

# Posting of employees to Austria

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# Cross-border services

- Free provision of services in general
- Notifications required for services that are classified as regulated trades in AT (e.g. builders, electrical engineering, pest control) BEFORE the first provision of service & annual renewal in case of continued activities
- ! No cross-border services any more, when the company systematically focuses on searching for opportunities to exercise the activity in Austria



# Employee secondment SK - AT

- Employee Secondment notification ZKO 3 (intra-group or intra-company secondment) **BEFORE** work starts! (or for **mobile employees** in the transport sector **BEFORE entry into federal territory**) → electronically!
- ZKO 4 notification (for commercial hiring-out) **BEFORE** work starts! → electronically!
- Notices are to be submitted separately, no „stock notices“ are permitted

Exceptions:

- **Framework notification** (relating to **one client** in Austria for a period up to **three months**)
- **Collective notification** (in case of similar service provision contracts for several different clients)
- A 1 certificate for every employee
- Insurance in BUAK (Construction Workers Leave and Severance Pay Fund) in case of posting of construction workers to AT
- The provisions of the Anti-Wage and Social Dumping Act (LSD-BG) shall be complied with: The minimum wage applicable in Austria is to be paid!, pay documents to be kept available at the place of employment (for mobile workers in the vehicle)



# Exceptions to LSD-BG

No notification of posting if the worker is posted to Austria exclusively for the purpose of performing the following small, temporary tasks:

- business meetings without rendering any other services
- participation in seminars and lectures without rendering any other services
- participation in trade fairs except for preparatory and concluding activities for the event
- attending and participating in congresses and conventions
- participation in (and organisation) of cultural events (dance, music, etc.)
- participation in and organisation of international competitions, with the exception of preparatory and concluding activities for the event
- work as a crew member in the cross-border transport of freight and passengers provided that the work is performed exclusively within the scope of **transit traffic** and the habitual place of work is not in Austria, except for a transit journey that is interrupted for the purpose of cabotage operations (traffic in stages) and terminating traffic
- Activities within a **group**, when the employee receives current average gross remuneration of at least € 6.075,00
- work within the scope of **international education and further training or research programmes** at universities/University Colleges of Teacher Education
- **particularly skilled workers**, whereas **group-internal postings** must not exceed a total length of two months per calendar year
- **'Exception for assembly' (Montageprivileg)** in case of performing service for installations which were manufactured abroad (up to 3 months)



# Exceptions (II)

## *Example: Transit*

### **Option a)**

A Slovak carrier undertakes truck journeys with Slovak drivers from Bratislava via Vienna to Munich. **Exeptions concerning the transit traffic are applicable.**

### **Option b)**

A Slovak carrier undertakes truck journeys with Slovak drivers from Bratislava to Vienna. **Exeptions concerning the transit traffic are NOT applicable.**

The foreign employer has following legal responsibilities in regards to the **part of the route that leads through Austria, that shall be met BEFORE entering the country and available (in the truck):**

- All secondment certifications (ZKO 3 or ZKO 4, A1) of the driver shall be kept in the vehicle or made available electronically (= transmission of data to the competent authorities)
- Pay documents shall be kept available in the vehicle or in the premises of an Austrian group company or by a legal professional (in German)
- Compliance with Austrian collective agreements and labour legislation

### **Option c)**

A Slovak carrier undertakes truck journeys with Slovak drivers from Bratislava via Vienna and Salzburg to Munich. Journey is interrupted in Salzburg for the purpose of unloading and loading the truck. **Exeptions concerning the transit traffic are NOT applicable.**

- BEFORE the stop in Salzburg, the foreign employer has the same responsibilities as in the option b).



