

Frontier workers taxation:
Italy and Croatia
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A frontier worker- term

- A frontier worker - defined by Regulation (EC) No. 883/2004
 - Article 1(f) as: 'any person pursuing an activity as an employed or self-employed person in a Member State and who resides in another Member State to which he returns as a rule daily or at least once a week'
 - In practice, the term „*daily migrants*“ is often used for these persons.
- LABOR LAW STATUS OF FRONTIER WORKERS - FOREIGNERS in the Republic of Croatia
 - Foreigner - foreign citizen - any person who is not a Croatian citizen (therefore, does not have Croatian citizenship), but has the citizenship of a member state of the EEA, the Swiss Confederation, a third country, or is a stateless person (so-called stateless or stateless).
- two basic categories: third-country nationals and EEA nationals

DEFINITION OF FRONTIER WORKERS - DAILY MIGRANTS

- The conditions for entry, movement, residence and work of citizens of the Member States of the European Economic Area and their family members in the Republic of Croatia are regulated by the provisions of the Act on Citizens of the Member States of the European Economic Area and Their Family Members
- A citizen of an EEA Member State who does not intend to stay in the Republic of Croatia for more than three months - a frontier worker who regularly returns to the country in which he/she permanently resides and lives is not obliged to register temporary residence
- A frontier worker (or daily migrant) is a person who performs an activity as an employed or self-employed person in the Republic of Croatia and who resides in another EEA Member State to which, as a rule, he/she returns daily or at least once a week
 - Art. 3, para. 1, item 9 of the Citizens of the EEA Act

Briefly on social security of frontier workers - Regulation 882/2004 - *lex loci labori*

- Basic Regulation - the social security system of only one member state applies to persons moving within the European Union, which means that they can only be insured in one EU country (Article 11)
- the situation when a worker from one member state comes to work in another member state (e.g. Croatia) and does not have an employment relationship or self-employment in another member state - in the area of social regulations, the Croatian legislation or the legislation of the country where he will perform his activity is applied
- in the case of frontier workers, it is most simply a question when the work is performed only in one member state, and they reside in another - *the basic principle - lex loci labori* - solving the issue of the relevant legislation of social benefits and benefits
 - if a person resides in one member state and works in another member state - the legislation of the state in which he actually performs his activity should be applied – reg. art. 11/ 3.a
 - (... the legislation of that member state applies to a person who performs an activity as an employed or self-employed person in a member state).

More complex social security issues

- A FRONTIER WORKER WORKS IN THE CROATIA AND IN AN EU STATE AT THE SAME TIME e.g. ITALY
- In many cases, a natural person lives in a frontier state and has an employment relationship in that state, and wants to work in Croatia as well, simultaneously or alternately.
- In that case, it is possible for the worker to remain socially insured in the country of residence (Italy) where he works part-time (e.g. Italy), and not to be socially insured in the country of work (Croatia).
 - Or vice versa: to be socially insured in Croatia regardless of living and working partly in the country of residence (Italy).
- an employed person simultaneously or alternately performs one or more separate activities in two member states/frontier
 - Exceptionally - cross-border workers are entitled to "full" health care in the country where they work and in the country of residence

Taxation of frontier workers

- taxation of compensation for the work of frontier workers - foreigners
- In Croatia, this means - application of Croatian tax regulations, DTC and the General Tax Code
 - If foreigners have an employment relationship and work in Croatia, when it comes to taxation, - the provisions of Art. 4 and 6 of the Income Tax Act.
- In this case, the taxable income of a non-resident is the income from self-employment that the non-resident earns in the country (principle of domestic income, source taxation).
- In principle, from the DTC `s with all border/frontier states of the Republic of Croatia - advance tax on income from employment is calculated for all persons who earn income in the Croatia and if only one of the conditions prescribed by DTC is met, i.e. if:
 - the worker stays in the Republic of Croatia for more than 183 days in a twelve-month period
 - the employer, a resident of the Croatia, paid the income
 - the income is charged to the permanent establishment that the employer has in Croatia.

