

Employees Abroad

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Definitions of terms for foreign assignments

The assignment of employees abroad is occurring more and more frequently, however it is a very complex construct, which is influenced by many factors. As a rule, the employment contract forms the basis, therefore, its structure plays a key role.

Practical tip: Always verify the framework regarding visa and other permissions in the respective country, as the entire assignment abroad may be put at risk, if it is lacking.

Within the scope of assignments in another country, many different terms are used, which do not always mean the same thing. In order to simplify the coordination, we are defining the terms below from our perspective:

Business trip abroad

A business trip comprises a work assignment of an employee abroad, which has a maximum duration of three months.

Contract for work and services – activity abroad in fulfilment of a contract

(service contract, business procurement contract; hereinafter, the term “contract for work and services” will only be selected)

Within the scope of a contract for work and services, a domestic employer assigns its employee, who is actually employed domestically, to temporarily fulfil a contract abroad.

An employment contract only exists with the domestic employer and specific requirements must be fulfilled:

- The employee is not integrated into the client’s operation.
- The decision about the nature, location, time and scope of the performance of the work lies with the employer domestically, not the client abroad.

Employment in a foreign Group company/subsidiary

With the employment in a foreign Group company or subsidiary, the employee is economically working for the foreign branch and is usually also integrated into the local business organization. The employee receives his remuneration from the foreign branch or from the domestic employer, who is usually reimbursed by the foreign branch.

The employee has

- an active employment contract with the domestic employer or
- a dormant employment contract with the domestic employer and an active employment contract with the foreign branch or
- an active employment contract with the foreign branch.

As a rule, the foreign branch has the right to issue instructions.

Employment with a foreign company

If NO employment relationship or a suspended employment relationship exists with the domestic company, of sole employment abroad is assumed and the employment relationship is no longer subject to the criteria of secondment.

Tax law check procedure for secondments

For the tax assessment of secondment cases, two questions are basically asked:

1. Where does the employee need to tax his global income, i.e. where is he subject to an unreserved tax obligation? Frequently, this depends on the centre of the employee’s life, but other criteria may also be relevant.

2. Which country has the taxation right for the wages? In principle, salaries may only be taxed in the country of residence. However, if the work is physically performed in a different country (i.e. in a non-residency country), the source country, also referred to as the country in which the work is performed, is permitted to tax.

In order to avoid double taxation, it must be checked whether a so-called dual taxation treaty exists for the countries concerned.

The taxation may transfer back from the country in which the work is performed to the place of residence under the applicable dual taxation treaty, using the so-called 183-day rule:

- The employee has not spent more than 183 days in the country in which the work has been performed.
- The salary is paid by or for an employer, who is not domiciled in the country in which the work is performed.
- The employee's salary is not charged at operating premises of the employer in the country in which the work is performed.

Since the structure of this 183-day rule is different in every country, further attention is necessary when it comes to optimizing the tax structure.

If double taxation occurs between two countries – once in the country in which the work is performed and once in the country of residence, – it must be examined whether and how this can be avoided by applying dual taxation treaties between the countries involved.

If no dual taxation treaty exists, the double taxation must be examined within the scope of the income tax return. In case of non-observance of the tax obligations, considerable fines and penalties may incur.

Practical tip: In several countries, tax registration is necessary, if a specific minimum stay is exceeded, which may only be 30 days, in some cases.

Tax structuring options / keyword hypotax

In principle, with a tax obligation abroad, the resulting differences between the countries can be compensated using contractual structures. Depending on the objective, a distinction is made between:

- **Tax protection:** The employer agrees to be responsible for the additional tax, which is incurred abroad. However, the employee would then pocket any lower tax.

Example: Domestic income EUR 100,000, 40% tax rate, employee receives EUR 60,000 net. Foreign income EUR 100,000, 50% tax rate, employee receives EUR 50,000 net. Compensation commitment for the difference of EUR 10,000 net, i.e. in this case, a net extrapolation would take place, so that the employee is not put in a worse position due to the higher tax charge in the secondment country.

