

# Taxation of Business Trips

There are many specific forms of international employment, and their taxation depends on the conditions of the specific employment so that they cannot be grouped under any single general and absolute rule. To clarify the matter a little, let us take a closer look at the taxation of business trips.



The content of the business trip is disclosed in § 21 of the Employment Contracts Act. According to subsection (1), an employer may send an employee outside the place of performance of work prescribed by the employment contract to perform work duties. Thus, in order to understand whether it is a business trip, it must first be clarified what the person's place of work is according to the employment contract.

## Income tax

When working internationally, the conventions for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes are important to be taken into account. They share taxing rights between countries to avoid double taxation of the same income. When sending an Estonian resident employee on a business trip to another state of the tax treaty, attention should be paid to Article 15 of the Tax Treaty, which provides for the taxation rights of remuneration. It is the general principle that the right to tax remuneration belongs to the state in which the employment was physically exercised. For example, when an Estonian resident is sent to Finland on a business trip, where he or she physically exercises employment, the right to tax arises in Finland. The same article provides for an exception to the general rule. If the following three cumulative conditions are met, the right to tax shall remain in the employee's home state: (i) the employed person stays in his home state for at least 183 days in any 12-month period commencing or ending in the fiscal year concerned; (ii) the employed person is paid by an employer who is not a resident of the state of destination (in our example, this means that the payer is not a resident of Finland) and (iii) the employer does not pay the remuneration through a permanent establishment in the state of destination (in our example, the Estonian employer does not have a permanent establishment in Finland). Thus, the taxation of the remuneration derived for employment exercised in another country depends on the identity of the employer and the time spent in the other country.

## Social tax

The social tax rules in the European Union are laid down in Regulation (EC) No 883/2004 of the European Parliament and of the Council and Implementing Regulation (EC) No 987/2009. According to the general rule laid down in Article 11 of the Regulation, a person is subject to only one social security insurance at a time, that is in the country of working. Exceptions apply in the case of a secondment. Article 12 states that a person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person. In other words, if the duration of the business trip is less than two years and the employee is not sent to replace another employee, the employer of the home state will pay the social security contributions. For example, when posting an employee living and working in Estonia to Finland for one year, the social tax remains in Estonia. To this end, one must apply for an A1 certificate confirming that the employer has paid the social tax in the country where the certificate is issued and that there is no obligation to pay social security contributions in another country of employment. In addition, Estonia has concluded international social security agreements with three non-EU countries to ensure equal treatment: Ukraine, Canada and Russia. The States of the Treaty have agreed to ensure that persons residing in their territory enjoy the same social security protection as their own residents.

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