

Working from home in Spain: points of attention

19 May 2021



AGENDA

- 1. WELCOME & INTRODUCTION**
- 2. LEAVING BELGIUM – SOCIAL SECURITY AND EMPLOYMENT CONSEQUENCES**
- 3. WORKING IN SPAIN – EMPLOYMENT CONSEQUENCES**
- 4. CORPORATE TAX CONSEQUENCES**
- 5. INDIVIDUAL TAXES CONSEQUENCES**
- 6. Q & A SESSION**





1. WELCOME AND INTRODUCTION





LEAVING BELGIUM

SOCIAL SECURITY AND EMPLOYMENT CONSEQUENCES

1. Applicable social security and related formalities
2. Social security coverage and related formalities
3. Mandatory employment law obligations



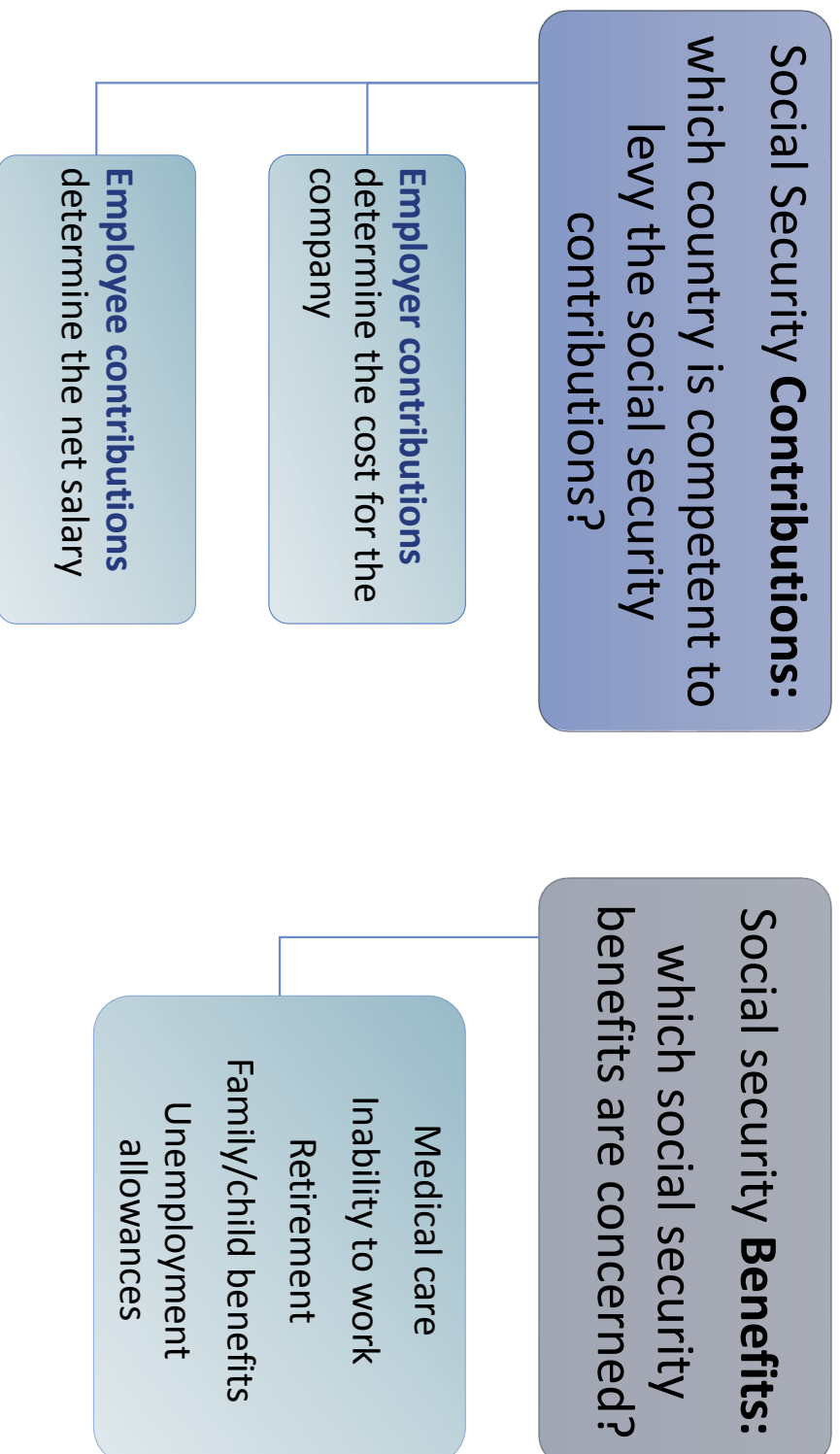
1. Applicable social security and related formalities





