Global Mobility Newsletter

EDITION
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When dealing with globally mobile employees, there are numerous questions to be answered from both a compliance as well as risk management perspective.

Welcome to the first of our quarterly newsletters in which we shine a spotlight on global mobility issues of interest to those operating internationally.

Post-covid world

The post-covid world has reshaped the world's economy and the way people think about business; and global mobility has become even more important. During the pandemic it was often said that business travel was a thing of the past. Now we see that business travel is in fact increasing and people are even more eager for direct contact. Alongside the renewed desire for travel, remote working has rapidly become the new normal. Employers who have employees working in several countries may face specific issues in this respect such as social security, tax and employment law issues. We therefore look expectantly to the legislative bodies to find solutions to these issues.

Now, for tomorrow

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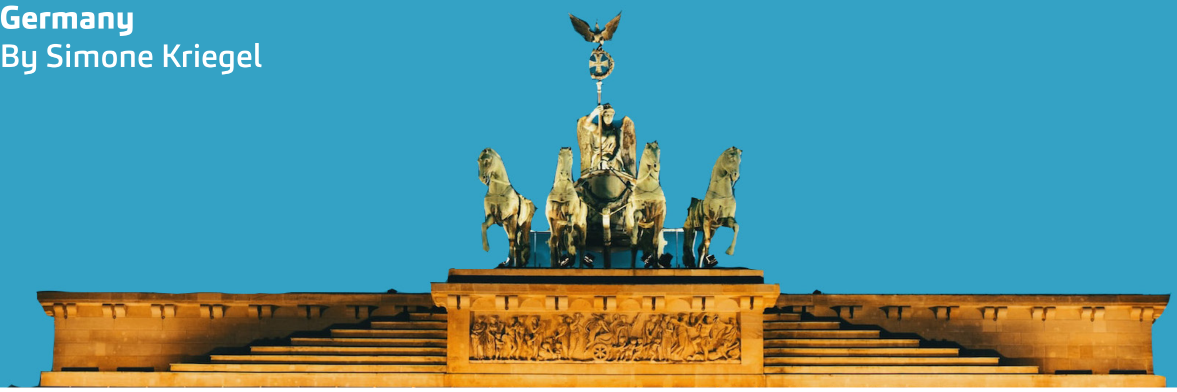
COVID-19: The end of pandemic-related European special rules in social security as of 30 June 2023. What happens next?

Germany
By Simone Kriegel



If employees live and work in different countries within the EU/EEA and Switzerland (cross-border commuters) and, due to the pandemic, no longer work exclusively in the actual country where the employer is located but partly or entirely remote in the country of residence, this should not lead to any change in the applicable social security law. This pandemic-related regulation was probably extended for the last time until 30 June 2023.

What are the consequences as of 1 July 2023?

The usual regulations based on Article 13 of Regulation (EC) 883/2004 will apply again effective 1 July 2023. Where employees regularly work for an employer in two (or more) countries within the EU/EEA or Switzerland, this can significantly impact social security. If the employee spends at least 25% of their working time in the country of residence, they are subject to social security system in their country of residence.

Example:

If an employee lives in France and regularly works both in their home office and also in Germany for their German employer, the employee is subject to French social security law if they spend at least 25% of their working time in their home country. As a result, the German employer must register in France for social security purposes and comply with the employer's obligations to pay contributions there.

In addition to the administrative effort, it should be noted that other regulations, e.g., continued payment of wages in the event of illness and calculation of contributions, must be observed. The change of social security system can lead to increased employer costs.

Are there going to be new regulations that consider the changed working conditions?

In recent years, teleworking activities have gained in importance. Activities that were previously carried out on the employer's premises are now increasingly being performed remotely. As a result, employees regularly work more than 25% of their time from home. To take this changed working environment into account, discussions are currently being held at an EU-level regarding future regulation. Whether regulation will already be in place by the end of the transitional phase on 30 June 2023 is not known.

Therefore, some countries have already made agreements regarding the social security allocation if employees regularly work in the contract states and thereby work more than 25% of their working time in the country of residence.

Agreement between Germany and Austria

The responsible authorities in Germany and Austria have concluded a framework agreement for cross-border telework if the employee performs more than 25% of their work in the home office. In such case the employee and employers can apply for a so-called exemption agreement if the employee habitually and recurrently carries out employment for the same employer, both:

1. In the State in which the employer`s business premises are located (e.g., Germany) as well as;
2. In the State in their country of residence, particularly in the domestic environment (e.g., Austria).

The employee is subject to the social security legislation of the country in which the employer is domiciled, if Telework in the country of residence accounts for between 25% and a maximum of 40% of total employment.

