



- Over 300 pages containing 21 years of experience in advising on cross border employment in Europe
- Practical examples, check-lists, commentaries, jurisprudence and law on posting of workers in Europe
- Permanent Establishment, 183-days-rule, cross-border taxation of companies, rules for the avoidance of double taxation
- A must-read for anyone who intends to post workers abroad
- Mandatory reading for legal and tax advisors as well for consultants on cross border employment in Europe
- An experienced lawyer explains in simple language the intricacies of posting

In cross-border business, income taxes (Corporate Income Tax – CIT and Personal Income Tax - PIT) are key issues.

On the one hand, the posting companies must pay taxes on company income (CIT). Taxation of posted employees' remuneration is another important issue.

In our more than 20 years of practice, we see that a misunderstanding of tax mechanisms leads to serious problems for companies. It often happens that the company pays taxes in good faith in one country, and after many years it turns out that it must pay taxes abroad - for several years of cross-border activity.

To avoid trouble, it is worth planning in which country taxes should be paid before cross-border activities starts.

In this book, we discuss in detail the definition of a permanent establishment with particular emphasis on long construction, assembly and installation work. With regard to posted workers, the principles of taxation, the 183 days rule and the situation of temporary workers posted abroad are discussed. Unlike previous editions of this book, we also discuss tax definitions of residence and of the effective seat of a company, as well as rules for cross-border taxation of companies and rules for the avoidance of double taxation.

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ELYSIUM-Europe  
Cross-Border Employment. Delivered

**Brighton & Wood**

Most of the things worth doing in the world had been  
declared impossible before they were done.

# Taxation of Cross-Border Services 2020/2021

- General definition of the term “permanent establishment”
  - The term “place of business”
  - The words “through which”
  - The word “fixed”
  - The words “coherent whole”
  - Permanency
  - Activities of a recurrent nature
  - Temporary interruptions of activities
  - The words “wholly or partly”
  - Subcontractors
  - Start and the End of permanent establishment
- Examples of places of business – “Place of management”
- Building site, construction and installation project
  - The term “building site or construction or installation project”
  - The twelve-month test
  - Abuses
  - Start of the construction
  - The End of the construction
- Exceptions to the general definition
- Fragmenting a cohesive business operation into several small operations – new rules
- Dependent agents
  - The phrase “concludes contracts”
  - The phrase “or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise”
  - The reference to contracts “in the name of”
  - The crucial condition “routinely concluded”
- Independent agents
  - “Exclusively or almost exclusively”
  - “Closely related”



- Subsidiary company
- Person or enterprise “closely related to an enterprise”
- Taxation of services - The combined effect of Article 5 and Article 7
- Taxation of business profits
  - General approach
  - The rules for the allocation of taxing rights on the business profits of enterprises
  - The basic rule for the determination of the profits that are attributable to a permanent establishment
  - “No unrelieved double taxation of the profits”- rule
  - The term “profits”
- Taxation of posted workers
  - General rule
    - “Redundancy payment”
  - 183-days-rule
    - “Days of physical presence”
    - The employer paying the remuneration must not be a resident of the State in which the employment is exercised
    - The remuneration is not borne by that permanent establishment
    - “Hiring-out of labour” cases
- Methods for elimination of double taxation
  - General observations and remarks
  - Description of methods for elimination of double taxation
  - Conflicts of qualification
  - Timing mismatch
  - Exemption method in Article 23 A
  - Credit method in Article 23 B
- Definition of resident
  - The concept of “resident of a Contracting State”
  - Definition of the expression “resident of a Contracting State”
  - Persons who are “liable to tax”
  - An individual is a resident of both Contracting States
  - Company as a resident in more than one State



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# Brighton & Wood

European Employment Lawyers & Advisors

- ✓ legal and profitable models of posting of workers in Europe
- ✓ optimization of costs related to posting of workers
- ✓ documentation for employees and temporary workers posted abroad approved in many control and court proceedings across Europe
- ✓ contract documentation
- ✓ consultations on the legal and profitable postings of workers
- ✓ access to knowledge about regulations in all European countries
- ✓ access to host country regulations regarding minimum remuneration, working time, supplements & allowances and other provisions
- ✓ audits for posting companies regarding the legality and cost-effectiveness of posting
- ✓ audits for contractors regarding the correctness and legality of posting by foreign companies
- ✓ certification (compliance with the Standard CBE-2020 [CROSS-BORDER EMPLOYMENT] Construction, Infrastructure & Energy)



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## ELYSIUM-Europe

Cross-Border Employment. Delivered

Posting of Workers in Europe  
Cross-Border Employment in Europe

HR and payroll outsourcing

optimization of employment-related costs  
modern and optimal legal forms of employment  
employment of foreigners

# ELYSIUM

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## OUR SERVICES

### BASIC SERVICES

- HR Administration
- Payroll Services
- Cost optimization
- A1 Forms
- Notifications in host countries

### ADDITIONAL SERVICES

- Bookkeeping
- Service for workers posted abroad
- Transport abroad and in a foreign country
- Accommodation/housing for Employees in host countries (B, NL, GER)
- Vocational training and certification

## Elysium-Europe

Elysium-Europe is the only payroll office in Europe that officially cooperates with Brighton&Wood and benefits from legal, tax and social security knowledge of this leading European law firm in the field of cross-border employment.

The Documentation and Representation in control procedures for Elysium-Europe-Premium Customers are provided by Brighton&Wood.