



International Tax SIG

Chair: Cathal Cusack, Cusack & Co, Dublin, Ireland

Independent legal & accounting firms

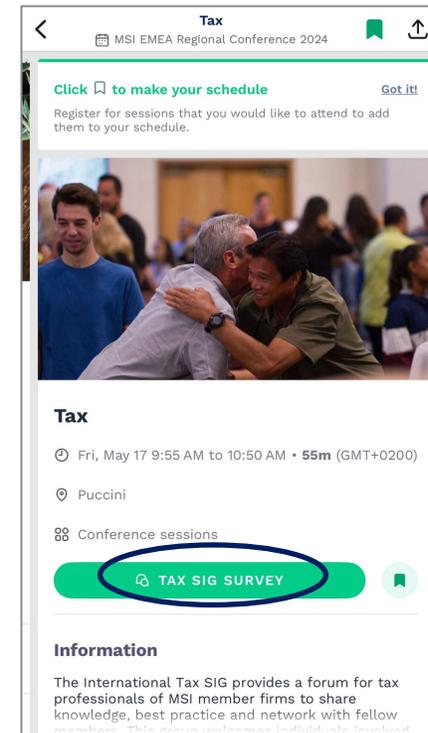
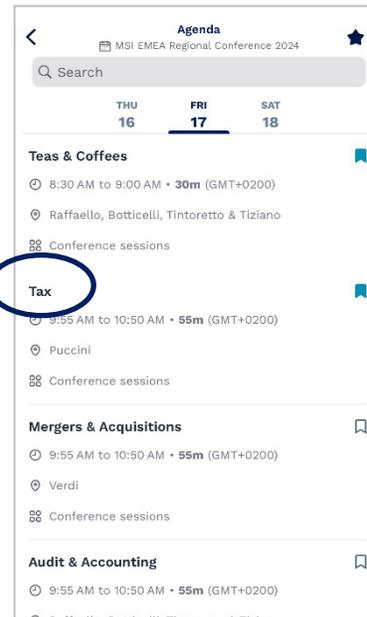
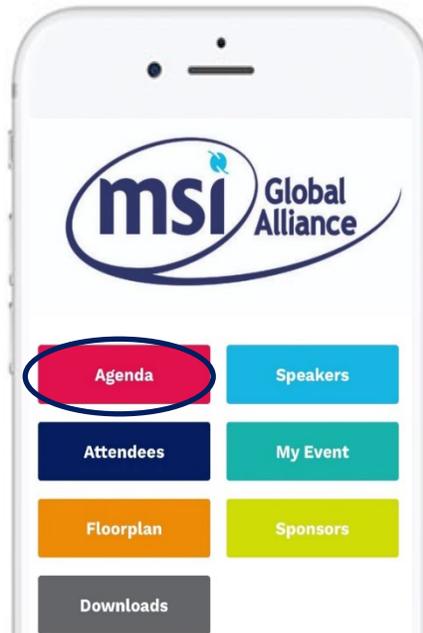
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Tax advisory services

Challenges resulting from globalization of taxes

Katarzyna Knapik: Tax Partner, Taxpoint, Poland

Independent legal & accounting firms

Globalization of taxes – facts, not fiction

Examples of existing EU harmonization

- ➔ Withholding taxation of passive income
- ➔ VAT & customs
- ➔ ATAD
- ➔ DAC6 (MDR)
- ➔ Pillar 2

Examples of planned harmonization

- ➔ Pillar 1
- ➔ BEFIT
- ➔ TP

Impact

For our clients



- More topics are managed centrally by regional/global tax teams
- Local teams providing input for reporting compiled globally

For advisors



- Constant learning
- Need to coop (projects cannot be run in isolation)

Challenges

Access to regional/
global tax managers
of our clients/ targets



Demonstrating we:

- have know-how
- are able to run multijurisdictional projects

Know how

How to learn

individual learning (e.g. publicly available trainings)

learning together – trainings dedicated for MSI member firms run by recognized experts

How to promote ourselves

brochures showing contact persons in particular countries

joint publications – MSI website & external platforms

placing proposals

How to coop



joint proposals



advisor in HQ country
approaches regional/
global tax managers
and subcontracts work