- **Tax equalization:** The tax level should have no influence on the assignment abroad. For the employee, everything remains "the same". Therefore, the employer would e.g. charge the lower tax to the employee in a country, which is more favorable for taxation

Example: Foreign income EUR 100,000, 30% tax rate, employee received EUR 70,000 net and the employer would cancel the tax benefit for him and only pay EUR 60,000 net.

How the employer decides will depend on how attractive the foreign assignment is. Therefore, these issues must be very precisely contractually regulated.

Social security check procedure for secondments

For employment abroad, the question arises of the continuation of the social security obligation in Germany, which should frequently exist. This is enabled with an appropriate contract structure, because social security has to be paid where the service has been rendered. The basic principle for social security is the territorial principle.

Secondment and continuation of the social security obligation

The social security obligation under German law only exists during the employment abroad for a secondment, which fulfils ALL of the following criteria:

- The employee works abroad at the instigation of his domestic employer.
- The activity abroad is temporary by contract or due to the nature of the activity, right at the outset.
- The employee continues to remain integrated into the domestic operation.

The secondment ends with the return of the employee to the domestic country. A short-term return, e.g. for visits or leave, does not terminate the secondment, provided that the interruption period does not last longer than two months.

Regarding a secondment to countries, with which a social security treaty exists, the continued validity of the German social security law is regulated differently and arises from the respective social security treaties:

Country	Health	Pension	Unemplo	Accident	Duration of German law	Special features
Australia		x	x		48 months	
Bosnia-Herzegovina	x	x	x	x	unlimited	
Chile		x	x		36 months	
China (excluding Hong Kong)		x	x		48 months	
India		x	x		48 months	
Israel	x	x		x	unlimited	
Japan		x	x		60 months	
Canada		x	x		60 months	
Korea		x	x		24 months	
Morocco	x	x	x	x	36 months	only for citizens of the treaty countries
Macedonia	x	x	x	x	24 months	also care insurance
Montenegro	x	x	x	x	unlimited	
Serbia	x	x	x	x	unlimited	
Turkey	x	x	x	x	unlimited	
Tunisia	x	x		x	12 months	only for citizens of the treaty countries
USA		x			60 months	

Exception agreements are possible.

For the duration of the continued validity of German social security law, the German insurance remains in place in all branches of social security (pension insurance/health insurance/ unemployment insurance/care insurance).

The maximum duration of the applicability of German law arises from the various social security treaties/EU regulations. If the time limit is predicted to be exceeded, a social security obligation already occurs in the country of the activity from the time when the social security obligation in Germany ends. Example: An employee is initially seconded to France for 12 months (e.g. from 1 January – 31 December). On 15 December, he arranges an extension of the secondment with his employer for a further 18 months. Therefore, the social security obligation occurs in France from 15 December, the end of the social security obligation in Germany is on 15 December, as on this day, it is already established that the maximum duration for a secondment is exceeded.

No social security obligation under German law

No social security obligation exists under German law, if no case of secondment exists. The social security obligation in Germany ends in all branches, as soon as the employment abroad starts.

Please note: If the social security obligation ends domestically, the social security obligation shall only apply in the country of employment, provided that such obligation exists.

Particularly for health insurance, it must be ensured, in any case, that sufficient insurance protection is available for the employee and his relatives, if applicable.

If the insurance obligation in the statutory health insurance scheme ends due to the employee's employment abroad, the insurance protection shall also lapse for his insured family members. However, the link with the German pension, unemployment, health and care insurance scheme can fully or partially be maintained due to various options. In this case, the link with the German social security scheme exists ALONGSIDE an insurance obligation in the foreign country of employment.

Statutory pension insurance scheme

After the termination of the insurance obligation, the option is available for voluntary insurance – Compulsory insurance upon application

Basically, the employee is slightly better protected by the compulsory insurance upon application, but is less flexible.

Unemployment insurance

In the unemployment insurance scheme, the option of establishing a compulsorily insured status upon application is available, if employees take up and perform employment with a minimum scope of 15 hours per week in a country outside of a Member State of the European Union, a Contracting State of the European Economic Area or Switzerland.

Health and care insurance

The statutory health and care insurance may be continued as voluntary insurance or as entitlement insurance

Application notice periods and limited group of persons

The compulsory and voluntary insurances do not need to be started immediately and at the same time as taking up the activity abroad, however, an application notice period of three months must be observed from the start of the requirements (initiation of activity abroad, suspension of the German employment relationship). Another requirement is that the employer is a German or EU citizen.