Italy- Croatia DTC, art. 15, „employment”

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a State in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated; if that State does not levy any tax on such remuneration, that remuneration may be taxed in the State of which the recipient is a resident.

PERSONAL DEDUCTIONS/ALLOWANCIES WHEN CALCULATING SALARY TO A FRONTIER WORKER

- For frontier workers in Croatia who have a PK card, according to Article 16 of the Income Tax Act, the income from employment (salary) may be reduced by a basic personal allowance of €560.00 (in 2024) for the months in which they earn income in Croatia
- However, for foreigners, tax non-residents in the Republic of Croatia, when calculating their salary, it is not possible to increase the basic personal allowance based on the support of family members, children and disability.
 - However, a cross-border worker, resident of a Member State of the European Union or the European Economic Area, in the annual calculation of income tax based on the submitted annual tax return or in a special procedure for determining annual income tax, may also use a personal allowance increased by the increase coefficients for children and dependents and disability for the entire tax period, provided that he proves with credible documents that the aforementioned income earned in the Republic of Croatia constitutes at least 90% of his total (worldwide) income earned in the tax period and that it is exempt or exempt from taxation in the Member State of his residence (Article 16, paragraph 3 of the Income Tax Act).

Example - Income from employment of a Croatian resident sourced in Italy

- A person from Buje, a resident of the Republic of Croatia, earns income from employment with an employer in Italy. The worker works in Italy 40 hours a week. Since he performs his activity in Italy, the worker is compulsorily insured in Italy. The employer from Trieste will calculate the contributions in accordance with Italian regulations.
- The right to taxation in accordance with the DTC on the Avoidance of Double Taxation between Croatia and Italy, and since the salary is paid by the Italian employer, **regardless of the number of days spent in Italy**, the advance payment of income tax will be paid in the country of source of income, Italy.
 - Within 8 days of receiving the first receipt, he will inform the competent branch of the Tax Administration INO with a statement on the paid advance payment of income tax in Italy.
- After the end of the calendar year, the resident of the Republic of Croatia will, because *he is obliged to report worldwide income in the Republic of Croatia*, submit the INO DOH form by 31 January of the current year and request a Certificate of Paid Tax in Italy from the Tax Administration.
- The method of avoiding double taxation **is the imputation method**. Based on this certificate, the Croatian Tax Administration will accept the income tax paid in Italy and include it in the total annual income tax liability on the total income earned in the tax period, and determine the difference for the payment of income tax by applying Croatian regulations.

International agreements regulations of taxation - income from employment taxation

- According to Croatian regulations, income from employment, i.e. salary, is considered to be all income that the employer pays or gives to the employee in cash or in kind on the basis of an employment relationship.
 - A worker, resident of Croatia who earns income from employment abroad is obliged to report all worldwide income to the country of residence, i.e. Croatia.
- However, whether the ***advance payment of income tax is made in the country of source of income or in Croatia***, will depend on the DTC

- In order for the taxpayer to take advantage of the benefits of the international agreement on the avoidance of double taxation when taxing income in source country, it is necessary to prove tax residency to the payer of the income - with a Certificate of Residency
- The payer of income from employment, to whom a resident worker of the Republic of Croatia has submitted a certificate of residency, applies, *most often, Art. 15 - income from employment, of the Agreement on the Avoidance of Double Taxation between the Republic of Croatia and Italy*, the country of source
- The article emphasizes, with the terms "only" and „can/may“, who has the right to tax income based on employment:
 - The term "ONLY" - the right to tax has EXCLUSIVELY one of the contracting states
 - The term „CAN/MAY" - the right to tax has both contracting states

- The treaties establish the conditions that must be met in order for the **source country to have the right to tax the income of a non-resident:**
- I. Income derived by a resident of a contracting state from employment in another contracting state is taxable only in the state of his residence
- **In order for income from employment to be taxed only in the state of residence – Croatia, and not in the source country of income, three conditions must be met:**

1. „183-day rule”

- that the recipient resides in the country of source of income for a period or periods **not exceeding 183** days in the calendar year in question.
 - The first condition is a time limit of 183 days and the number of days may not be exceeded in any twelve months commencing or ending in the tax year in question. All possible periods of twelve consecutive months are taken into account in the application.
- Example 1.
 - A worker resides in one country for 140 days between 1 May 2017 and 30 April 2018, and then for 200 days between 1 September 2017 and 31 August 2018.
 - The worker resided for a period exceeding 183 days during the second twelve-month period, notwithstanding that he did not meet the minimum residence requirement in the first case and that the first and second periods overlap to some extent.

