificate") for a "multistate worker" to the Czech social security authority, which confirms the affiliation of the HR manager to the Czech social security system. He should file a request for the A1 certificate before he travels to other countries in the performance of his role for the first time. He should carry a copy of the certificate (or at least a copy of the application for the certificate) with him when he travels to the other countries.
Assignment letter	A written Agreement on the Temporary Assignment of the HR manager to the Slovak entity should be concluded in line with the Czech Labour Code.
Minimum working conditions based on EU regulations	The Czech company would be obliged to compare the minimum working conditions (minimum salary, working hours, days of vacation) in the Czech Republic and Slovakia. The HR manager should be entitled to the more favourable conditions.
Notification of assignment required by the EU Posting of Workers Directive	The Czech company will be obliged to notify Slovak authorities of the assignment of the HR manager by the start of the assignment at the latest and designate a contact person in Slovakia for document delivery purposes. Documents substantiating the labour law relationship with the HR manager (employment contract, assignment letter, records of working hours) should be available at the premises of the Slovak company.

*Please note that should the details of the situation be different, the consequences might change.



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Frequent business travelers

An employee of your company goes on frequent business trips



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Frequent business travelers

EXAMPLE

A Czech company has sent some of its employees – consultants – to work on a project at the premises of a fellow subsidiary in Slovakia. The employees spend 3 days a week on business trips to Slovakia. The project should last for 6 months. The Czech company charges a fee to the Slovak company for the consultants' work on the project. The consultants live in the Czech Republic.

Potential consequences to be considered and documents needed*	Comments
Tax obligations of the companies	The Czech company is at risk of creating a permanent establishment (i.e. taxable presence) in Slovakia due to the consultants' activities. The risk should be reviewed by Slovak tax specialists. If the activities of all consultants combined do not exceed 6 months in any 12-month period, it is highly likely that a permanent establishment will not be created.
Tax obligations of the consultants	If the activity of each consultant does not exceed 183 days in any 12-month period and if the Czech company does not create a permanent establishment in Slovakia, the employment income of the consultants would not become taxable in Slovakia.
A1 certificate	The consultants and the Czech company should file a joint application for a certificate of coverage (the "A1 certificate") for "multistate workers" to the Czech social security authority, which would confirm that the consultants remain subject to the Czech social security system during their activity in Slovakia. They should file a request for the A1 certificate before they travel to Slovakia for the first time and carry a copy of the certificate (or at least a copy of the application for the certificate) with them when they travel to Slovakia.
Notification of posting required by the EU Posting of Workers Directive	The Czech company would be obliged to notify the Slovak National Labour Inspectorate of the posting of the Czech employees and designate a contact person in Slovakia for document delivery purposes. Documents substantiating the labour law relationship (employment contracts) and records of working hours must be available at the premises of the Slovak company where the consultants will be working.
Minimum working conditions comparison	The Czech company would be obliged to compare, evaluate and determine the base salaries and working conditions of the consultants (minimum salary, working hours, days of vacation) based on a comparison of the working conditions in the Czech Republic and Slovakia. The consultants should be entitled to the more favourable conditions of the two.

*Please note that should the details of the situation be different, the consequences might change.



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Home office abroad

An employee with a home office arrangement in a country other than the country where the employer is located



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Home office abroad

EXAMPLE

A Czech company employs a Romanian IT specialist. He works from his home in Romania, and only travels for approx. 2 – 3 days per year to the Czech Republic. He lives with his family in Romania.

Potential consequences to be considered and documents needed*	Comments
Tax obligations of the employee	The IT specialist would be obliged to pay tax in the Czech Republic only on his income for the workdays spent in the Czech Republic. He should keep records of the workdays (i.e. calendar, copies of bills and receipts) for the purposes of a potential tax audit. In Romania the employee would be obliged to file monthly reports of salary income and pay salary income tax on a monthly basis to the Romanian tax office.
Tax obligations of the company	The Czech company would be obliged to process the employee's income through a monthly Czech payroll and pay tax withholdings to the Czech tax office. The tax withholdings could be partially or fully waived if the Czech company can prove that the employee is a non-resident and is working abroad. Depending on Romanian legislation and the nature of the activity of the IT specialist, the Czech company might be at risk of creating a permanent establishment in Romania.
Social security implications	The employee would be subject to the social security system of the country where he works - Romania. No A1 certificate would be required in his case. The Czech company would be obliged to register for social security purposes in Romania and pay social security contributions from his income to the Romanian system. The employee portion of the Romanian contributions should be deducted from the employees salary.
Labour law implications	Further aspects that need to be taken into account when establishing an employment relationship with the IT specialist primarily include determining the place of work and regular workplace, the obligation to provide the Individual with travel allowances and the arrangement of work from home.

*Please note that should the details of the situation be different, the consequences might change.



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Regional executive director

An employee of your company is simultaneously employed by other foreign companies



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Regional executive director

EXAMPLE

A US parent company of a group of companies in Central Europe appoints a CEO who is responsible for the operations of companies in the region (Czech Republic, Hungary, Slovakia and Poland). He is appointed as the executive director of the Czech, Slovak, Polish and Hungarian entities. He has concluded contracts for the performance of this function with the respective entities and receives remuneration from these entities. He should spend approximately 50% of his working hours in the Czech Republic and the rest by travelling between the other countries. He is a Czech national and lives with his family in the Czech Republic.

