

The crossborder posting of employees to Slovakia

Daniel Kováč - Lawyer

Juraj Turček – Payroll Manager

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1. Respective Legal Regulations

1. REGULATION (EC) No 593/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the law applicable to contractual obligations (Rome I),
 2. Labour Code No. 311/2001 Coll. (§ 5),
 3. No. 351/2015 Coll. Crossborder Cooperation by the Secondment of the Employees Act,
 4. No. 283/2002 Coll. Travel Allowances Act,
 5. No. 461/2003 Coll. Social Insurance Act,
 6. No.124/2006 Coll. Security and Health's Protection at Work Act,
 7. No. 595/2003 Coll. Income Tax Act
 8. double taxation treaties.
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2. Definition of the Crossborder Posting/Secondment

Crossborder posting/secondment is:

- a) „commercial posting/secondment“ - secondment of an employee under the mutual agreement on services between the seconding employer and the receiver of the respective service,

 - b) „holding posting/secondment“ - secondment of an employee between the companies of a holding company,

 - c) „temporary assignation/secondment“ - to user employer, if there is an employment relationship between the original employer and the employee.
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Posting/Seconding Employer and Posted/Seconded Employee

Seconding employer

➤ is an employer from an EU member state posting its employee from one EU member state to the Slovak Republic by providing services there,

➤ **Seconded employee**

➤ is an employee, who temporarily works in the Slovak Republic by providing services and usually working in the other state of the EU.

Exemptions

Foreign business trip – employee does not provide services abroad, his usual working place is in the EU member state, but he works just for his employer abroad (abroad training, business appointment, exhibition, etc.)

The first instalation of technology or sotware, etc. which is inevitable for implementation of the delivered technology, it the needed time for instalation/implementation has not exceeded 8 days in the last 12 months.

This does not apply by these activities: dredging (excavation), earthmoving works, in-house building works, assembly and disassembly of prefabricated members, adjustments, renovation works, repairs, dismantling, demolation works, maintenance, painting and cleaning works, reconstruction.

The Fundamental Obligations of Posting Employer

Posting employer shall provide conditions for a posted person minimum in such a standard for a Slovak employee in following scope (core working conditions):

- The length of working time and rests,
- The length of holiday
- Minimum salary and overtimes contribution
- Occupational health and safety
- Working condition for women and employees taking care of the child below 3 years of age
- Equal treatment for men and women (no discrimination)
- Working condition during employment by a temporary employment agency.

These conditions can be agreed more favorable for employee.

3. Documents

Posting employer has to provide and keep at least during posting time period these documents in the place of work in Slovakia:

1. Agreement of the posting (between posting employer and posted employee) in written form (the day of start, the day of termination, job description, place of work, working conditions),
 2. Job contract or other document about the job relationship/employment
 3. Evidence of the attendance of employee,
 4. Payslips and salary payment (at least during posting time period).
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4. Process

1. Social and health insurance – application form for A1 certificate,
 2. The verification of the obligations of country (core working conditions),
 3. The verification of country income taxation,
 4. Signed document „Agreement of the posting of employee“,
 5. Registration of employee in National Labour Inspectorate - NIP (before the start of posting) – 2 ways:
 - a) registration in „paper form“ sent by post,
 - b) registration of employer on portal of NIP and registration employee via web portal (<https://www.nip.gov.sk/?lang=sk>),
 6. Documents on place of work – job contract/posting agreement/A1 certificate, attendance (working hours evidence), payslips, bank statements (salary payments during posting).
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5. Social & Health insurance

1. A1 application form to social institution in home country,
 2. A1 certificate,
 3. A1 certificate – 3 functions:
 - a) Employment evidence document,
 - b) Decisive legislation verification,
 - c) For the case of working injury abroad and sickness compensation from insurance.
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6. Income tax

- 66 active international agreements between Slovakia and other country,
 - Check international agreements - Double Tax Treaties (<http://www.finance.gov.sk/Default.aspx?CatID=8688>),
 - Generally - tax residency – more than 183 days in year in Slovakia,
 - the review of the risk of the creation permanent establishment,
 - review of need to be registered in tax office as a foreign employer (for income tax)
 - income tax calculation in according to Slovak regulation.
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7. Risks

Labor inspectorate will likely check in particular :

- if employee works in Slovakia for a limited time period,
 - the place of work where an employee normally works,
 - the start date of the posting and registration date,
 - if an employee after termination of the posting comes back to state from which he/she was sent and will continue in his work,
 - the characteristics of working activities (job description) made by an employee,
 - the compensations of contribution for traveling/transportation, meal and accomodation by an employer,
 - previous time periods – job positions was occupied or re-occupied by the same employee or other employees,
 - documents which have to be on the place of work.
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8. Tips

- The member of the statutory body who is responsible for management in Slovak entity from this point of view is not considered a provider of services for recipient. The person is acting behalf of the employer. It is foreign business trip – employee. The contract between person as acting as a statutory body and employer has to be based on Commercial Code, not Labor Code.
 - Evaluation of the posting from case to case,
 - Review of local obligations via local holding entity or a local consultant.
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Daniel Kováč, Lawyer

E-mail: daniel.kovac@vgd.eu

Juraj Turček, Payroll manager

E-mail: juraj.turcek@vgd.eu

VGD SLOVAKIA s. r. o.

office Bratislava

Moskovská 13, 811 08 Bratislava

www.sk.vgd.eu