Survey



**Let's see what are
your thoughts**

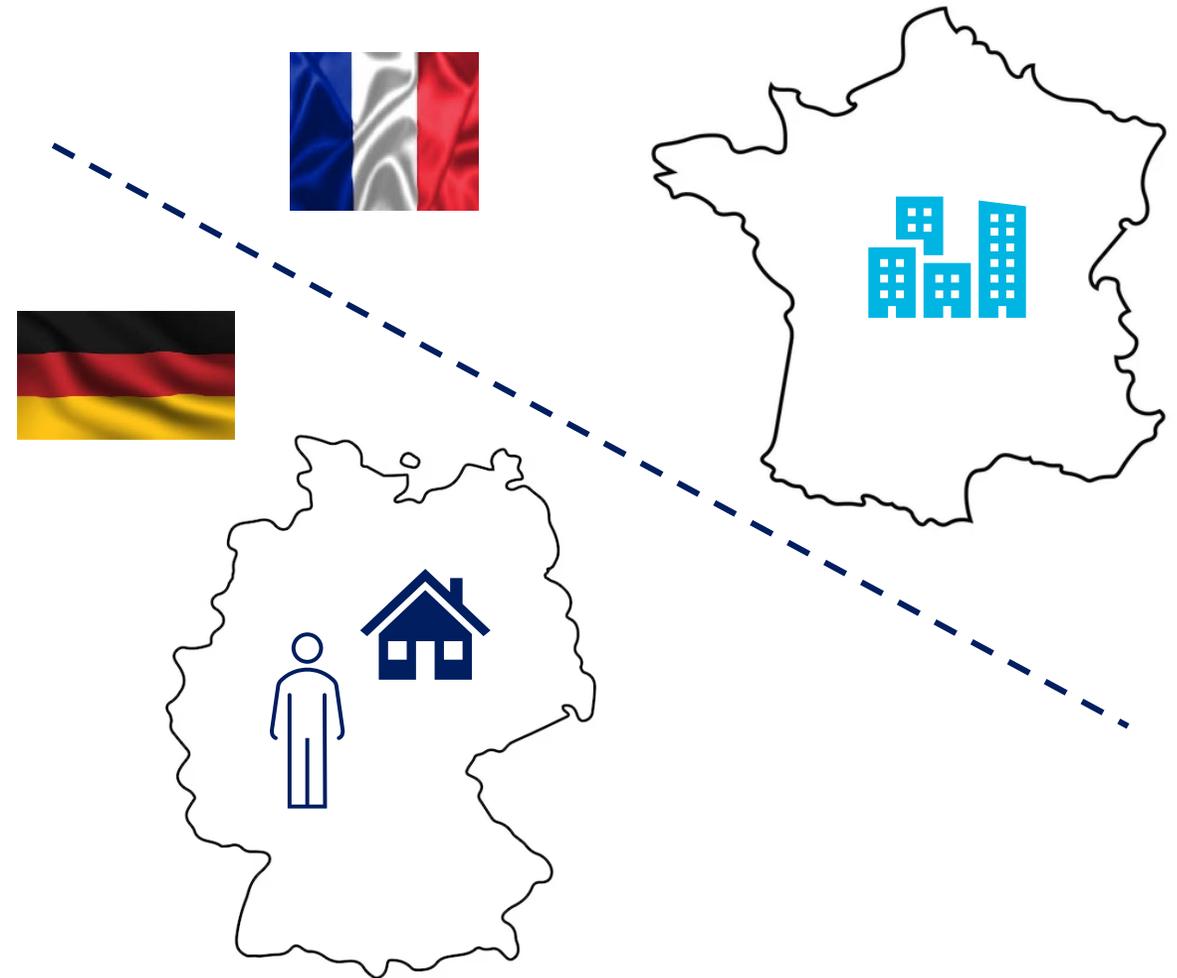
Thank you for your attention!

Remote Work – Nightmares to avoid

Constanze Hoberg: Tax Consultant, ADKL, Dusseldorf

Case Study I

- A lives in Germany
- A is a software engineer
- A works for a company B in France
- Place of work: apartment of A in Germany (remote work)
- After three years A moves away from Germany
- Activities:
 - Adjusting the products to German needs
 - Developing new products for German market
 - Building up a customer base in Germany



Permanent Establishment

Acc. To §12 AO and Art. 5 OECD

§12 AO

- Any fixed place of business or facility that serves the activity of the company
 - Fixed place
 - Power of disposition
 - Serving the activity of the company



No permanent establishment
Missing power of disposition (clarifying BMF 22.02.2024)

Art. 5 OECD

- Any fixed place of business or facility that is used to exercise the business activity of the company
 - Place of business
 - Fixed
 - Attributable to the head office
 - Exercise of the business activity of the company



No permanent establishment
Missing power of disposition

Permanent Representative as Permanent Establishment

Acc. To §13 AO and Art. 5 V OECD



§13 AO

- Manages business of a company on a long-term basis and subject to instructions
 - Sufficiency of following the economic interests
 - Long-term basis
 - Subject to instructions
- Concludes or arranges contracts or obtains orders



Permanent establishment depends on the activities and the power of the employee

Art. 5 V OECD

- Takes action on behalf of the company
- Has the right to conclude contracts and regularly exercises this right



Permanent establishment depends on the right of concluding contracts (Civil law representative / PoA)



