A Framework for Taxation of Telework Income in the European Union: How Late?

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The practice of telework reached its peak during the global health emergency of the COVID-19 pandemic. Many governments decreed mandatory remote work during several periods and, while many businesses suffered tremendously, many others realized that this practice could well be something to cherish. Happier workers, higher productivity, lower bills – what is there not to like? So, for many people, getting to work no longer starts with commuting to the office, but rather with opening a laptop with a self-brewed coffee in hand. While this gesture does not have an impact on one's tax affairs if workers live at a commutable distance from the office, it can create a tax hassle if work that can be performed anywhere in the world is not, in fact, performed within the same national borders in which the employer is located.

1. The rule and the problem

According to the OECD Model allocation rules, the residence state has exclusive taxing rights over employment income unless the employment is exercised in the other contracting state, in which case taxing powers are shared and both states, residence and source, can exercise them. Employment is exercised where the employee is physically present – in the traditional economy, the state in which the employer is a resident. Despite the rule apparently favouring the residence state of the employee, the "unless" clause is the most common factual setting, and the source state will usually tax this type of income.

If telework comes into play, the traditional allocation of taxing rights will be inverted. However, these rules may be adjusted soon, as this topic has been on the radar of the EU institutions for some time now. Can we expect a harmonized solution and take the next step in the free movement of workers?

2. Pre-pandemic discussion

In 2015, a European Commission expert group highlighted the fact that unrelieved double taxation caused by mismatches between Member States' taxation rules disfavours cross-border activities and that "uncoordinated exercise of their taxing powers by Member States may dissuade many individuals from exercising their EU-treaty rights to access the internal market". Hence, the expert group recommended that cross-border workers, mobile workers and other individuals deriving a significant part of their income from Member States other than the residency member:

- be governed by an EU-wide set of rules on conflict of jurisdiction, which could be introduced by a multilateral tax treaty; or
- be able to inform the tax authorities of the state of residence about cross-border tax problems so that they may reach a joint solution.

The expert group also recommended the abolition of withholding taxes on employee income, the adoption of a code of conduct on the fair tax treatment of cross-border situations and, as the best solution, a one-stop shop for workers for the collection and sharing of tax revenues among relevant tax authorities.

This report laid the foundations for the solutions that were proposed when the problem was exacerbated by the global pandemic. However, it did not offer views on the fitness of the applicable rules on the allocation of taxing rights.

3. Pandemic impulse

The European Economic and Social Committee (EESC) is an advisory body representing civil society organizations, most notably workers and employers. It produces opinions in response to referrals from the EU institutions, but it can also issue own-initiative opinions on topics of general interest and political importance, for instance where new legislation is needed.

In July 2022, amidst the pandemic, the EESC adopted an own-initiative opinion on taxation of cross-border teleworkers and their employers. The opinion welcomed the rise of teleworking and identified its benefits for employees and the environment but highlighted the challenges it poses to the international tax system. It stressed the importance of aligning the tax system with the current environment so that taxation does not disincentivize employers from hiring and employees from applying for jobs with teleworking arrangements in cross-border situations.

In particular, the EESC recommended that:

- administrative obligations related to the taxation of cross-border teleworkers be eliminated or at least minimized; and
- taxation principles should preferably be agreed upon at the global level, but while they are not, the European Union should address the issue, considering the inherent intra-EU mobility under the freedom of movement within the single market. The following possibilities were put forward:
  - Member States can agree to only tax employment income if the number of working days in the country exceeds 96 days per calendar year – less than that would not entail any tax consequences; and
  - a one-stop shop requiring the employer to report for cross-border teleworkers the number of days teleworkers worked in their country of residence and in the country in which the employer is located.

When reporting its position on the EESC opinion, the Commission generally agreed with the views expressed therein. It noted that Member States need to update the relevant tax provisions but also mentioned that the implementation of updated and coordinated rules on the taxation of cross-border teleworking would require bilateral or multilateral agreement between Member States – the best being a multilateral solution in an EU context (similar to the Multilateral Instrument).

4. 2024: Is there a light at the end of the tunnel?

Fast forward to January 2024, when Belgium assumed the rotating presidency of the Council of the European Union. The programme mentioned that the presidency "will explore the usefulness of more unified tax rules in other fields over the longer term, such as in relation to mobile workers". One month later, Vincent Van Peteghem, Belgian Minister of Finance and ECOFIN President during the Belgian presidency, stated during his keynote speech at the European Parliament Week 2024 as follows:

> Especially in the new context of teleworking, citizens living and working in border regions need solutions to the very concrete problems they face. It is therefore urgent that we also jointly discuss within the EU, how to treat mobile workers fiscally. Regarding this taxation of cross border work, we will push work to provide a more comprehensive framework during our EU Presidency, which is key for both employees and their employers.

By coincidence (or not), the day after this speech, the EESC adopted another own-initiative opinion on the taxation of cross-border teleworkers globally and the impact on the European Union. This opinion recommends, as a principle and preferred option, allocating the taxing right derived from the performance of cross-border telework to the employer's country of residence (source state). This recommendation would keep, in principle, the right to tax the income in the State in which it would be taxed according to the OECD Model rule, designed for the bricks-and-mortar economy: the country in which the work is performed (the employer's residence). According to this recommendation, the mobility of the worker and the change of the means of work (from physical to digital presence) should not affect the allocation of taxing rights to the same State, i.e. where the employer is located. To compensate for the loss of revenue of the employee's country of residence, a revenue sharing mechanism could be implemented.

When following up on the EESC opinion, the Commission stated that it does not have a firm opinion on the proposed solution, as possible alternatives are being examined and technical discussions are being held with Member States. However, neither the European Commission's website, on which acts in preparation or upcoming legislative initiatives are listed, nor the agenda of the College of Commissioners refers to any initiative of this kind.

Most likely, the Commission was referring to the task force on cross-border teleworking created by the Belgian presidency. This informal working group was established to discuss the topic (rather than to reach a definite solution). The task force currently comprises 20 Member States, 3 non-EU Member States, and representatives from the Commission and the OECD. Even though the discussions should be continued beyond the presidency's term, the work at the OECD level should be prioritized, to avoid duplication of efforts and standards.

At this point, many questions can be posed: How will the taxing rights be divided? Which instrument will implement the changes? Will it be able to balance administrative simplicity with a fair sharing of revenues among the States? And how late will it come?

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