



OPINION

European Economic and Social Committee

Taxation of cross-border teleworkers and their employers

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[own-initiative opinion]

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1. **Conclusions and recommendations**

- 1.1 The EESC recognises the particular challenges that the rise of cross-border teleworking pose to the international taxation systems of today. This concerns in particular the taxation of wages and the taxation of company profits.
- 1.2 The EESC agrees with the European Commission (EC) that a cross-border teleworking employee could be faced with double taxation on their income, resulting in lengthy and costly disputes between an employee and Member States' tax authorities. Dependent on a country's tax treatment of foreign income, an employee could also be obligated to comply with two separate tax declarations, possibly at different times due to differences between tax filing deadlines between Member States. The compliance burdens constitute obstacles to an efficient single market. Member States should pay due attention to the obstacles when bilateral tax agreements are signed.
- 1.3 In terms of the taxation of company profits, international teleworkers may run the risk of inadvertently creating a permanent establishment (PE) for the company in a country other than its own. If a PE were established in another country, the company would be forced to accurately divide its corporate income between the two locations, and thus be subject to different filing obligations and tax liabilities.
- 1.4 The EESC welcomes the temporary tax measures Member States took during the height of the pandemic and the guidance issued by the OECD during the pandemic. These measures allowed cross-border employees and employers to carry on with business activities, and ensure both were not faced with double taxation, allowing businesses to continue supporting the EU economy and workers at an important time.
- 1.5 The EESC underlines how important it is that the taxation systems are updated further to answer the needs of today's work environment. The international corporate tax framework has recently been overhauled through an agreement on an OECD/G20 Inclusive Framework Tax Package consisting of two pillars. If employees increasingly engage in employment through teleworking, there might be a need to also review international taxation rules for individuals. In particular, rules must be easy to comply with.
- 1.6 The EESC considers it essential that taxation rules regarding cross-border teleworking ensure that there is no double taxation or unintended non-taxation for both employees and employers. In ensuring that companies of all sizes can offer teleworking opportunities, it is important that any administrative obligations related to the taxation of cross-border teleworkers are eliminated or at least minimised.
- 1.7 Whilst EESC recognises that countries have the right to decide on whether and at what rate they should levy taxes in their countries, taxation principles for cross-border teleworking should preferably be agreed at the global level. However, considering the inherent intra-EU mobility under the freedom of movement within the Single Market, there are reasons to address the issue at EU level before a global solution is found. While different approaches are possible, it is important that a high degree of coordination is achieved in the EU.

- 1.8 The EESC stresses that the rules should be easy for both employees and employers. One possibility would be for Member States to agree to only tax the employee if the number of working days in the country exceeds 96 days per calendar year. The EESC notes that in the OECD/IF tax work, a Multi Lateral Instrument (MLI) has been used as a tool to facilitate a timely implementation of new tax rules.
- 1.9 The EESC encourages the EC to consider whether a one-stop shop, like we have in the VAT area, could be a possibility. It would require the employer to report for cross-border teleworkers the number of days teleworkers worked in their country of residence and in the country where the employer is located. With this information, tax authorities would be able to assess in which country income would be taxable, or what part of the income would be taxable in each country.
- 1.10 A one-stop shop system developed for cross-border teleworkers may serve as a first step to having an infrastructure allowing employees and employers to reduce tax disputes between Member States and at the same time ensuring that taxes are levied correctly without requiring the individual to file in multiple countries.

