WORKING REMOTELY IN TIME OF BREXIT & COVID-19: CHECKLIST

Covid 19 has made remote working the "new normal". For some employees this means working for a UK-domiciled employer from another country and therefore, from another jurisdiction.

Focusing on the Spanish-British perspective, we look at each of the issues that employees and employers should consider under such scenario.

TAX RESIDENCY & COVID-19 TRAVEL RESTRICTIONS

The main and first criteria when establishing someone's tax residency is the 183 days rule, under which an individual would be deemed to be Spanish tax resident if spends in Spain more than 183 days in a calendar year.

Albeit travel restrictions imposed as a result of the ongoing pandemic have questioned such criteria in some jurisdictions (where days spent under lockdown do not count towards tax residency) the Spanish Tax Authorities have confirmed that individuals who spend more than 183 days in Spain can become Spanish tax-residents, even if such time residing in Spain was against the individual's will i.e. forced by travel restrictions.

SPAIN-UK DOUBLE TAX TREATY

As a general rule, an individual can only be considered tax resident in one country. However, if a person is resident in a country which taxes his worldwide income, and he has gains from another country, that person may be asked to pay tax in both countries on the same income. To prevent that situation, many countries have in place Double Tax Treaties (DTT) as it is the case between Spain and UK.

Therefore, if a person is working remotely from Spain for a UK company, even though he could fall within both domestic criteria to be deemed tax resident in both countries, by virtue of the regulations of the double tax treaty, that person will be only liable to pay tax to one country.

In the example above, if the individual has spent more than 183 days in Spain, he must submit his income tax return and pay his taxes to the Spanish tax authorities.

PERMANENT ESTABLISHMENT

The employer must ensure that the activity of the employee is not going to create a permanent establishment in the employee's host country (in Spain following the example provided) in order to avoid any gains derived by the activity generated by such PE to be taxed in Spain.

For instance, if the worker has the authority to represent the UK company, continuously over time, leading business and management activities, it could be deemed that the UK company has a permanent establishment (PE) in Spain, making the UK company liable for paying corporation tax in Spain.

BREXIT: IMMIGRATION RULES

As to the immigration status of the employee, if it was the case of a non UK citizen / resident but who would had attained pre-settled status in the UK, he can spend up to 2 years in a row outside the UK without losing his pre-settled status already attained in the UK.

Take a look at Scornik Gerstein´s Brexit department website, to read the insights from their Brexit experts: The Brexit Law - Home Page

In case you do not find what you are looking for, you can send an email to info@thebrexitlaw.com with the topic that you would like for them to write about, and they will provide you with the desired information.

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