

## TRANSNATIONAL PER DIEM, COMPONENT OF THE SALARY OF TRANSNATIONALLY POSTED EMPLOYEES

**Corina BANDICIU-BENE, Lecturer Ph.D.,**

*“Bogdan –Vodă” University of Cluj-Napoca, Faculty of Economic Sciences, Cluj Napoca,  
România  
email:corinabene@yahoo.com*

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### ABSTRACT

*Among the various forms of work performed by employees, transnational secondment stands out. This refers to the situation where an economic entity based in one member state sends employees, with whom it already has employment relationships, to the territory of another member state for the duration of their provision of transnational services.*

*To compensate for the activities performed by these seconded employees, the employer will grant them a transnational per diem.*

*This paper covers both accounting and fiscal aspects related to the transnational per diem, which is a component of the remuneration for transnationally seconded employees.*

**KEYWORDS:** *Secondment, Per diem, transnational, allowance.*

**JEL CLASIFICATIONS:** G10, G13, G19

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### 1. INTRODUCTION

There are situations where individuals seek to obtain a higher remuneration than they would if they carried out their activities within the national territory. In such cases, they may choose to earn their salaries by working in other countries, even though they are employed under an individual employment contract in Romania. They have this possibility if they are employees of a Romanian economic entity that conducts economic activities in other European Union countries; they can be seconded for a certain period to those countries to work there. Thus, transnational secondment stands out among the various forms of work performed by employees.

Transnational secondment is the process by which a company temporarily sends employees to another country within the European Union to carry out activities in that country. This practice is governed by a series of legal obligations for the economic entity conducting the secondment, intended to ensure the rights and protection of employees in the host country.

Transnational secondment is regulated by the provisions of Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. This directive applies to enterprises established in a member state which, in the context of providing transnational services, send workers [...] to the territory of another member state.

Enterprises to which the regulations contained in this Directive apply must take certain transnational measures, ensuring that:

a) The secondment of a worker, on behalf of the enterprise or under its coordination, to the territory of a member state, within the framework of a contract concluded between the enterprise making the secondment and the recipient of the services who operates in that member state, must only take place if there is an employment relationship between the enterprise making the secondment and the worker during the period of secondment; or

b) The secondment of a worker to the territory of a member state to a unit or enterprise that belongs to the group must only take place if there is an employment relationship between the enterprise making the secondment and the worker during the period of secondment; or

c) The secondment, as a temporary employment agency or enterprise that has made a worker available, of a worker to a user enterprise established or operating in the territory of a member state can only take place if there is an employment relationship between the temporary employment agency or the enterprise that has made the worker available and the worker during the period of secondment. The same Directive defines a posted worker as an employed person who carries out their work in the territory of a member state other than the one in which they usually work, provided that during the posting period they maintain their direct employment relationship (as an employee) with the employing entity.

As a result of maintaining the individual employment contract during the posting period between the employee seconded to another European Union member state and the employer in Romania, the Romanian entity will determine the nature of the activity to be carried out by the seconded employees and has the obligation to pay the remuneration of the posted worker, even if the actual payment is made by the enterprise to which the worker is seconded.

For the transnational secondment of employees of Romanian economic entities, several mandatory elements must be taken into account, such as:

- The necessity of a direct link, determined by the existence of an employment contract between the posted worker and the economic entity making the secondment (which continues to retain the right to coordinate the worker's activities);
- For the purpose of the secondment, the Romanian economic entity must conclude a service provision contract with the economic entity in another European Union member state, where the Romanian worker will carry out the activity.

First and foremost, the employing economic entity in Romania must analyze the legislation of the host country and ensure that the posted employees benefit from the same rights and working conditions as local employees. This includes minimum wage, working hours, paid leave, health insurance, and workplace safety. Companies must ensure that posted employees are not discriminated against in any way based on nationality.

Subsequently, an addendum to the individual employment contract is concluded, which orders the secondment and must contain the following information:

- Duration of the secondment;
- Currency in which the remuneration will be paid;
- Mention of the rates at which the transnationally seconded worker will be paid both during regular working hours and for any overtime performed;
- Climatic conditions at the location of the secondment;
- Maximum/minimum working and rest periods;
- Duration of the holiday leave;
- Health and safety at work;
- Employee protection measures;
- Local customs, the disregard of which could endanger the employee's life, freedom, or personal safety;
- Repatriation conditions.

This document must be registered with the Territorial Labor Inspectorate in the area where the employing economic entity in Romania is based. Regarding the registration of the transnational secondment in Revisal, both the start and end dates of the secondment are recorded in Revisal and submitted on the Reges portal at least one day before it is carried out. Also, when registering the employee's secondment in Revisal, information about the economic entity in the European Union

member state to which the employee is seconded (name, tax code, country where it is based) as well as the period of secondment is completed.

Transnational secondment has a limited duration, and companies must ensure that this duration is not exceeded. Typically, the secondment should not exceed 24 months, with the possibility of extension in certain cases.

