

Home-office: too much of it can lead to tax surprises

*René Matteotti, Professor of Tax Law at the University of Zurich and Tax Lawyer**

So-called remote working belongs to the new normal for many employees. Careful though: it can trigger new tax consequences.



It is essential to analyse the tax risks of the proposed home-office concept in advance.

"Remote work works." By granting a home-office set-up, companies can not only boost employee motivation, they can also save considerable rental and travel costs. According to initial estimates, up to 30 percent of employees in certain industries could work from home several days a week. Mark Zuckerberg even predicts that around 50 percent of Facebook employees could work from home within the next five to ten years. With the new normal, slack chats, zoom meetings and other digital forms of communication will be with us for a considerable while longer. What does this mean for taxes?

Domestic permanent establishments

If a company sets up a permanent establishment in another canton or state, part of the profits will be taxed there accordingly. There is broad agreement that due to its time limitation, home-office models implemented during the lockdown, did not determine a permanent establishment. However, should a home-office policy continue for a period of at least six to twelve months after lockdown, a more nuanced tax assessment must apply.

The cantonal tax authorities are reluctant to assume a permanent establishment as a result of a home-office model. But beware: if, for example, an executive is not provided with a work place on a fixed basis, in order to save on rental costs, the home-office is likely to be considered a permanent establishment and give rise to a tax liability. If a company based in a low-tax canton goes one step further, and the majority of its management team continues to work for the foreseeable future from home offices based in Zurich, there is potentially a risk that the canton of Zurich will tax the company, based on the place of effective management in the canton of Zurich. If the company acts in bad faith and fails to disclose the permanent establishment or the effective place of management, the elimination of inter-cantonal double taxation will be denied.

Permanent establishments abroad

Similar considerations apply internationally. However, there is a trend to reduce the requirements for a permanent establishment. For example, the Austrian Federal Ministry of Finance has recently taken the position that a permanent establishment is already deemed to exist if the employee, in agreement with the employer, works to a significant extent from their home-office, i.e. around 25 percent of total working hours.

In view of the gaping holes that the Covid-19 pandemic has torn into state coffers and the already visible tendency to allow employees to work from home, even across borders, it is foreseeable that the home-office concept will increasingly come into the focus of foreign tax authorities and become the subject of international double taxation conflicts. Added to this are the tax risks at the employee level. Insofar as a senior executive continues to work from their home office on a regular basis, even after the lockdown, the foreign state is likely to claim the unlimited right to tax. Any double taxation resulting from the home-office must be eliminated through mutual agreement procedures, or by taking legal remedies in accordance with the respective national law.

Never overlook taxes

Companies that lift home-office policies for their employees after the lockdown will barely run into unexpected tax risks. However, the situation is different for those who even after lockdown, would like their employees to continue working from home and to a considerable extent, in order to save on rental costs in the

long term. In this scenario, it will be crucial for internationally active companies to analyse the tax risks of planned home-office concepts in advance. Otherwise, there is a risk that the cost savings aimed for by way of a home-office model, will be offset by unexpected tax bills and procedural costs.

*René Matteotti is Professor of Swiss, European and International Tax Law at the University of Zurich and a tax attorney at Tax Partner AG. As such, he acts as an advisor, expert and litigator.

Tax Partner

Tax Partner, based in Zurich, specialises in Swiss and international tax law. The company was founded in 1997 and consists today of 15 partners or counsel and around 40 tax advisors. The leading independent Swiss tax boutique advises and represents companies in all aspects of corporate tax law. Tax Partner works globally with leading tax law firms and in 2005 co-founded Taxand, the world's largest independent organisation of tax advisors. Taxand currently boasts more than 2,000 tax advisors and around 400 tax partners from independent member firms, based in more than 50 countries worldwide.