

EDITION 3

# Global Mobility Newsletter

**We enter Q4 with renewed optimism around global mobility as travel restrictions continue to ease post-pandemic.**

The cross-border telework agreement, set in motion early this year, is now actively underway, and the first wave of requests are in the pipeline.

In this update, our German colleagues take a closer look at ESG and areas of local legislation that look set to make an impact on an international level. These developments underscore the dynamic landscape we find ourselves in, where adaptability and informed decision-making are key.

**Now, for tomorrow**



# Cross-border telework in the EU, the EEA and Switzerland

By Simone Kriegel  
Germany

**There have been important updates concerning the States that have thus far signed the social security framework agreement for teleworkers. This framework agreement empowers employees engaged in telework to maintain their social security benefits from their country of employment, even when they reside and telework partially in another country.**

**This arrangement remains in effect as long as the employee spends less than 50% of their working time in their country of residence.**

The following member states have committed to implementing the social security regulations as of 1 July 2023:

- Austria
- Belgium
- Croatia
- Czech Republic
- Finland
- France
- Germany
- Liechtenstein
- Luxembourg
- Malta
- Norway
- Poland
- Portugal
- Spain
- Sweden
- Switzerland
- The Netherlands
- The Slovak Republic
- As of 1 September 2023, the Slovenian Republic have joined this group.

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## Application procedure:

For cross-border teleworkers who work more than 25% but less than 50% in their country of residence and wish to continue applying the social security system of the country where their employer is headquartered, an exemption agreement can be sought by both the employer and the employee. The application must be submitted to the relevant authority in the country whose social security regulations are to apply.

If the application is submitted no later than 30 June 2024, it can be retroactively claimed from 1 July 2023. After this date, retroactive validity will be limited to the last three months.

An exemption agreement can be applied for a maximum period of three years, with the option to request an extension thereafter.

# Enhancing ESG considerations for global mobility professionals

By Jessica Striffler  
Germany

**As the spotlight on environmental, social, and governance (ESG) factors intensifies, it is imperative for global mobility professionals to pay close attention to their company's policies concerning business travel and international assignments. The evolving corporate landscape has underscored the significance of these issues.**

Furthermore, the shift towards remote work has diminished the importance of an individual's physical location, with technology facilitating seamless virtual collaboration, thus reducing the necessity for domestic and international relocations. The rapid changes brought about by the COVID-19 pandemic have accelerated workplace transformations, potentially causing global mobility professionals to inadvertently overlook crucial policy adjustments needed to align with emerging trends. However, change is inevitable, as ESG considerations are not transient but rather a lasting commitment. Companies are keen to attract a new generation of talent that values how ESG factors are integrated into their business models.



## Environmental

Companies should evaluate potential adjustments to their assignment policies to minimize their carbon footprint. For instance, offering compensation in lieu of household shipments can incentivize assignees to ship only essential items, simultaneously reducing overall shipping costs for the company. Alternatively, companies can provide assignees with professional organizers to help downsize their household goods, with the surplus items being donated, all while covering the associated expenses.

To further reduce the carbon footprint, consider offering a cash home leave allowance instead of reimbursing actual flights to encourage local travel or providing sustainable housing options and electric or hybrid vehicles.

ESG factors may drive companies to be more discerning in their assignment choices and possibly source talent locally. Travel is often unnecessary, with assignees favouring virtual meetings to minimize environmental impact and reduce business travel costs. Additionally, adopting remote or hybrid work solutions can broaden the talent pool.



## Social

Research has consistently shown that companies with women in leadership positions tend to have higher profit margins. However, assignee populations tend to skew heavily towards men. Moreover, a diverse workforce has been linked to increased productivity, higher employee retention rates, and overall job satisfaction. Global Mobility professionals should align themselves with their company's diversity and inclusion objectives. It's essential to scrutinize practices and consider adjustments, including reviewing compensation and benefits to ensure pay equity. At Baker Tilly, we celebrate and value everyone's identities, perspectives, and contributions through our diversity, inclusion, belonging, and societal impact (DIBS) philosophy.

Furthermore, when it comes to business travel, consider employee well-being. Recognise that business travel affects each employee differently and making policy changes based on employee feedback sends a powerful message that the health and well-being of assignees matter to the company.



## Governance

Companies should assess the impact of their travel on local communities. This includes supporting local businesses and initiatives while traveling and taking measures to minimize any adverse effects on local cultures and environments.

In addition to internal ESG practices, it is vital to scrutinise the ESG-related practices and offerings of vendors. Relocation vendors are beginning to provide programs that can assist global mobility professionals in aligning with ESG goals or generating innovative ideas and practices that may not have been previously considered.



# New taxation regulations for inbound assignments in Austria

By Carmen Propst  
Austria

In response to a recent ruling by the Austrian Administrative Court (VwGH), there are new regulations pertaining to the withholding tax relief on remuneration for temporary workers transferred to Austria. The purpose of the 20% withholding tax is to ensure the proper taxation of income earned by transferred labour in Austria. The latest ordinance introduces a noteworthy change: it splits the remuneration for labour provision into two parts, namely a remuneration share and a provider share. This division is aimed at safeguarding the taxation process effectively. Additionally, several conditions must be met, including:

- Submission of an advance exemption notice to the tax office for large companies.
- No engagement in circumvention practices.
- Appropriate withholding and payment of withholding tax, or alternatively, voluntary wage tax administration in Austria.

