

Short-term business travelers to Germany

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Short-term business travelers (STBTs) are employees working in Germany for a short period of time while continuously maintaining tax residency in their home jurisdiction, known as their center of vital interest – where they hold strong personal ties. When working in Germany, STBTs can trigger unexpected tax and reporting obligations for themselves and their employers, placing a significant administrative and tax burden on multinational companies that may be unaware of their exposure to penalties and regulatory risks.

Tax and regulatory considerations

STBTs working in Germany are generally subject to (limited) income taxation, according to German national tax law. Hence, the applicable double tax treaty as well as any further regulatory risks (e.g., if the employer creates a permanent establishment or qualifies as an economic employer in Germany) must be reviewed carefully.

To minimize the costs associated with conducting business in Germany, it is important for employers and employees to be aware of the tax implications when an employee works as an STBT in Germany.

Tax residency

A person's liability for German individual income tax is primarily determined by their residency status for taxation purposes and their source of income. A person can be a resident or a nonresident for German individual income tax purposes.

A resident of Germany generally is an individual who has a domicile in Germany or spends more than six consecutive months there. A domicile is a home or apartment owned, rented or used by the taxpayer, who has full control over the property. Domicile is determined by fact, not intention of the taxpayer. The general rule is that the worldwide income of a person who is a resident of Germany is taxable.

Maintaining documentation for STBTs

We advise employers to always maintain records of employee travel and be able to show German tax authorities that they are compliant with all tax obligations regarding business travelers.

Immigration

Performing an activity in Germany that is required by an individual's employment contract is considered work. The duration of the work and the location of the employer do not matter.

Working in Germany is generally subject to work authorization requirements. However, individuals from member states of the European Union, or the European Economic Area (EAA), or from Switzerland, are always exempt, including when working in Germany as STBTs.

Nationals of other countries or jurisdictions may also be exempt, depending on the type and duration of their work activities. Internal immigration controls should be in place to ensure that STBTs are only carrying out business activities allowed by their work permit.

A nonresident of Germany is generally someone who spends less than six consecutive months there. Nonresident income derived from German sources is generally taxable. STBTs are likely to be considered nonresidents of Germany for tax purposes unless they stay there for more than six months (brief interruptions such as vacations or weekend trips home are disregarded).

Income tax

Employment income is generally treated as German-sourced compensation when the individual performs the services while physically present in Germany. Additionally, specific rules apply for salary received as a board member, managing director or other authorized representative ("prokurist") of a German company. Double tax treaty provisions may prevent Germany from taxing employment income if certain conditions are met.

Technically, there is no minimum threshold/number of days that exempts the employee from requirements to file and pay income tax in Germany. However, to the extent the individual qualifies for relief under a double tax treaty by providing personal services to a dependent, there will be no tax liability. In some cases, treaty relief can be obtained only by submitting a formal upfront application to German tax authorities. To identify the employer and determine taxing rights, the German tax authorities rely on the criteria of the economic employer as well as on domestic laws. The treaty exemption will not apply if a foreign employer with no permanent establishment in Germany pays the compensation but recharges it to the German entity, or if the German entity should have, but did not, pay the compensation under the arm's-length principle.

For STBTs, the types of income generally taxed are employment income and German-sourced income, including fringe benefits, which are considered noncash employment income. Gains from German assets such as real estate located in Germany are also taxable.

For both resident and nonresident employees, taxable income is taxed at graduated (progressive) income tax rates ranging from 14% to 45%. In addition, a solidarity surcharge amounting to 5.5% of the assessed income tax is charged. If the taxpayer is a resident and a member of a church or creed recognized for tax purposes, church tax at 8% or 9% of the individual income tax is levied; nonresident employees are not subject to this tax.

Social security

Short-term business travelers from other EU or EEA member states or Switzerland will typically be exempt from contributing to the German social security system under the applicable EEA regulation. Short-term business travelers from other countries or jurisdictions may be exempt from paying social security tax under a totalization agreement or under Germany's domestic laws.

Transfer pricing

Germany has a tough transfer pricing regime that can apply when the employee is paid by an entity in one jurisdiction but performing services for the benefit of that entity in another jurisdiction—in other words, when the employee is providing a cross-border benefit. Whether transfer pricing comes into play depends on the nature and complexity of the services performed. There is a strict legal requirement to have comprehensive documentation on cross-border activities at hand for a future tax audit.

Permanent establishment

An employer may become a permanent establishment in Germany due to an employee's extended business travel there, depending on the type and duration of services performed and the employee's level of authority. The definition of a permanent establishment under Germany's domestic laws differs from the definition for treaty purposes—and under domestic law, creation of a permanent establishment is sufficient to trigger a wage tax withholding obligation.

Checklist for managing risks of noncompliance

Immigration risks: It is imperative that STBTs adhere to immigration laws globally. Any visa/work permit requirements should be identified prior to traveling to other jurisdictions.

Corporate tax risks: The employee's activities in the host country can create tax filing and payment obligations at the corporate level. The applicable income tax treaty should be reviewed, as a mitigation strategy may need to be put in place.

Regulatory risks: Local requirements must be considered to reduce the possibility of triggering any regulatory issues in the host country.

Reputational risks: There is increased pressure on multinationals to show that they have a process in place for monitoring STBTs and managing risks of noncompliance.

How can RSM help?

Noncompliance with local requirements may lead to financial and reputational risks and exposures that could cause international jurisdictions to refuse an employee entry—and put business objectives and projects at risk. Failing to meet local requirements may hinder expansion to new markets, lead to monetary penalties and expose the organization to legal challenges from employees and authorities.

The reporting obligations described above need to be carefully managed to ensure all requirements are met and tax liabilities are minimized.

RSM offers a senior professional-led service that can advise on the data collation, record keeping and risk management surrounding your STBTs to Germany.

Our international tax professionals will provide clarity regarding the complex tax compliance requirements that your business travelers face globally.

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