2. Background

- 2.1 The COVID-19 pandemic has changed the lives of workers and businesses in unprecedented ways. One of the most striking trends during the COVID-19 pandemic, with travel restrictions in place and governmental limitations on the number of employees present in offices in order to reduce transmission of the COVID-19 virus, has been the rise of teleworking¹. Businesses and employees made major efforts to digitalise their daily activities (e.g. online meeting tools) in order to facilitate employees working from home. In this way, businesses could still continue delivering (necessary) goods and services to customers and thus support the EU economy, jobs, trade and economic growth.
- 2.2 By reducing travel commuting time, teleworking is associated with greater flexibility which may decrease stress for the employee, allowing for an improved work/life balance². In addition, the rise of teleworking can benefit the EU's objective of carbon neutrality. With a large share of EU emissions arising from transportation, a rise in teleworking could lead to a lower amount of carbon emissions and less traffic congestion³. By moving to teleworking, the need for office space is likely to decrease, thus lowering emission costs of office buildings (e.g. heating and cooling).
- 2.3 As we are moving towards a 'post-COVID-19' era with high vaccination rates across the EU, while we expect that some employees will return to their offices, it is unlikely that the rising

¹ While recognising the importance of employment contracts, social security contributions, pension rights, (physical and mental) health and safety concerns, impact on labour market organisations, competitiveness etc., the focus in this opinion is on the direct taxation of employees and employers in a situation where the employee is employed in a business in one country while performing a limited part of the work time from abroad by using teleworking tools. The opinion does not address posted workers, frontier workers as defined in bilateral agreements or self-employed workers engaged in cross-border sales.

² [The impact of teleworking and digital work on workers and society](#)

³ [The impact of teleworking and digital work on workers and society](#)

trend of teleworking will be fully reversed. In a Eurofound survey of March 2021, 46% of EU employees expressed a preference to continue to work 'daily' or 'several times a week' from home when the pandemic ends⁴. As a result, teleworking is also expected to become part of our working culture.

- 2.4 The rise of cross-border teleworking poses challenges to the taxation systems of today. While the phenomenon of cross-border working is not new, the ability for an employee to telework from their home in another country raises issues with international tax rules, in particular if the employee works a substantial share of working days in their country of residence or in a third country, rather than the traditional place of activity. This concerns in particular the taxation of wages and the taxation of company profits. Such cases can arise particularly in certain 'hotspot regions' which lie geographically close to other Member States, but the growth and development of teleconferencing tools is likely to increase such cases on a wider basis.
- 2.5 In terms of the taxation of wages, workers residing in one Member State (residence jurisdiction), but working for a company located in another (source jurisdiction) can be subject to double taxation, with both jurisdictions taxing the income. In order to avoid such a scenario, countries have concluded bilateral double taxation agreements, often following the OECD Model Tax Convention (OECD-MTC) on Income and on Capital. The OECD MTC lays down as a general principle that income from employment should be taxed only in the residence jurisdiction. However, if work is carried out in another country (i.e. the source state), the source state may tax the income attributable to the days worked in this state, provided that the employee stays at least 183 days in the source state in a year, or the remuneration is paid by an employer in the source state, or if the remuneration is borne by a PE of the employer in the source state.
- 2.6 In accordance with the OECD-MTC, an employee resident in a country other than their country of usual work activity will be faced on day one with a division of taxing rights on work income between the residence jurisdiction and the source jurisdiction on a pro-rata basis.
- 2.7 To avoid an immediate apportionment of income for cross-border working, and as the OECD Model is a template which Member States are not obligated to follow, some countries have installed different rules, such as de-minimis structures. In this case, the employee's income is taxed exclusively in the residence country, provided that the employee does not exceed a certain number of days where they are not present in the usual place of activity⁵.
- 2.8 Due to measures taken during the pandemic, such as the implementation of strict quarantine requirements and restricting cross-border travel, many workers, in particular frontier workers, were forced to telework in their residence country rather than their usual country of activity. As a result of the COVID-19 pandemic, numerous Member States took temporary measures to avoid source jurisdictions losing their entire taxing right. Member States agreed on 'memoranda of understanding' whereby all the days worked in a home office would be deemed as activity in the Member State where work activity normally takes place. This would only apply to workers

⁴ Eurofound: ["Labour market change: Teleworkability and the COVID-19 crisis: a new digital divide?"](#). Working Paper WPEF20020.

