

# Rödl & Partner

NEWSLETTER SLOVAKIA

SETTING FOUNDATIONS

Issue:  
March 2024

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## → Law

### Cross-border secondment of employees within the EU

You often contact us about the topic of employee mobility. The most common is the cross – border secondment of employees within the same business group with various purpose. In some cases, it is to train employees, in other cases to provide temporary assistance in the event of a sudden shortage of workforce, or to supply services that the company cannot provide itself.

In this article, we will focus on the posting of employees under the Slovak Labour Code, its individual types and the differences between them, as well as the distinction between posting and business travel. A consequence of the distinction between these different methods of cross-border secondment of employees, which we would like to emphasise, is the use of appropriate documentation and, above all, the difference in remuneration of employees. Incorrect application of the Labour Code can lead to incorrect remuneration of employees, which can have private-law consequences in the form of claims by employees and public-law consequences in the form of claims by institutions in the field of social security, health insurance or taxation. Particularly where employees are seconded over a long period of time, these consequences can have a major economic impact.

In this context, the Slovak Labour Code applies to the posting of employees to the territory of the Slovak Republic, but since this is a transposed European legislation, which is more or less similarly applied in all EU countries, the content of this article may also be a guide for posting employees from Slovakia to another EU country.

The Slovak Labour Code distinguishes in the context of posting of employees between cross-border

1. posting under the direction and responsibility of the posting employer on the basis of a contract between the posting employer as a cross-border service provider and the recipient of this service, if an employment relationship exists between the posting employer and the employee during the period of posting,
2. posting between a controlling person and a controlled person or between controlled persons, where an employment relationship exists between the posting employer and the employee during the period of posting; or

3. temporary assignment to a user employer, where an employment relationship exists between the posting employer and the employee during the period of posting.

However, such projects mostly do not address the legal assessment of cross-border secondment in the first step. One of the most common first question we deal with concerns the tax implications of such a project, and despite recommendations, legal assessment is not a major focus. From our perspective, however, the primary concern is the legal assessment of the project and its subsequent assessment in its tax interrelationships. We often encounter that the resolution of tax issues does not necessarily lead to the correct application of the Labour Code. Not infrequently, after the initial assessment of tax issues, we will return to the legal assessment of the employees' cross border activities at the client's request, which may ultimately lead to different tax consequences and related extra costs.

There are several differences between the different types of posting, but in this article we would like to describe the most important ones, i.e. the ones that need to be defined first.

The fundamental difference between the different types of posting is the authority to give directives that employees follow when they are posted. If this authority to give directives passes from the posting employer to the receiving company, it is a temporary assignment (see point 3 above). Such employees come under the powers of the receiving company, which directs their work.

If the authority to give directives does not pass to the receiving company, but remains with the employer who posts the employees, it will be a posting in the narrower sense (see 1 above).

The distinction between these types of cross-border secondment of employees does not therefore present a fundamental problem. However, this is only in the case of two different entities, i.e. if the posting organisation and the receiving organisation do not belong to the same business group.

However, in case of a cross-border secondment within a group, the option mentioned above under no. 2, also known as 'group posting', would be appropriate. A single project may have elements of both temporary assignment and

cross-border provision of services and the distinction between the different types of posting is no longer entirely clear. However, the distinction is necessary precisely because of the different remuneration of employees, the different documentation and for tax reasons. From a legal point of view, the purpose of the specific cross-border secondment is the main thing to be taken into account in this situation.

Cross-border posting of employees must also be further distinguished from a business trip. In the case of a business trip, it is not the provision of a service, but work for the employer who has posted the employee on the business trip and the employee is thus performing work under his contract of employment and for the benefit of his/her employer. This is most often the case for training, business meetings, etc. In practice, the concept of training can also be encountered in the case of employees from one company gaining practical experience in another, e.g. a sister company (introduction of new technologies, etc.). In this context, however, under the Slovak legislation and in the opinion of state authorities, this is not a business trip, but a cross-border posting of employees, e.g. if the employees are directly involved in the production process.

However, in each case, each individual situation must be assessed separately.

Incorrect application of the various forms of cross-border secondment of employees

may result not only in a fine being imposed, but also in additional payments in the form of social and health contributions, taxes and also employee wages.

Finally, we would also like to refer to the concept of posting itself, which often raises questions and is a source of misunderstanding among the public. Indeed, it is very often used in a variety of different contexts. First of all, it is the cross-border secondment of employees itself, regardless of whether it is posting in the context of the provision of services or a posting in the context of a temporary assignment or a group posting. The law also uses the term posting on business trip. Last but not least, it is posting in the context of social security law and the issue of A1 certificates. However, each of these postings is different and must not be confused.

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#### → Law

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## Investing in Mallorca

Mallorca is currently in the low season. This is the ideal time to contract a property for long term rental or even for purchase. At this time, due to lower demand, the rental prices are lower and from a buyer's point of view the purchase price is also better negotiable in the winter months.