Notes

The continuation of the social security obligation in Germany and consequently the exemption from the social security obligation abroad must be certified upon secondment.

For employees, who are seconded to a Member State of the EU/EEA or to Switzerland, an application must be filled out for the issuance of the A1 certificate. As of January 1st, 2018, the application has to be submitted electronically, as of July 1st, 2018 any feedback regarding data shall be carried out electronically.

If the seconded employee is not a member of the statutory health insurance scheme, but is privately insured, the certificate will be issued by the responsible pension insurance scheme or DVKA. For short-term (up to one week) or short-notice secondments, the A1 form can also be applied for subsequently.

For employees, who are seconded to other countries (outside of the EU/EEA or Switzerland), an application must be filed with the responsible collection body (health insurance scheme) for the establishment of a secondment and consequently, the validity of German social security law.

Circumstance	Duration	Application of German social security law	Code	Responsible for social security	Form
Business trip	maximum of 3 months continuously	exists		Domestic employer	EEA: A1 For short-term (1 week) or short-notice secondments, also subsequently Other countries: Application for establishment of the existence of a secondment
Contract for work and services, service contract, business procurement	Project-related or for long-term projects (e.g. system maintenance) time limitation necessary in advance	exists	Fulfilment of a contract by the domestic company, Right to issue instructions only with domestic employer, Salary payment by domestic employer. End of activity abroad after completion of the contract	Domestic employer	
Activity for domestic employer in a foreign Group company or subsidiary	Time limitation necessary for activity in EEA max. 24 months, for third-country nationals max. 12 months, extension by 12 months possible, Extensions realisable with exception agreement		Salary payment by domestic employer, right to issue instructions also exists with domestic employer, economic value of the work benefits the domestic employer	Domestic employer	
Transfer to and activity for foreign Group company or subsidiary	Time limitation required in advance for activity in EEA max. 24 months, for third-country nationals max. 12 months, Extension by 12 months possible, Extensions realisable with exception agreement	Due to lack of integration in domestic operation/ lack of right to issue instructions no secondment, Reimbursement of salary by foreign Group for up to two months, non-detrimental, otherwise risk case	Salary payment by domestic employer, no residual right to issue instructions with domestic employer, Integration into foreign company, economic value of the work benefits the foreign employer	Domestic employer At the end of the insurance obligation, voluntary insurance pension insurance/health insurance/care insurance and compulsory insurance in unemployment insurance: Employee, compulsory insurance upon application pension insurance: Domestic employer, Social security abroad: foreign employer, employee	
Activity for foreign company (Group or other)		no secondment possible	Employment contract with foreign employer, Employment relationship with domestic employer suspended, Payment of remuneration by foreign employer, Right to issue instructions with foreign employer	Voluntary insurance pension insurance/health insurance/care insurance and compulsory insurance in unemployment insurance: Employee, compulsory insurance upon application pension insurance: Domestic employer, Social security abroad: foreign employer, employee	
Activity for domestic employer in foreign non-Group company		no secondment possible	Salary payment by domestic employer, economic value of the work benefits the domestic employer, right to issue instructions also exists with domestic employer	Voluntary insurance pension insurance/health insurance/care insurance and compulsory insurance in unemployment insurance: Employee, compulsory insurance upon application pension insurance: Domestic employer, Social security abroad: foreign employer, employee	
Transfer to foreign company	Assignment time-limited	Due to lack of integration into domestic operation (lack of right to issue instructions), no secondment, time limitation in advance with activity in EEA – maximum of 24 months with EEA members, maximum of 12 months with third-country nationals, extension by 12 months possible, extensions possible with exception agreement	Employment relationship exists with domestic employer Payment of salary by domestic employer and reimbursement by foreign employer, economic value of the work with foreign company, integration into foreign company residual right to issue instructions with domestic employer	Voluntary insurance pension insurance/health insurance/care insurance and compulsory insurance in unemployment insurance: Employee, compulsory insurance upon application pension application pension insurance: Domestic employer, social security abroad: foreign employer, employee	