Payroll

- Wage tax
- Social Security

Taxation

- Corporate Tax (limited liable)
- Determination of profit (AOA) with allocation of assets based on people functions
- Contribution of assets
§ 12 Ia KStG, § 4 I s. 8 hs 2 ff EStG
- No Trade Tax

Other duties

Exit taxation

§ 12 I s. 1 KStG, § 4 I s. 3 EStG

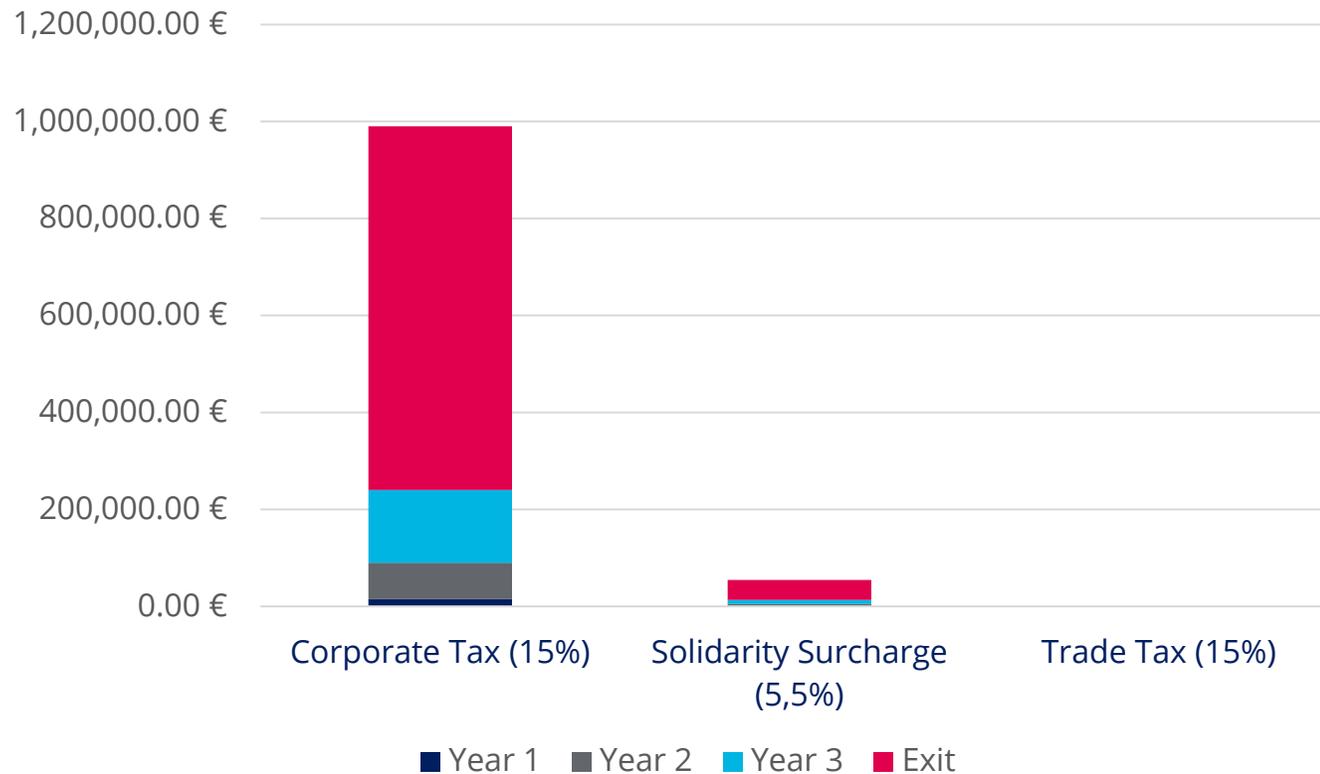
- Assumed disposal of assets in the moment of limitation or exclusion of the right of taxation for Germany
- Common value based on transfer pricing
- Compensation item for EU/EEA possible

Relocation of functions

§ 1 AStG

- A function, including the appertaining chances and risks as well as the transferred or provided assets or other advantages are transferred as a whole (transfer package)
§ 1 IIIb s. 1 AStG, § 1 II s. 1 FVerIV
- Determination of the transfer package
- Evaluation of the transfer package based on transfer pricing

Tax Impact



Assumption

Current Taxation

- Year 01: 100.000,00€
- Year 02: 500.000,00€
- Year 03: 1.000.000,00€

Exit Taxation

- Acquisition Costs: 0,00€
- Fair value (in moment of exit): 5.000.000,00€

How can these nightmares be avoided?

Work Contract

- No power of disposition
- Detailed description of employee's activities
- No conclusion/arrangement of contracts
- No civil representative (PoA)

Permanent Establishment

- No allocation of assets
- No development of intangible assets
- No allocation of functions

Exit-Plan



Summing up

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