

# Posting workers - legal and tax aspects

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# Posting workers to Poland

## Posting Employer

Seat in the Member State



Substantial business activity in the Member State



Temporary character of posting



The requirements apply accordingly to posting by employer having its seat in Non-Member State

## Framework of Posting

In connection with performance of the contract with an undertaking operating in Poland

To undertaking/branch owned by the group and operating in Poland

Temporary work agency



## Exceptions

Merchant navy undertakings as regards crews of sea merchant ships

International transport (excluding cabotage transport)



# *Posting workers to Poland*

## Minimum terms and conditions of employment resulting from Polish law provisions concern:

1 Maximum work periods and minimum rest periods

2 Minimum paid annual holidays

3 Minimum rates of pay

4 Remuneration and overtime rates amount

5 Health and safety

6 Protection of employees during pregnancy and during maternity leave

7 Employment of juveniles and performance of work or other gainful activities by a child

8 Equality of treatment between men and women and other provisions on non-discrimination

9 Performing work accordingly to the provisions on the employment of temporary workers

Points 2-4 does not apply to initial assembly or first installation of goods – if not exceeding 8 days in a calendar year

# Obligations of the posting employer

Person authorized to contact with National Labour Inspectorate



Declaration submitted to National Labour Inspectorate



Duties regarding documentation



## The information that need to be included in the declaration:

- identification data of the posting employer
- anticipated number of workers with identification data and beginning and end date of posting
- address(es) of the workplace in Poland
- nature of the services justifying the posting
- place in Poland where the documents are kept
- identification and contact data of person(s) appointed by the posting employer to intermediate in contacts with National Labour Inspectorate

## The documents that need to be kept:

- copies of the employment contract or an equivalent document
- payslips
- time-sheets indicating the beginning, end and duration of the daily working
- proof of payment of wages or copies of equivalent documents

# ***Posting workers to Poland (inbound assignees) - PIT***

## **Personal income tax (PIT)**

### **Polish employment contract**

- work performed in Poland
- salary paid by the Polish employer

### **Employer's obligations**

- Polish employer is obliged to process the employee's income via monthly payroll and withhold monthly tax advances.
- Polish tax residents – standard rules applies.
- Polish tax non-residents – only the income received for Polish workdays is subject to taxation in Poland.
- Allocation of income for tax purposes and correct disclosing of income in PIT-11.

### **Employee's obligations**

- The employee is responsible to prepare and file Polish annual tax return based on PIT-11 form.

# ***Posting workers to Poland (inbound assignees) – ZUS***

## **Social security and health insurances**

### **Polish employment contract**

- work performed in Poland
- salary paid by the Polish employer

## **Employer's obligations**

- General EU rules: employee is subject to the social security scheme in the country, in which his/her work is performed (with some exceptions).
- The employee working in Poland is subject to the social security in Poland.
- Standard rules applied: the Employer is obliged to calculate, withheld and remit social security and health insurance contributions to ZUS (Polish social security institution).

# ***Posting workers to Poland (inbound assignees) – PIT***

## **Personal income tax (PIT)**

### **Foreign employment contract**

- work performed in Poland
- salary paid by the foreign employer

### **Employer's obligations**

- There is no obligation for the foreign employer in Poland
- There is no shadow payroll concept in Poland. Hence, Polish company (host company has no obligations towards income derived by the assignee from abroad
- In case of the Assignee, who is non-resident of Poland, the Polish company is obliged to file to the Polish tax authorities information about the Assignee on ORDW-1 form
- Potential PE issue for the foreign employer in Poland

### **Employee's obligations**

- The Assignee is personally obliged to calculate and pay monthly tax advances to the Polish tax authorities
- After the end of the year the Assignee is obliged to file annual tax return and pay final tax due
- 183 days issue - it is possible to avoid taxation in Poland based on double tax treaty (if certain conditions are met)

# *Posting workers to Poland (inbound assignees) – ZUS part 1*

## **Social security and health insurances**

### **Foreign employment contract**

- work performed in Poland
- salary paid by the foreign employer
- certificate of coverage **IS** obtained (A-1 or certificate issued under the Totalization Agreement)

## **Employer's obligations**

- General EU rules - the employee is subject to the social security scheme in the country, in which work is performed, unless the employee has certificate of coverage issued by the home country authorities (A-1).
- Under the certificate of coverage the employee is subject to the home country social security scheme.
- Similar rule applies to the employees coming from the country outside EU, with which Poland has Totalization Agreement (e.g. USA, Canada, Australia, Ukraine, Korea).
- The foreign employer has no obligations towards social security and health insurance in Poland.

# *Posting workers to Poland (inbound assignees) – ZUS part 2*

## Social security and health insurances

### Foreign employment contract

- work performed in Poland
- salary paid by the foreign employer having its seat in EU, EEA or Switzerland or country with which Poland has Totalization Agreement
- certificate of coverage **IS NOT** obtained (A-1 or other certificate)

## Employer's obligations

- The foreign employer is obliged to register in the Polish social security scheme, register the employee, prepare and file social security declarations, withhold and remit social security and health insurance contributions to the Polish social security authorities (ZUS) on monthly basis.
- In case of the employees from EU, EEA or Switzerland, this obligation may take over by the employee under the special agreement with the employer. In such a case, the employee register himself/herself to the Polish social security as a remitter. The employee is obliged to file monthly declarations and pay monthly social security contributions (both employee's and employer's part).