Potential consequences to be investigated and documents needed*	Comments
Tax obligations of the companies	The executive director is considered to be an employee of the different entities (the employment or self-employment position is determined based on the local legislation in each country), his remuneration in the different countries is thus processed by the companies through their payrolls and tax is paid to the tax offices in the respective countries.
Tax obligations of the executive director	Depending on the tax regulations in the different countries the executive director might be obliged to file annual personal income tax returns in Slovakia, Poland and Hungary. In his Czech tax return he should declare his total worldwide income (including employment income from the other entities) and he can subsequently exempt the employment income from taxation in the Czech tax return.
Social security obligations of the companies	In accordance with the EU social security coordination rules, social security contributions need to be made only to the system of one country. Based on these rules the executive director should be subject to the Czech social security system. The Slovak, Polish and Hungarian companies are thus obliged to register for social security and health insurance purposes with the Czech social security and health insurance authorities and pay Czech social security and health insurance contributions from the income paid to the executive director by their companies.
A1 certificate	The Czech company and the executive director should file a joint application for a certificate of coverage (the "A1 certificate") for a "multistate worker" to the Czech social security authority confirming the affiliation of the executive director to the Czech social security system (he spends more than 25% of his time working in his country of residence). He should have this certificate issued before he travels to the other countries in the performance of his role for the first time.

*Please note that should the details of the situation be different, the consequences might change.



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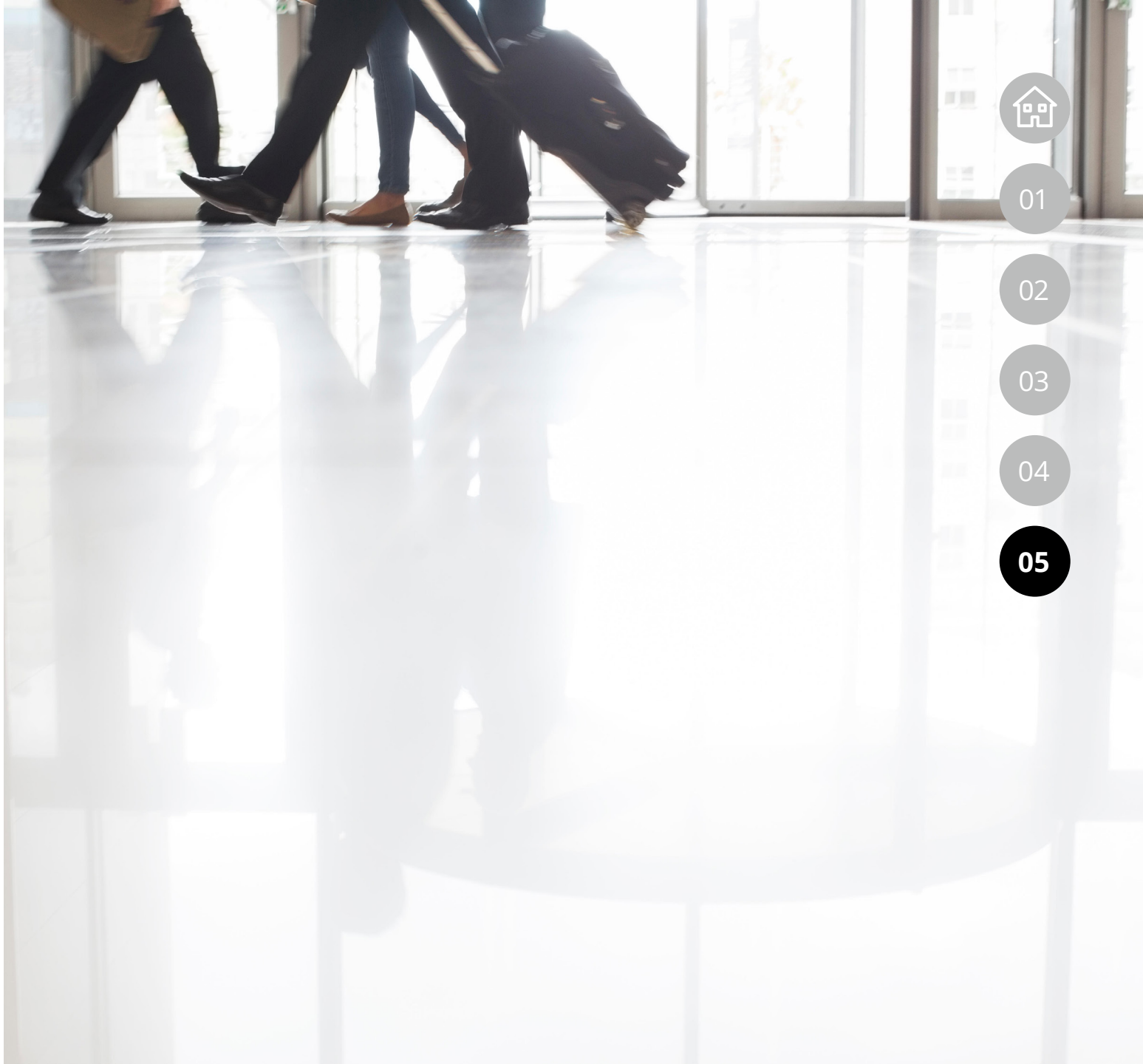
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Employee Cross Border Activities

What is the situation in your company?

- Do you monitor/track the employees working abroad?
- Do you recharge the costs of the employees working abroad?
- Do you apply for social security certificates (A1, CoC)?
- Do you notify foreign authorities about the activities of your employees abroad?
- Do you notify Czech authorities of the activities of foreign employees in the Czech Republic?

If any of your answers to the above questions is “No”, you should review your internal policies and seek changes in order to fulfill your obligations.



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