The application for the exemption agreement must be submitted to the responsible authority in the country whose legal regulations are to be applied. The exemption agreement can be applied for two years; applications for extension are possible.

The following other countries have also concluded framework agreements in relation to social security:

- Germany and the Czech Republic
- Austria and the Czech Republic

Not only from a social security perspective does remote working pose significant implications for the employer. Several countries have double tax treaties in place to determine where an employee is taxable. The principles of all the double tax treaties are the same, but differences may occur between two countries based on their specific double tax treaty.

The fact that employees are working in another country than what is habitually the case may result in additional administrative burden for the employer. For example, the employee may be obliged to register in another country to pay withholding taxes in that country. If an employer has employees living in several countries, this may become a complicated exercise.

Agreements signed by France regarding teleworking and place of taxation of salary incomes

France
By Corinne Lecocq and Julienne Mathilde

Two agreements have been signed respectively on 7 November 2022, between France and Luxembourg (amendment to the tax treaty between the two States), and on December 22, 2022, between France and Switzerland (amicable agreement).

These agreements provide that remote working, within a certain limit, will have no consequences on the taxation of employment income received by cross-border workers notably, from 1 January 2023. The agreement between France and Luxembourg also provides that the States will meet again before 31 December 2024 to determine the conditions that will apply from 1 January 2025, to conclude, if necessary, a new amendment.

As a reminder, a cross-border worker could be defined as any "resident of a State who exercises a salaried activity in another State with an employer established in this other State and who returns, as a general rule, each day to the State of which he is the resident" (agreement between France and Switzerland dated 11 April 1983).

The general principle regarding salaried income provided by double tax treaty is that employment income is taxable where the activity is exercised. However, the specific cross-border regime provides that employment income is taxable in the State of residence of the worker, even if he works in another State.

Concerning the agreement recently signed with Luxembourg, the number of days of teleworking performed by cross-border workers has been increased from 29 to 34 days per year without consequences on the specific status and the place of taxation of employment income (taxable in the State of residency).

Regarding the agreement with Switzerland signed in December 2022, it has been decided by both States to consider the situation of cross-border worker and the situation of other workers separately.

For cross-border workers, they can telework up to 40% of their time without having implications for the specific status of cross-border worker and the place of taxation. Employment income remains taxable in the State of residence. For other workers, employment income remains taxable in the State where the employer is located if the work carried out remotely from the State of residence does not exceed 40% of the working time.

Note: these agreements only provide consequences for the taxation of employment income; they don't provide solutions regarding the risk of a permanent establishment based on teleworking and regarding social contributions issues. These two issues must be analysed in each specific situation.

We expect that France will sign other agreements on this subject as France signed cross-border agreements with other States during the covid pandemic, namely Germany, Belgium, Spain and Italy.

Some EU countries have taken the initiative to introduce new regulations both for social security and income tax as a solution for the new issues that arise due to employees working from home. However, these separate regulations make the global mobility practice increasingly complicated. Therefore, we're hoping that more general initiatives will be introduced in the coming months and years.

Special tax regime for foreign employees

Belgium and the Netherlands
By Audrey De Bevere and Peter Polman

A new tax regime was introduced in Belgium on 1 January 2022 for foreign employees working in Belgium. The Belgian government has found some information in the rules that are applicable in the Netherlands: the so-called 30%-rule. However, it does not mean that both regimes are aligned. We compare the several conditions below and highlight the differences for you. We will only reflect on inbound expats (working in Belgium or Netherlands).

Condition For the employer:

1 Belgian/Dutch company

2 Belgian/Dutch establishment of a foreign company

3 Non-profit organisation.

For the employee:

Belgium	The Netherlands
Name of the regime: Special tax regime for income taxpayers Special tax regime for income researchers*	**Name of the regime:** 30% ruling
Incoming taxpayers	Incoming taxpayers
Employee or director (even if shareholder)	Employee or director (even if shareholder)
Minimum gross salary of EUR 75,000 per calendar year • Relating to activities in Belgium • Incl. holiday pay, end-of-year bonus, BIK, bonusses and other gratifications • Not incl.: costs proper to the employer • At the moment of recruitment or (start) employment in Belgium • Revisable every 3 years (starting as of 2024) This minimum salary is not applicable for researchers. They however need to meet specific conditions concerning qualification and the type of work they effectuate.	**Minimum taxable salary of EUR 41,954 per calendar year (for 2023, subject to indexation)** • Incl. holiday pay, bonusses and other gratifications **Minimum taxable salary of EUR 31,891 per calendar year (for 2023, subject to indexation) if younger than 30 years and Dutch academic master title (or a foreign equal master title, subject to approval by Nuffic)** • Incl. holiday pay, bonusses and other gratifications
All nationalities (Belgian or foreign nationality)	All nationalities (Dutch or foreign nationality)
During a period of 60 months (5 years) prior to the employment in Belgium: • Must not have been a Belgian resident • Must not have lived within 150 km from the Belgian border • Must not have been subject to Belgian non-resident taxation	**During a period of 24 months (2 years) prior to the employment in the Netherlands:** • Must not have lived within 150 km from the Dutch border for more than 16 months • Exceptions to this rule may be appliable for PhD candidate, in case of living closer to 150 km from the Dutch border whilst performing research activities for his/her promotion
Benefit: Costs proper to the employer = 30% of gross salary is not subject to taxation and not subject to social security • Benefit to be calculated and paid on top of gross salary of minimum EUR 75,000 • Max. EUR 90,000/year of costs proper to the employer • No further evidence required	**Benefit:** 30% of gross salary is not subject to taxation • Minimum taxable salary: EUR 41,954 (or EUR 31,891) • No maximum • As of 2024, 30% ruling can only be applied on a salary of max EUR 223,000 (subject to annual indexation) • No further evidence required • Professional soccer players and coaches are excluded

Additional costs proper to the employer (on top of 30%)

- School fees: kindergarten (as of 5 year), primary and secondary education in Belgium
- Expenses of moving to Belgium and hotel expenses (first 3 months after arrival in Belgium)
- Installation/furnishing costs (first 6 months after arrival in Belgium) – max. EUR 1,500
  - No maximum
  - Evidence is required

Additional costs to be reimbursed on net basis (next to 30% ruling)

- School fees: for international schools
- Expenses of moving to the Netherlands, and temporary storage of household goods

Normal residency rules are applicable[1].

If the employee is considered as a Belgian resident, they must declare their worldwide income in Belgium

- Declaration of foreign property
- Declaration of worldwide interests and dividends
- Declaration of foreign structures

Employees with the Dutch 30% ruling can opt to be treated as partial non-resident tax payers in the Netherlands. In that case, they must declare their:

- Worldwide income from employment with the Dutch employer
- Any shareholding in a Dutch entity of 5% or more
- Real estate in the Netherlands, or any rights relating to Dutch real estate
- In the case of an US citizen/green cardholder, the expat is treated as a non-resident tax payer for the duration of their 30% ruling (meaning amongst others only Dutch physical work days are subject to Dutch income tax)

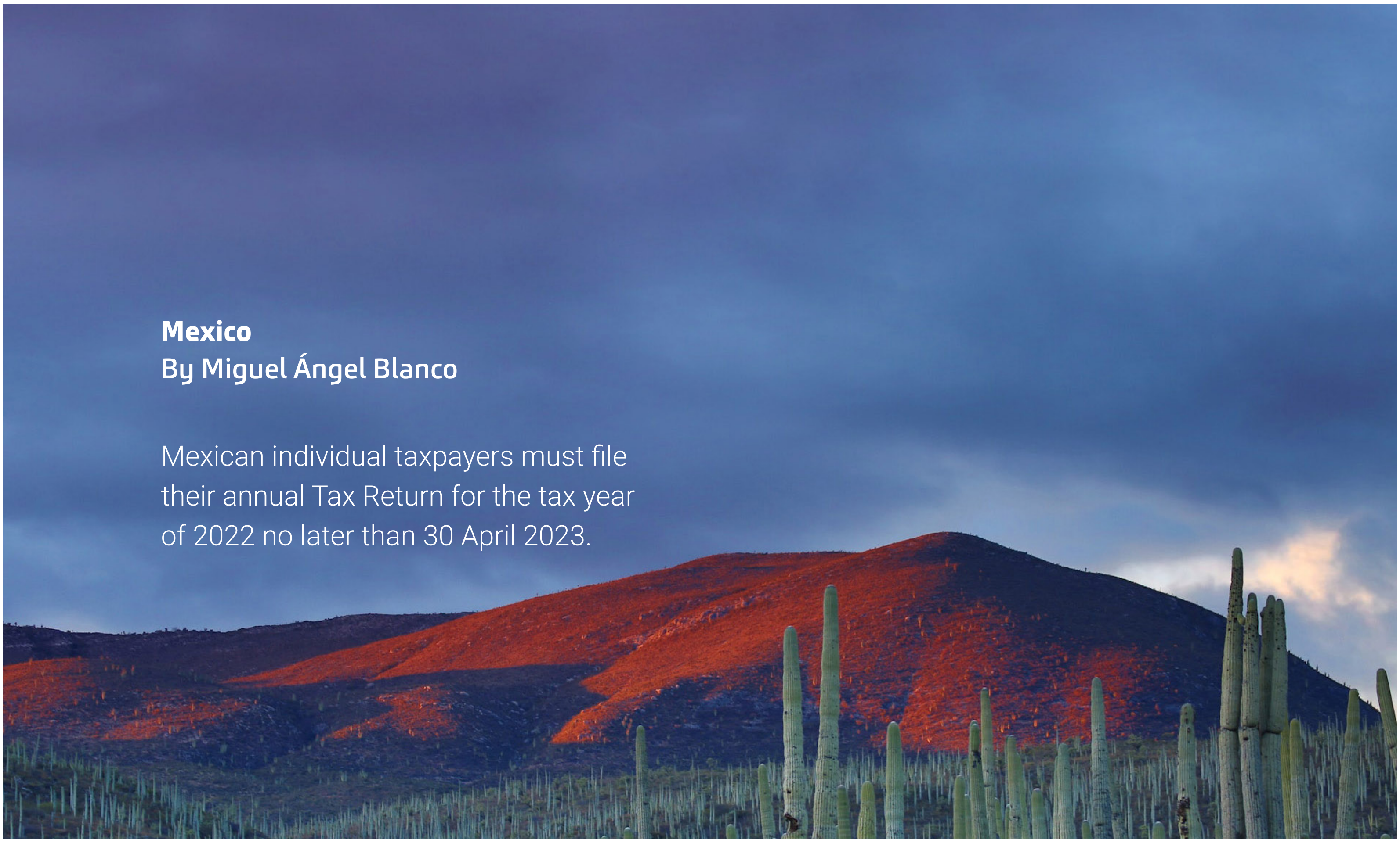
How to apply for the regime?