## Expiration of the Special Home Office Regulation in Austria

The special regulation related to remote work abroad, triggered by the pandemic, and applicable when remote work exceeds the significant threshold of 25%, has been extended by the EU Administrative Commission until 30 June 2023. After this date, it will cease to be in effect.

The purpose of this regulation was to facilitate employers and employees in returning to the legal norms preceding the COVID-19 era, thereby preventing any unintended changes in social security responsibilities.

## Social security for telework – introduction of the new multilateral framework agreement

Since 1 July 2023, certain telework scenarios allow for the retention of the social security jurisdiction of the state where the employer is headquartered, even if employees reside in a different state and spend less than 50% of their working hours there.

As per European Regulation 883/2004, an employee is subject to the social security system of only one state.

In cases where an individual works for a foreign employer and simultaneously engages in work in both the employer's state and their home state (e.g., telework), they are subject to the social security system of their home state as soon as they perform a substantial amount of work in that state. 'Substantial activity' refers to work that accounts for at least 25% of their total working hours. Due to the COVID-19 pandemic, this 25% rule was temporarily suspended until 30 June 2023. Consequently, for employees who conducted more than 25% of their work in their home state, there was no alteration to the previously responsible Social Security authority.

Recognising the evolution of telework as a norm, the EU has introduced a Multilateral Framework Agreement (MFA) for its member states to adopt. By signing this agreement, member states agree to apply the social security regulations of the member state in which the employer is based, provided that the employee spends less than 50% of their total working time in their home state through telework. Currently, the following countries have signed the framework agreement: Austria, Belgium, Croatia, Czech Republic, Finland, France, Germany, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Spain, Sweden, and Switzerland.

This agreement effectively raises the 25% limit to less than 50% when both states involved have ratified the MFA. The decision to apply this framework is at the discretion of the employer and employee, and if they choose not to adopt it, the 25% limit will remain in place. Any application for this framework should be submitted to the umbrella association of social insurance institutions if Austria is the relevant authority. It's essential to note that the MFA applies exclusively when the employees in question are not engaged in any other income-generating activities (neither self-employed nor employed), and the activity in the home country is purely telework utilising information technology.



# Fostering new business development through tax incentives in the Isthmus of Tehuantepec, Mexico

By Miguel Ángel Blanco and Eduardo Marroquín Pineda  
Mexico

**In this bulletin, we unveil crucial insights regarding a presidential decree aimed at igniting investment within the Development Hubs for Well-being located in Mexico's Isthmus of Tehuantepec.**

This forward-looking decree carries the mission of propelling economic growth and employment opportunities throughout the region. Taking into consideration the challenging socio-economic landscape of the Isthmus of Tehuantepec, where poverty rates surpass the national average and informal employment prevails, the imperative of cultivating formal, well-compensated job opportunities becomes evident.

The establishment of the Development Hubs for Well-being in the Isthmus of Tehuantepec is a significant move, accompanied by a suite of incentives designed to attract investments and ignite both economic and social advancement within the area.

On 5 June 2023, the Decree for the Promotion of Investments by taxpayers engaged in productive economic activities within the Development Hubs for Well-being of the Isthmus of Tehuantepec was officially published in the Official Gazette of the Federation. Below, we shed light on key aspects of this decree:

**1**

#### **Tax benefits and administrative facilities:**

This Decree extends tax benefits and administrative conveniences to taxpayers engaged in productive economic activities within the Development Hubs for Well-being. These activities encompass a wide range of sectors, including electrical and electronic, semi conductors, automotive (particularly electromobility), automotive parts and equipment, medical devices, pharmaceuticals, agro-industry, clean energy, machinery, information technology, metals, and petrochemicals, among others.

2

**Tax incentives:**

Notably, the tax incentives outlined in the decree feature a 100% income tax credit for the initial three fiscal years, followed by 50% for the subsequent three fiscal years, or a potential 90% when minimum employment targets are surpassed. Additionally, investors are granted the privilege of an immediate 100% deduction on the original investment amount in new fixed assets used within the Development Hubs for Well-being for six fiscal years. Furthermore, a tax credit equivalent to 100% of the Value Added Tax, applicable to the sale of goods, provision of independent services, or leasing of goods, is contemplated for a four-year duration.

3

**Requirements:**

To access these tax benefits and administrative conveniences, taxpayers must adhere to specific prerequisites. These include maintaining compliance with tax obligations, holding a valid concession title or possessing land within a Development Hub for Well-being, submitting an investment project relevant to the concession, and having a tax address within the Development Hub where their economic activities are conducted.

4


**Supervision and control:**

The Tax Administration Service (SAT) will issue comprehensive control and monitoring guidelines to ensure the proper implementation of these tax incentives.