⁵ These structures cover teleworking, but also training and missions.

subject to the exceptional situation of COVID-19, and not cross-border workers who were already teleworking before the pandemic. These temporary measures have presumably not been prolonged after 30 June 2022, and countries will return to the general OECD-MTC or de-minimis structures. Similarly, the OECD also issued guidance concerning the taxation of the income of 'stranded workers' (employees stranded in a source jurisdiction for a long period of time due to COVID-19 related travel restrictions, quarantining rules, etc.)⁶.

- 2.9 According to the EC⁷, a cross-border teleworking employee could be faced with double taxation on their income, resulting in (lengthy, costly) disputes between an employee and Member States. Dependent on a country's tax treatment of foreign income, an employee could also be obligated to comply with two separate tax declarations, possibly at different times due to differences between tax filing deadlines between Member States. In addition, complexities could arise where certain tax expenses necessary for the generation of income would need to be accurately divided between the two Member States. A cross-border teleworking employee may also lose out on tax benefits or credits.
- 2.10 Non-resident taxpayers with income from two or more Member States, such as mobile workers, seasonal workers, sportsmen, artists and pensioners are in general not eligible for the taking into account of personal and family circumstances in the same ways as for resident taxpayers. According to the *Schumacker*-ruling⁸, Member States have to grant such tax benefits to non-residents, if the taxpayers earn "all or almost all" their income in this Member State. Some Member States apply a threshold of 90% of the total income to be earned in that Member State for granting such tax benefits. This can represent an obstacle to the free movement as any income above a 10% share of the total income in other Member States will result in at least a partial loss of such tax benefits, as the threshold for the full granting of such tax benefits will not any longer be attained. Member States should allow the taking into account of personal and family circumstances, if non-residents earn 75% of the taxpayer's income in the source state.
- 2.11 The compliance burdens constitute obstacles to an efficient single market. Member States should pay due attention to the obstacles when bilateral tax agreements are signed.
- 2.12 In terms of the taxation of company profits, international teleworkers may run the risk of inadvertently creating a PE for the company in a country other than its own. If a PE were established in another country, the company would be forced to accurately divide its corporate income between the two locations, and thus be subject to different filing obligations and tax liabilities.
- 2.13 Many companies, in particular SMEs without an international structure, may not be aware that having staff working from another country may give them functions and substance and thereby make them liable to profit allocation and requirements to adhere to transfer pricing rules as well as reporting requirements. SMEs may not have a tax department or access to advisors and their

⁶ ["Updated guidance on tax treaties and the impact of the COVID-19 pandemic"](#), OECD

⁷ ["Tax in an increasingly mobile working environment: challenges and opportunities"](#), by Commission expert group "Platform for tax good governance"

⁸ See Judgment of European Court of Justice of 14 February 1995 in case C-279/93 *Schumacker*.

compliance costs are already very high. Companies in the EU and the UK are, according to a study by the EC, estimated to spend an annual total amount estimated around EUR 204 billion to comply with obligations related to CIT, VAT, wage related taxes and contributions, property and real estate taxes and local taxes. The average enterprise incurs an annual cost in meeting its tax compliance obligations amounting to 1.9% of its turnover⁹. Any further increase may jeopardise the viability of the company.

- 2.14 Due to concerns arising from the possible creation of PEs as a result of cross-border telework, the OECD issued guidance on the topic¹⁰ in April 2020 and March 2021. The OECD considered that "the exceptional and temporary change" of the place of location where employees work, "should not create new PEs for the employer"¹¹. In general, the OECD argued that "even though part of the business of an enterprise may be carried out at a location such as an individual's home office, that should not lead to the conclusion that that location is at the disposal of that enterprise simply because that location is used by an individual (e.g. an employee) who works for the enterprise", arguing that an employee being forced to work from home due to the COVID-19 pandemic and public health measures "lacks a sufficient degree of permanency or continuity" in order to consider its home as a PE for the employer.
- 2.15 The OECD, whilst underlining the exceptional nature of the COVID-19, did note that if employees continued to work from home after the COVID-19 pandemic, thus delivering a certain degree of 'permanence or continuity' to their home office, it would "not necessarily result in (...) a business PE". Such situations would require further examination of the specific facts and circumstances, according to the OECD. For persons in decision-making positions, tax authorities have often challenged whether a PE may have been established.

