



# TAX:WATCH

## COVID-19: Danish tax implications for employees, who will be working in a different country than usual

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*Considering the travel restrictions implemented and other measures taken to limit the spread of COVID-19, we address some of the Danish tax implications for employees, who will be working in a different country than usual.*

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The below overview is not exhaustive. For specific and in-depth tax advice on your situation, please contact BDO.

### Will Danish tax exemption be forfeited?

Q: Will employees, who are tax exempt in Denmark according to section 33 A of the Danish Tax Assessment Act, be able to reside in Denmark for more than 42 days within a six-month period, now that they are encouraged to return to Denmark?

A: This tax rule does not prohibit employees from staying in Denmark. However, the tax exemption is forfeited from the start of the stay in Denmark resulting in more than 42 days in Denmark within the preceding six-month period. The tax exemption is also forfeited if work is carried out during the stay in Denmark, which is not directly related to the work abroad.

Q: Will the salary be fully taxed in Denmark?

A: No. If the employee is resident in Denmark for tax purposes, the employee is usually entitled to a relief from double taxation corresponding to taxes paid abroad.

Q: Can the situation be remedied?

A: Yes. It can be examined whether the employee can become resident in the other country, if a double tax treaty between Denmark and that country has been concluded. However, this is not the case for several zero-tax countries in, for example, the Middle East and for France and Spain.

Q: Are there other options?

A: Yes. The employee can reside in another country.

Q: Are there any tax implications of allowing the employee to stay in another country?

A: Yes. For longer stays, the employee can become resident in the other country, regardless of whether the employee lives there. If the employee also performs work there, a so-called permanent establishment may arise. This can have far-reaching consequences for the employer in relation to corporate tax and compliance obligations, including obligations to withhold tax and social security contributions when paying salary.

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### **Does tax residence commence?**

Q: Can seconded employees return to Denmark and stay here without becoming resident in Denmark for tax purposes and, consequently, subject to Danish tax?

A: This depends on an individual assessment. For guidance, a stay in Denmark of less than three months in combination with no home available in Denmark will likely not lead to Danish tax residence. Employees with such issues are encouraged to seek individual tax advice to determine the specific consequences. Especially, if the employee owns shares, a subsequent relocation abroad may trigger exit tax, if the shares have risen in value from the very low level seen at present.

### **Will taxation according to the tax scheme for inbound expatriates be forfeited?**

Q: Will a stay in Denmark, which entails Danish tax residence for a shorter period, ruin the possibility of later returning to Denmark to be taxed on salary according to the tax scheme for inbound expatriates?

A: Yes. That may be the case. According to the rules, the employee generally cannot have been subject to Danish tax for a period of 10 years prior to taxation according to the scheme. Consequently, a short period of Danish tax liability due to the COVID-19-crisis, will require a new ten-year period without Danish tax liability, before taxation according to the scheme can take place.

Q: What are the implications of the 30-day rule?

A: If an employee, who lives in Denmark with his family and works here for a so-called permanent establishment of a foreign company, travels to the country of the foreign employer and stays there for more than 30 days, taxation according to the tax scheme for inbound expatriates will be forfeited, if the right to tax the salary is transferred to the other country.

Q: What happens if the minimum monthly salary requirement is not met due to forced holidays, forced pay-cuts or the like?

A: If the minimum monthly salary requirement is not met on average during the calendar year, taxation according to the scheme may be forfeited. Individual tax advice should be sought before a decision is made.

### **Social security**

Q: What are the implications for Danish companies, if their employees have left Denmark and in the near future will carry out work remotely from their home abroad, where they live with their family?

A: As a starting point, such employees are covered by Danish social security since they are expected to work at least 75 pct. of the time in Denmark and thus less than 25 pct. of the time in their home country. If the 25 pct. threshold is exceeded, they may be covered by social security in their home country. This implies that the employer becomes liable to pay employer's social security contributions in the employee's home country, which may be considerably higher than in Denmark (up to 35 pct. of the employee's salary in some European countries). The employee's work in the home country may further raise the question of permanent establishment in that country.

## Øresund

Q: Is it a problem if a commuter, who lives in Denmark and is taxed according to the SINK tax scheme in Sweden, works from the home in Denmark during the time to come?

A: Yes. If Sweden does not retain the right to tax the salary, Sweden will not apply the SINK tax scheme, and the employee will have to pay Danish taxes. If the employee does not work at least 50 pct. of the time in Sweden (measured over a three-month period), the employee can no longer be covered by Swedish social security, thus forfeiting tax exemption in Denmark. Further, there is the issue of a potential Danish permanent establishment of the Swedish employer.

Q: is it a problem if a commuter, who lives in Sweden, works from home during the time to come?

A: If the employee does not perform at least 50 pct. of the work in Denmark (measured over a three-month period), the employee will be covered by Swedish social security, where the employer's contributions are significantly higher than in Denmark. In terms of tax, this implies that the employee is no longer exclusively taxed in Denmark on the salary. Furthermore, the issue of permanent establishment in Sweden may arise for the Danish employer, when the employee works in Sweden.

Q: Which days counts as workdays in the employer's country?

A: In a ruling from 2019, the National Tax Board stated:

- Sick days and holidays spent in the home country counts as workdays in the employer's country.
- Weekends, lieu days, Swedish and Danish public holidays are not counted in neither Denmark nor Sweden.
- Part of a day in e.g. Sweden is counted as a workday in Sweden although work is also carried out in Denmark and vice versa.

## Germany

Q: Is it a problem if a commuter living in Denmark, who usually works in Germany, works from home during the time to come?

A: Yes. If Germany does not retain the right to tax the salary, Germany will not tax, and the employee will have to pay Danish taxes. If the employee works at least 25 pct. of the time in Denmark (measured over a three-month period), the employee can no longer be covered by German social security, thus forfeiting tax exemption in Denmark. Further, there is the issue of a potential Danish permanent establishment of the German employer.

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