The primary objective of this decree is to stimulate economic and social progress in the Isthmus of Tehuantepec, catalysing investment, job creation, and the growth of strategic sectors. These measures are anticipated to contribute significantly to reducing regional disparities and enhancing the quality of life for the local population.

Effective from its publication in the Official Gazette of the Federation on 5 June 2023, this decree marks a pivotal step towards realizing the development potential of the Isthmus of Tehuantepec. At Baker Tilly Mexico, we have a dedicated team of experts poised to provide guidance and support in navigating these transformative changes. Please do not hesitate to reach out to us to discuss your specific requirements.





# Working in the UK: A brief guide to payroll compliance for overseas (non-UK) employers

By Peter Abbott  
UK

**There is a wide spectrum of issues for overseas (non-UK) employers to consider when they have employees working in the UK - ranging from recruitment and immigration challenges to corporate tax filing requirements and VAT matters.**

These employees may be seconded to work in the UK for a temporary basis or they may be employees relocating to the UK on a permanent basis. Alternatively, they may be employees that live overseas but travel regularly to the UK for work purposes.

Whatever the working arrangements, there are UK payroll and statutory employment obligations to address.

This article provides a high-level overview of the more common compliance and payroll aspects that overseas (non-UK) employers must consider. It is intended to assist overseas (non-UK) employers that have had little or no previous experience with working in the UK, as well as a helpful reminder for those already more familiar with the UK system. It does not consider other taxes or comment on immigration issues. It is also not intended to be a substitute for comprehensive, professional advice and should not be relied upon as such.

## **Requirement to report in the UK**

Wage taxes and social security contributions are generally paid in the country in which the employee is working. In the UK, wage tax (income tax) and social security contributions

(National Insurance Contributions – NIC) are typically withheld at source from an employee via a payroll operating 'Pay As You Earn' – PAYE and paid to the UK tax authority (HMRC).

However, whether an overseas (non-UK) employer has a payroll reporting obligation in the UK, or not, is determined by whether they have a 'sufficient presence' in the UK and whether income tax or NIC is due.

Having a sufficient presence in the UK can be easier to determine in some cases than with others. For instance, an overseas employer looking to create a formal entity in the UK will likely have a sufficient presence for payroll reporting obligations. However, having just one employee working remotely from the UK for their overseas employer may not.

There are also local employment requirements to consider, such as the overseas employer having to automatically enrol the employee(s) in a UK pension scheme. It is therefore important for non-UK employers to assess what payroll reporting obligations may arise given the employer and the employee(s) specific circumstances.

If it can be determined that an overseas employer does not have a UK payroll reporting obligation, then alternative methods of ensuring the correct income tax and NIC is paid to HMRC can be considered, which may be more cost effective and less onerous to administer.

On the other hand, if the overseas employer has a UK payroll reporting obligation, it is equally as important to ensure that the correct payroll mechanism is employed to ensure any allowable income.



# Challenges to the constitutionality of the new temporary solidarity tax

## Paying now, questioning tomorrow

By María Ángeles Mariñas Martínez  
Spain

**In July 2023, all residents of Spain with a net worth exceeding €3 million found themselves obliged to pay the temporary solidarity tax on their global assets. This tax isn't limited to Spanish tax residents; it also applies to individuals with assets situated in Spain.**

The first tax return deadline for the year 2022, falling between 1 and 31 July, has just concluded. Nevertheless, this tax law is currently under scrutiny for potential unconstitutionality.

Drawing from past experiences, such as the unconstitutionality ruling on the local tax concerning the increase in the value of urban land (IIVTNU) in 2021, those who did not seek rectification before the ruling missed out on the court's favourable decision. Therefore, it is of utmost importance for those affected by the new tax to carefully evaluate their actions to avoid facing a similar predicament.

**Several factors suggest that the new tax might be deemed unconstitutional:**

- 1 The tax came into effect just four days before the end of 2022 but applies retroactively to that year. This could be interpreted as having retroactive effects, potentially violating the principle of legal certainty as outlined in the Spanish Constitution.

- 2 The tax was approved as an amendment to a law initially focused solely on other taxes, circumventing the necessary parliamentary debate for its approval.
- 3 There is a potential overlap between this new tax and the existing wealth tax in some Spanish regions. The wealth tax is the purview of Spanish regions, not a centralised tax, and certain local governments grant total exemptions. If it's established that the new tax shares the same object and nature as the wealth tax, the central government might be regulating a tax over which it lacks competence.
- 4 The tax may clash with the principles of economic capacity and non-confiscatory nature, as it targets areas of wealth that don't necessarily generate income. With a maximum rate of 3.5%, this tax could be burdensome, especially for assets that don't generate income. It might compel taxpayers to sell assets simply to meet their tax obligations.

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While it will take some time for the question of unconstitutionality to be resolved, it's advisable for affected taxpayers to challenge their tax declarations after duly submitting and paying on time. This proactive approach can help avoid potential issues if the tax is ultimately declared unconstitutional. A starting point could involve submitting a tax return rectification along with a request for a refund of overpaid amounts.

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