1.1 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES

– General principles





1.1 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES – General principles

- **Principle:** place of work → employee contributes to system of country where he works
- **Exceptions:** temporary (posting/assignment) or partial (simultaneous) employment abroad

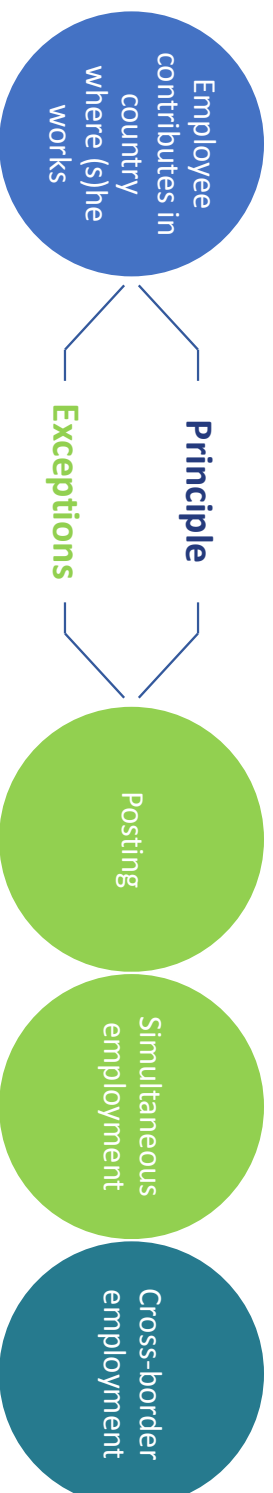
European context → Regulation 883/2004

Bilateral treaties

No treaty



1.2 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES – How to determine the applicable social security





1.2 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES - How to determine the applicable social security

General principle to determine competent EU Member State (article 11 Reg. 883/2004)

“a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State”

- COVID-19 in general has enabled us to work from home more. However, the above principle would mean that if an employee who usually works in Belgium, but temporarily works in Spain, for example:
 - As a “workation”: employee goes on holiday to Spain for 2 weeks and stays 2 more weeks to work there
 - Family visit: Spanish employee who usually works in Belgium, goes to Spain for 1 month and works there temporarily
 - Etc...
- The employee would be subject to **Spanish** social security because he works there.
- **No**, derogations apply for temporary assignments abroad!



1.3 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES – Exception of posting

Special rule for temporary posting (article 12 reg. 883/2004)

“A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer’s behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person.”



1.3 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES – Exception of posting

Posting by employer who normally pursues activities in sending country

Limited in time: 24 months – 5 years

Employee does not replace other posted employee in same function

Link of subordination between employer and employee

Minimum period of 1 month of contributions to the social security system of the posting country

Application A1-form (obligatory), which confirms the applicable social security law



1.3 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES – Exception of posting

- ➔ Employees who usually work in Belgium, but go to work temporarily in Spain, can remain subject to Belgian social security contributions in case of temporary posting to Spain
 - Even though the employee will work in Spain, he will remain subject to Belgian social security contributions = derogation of work state principle
- ➔ Formalities: apply for an **A1-form** with the Belgian social security authorities (RSZ/NSSO)
 - The A1-form will prove the employee remains subject to Belgian social security while on temporary assignment in Spain
 - The employee must carry the A1-form with him



1.4 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES – Exception of simultaneous employment in multiple countries

Special rule for pursuit of activities in two or more EU Member States (article 13)

*“A person who **normally** pursues an activity as an employed person in two or more Member States shall be subject: (a) to the legislation of the Member State of residence if he/she pursues a **substantial** part of his/her activity in that Member State;*

Example

- Since the pandemic, a Belgian employee who usually works in Belgium has been going to his holiday home in Spain every two months for an extended period of time. He works from there for a few weeks, but always returns to Belgium. He asks his employer if he can continue this way of working indefinitely