- Request to be filed by employer within 3 months after the start of the employment
- Decision by authorities to be taken within 3 months after the receipt of the application
- Too late? No possibility anymore to opt the regime

How to apply for the regime?

- Request to be filed by employer within 4 months after the start of the employment to be able to apply from that start of the employment
- Too late? 30% ruling can only commence on the first day of the month following the month of the request filed
- Decision by authorities to be taken within 10 weeks after the receipt of the application

[1] Both for Belgium and the Netherlands, the elements mentioned under the residency part are not limitative



Mexico
By Miguel Ángel Blanco

Mexican individual taxpayers must file their annual Tax Return for the tax year of 2022 no later than 30 April 2023.

Mexican tax residents are required to submit the Mexican annual tax return for those who have obtained income regarding the following concepts:

- Mexican tax residents who had employment income exceeding MXN$ 400,000 per year (USD 20,000), or those formally informed will file the Mexican tax return
- For those who had income from salaries regime and started rendering services after January 1, 2022, or have stopped rendering services to the withholder before December 31, 2022,
- For income in addition or different from salaries, which derived from carrying out business activities or rendering professional services
- For the use or temporary disposal of real estate
- Due to capital gains
- For the acquisition of goods
- For interests or dividends
- For obtaining prizes derived from the holding of lotteries, raffles, games with bets and contests
- For those amounts received that increase the patrimony.

Mexican taxpayers required to submit the Mexican annual tax return may apply the following deductions:

- Medical, dental, and hospital expenses
- Funeral expenses
- Charitable contributions
- Interest on mortgage loans
- Premiums for medical expenses insurance
- School transportation
- Funeral expenses
- Deposits in special Mx savings accounts
- School fees.

The Mexican tax provisions indicate that an individual is considered a Mexican tax resident when they established a home in Mexico. If the individual may demonstrate that they have a home in another country, then it should be determined where is located the individual's center of vital interests. An individual's centre of vital interests is considered to be located in Mexico in the following circumstances:

- More than 50% of the person's income is derived from Mexican sources in a calendar year, or if,
- The centre of the person's main professional activities is located in Mexico.

It is important to mention that Mexican tax residents are subject to Mexican income tax on their worldwide income regardless of their nationality. Mexican non-residents, including Mexican citizens who can prove residence in a foreign country, are taxed only on their Mexican source income, and are not obligated to file tax return.

If taxpayers do not file the annual Income Tax Return, the tax authority may impose a fine ranging from MXN$ 1,560 (USD 700) to MXN$ 31,740 (USD 15,000)

For more information

(Spanish version): https://www.sat.gob.mx/declaracion/23891/presenta-tu-declaracion-anual-de-personas-fisicas-para-2022

In Baker Tilly (Mexico) we have tax experts that may support in any area related to this topic.