Post-COVID-19 cross-border remote working: managing tax risks

When working remotely from a jurisdiction other than where the employing entity is a tax resident, and where (at least one of) the following conditions are present, …

- If a director/ executive takes key management decisions
- If an employee is habitually involved in contract conclusion/ negotiation activities on behalf of the employing entity
- If an employee is required to work remotely (its employer does not provide an office but instead IT equipment such as printers, screens, etc. to work from home)
- And in any case, if an employee works regularly from the same country which is not their habitual place of work

…this could result in the following tax consequences for the employer…

- Effective place of management
  This may impact the tax residence of the employer and result in double residency and/ or exit taxation.
- Transfer pricing
  Depending on the functions concerned, this may lead to the allocation of taxable profits to the host country/ denial of losses (if any) in the home country by the respective tax administrations
- Permanent establishment exposure
  As a result, the foreign employing entity may be regarded as taxable by the tax administration of the host country.
- Wage tax withholding obligation
  Employer might become subject to wage tax withholding obligation even if there is no permanent establishment in the host country.
- Social security withholding obligation
  Employer might be obliged to withhold social security obligations in the host country.

…and for the employee.

- Tax residency
- Income taxation
- Wealth, inheritance and gift taxation

How to manage the risks and how we can provide support:

- Monitor employees' remote place of work
- Assess the tax and other legal risks in the respective jurisdictions
- Design a remote working policy
- Keep your employees informed about the possible tax and legal consequences / Providing training
- Register with the relevant tax and social security authorities, if necessary
- Establish a NewCo or a branch in the host country, if necessary

Also consider the following:

- EMEA Tax webinar – 4 Nov 2020
- Building a New Workforce Reality
- Technology business leading the way towards sustained remote working
- TMT related products

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