2 and 3 requirement

- 2. that the income is paid by an employer who is not a resident of the country of source of income or is paid on his behalf
- 3. that the income is not charged to a permanent establishment or permanent residence that the employer has in the country of source of income
 - The purpose of the second and third conditions is to avoid double taxation in the sense that income from employment, which is short-term, cannot be a tax-deductible expense in the country of source because the employer is not a taxpayer of that country, given that he is not a resident or has a permanent establishment.
 - In order for employment income to be taxed only in the country of residence - Croatia, and not in the country of source of income, **all three requirements must be cumulatively met.**

- If a resident of a Contracting State is employed in the other Contracting State, such income may be taxed in that other State, the State of source, and the State of residence.
 - Then the state of residence in accordance with Art. 23 of the Agreement to apply the appropriate method of elimination of double taxation
- In other words, the right to tax where income is derived, according to its regulations, belongs to the country of the source of income, and then the country of residence will apply the method of eliminating double taxation –exemption method or credit method
 - the country of residence will recognize the tax on income from employment paid in the source country and determine the possible income tax liability with respect to the total income, in accordance with its regulations.
- The credit /imputation method - DTC's of Croatia with the largest number of states and with all border statescountries - that is, including Italy, Slovenia, Hungary, Austria (BiH, Montenegro, Serbia).

Employment income

- Before paying a salary, a foreign employer must determine the tax status of an employee, a resident of Croatia, or more precisely whether he is a non-resident or a resident.
- If double income tax is to be avoided, i.e. DTC's are to be applied, the *employee must prove that he is a tax resident of another country*.
 - Non-resident status is proven by a Certificate of Residency issued by the competent tax authority or an authorized person.
- As previously stated, Art. 15 of the DTC **allows taxation of employment income of a Croatian resident in the source country**, if:
 - Employment income derived from work performed in the country of source of income, and one of the following conditions is met:
 - that he resides in the source state for more than 183 days in a twelve-month period
 - that the income is paid by an employer who is a resident of the income source state
 - that the income is charged to a permanent establishment that the employer has in the income source state

Obligation To Pay Advance Income Tax in Croatia

- If one of the above requirements are not met, the income from employment of a Croatian resident **will be taxable in the country of residence.**
- Therefore, the foreign employer is obliged to pay the gross remuneration to the employee so that he can calculate, withhold and pay the advance income tax in the country of residence, i.e. in Croatia, upon each payment according to the regulations of the country of source of income.
 - Payment of employment income to a resident of Croatia who works for a foreign employer, and contributions are paid in the country of source of income, i.e. in another EU country

- **OBLIGATION TO PAY ADVANCE INCOME TAX IN THE COUNTRY OF SOURCE OF INCOME**
 - If one of the above conditions is met, the income from employment of a resident of the Republic of Croatia will be taxable in the source state
 - Therefore, the employer is obliged to calculate, withhold and pay advance tax
- A taxpayer resident of Croatia who derives employment income from foreign state, whether taxable or not, is obliged, in order to secure the data necessary for determining the tax, to submit the forms

Concluding remarks on taxation of frontier workers Croatia Italy

- There is no bilateral agreement
- There are recommendations to the member states - e.g. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - Removing cross-border tax barriers for EU citizens - 2010

Encouraging Member States to adopt specific rules for cross-border workers and mobile workers that take into account the interaction of tax and social security systems in different Member States

- The right of the contracting state to tax employment income - art. 15.

- The proposal of new para. 4. Art. 15 DTC, Croatia Italy, modeled after Italy-France Agreement:
- "Notwithstanding the preceding provisions of this Article, employment income of persons living in the frontier zone of one of the States and working in the frontier zone of the other State shall be taxable only in the State of which such a person is resident."