#### What do you need to think about when renting?

There are two major portals where Spanish property, whether to rent or to buy, is best found, as all estate agents advertise on them – [www.idealista.com](http://www.idealista.com) and [www.fotocasa.es](http://www.fotocasa.es). Once you have chosen a property, you make contact with the real estate agent and arrange a viewing. Be prepared that the real estate agent will ask you, as a foreigner, many personal questions before you can even see the property.

In addition to wanting to know how many people will be living in the property and

whether you have any pets, they will want to know if you are solvent, i.e. what kind of work you do, where you work and for how much. Unless your income comes from Spain, be prepared for most landlords to ask for rent for the whole tenancy in advance, even if it is a year's rent. You will also need to add a deposit to the rent, which is on average two months' rent. The deposit is, of course, refundable, but according to local law, the landlord can use it to pay the rent in the event of your early termination of the tenancy. And there's also a real estate agent fee, which is also roughly equal to one month's rent. In case of business rentals it's up to the parties to agree who pays it, but most estate agents will persuade you that for tenancies of less than 12 months, it shall be paid by the tenant. In case of rent for private living purposes the real estate agent fees should be borne by the landlord. You will need to agree the

financial terms, as well as to prove solvency in advance.



At the moment, rental prices in Mallorca are at an all-time high. Of course, prices depend on the size of the property and its location, as they do everywhere. For a 3-bedroom apartment around Palma de Mallorca, Andratx, Llucmajor, you'll pay around 1,500 to 3,500 euros per month in any given period. Charges for some services (especially water, electricity) are extra.

## How does buying a property work in Mallorca?

The first step before buying a property is to think about your own financial possibilities. If you do not have your own resources, or resources obtained from Slovakia by mortgaging a property you own in Slovakia, and you want to apply for a mortgage with a Spanish bank, be aware that as a foreigner the bank will grant you a mortgage up to a maximum of 60–70 per cent of the price of the property as determined by an expert. All mortgage costs are covered by the bank, except for the cost of the expert. These are approximately between 350 and 1.000 euros per appraisal. The fee to the financial agent, if you use his services, is usually 1 per cent of the mortgage granted.

The second step after finding a suitable property is to enter into a reservation contract with a real estate agent or the seller and pay the reservation fee. This usually amounts 10 per cent of the purchase price. Moreover, under Spanish law there are several types of such fees (called arras) with different legal consequences, which are explained in the [article](#) by our Spanish colleagues. This is also why it is essential to involve a lawyer already at this step in the process.

Do not forget to obtain an alien identification number (NIE) (Spanish Tax Number). Without this, it would not be possible to carry out such a transaction. The NIE is needed to open a bank account, obtain a mortgage, sign contracts with energy suppliers, in short, for everything

related to the acquisition of the property, but also for the normal everyday life in Mallorca. The NIE is processed at the Foreigners Office Department, where you need to make an appointment well in advance, pay a small fee in advance to the bank and attach your passport and birth certificate in Spanish to the application form. The NIE can also be applied for through the Spanish Embassy in Slovakia.

In the third step, it is essential to do a thorough audit of the property, with the help of a legal advisor. In particular, care should be taken with regard to illegal constructions, which are not that uncommon in Mallorca and could result in problems with financing the purchase, renovation of the property or even the risk of demolition. Problems can also arise if only part of the property is illegal, as this affects the status of the whole property. Additional legalizing building permits are possible, but only if everything complies with the building law.

As in Slovakia, it is necessary to check the title deed attached to the property and obtain a certificate of no arrears from the managing agent (if buying a flat). As part of the pre-purchase audit of a property in Mallorca, we also recommend checking the energy efficiency certificate. Some houses here are quite old and cannot cope with the energy consumption required by the current number of appliances used in the household nowadays. With the help of a lawyer, it is a good idea to check the property's building permit and, if you are buying a new building, the builder's liability insurance.

The next step is to sign a deposit agreement or to proceed directly to a contract of sale and purchase. These should be written by a lawyer.

Up to this point, the process in Slovakia is not very different from the process in Mallorca. The first major difference is the institution of the so-called "arras penitenciales" or penitential security/deposit, also called "arras de desistimiento". It consists in the handing over of a sum of money by one party to the other, it being understood that either party may cancel the contract concluded, but the party who has given the security forfeits it, or the party who has received it repays twice the security. The amount of such deposit is usually around 10 per cent of the purchase price.

The purchase contract must be concluded in the form of a notarial deed, so it is necessary to think about booking an appointment with a notary. The moment of concluding the purchase contract at the notary is also the moment of transferring the ownership of the property. This is therefore completely different from Slovakia,

where the transfer of ownership is effective upon registration in the land register. The notary's fee depends on the amount of the purchase price, but it is not more than a few percent of the property price. At this point, in addition to the notary's fee, the real estate transfer tax (ITP) or in case of new buildings VAT (IVA) has to be paid. ITP in the Balearic Islands can amount up to 13 per cent of the property price!