# *Obligations of employers posting workers from Poland*

## Minimum terms and conditions of employment of the host country

Statutory provisions



Collective agreements

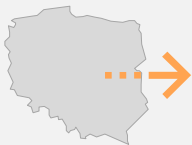


## Terms and conditions of employment in Poland

Terms and conditions of employment of resulting from the employment contract and Polish labour law still apply



## Notification / registration requirements in the host country



# ***Obligations of employers who post workers from Poland – differences in EU***

Obligations related to posting vary greatly between the countries. There are some countries where the obligations are more complex and more strictly enforced than in Poland.

## **France**

- Electronic declaration – at least 1 day before the posting of employees
- Additional registration requirements for construction and building industry
- Extensive obligations related to keeping documents
- Relatively high administrative penalties for non-compliance which in case of repeated breaches may reach up to EUR 500,000



## **Germany**

- Electronic declaration to be made prior to start of the activities
- Declarations under the Minimum Wage Act and the Posted Workers Act required for work performed in certain industries
- High administrative penalties for non-compliance reaching up to EUR 500,000



# *Posting workers from Poland (outbound assignees) PIT*

## **Personal income tax (PIT)**

### **Polish employment contract**

- work performed outside of Poland
- salary paid by the Polish employer

## **Employer's obligations**

- Polish employer is obliged to stop withholding monthly tax advances, if this income is subject to taxation abroad
- Only income received for working days in Poland is still subject to taxation in Poland
- Appropriate disclosing the income on PIT-11
- Potential PE issue for the Polish employer

## **Employee's obligations**

- Depending on the given case the employee may be required to prepare and file Polish annual tax return

# *Posting workers from Poland (outbound assignees) ZUS part 1*

## **Social security and health insurances**

### **Polish employment contract**

- work performed outside of Poland
- salary paid by the Polish employer
- certificate of coverage **IS** obtained (A-1 or certificate issued under the Totalization Agreement)

## **Employer's obligations**

- Under the certificate of coverage the employee is subject to the social security in Poland.
- Standard rules applied: the employer is obliged to calculate, withheld and remit social security and health insurance contributions to ZUS (Polish social security institution) on monthly basis.
- Special exemption: amount of per diem for each day spent abroad during the assignment

# *Posting workers from Poland (outbound assignees) ZUS part 2*

## Social security and health insurances

### Polish employment contract

- work performed outside of Poland
- salary paid by the Polish employer
- certificate of coverage **IS NOT** obtained (A-1 or certificate issued under the Totalization Agreement)

## Employer's obligations

- The employee is subject to the social security scheme in the country of his/her assignment (not in Poland).
- The employer may be required to register to the social security scheme in the country of assignment and pay social security contributions according to the local rules.
- Taking over these obligations by the employee may not be possible.

# *Posting workers from Poland (outbound assignees) PIT*

## Personal income tax (PIT)

### Foreign employment contract

- work performed outside of Poland
- salary paid by the foreign employer

### Employer's obligations: PIT

- There is no obligation for the foreign employer in Poland

### Employee's obligations: PIT

- Depending on the given case, the employee may be responsible to prepare and file Polish annual tax return (e.g. Polish tax resident).

# *Posting workers from Poland (outbound assignees) ZUS*

## **Social security and health insurances**



### **Polish employment contract**

- work performed outside of Poland
- salary paid by the foreign employer

## **Employer's obligations**

- Generally, there are no obligations towards social security in Poland for the foreign employer. However, in some specific cases, when the employee has crossborder duties within EU such obligations may arise.

# *Posting of workers and business trips – differences*

<b>Posting</b>	Temporary change of place of work based on agreement of the employee and the employer	
<b>Business trip</b>	Incidental and for short duration performance of work outside of a permanent place of work to perform a specific task connected with work duties resulting from the decision of the employer	

**Other differentiating factors** (performing an auxiliary function):

**1.** Length of working time abroad

**2.** The entity which benefits from work

**3.** Employee's supervision

# ***Business trips – some PIT/ZUS aspects***

## **Personal income tax**

- Double Tax Treaty (DTT) protection (183 days rule)
- If no DDT protection, income allocated based on each day spent in given country may be taxed in this country

## **Social security and health insurance**

- Certificate of coverage may be required
- If no certificate of coverage, the employee may be subject to the social security scheme in the host country
- European Health Insurance Card (EHIC)

## **Business trip/Posting** – different treatment of travels costs covered by the employer

### **Business trip:**

per diem and accommodation, travels costs are exempt from Polish PIT and ZUS up to certain limits

### **Posting:**

in general all cost related to assignments e.g. travels, accommodation, trips – are subject to PIT and ZUS

***Thank you!***

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