3. **General comments**

- 3.1 The EESC strongly welcomes the efforts made by companies and workers during the COVID-19 pandemic to continue business operations through the use of digital tools. The unprecedented circumstances of the COVID-19 pandemic, and the resulting public health measures, forced companies and workers to adapt their work environment in order to continue business operations and deliver goods and services, thus supporting the EU economy, jobs and growth.
- 3.2 As greater advancements in online office tools (e.g. online meeting software) will allow some employees more and more to perform work activities from their home with more or equal efficiency, we expect to see the number of (cross-border) teleworkers rise in the EU. Lawmakers need to adjust existing rules to a new reality.
- 3.3 While the possibility of teleworking can vary according to sector and job role, the EESC considers that the rise of teleworking should be welcomed and encouraged where possible. Next to more flexibility for employees, it can also provide benefits to the EU's wider Green Deal

⁹ ["Tax compliance costs for SMEs: an update and a complement: final report"](#), 2022

¹⁰ ["Updated guidance on tax treaties and the impact of the COVID-19 pandemic"](#) ["OECD Secretariat analysis of tax treaties and the impact of the COVID-19 crisis"](#)

¹¹ ["OECD Secretariat analysis of tax treaties and the impact of the COVID-19 crisis"](#)

agenda, with fewer people travelling to work, and thus decreases in transport emissions and air pollution. The EESC recognises the particular relevance of the topic to the EU and the freedom of movement of workers in the Single Market.

- 3.4 The EESC recognises the particular challenges the rise in cross-border teleworking pose to the international tax system. The EESC notes the obstacles employees reported in cross-border working situations even prior to the pandemic¹². The EESC welcomes the temporary tax measures Member States took during the height of the pandemic and the guidance issued by the OECD during the pandemic. These measures allowed cross-border employees and employers to carry on with business activities, and ensure both were not faced with double taxation, allowing businesses to continue supporting the EU economy and workers at an important time.
- 3.5 The EESC underlines however how important it is that the taxation systems are updated further to answer the needs of today's work environment. In particular, it is important that employers, when installing teleworking arrangements, are not disincentivised to hire employees from outside the employer's jurisdiction because of taxation obstacles. Similarly, taxation rules should not be an obstacle for employees when applying for jobs in a cross-border situation.
- 3.6 The EESC considers it essential that taxation rules regarding cross-border teleworking ensure that there is no double taxation or unintended non-taxation for both employees and employers. In ensuring that companies of all sizes can offer teleworking opportunities, it is important that any administrative obligations related to the taxation of cross-border teleworkers are eliminated or at least minimised¹³.
- 3.7 The international corporate tax framework has recently been overhauled through an agreement on an OECD/Inclusive Framework Tax Package consisting of two pillars. If employees increasingly engage in employment through teleworking, there might be a need to also review international taxation rules for individuals. In particular, rules must be easy to comply with.
- 3.8 The EESC welcomes the discussions launched by the EC on this topic in order to update tax systems in order to reflect today's work environment based on increased teleworking, both with Member States and with stakeholders of the Platform for Tax Good Governance. The EESC refers to previous discussions that were made on this matter as part of the communication "Removing cross-border tax obstacles for EU citizens" and the EC expert group report on "Ways to Tackle Cross-Border Tax Obstacles Facing Individuals in the EU"¹⁴.

12 See Commission Communication on Removing cross-border tax obstacles for EU citizens, [COM\(2010\) 769 final](#), page 4: "EU citizens who move abroad to work temporarily or permanently or cross borders every day to go to work complain above all about difficulties in obtaining allowances, tax reliefs and deductions from foreign tax authorities. They also complain frequently about higher progressive tax rates applied to non-residents and higher taxation of foreign income. Double taxation problems also feature prominently, arising from conflicts in tax residence, limitations in the amount of credit available under bilateral double taxation treaties and even the lack of such treaties in certain cases."