# Exceptions (III)

## *Example: 'Exception for assembly' (Montageprivileg)*

- The 'exception for assembly' has been **limited** to cases in which the **installations** were manufactured **abroad** by the **posting company** or a **Group** company.
- Example: The Austrian company Z-GmbH awards a contract for service works of an installation to a German Y-GmbH. The employees of Y-GmbH are specially trained for these works, the employees of Z-GmbH are unable to perform these services themselves. The work will take approximately 2 months.
  - The company Y-GmbH has NOT manufactured the installation.
  - The company Y-GmbH has manufactured the installation.
- Solution to a): The 'exception for assembly' **CANNOT be applied** as the **foreign** company has **NOT manufactured the installation**. Therefore all legal consequences become effective:
  - All secondment certifications (ZKO 3 or ZKO 4, A1) shall be kept within the country or shall be made available electronically (= transmission of data to the competent authorities)
  - Pay documents shall be kept available within the country or in the premises of an Austrian group company or by a legal professional (in German)
  - Compliance with Austrian collective agreements and labour legislation
- Solution to b): As the installation was manufactured by the company Y-GmbH and the service works will take only two months, the 'exception for assembly' is **applicable**.



# Administrative penalties for breaches of regulations

- Fine for infringement of the requirement of **timely or complete ZKO-notification** is between € 1.000 and € 10.000 and if repeated, between € 2.000 and € 20.000 per employee:
- Fines will be imposed also in case of **infringement of the requirement of availability of pay documents** - a fine between € 1.000 and € 10.000 and if repeated, between € 2.000 and € 20.000 per employee.
  - In case it concerns more than three employees, the amount of fine is between € 2.000 and € 20.000
  - if repeated, between € 4.000 and € 50.000 per employee.
- In case the **underpayment** concerns maximum three employees, the financial penalty amounts to
  - between € 1.000 and € 10.000 per employee
  - if repeated, between € 2.000 and € 20.000
- If it concerns more than three employees
  - between € 2.000 and € 20.000 per employee
  - if repeated, between € 4.000 and € 50.000
- In case of underpayment over several related pay periods, it is to be considered as single offence
- Bonus payments can be paid out by the end of the calendar year without incurring any penalty
- In case of minor fault (slight negligence), it shall be refrained from imposing penalties



# Employee Secondment SK – AT to perform (Construction) works for clients

## **! Differentiation between Service Agreement with the client and Employee secondment to client:**

Depending on the contract:

### **Basis of Service Agreement:**

- the Contractor is liable for the success of services
- no integration of staff members in Customers' operation
- works are performed mainly with material and tools of the Contractor
- product/service of the Contractor is different from that of the Customer
- the Contractor bears the economic risks of the contract
- the Contractor exercises administrative and technical supervision of the employed labour

### **Basis of Employee Secondment:**

- no work is performed that differs from the products/services of the Customer and is attributable to the Contractor
- works are not performed mainly with material and tools of the Contractor
- the Contractor is not liable for the success of services or the Customer bears the economic risks

→ **different tax consequences!**



# Employee Secondment SK – AT for construction works:

Employee Secondment		Service Agreement	
<b>Foundation of a permanent establishment under double taxation agreement (corporate tax)</b>		<b>Foundation of a permanent establishment under double taxation agreement (corporate tax)</b>	
Attendance < 12 months	Attendance > 12 months	Attendance < 12 months	Attendance > 12 months
NO	NO	NO	YES
<b>Income Tax Liability Staff</b>		<b>Income Tax Liability Staff</b>	
Attendance < 183 days in calendar year	Attendance > 183 days in calendar year	Attendance < 183 days in calendar year	Attendance > 183 days in calendar year
usually YES, as the Employer is economic employer	YES	NO	YES
<b>Customer's Liability according to §82a Income Tax Act and 67a General Social Security Act</b>		<b>Customer's Liability according to §82a Income Tax Act and 67a General Social Security Act</b>	
Retention of 25% by the Customer unless company is included in the HFU-List (List of Indemnifying liability company)		Retention of 25% by the Customer unless company is included in the HFU-List (List of Indemnifying liability company)	
<b>Tax deduction according to §99 Income Tax Act</b>		<b>Tax deduction according to §99 Income Tax Act</b>	
Tax deduction of 20% unless certificate of exemption of the Tax Office Bruck/Eisenstadt/Oberwart is provided		No tax deduction	

# Contacts



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# Questions & Feedback