The final step in the transfer of a property in Mallorca is the registration of the transfer of ownership in the land register, which then usually informs the cadastre of the changes. However, this registration is only declaratory. The land register will only register the transfer of ownership of the property after the buyer has paid the transfer tax. Official fees and stamp duties in case should not be forgotten either.

To sum up, when buying a property in Mallorca, one should count on a considerable increase in the purchase price by additional fees and taxes, which can rise between 10–30 per cent of the property price. Sometimes it is possible to negotiate with the seller a reasonable reduction in the purchase price and to share in these fees in this way. And what then? – Taxes & death.

## Tax

It doesn't stop when you buy a property. There are many other obligations associated with acquiring property in Mallorca, especially tax obligations. That is why we recommend that you involve local tax advisors early in the process.

First of all, the buyer needs to pay the real estate transfer tax (ITP) or VAT (IVA) in case of new buildings. The ITP in Mallorca, as mentioned above, can be up to 13 per cent of the property price. The equivalent for new builds is the payment of VAT (21 per cent).

The seller must pay income tax on the capital gain. The basis for its calculation is the gain obtained through the sale.

The buyer on the other hand pays annual income tax (IRPF or IRNR) based on the use of the real estate. Residents and non-residents may have different tax rates.

There is also an autonomous wealth tax and a state solidarity tax for those who have assets worth more than 3 million euros net.

Additionally, there is a real estate tax. This may change every year. The basis for its calculation is the cadastral value of the land.

And last but not least, there is as stated before an income tax on rental profits if you decide to rent out the property. If you plan to offer the property for holiday rental – that is, for periods of less than 1 month, you can only do so in the

Balearic Islands and other autonomous regions in Spain, if you have a so-called holiday rental licence (in Spanish: licencia de arrendamiento vacacional /alquiler turístico). Such licences were not cheap to obtain, and the issue of further licences on the Balearic Islands is currently suspended. Therefore, even a property with such a licence will be more expensive to buy. On the other hand, you can offer such a licenced property for holiday rental, i.e. for periods of less than one month, and in high season you can charge for a week of such rental what you get for a month in the winter months.

## Death (sale, gift, inheritance)

As in Slovakia, in Mallorca there is also the question of how to "dispose" of privately owned real estate in the future, i.e. what is the best way to do it. Is it better or more profitable to sell the property? Is it worth it? And if you want to transfer the property to family members "for free" is it better to give it to them or wait until they inherit it? However, you will not avoid taxes in either case.

As we mentioned above, a sale and purchase contract in the form of a notarial deed is required when transferring a property. The seller must pay tax on the profit.

As in the case of a sale, a contract in the form of a notarial deed is also required for a gift of real estate. It should be noted that the donee enjoys less registry protection than the buyer who acquires the property for consideration. In addition, the donor may impose conditions on the donee in the contract relating to the donation. Even when making a gift, you will not avoid taxes (profit tax, gift tax ...).

Succession is a complicated topic, especially when there is an international aspect at play. This is where a lawyer should definitely be sought. As a rule, however, these matters are governed by the law of the place where the deceased was habitually resident at the time of death. The law of the state of the deceased's nationality will only apply if the deceased expressly chose it in the will. As in Slovakia, a notarial deed is recommended but not necessary for a will.

From a tax point of view, succession may be governed by the law of another State or autonomous region. We therefore recommend that you consult a tax advisor. However, certain reliefs have recently been made with regard to inheritance tax on the Balearic Islands, which are explained in more detail in the [article](#) by our Spanish colleagues.

"The most important innovation is the abolition of inheritance tax on the Balearic Islands

between parents and children, grandchildren and grandparents, and between spouses, both in the event of death and in the event of inheritance during life through inheritance contracts. This is a 100 per cent reduction in tax liability on the Balearic Islands. Relief of 50 per cent has also been introduced for siblings, uncles, aunts and nephews and nieces."

Property can also be put into a company. A form of notarial deed is necessary here. If transferred as contribution in kind an expert appraisal is mandatory.

In any case, to ensure that your property purchase or investment goes smoothly and that you can enjoy ownership one way or another, we recommend that you involve experienced real estate agents, diligent lawyers and tax advisors, and possibly mortgage experts with good banking contacts in the purchase process. These professionals and their services will ensure a smooth and secure transaction. Whether your motivation is investment or living in Mallorca, believe that investing is worthwhile, despite the above-mentioned tax obligations. With all prudence, such an investment can be considered a sound one.

## Why to invest in Mallorca?

Mallorca offers more than 300 days of sunshine a

year, so you can spend most of your time and life outdoors all year round – whether you play golf, cycle, play tennis, like to walk on the beach or in the mountains, or like to cool off in the sea. Healthcare in Mallorca is of a high standard. The cuisine is mostly a culinary experience and the wine is great. Reason enough to seriously think about investing in a property in this place. If you don't use it yourself, the constant and year on year increasing influx of tourists will ensure a return on that investment.

We in Rödl & Partner Bratislava will be happy to help you with this in cooperation with our great and experienced colleagues in 3 branches Rödl & Partner in Spain (Barcelona, Madrid as well as in Mallorca).

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