13 Workers who, following the pandemic, live permanently in another EU country other than where the firm is located and working remotely will be faced with many questions: Which social security system will be applicable; which tax authority will the employer have to pay taxes on their income; will the employer be able to continue to do the withholding tax; will the employment relationship have to be registered with the competent employment offices in the worker's new country of residence; what labour legislation should apply to the employment relationship etc.

14 ["Ways to tackle cross-border tax obstacles facing individuals within the EU"](#)

4. Specific comments

- 4.1 Whilst recognising that countries have the right to decide on whether and at what rate they should levy taxes in their countries, taxation principles for cross-border teleworking should preferably be agreed at the global level. However, considering the inherent intra-EU mobility under the freedom of movement within the Single Market, there are reasons to address the issue at EU level before a global solution is found. While different approaches are possible, it is important that a high degree of coordination be achieved between EU Member States, and where possible with third-countries (United Kingdom, Switzerland, ...).
- 4.2 The rules should be easy for both employees and employers. One possibility would be for Member States to agree to only tax the employee if the number of working days in the country exceeds 96 days per calendar year. The EESC notes that in the OECD/IF tax work, a Multi Lateral Instrument (MLI) has been used as a tool to facilitate a timely implementation of new tax rules.
- 4.3 It seems to be warranted to have ambitious rules allowing for cross-border teleworking. If the rule of 183 days were applied, employees would gain more flexibility and environmental objectives would be more likely to be achieved. As the number of days is increased, the need for some kind of standardised reporting system also increases, and the establishing of some kind of compensatory mechanism for transferring tax revenues among countries may be required¹⁵.
- 4.4 The EESC asks the EC to consider whether a one-stop shop, like we have in the VAT area¹⁶, could be a possibility. It would require the employer to report for cross-border teleworkers the number of days teleworkers worked in their country of residence and in the country where the employer is located. With this information, tax authorities would be able to assess in which country income would be taxable, or what part of the income would be taxable in each country. Such a recommendation was supported by the EC expert group in their report on "Ways to tackle cross border tax obstacles facing individuals in the EU"¹⁷. A tax revenue compensatory scheme among countries could be linked to the information reported in the one-stop shop. The taxpayer should face only one tax administration.
- 4.5 The employer typically has to withhold taxes on the employee's wages and salaries. Furthermore, social security contributions to public pensions schemes and other social benefits for the employee are often paid separately but based on the income of the employee¹⁸. It would considerably reduce the administrative burden if such levies could be paid by the employer for the employee in such a way that the one-stop shop would allocate the funds to the appropriate

¹⁵ The compensatory scheme developed for international corporate taxation is to allocate a portion of the profit in highly profitable companies to the country of sales (Amount A in Pillar 1). It is important that any compensatory scheme between countries due to cross-border teleworking is as simple as possible. The number of days and earned income should be the key parameters to consider.

¹⁶ The VAT One-Stop-Shop (MOSS) was put in place by the EU to ease the burden on businesses selling to consumers in other EU Member States. One Stop Shops permit businesses to submit a single VAT return declaring sales in multiple EU Member States, rather than having to register for VAT in each country.

¹⁷ ["Ways to tackle cross-border tax obstacles facing individuals within the EU"](#)

¹⁸ The EESC recognises the need to also address the effect on benefits like pensions etc. if social security contributions are divided between countries. This may be the subject of future work by the EESC.

recipient country. Such a system would require close cooperation between tax authorities and electronic filing.

- 4.6 The EESC has repeatedly asked for closer cooperation between Member States' tax authorities. Such cooperation would make life simpler for ordinary citizens and businesses and it would increase the possibilities to combat fraud and tax evasion more efficiently. To combat evasion, it is paramount that compliance be made easy.
- 4.7 A one-stop shop system developed for cross-border teleworkers may serve as a first step to having an infrastructure allowing employees and employers to reduce tax disputes between Member States and at the same time ensuring that taxes are levied correctly without requiring the individual to file in multiple countries.

Brussels, 13 July 2022

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