→ simultaneous employment > posting



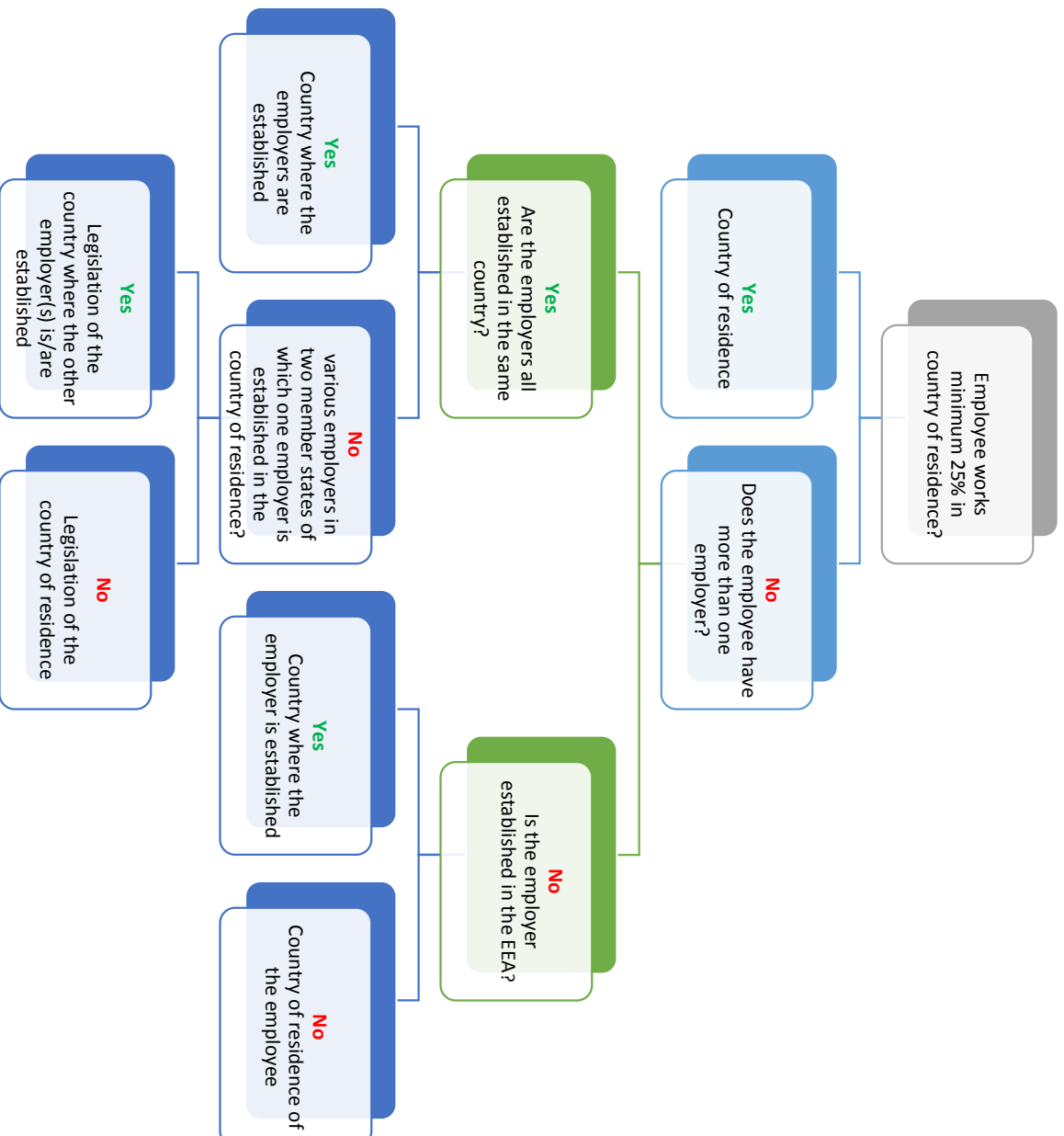
1.4 APPLICABLE SOCIAL SECURITY AND RELATED FORMALITIES - Exception of simultaneous employment in multiple countries

Special rule for pursuit of activities in two of more EU Member States (article 13)

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Practical Guide

- **Multiple activities** >< posting → duration and nature of the activity shall be decisive (whether it is permanent or of a one-off, ad hoc or temporary nature).
- **Marginal activities** = activities accounting for less than 5% of the worker's regular working time and/or less than 5% of his/her overall remuneration → not taken into account
- **Substantial activities** → ≥ 25% of working time and/or remuneration





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2. Social security coverage and formalities





2. SOCIAL SECURITY COVERAGE AND RELATED FORMALITIES

Social Security Benefits





2. SOCIAL SECURITY COVERAGE AND RELATED FORMALITIES

Consequences for Benefits in the event of posting

- ✓ **Accrual of benefits (pension, unemployment allowances etc..) continues in posting country (“home country”) → no changes**
- ✓ **Medical care → S1 form (when employee moves residence) or European Health Insurance Card (employee keeps residence in sending country)**



2. SOCIAL SECURITY COVERAGE AND RELATED FORMALITIES

Work accident insurance

- ✓ Continue to apply Belgian work accident insurance
- ✓ Check if coverage is sufficient for home work abroad.
 - If not: pay for additional coverage



3. Mandatory employment law obligations





Mandatory employment law obligations

-
- Working from home on a structural/regular basis = **telework (CLA85)**
 - **Voluntary** basis for employer/employee + mandatory agreement to be made
 - Frequency of the telework
 - Periods when the employee needs to be reachable
 - Cost reimbursement (internet)
 - Working schedule
 - If temporary assignment > 1 month → Article 20bis Employment Contracts Act of 3 July 1978
 - The employee should receive a letter from the employer in accordance with concerning:
 - duration of the work abroad,
 - currency in which the salary is paid,
 - possible benefits connected to the assignment abroad
 - the conditions of the employee's return to his country.



