

- b) If the employee's country of residence **has not signed** a bilateral social security agreement with Turkey;

**Social security implications** → The individual will be subject to Turkish social security applications as of the first day following the 3rd month of the employment period.

Furthermore, private health insurance is not obligatory and would be decided upon freely as per the employer's HR policy.

#### 4. Immigration Issue

Foreigners must apply for a residence permit if they need to extend their visa term before its expiry date.

#### 5. Duty of Care to Compensation Levels

Local legislation might only be implemented if the presence of a foreign employee creates a PE or if the employer currently has a PE in Turkey.

#### 6. Benefits & Payroll

Turkish labour law cannot be implemented unless the foreign employer has a PE in Turkey.

Mithat Erdoğan  
mithat.erdogan@  
wts-turkey.com

## Ukraine



## Migration and taxation issues in times of COVID-19

### Migration

#### Governing law

Article 52 of the Ukraine Law "On International Private Law" specifies that employment relations are governed by the law of the country where the employment is actually exercised, unless otherwise set out by the law or respective international treaty. However, the above rule shall not be applicable for expatriates and stateless individuals: (i) working for diplomatic missions of foreign states or missions of international organisations in Ukraine; or (ii) if the employment agreement is concluded with a foreign employer.

Therefore, if a foreign employer has a foreign employee working remotely from Ukraine due to COVID-19, their **employment relations will not be governed by the laws of Ukraine notwithstanding the duration of an employee's stay in Ukraine or the reasons for said remote work.**

#### Period of stay in Ukraine and liability for breaching migration rules

Foreigners who are citizens of countries with a visa-free entry regime, citizens of visa-free countries, including nationals of EU countries, may temporarily stay in Ukraine for a period not exceeding 90 days during any 180-day period.

Overstaying in Ukraine shall lead to a fine ranging from UAH 1,700 – 5,100 (approximately EUR 51 – 154). A foreigner may face only a written warning if the offence is identified at checkpoints on the state border of Ukraine.

#### Liberalisation due to COVID-19

Temporarily, **for the period of quarantine in Ukraine and within 30 days after its end**, foreigners and stateless individuals who have overstayed in Ukraine or failed to receive/change a temporary or permanent residence permit, shall be exempt from administrative liability, provided that said breach occurred during or was triggered by quarantine.

Therefore, all foreigners/stateless individuals have at least 30 days after the end of the quarantine period to leave Ukraine or formalise a legal ground for a further stay in Ukraine, with no sanctions being applied.

#### Taxation

The scope of income taxable in Ukraine depends on the expatriate's tax residence, but at least a Ukrainian-sourced income shall be taxed in Ukraine.

No special rules for defining individual's tax residence were introduced in Ukraine due to the lockdown.

The expatriate's duration of stay in Ukraine is not a main criterion for defining tax residence. The 183-day criterion is used only if an individual fails to confirm having a place of residence, domicile, or a centre of vital interests in any other country.

Also, an individual's actual presence in Ukraine does not instantly mean that the income received is Ukrainian-sourced. A number of criteria are to be regarded to define whether income originates from Ukraine and from what kind of activity it was gained.

**Thus, notwithstanding the coronavirus crisis, the matter of expatriate taxation in Ukraine is still subject to a case-by-case study.**

Furthermore, an expatriate's income might be exempt from taxation in Ukraine under the provisions of a Double Tax Treaty (DTT) (if any), also subject to analysis on the case basis.

The **OECD, in April 2020**, brought the issues of cross-border working that arose due to the lockdown into the spotlight; however, leaving their resolution to each country's discretion.

So far, no amendments have been made to Ukraine's DTTs due to the coronavirus crisis and, to our knowledge, no information on negotiations with other countries on the matter has been made public.

*Alexander Minin*  
*a.minin@wts.ua*

*Inna Taptunova*  
*i.taptunova@wts.ua*

*Yaroslava Ivasyuk*  
*y.ivasyuk@wts.ua*

## Vietnam



### Does having an employee in Vietnam create a permanent establishment?

**The case:** German company A employs person B with residence in Vietnam for working on projects of A in Germany and other countries. A is not registered in Vietnam. A and B intended that B will be working for A in Germany, but this plan cannot be implemented due to COVID-19 restrictions. After these restrictions are lifted, B remains in Vietnam. B does not have an independent business in Vietnam, he is employee.