WORKING IN SPAIN

EMPLOYMENT CONSEQUENCES

1. Mandatory registration
2. Mandatory employment law obligations



1. Mandatory registration

- Mandatory registration of the temporary activity with the authorities → at the latest before the start of the activities
 - Similar to Belgian Limosa obligation
- A contact person (liaison) must be appointed
- Check conditions and formalities per Autonomous Community (Comunidad Autónoma)
- Fine up to 6,250 EUR if not complied with!



2. Mandatory employment obligations

- Principle: parties are free to choose the labour law applicable to the employment relationship (principle of choice of law)
 - However, there are limitations to these principles, linked to the place where the employee performs his activities → **mandatory** provisions of local law / public order may apply
 - E.g. salaries, public holiday, working time etc..
- ! Check from Spanish law POV

4. Teleworking from Spain



POINTS OF INTEREST



- **For the employer**
 - ⇒ **Permanent Establishment**
- **For the employee**
 - ⇒ **International Employment**



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4. POINTS OF INTEREST FOR THE EMPLOYER

Permanent Establishment



Permanent Establishment (article 5)

- Definition:

“A fixed place of business through which the business of an enterprise is wholly or partly carried on”

- The existence of a workplace
- The workplace has to be permanent
- The company carries out its activity through the PE

According to the OECD:

- Used on a continued basis?
- Does the enterprise require the employee to use that location?
- In case of a “home office” => “right of use test” (having or not access to / control over the home office)
- Preparatory / auxiliary



Permanent Establishment (article 5)

- Employer EP effects:

The concept of PE is used to determine the right of a State to tax profits of a company of the other contracting State :

- Corporate tax liabilities including tax filings obligations
- Transfer pricing obligations
- ...

⇒ Domestic tax law

⇒ To be assessed on a case-by-case basis



Permanent Establishment (article 5)

- CONSULTA V3794-16

“El consultante es una persona física que trabaja para una empresa de consultoría IT con sede en Alemania (sin establecimiento en España) desde hace 4 años. Empezó a trabajar en dicha empresa residiendo en Alemania, y ha regresado para residir indefinidamente en España. La empresa alemana le ha ofrecido la posibilidad de seguir trabajando para ellos realizando teletrabajo, con la condición de viajar a la oficina alemana una semana al mes. Residirá más de 183 días en España a partir de 2016”

=> In this case the German company was not considered to have a PE in Spain



5. POINTS OF INTEREST FOR THE EMPLOYEE

International Employment



International employment

Spain



(1) Living and Working

(2) Living and Working

Belgium



~~Working~~

Working art. 15 Tax Treaty



No international employment

Spain



Living and Working

Declaration in Spain (IRPF modelo 100)

Belgium



Working



International employment

Spain



Living and Working

Declaration in Spain (IRPF modelo 100)

Art. 23.1 (Tax Treaty to avoid double taxation)

Art. 80 LIRPF “Deducción por doble imposición internacional”

Belgium



Working (art. 15 Tax Treaty)

Declaration as a non resident in Belgium



International employment (NO EP in Spain)

Belgium



Living and Working

Declaration in Belgium as resident

Spain



Working (art. 15 Tax Treaty)
< 183 days

Contact



Dany De Decker

Tax Partner

d.dedecker@bakertilly.be

0032 475 537 576

Baker Tilly

Offices in Belgium:

Aalst, Brussel, Mechelen, Melle, Luik, Zele

www.bakertilly.be

00 32 53 70 01 11

Spain:

Alicante, Calpe, Iriesta, Cuenca, Valencia



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PRO€PAY
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QUESTIONS ?

Tel +32 (0)2 302 19 01

info@pro-pay.be

www.propay.be



OUR OFFICE IN BRUSSELS

General contact info

Address

Sint-Stevens-Woluwestraat 55
1130 Haren (Brussels)
Belgium

Phone

+32 2 302 19 01

Web

www.propay.be

Inge Janssens

Director Legal and Immigration

Phone +32 2 302 19 35

Email ijanssens@propay.be

An De Wever

Legal Advisor

Phone +32 2 302 19 05

Email adeweaver@propay.be