Economic entities that carry out transnational secondments are required to register the operation and notify the authorities in the host country before the secondment begins. This notification must contain information about the seconded employees, the workplace, the duration of the secondment, and other relevant details. Additionally, companies must designate a legal representative in the host country.

The work performance is characterized by a limited duration and must be carried out in the interest and benefit of the economic entity that makes the secondment, which continues to bear the typical obligations of an employer, namely: responsibility for employment, management of the employment relationship, payment of remuneration and related contributions, as well as the right to adopt and apply disciplinary measures and dismissal.

Economic entities that second employees to another European Union member state are obliged to pay social contributions and comply with the fiscal rules of the host country for the seconded employees. This may include payments to pension funds, social insurance funds, and other taxes or charges.

An exception to this rule applies to employees for whom the European A1 Form – Portable Document A1 has been requested and obtained. This document exclusively proves the holder's continued coverage under the social security system of the sending state (Romania) by the County Public Pension House in the jurisdiction where the social headquarters/work point is located.

If the seconded employee holds the A1 Form, they will not be obliged to pay social contributions in the host state, but only in the state where the employing economic entity is headquartered. Otherwise, social contributions will be due in both the host country and the home country.

The A1 Form is issued for a maximum period of 24 months, and its validity extends to the territories of the European Union/EEA/Switzerland as well as other countries such as Canada, Israel, Albania, Korea, Macedonia, Moldova, Serbia, Turkey, Quebec, Chile, and Uruguay, due to bilateral social security agreements concluded by Romania with these states.

For work performed in the territory of another member state, the seconded worker will receive the transnational secondment allowance. This allowance, together with the delegation allowance, the secondment allowance, and the allowance for additional benefits received by employees based on the mobility clause, are commonly referred to as per diems. Although the term per diem is frequently used, specialists advise using the exact term from the legislation (e.g., transnational secondment allowance) to avoid the need for further explanations during an authority inspection (e.g., a tax audit). Law No. 16/2017 regarding the posting of workers in the framework of the provision of transnational services specifies the following: any specific allowance for transnational secondment is considered part of the minimum wage, provided it is not granted as reimbursement for expenses generated by the secondment, such as transport, accommodation, and meals. It is intended to compensate for the inconveniences caused by the secondment, which consist of removing the employee from their usual environment. It should be noted that these employees are provided with accommodation and meals by the employer, the Romanian economic entity, throughout the entire period of the transnational secondment.

The Romanian employer is obligated to pay its employees, during the period of secondment, at least the minimum wage applicable in the member state to which they are seconded, as defined by the legislation and/or practice of that member state. From this, income tax will be deducted in accordance with the tax regulations of the member state, along with any other deductions that may apply (e.g., health insurance, accident insurance, etc.). As mentioned previously, if the seconded worker from Romania to another member state holds the A1 Form, they will not be required to pay social

contributions in the state where they work, as it is considered that they pay such contributions in the state where the employing economic entity is headquartered (e.g., Romania).

In addition to the specific transnational secondment allowance, the employer in Romania is required to ensure that the seconded employee receives at least the national minimum wage, as they are employed under a work contract with the Romanian economic entity, even if they carry out their activities in another member state as a transnational seconded worker.

For example, in the case of seconding a Romanian employee working in the construction sector as an unskilled construction worker to Germany, the Romanian economic entity provided, in 2023, a specific transnational secondment allowance of 15.7 euros gross per hour, thus complying with the member state's minimum wage regulations applicable to that sector. If the seconded worker also performs overtime, these hours will be charged at a higher rate (e.g., 19.62 euros gross per hour).

After determining the gross transnational secondment allowance for each seconded employee, income tax and various other deductions will be subtracted, resulting in the net transnational secondment allowance, which will be received by each transnationally seconded employee. This net amount will be paid by the Romanian employing economic entity to each seconded employee, either via bank transfer or in cash.

Regarding the taxation in Romania of the specific transnational secondment allowance, it is considered part of the income assimilated to salaries and is taxed according to the provisions of Law No. 227/2015 regarding the Fiscal Code for the portion that exceeds the non-taxable limit established as follows:

- Domestically, 2.5 times the legally established level for the allowance, by Government decision for personnel of public authorities and institutions, up to a limit of 3 base salaries corresponding to the occupied position;
- Abroad, 2.5 times the legally established level for the per diem, by Government decision, for Romanian personnel sent abroad to carry out temporary missions, up to a limit of 3 base salaries corresponding to the occupied position.

The ceiling related to the value of 3 salaries corresponding to the occupied position is calculated separately for each month by relating the 3 salaries to the number of working days in that respective month, and the result is multiplied by the number of days corresponding to each month in the period of delegation/secondment/performance of activities in another locality, another country, or abroad.

Under these conditions, the part of the specific transnational secondment allowance that exceeds the non-taxable ceiling specified above is included in the gross salary income of each employee and will be taxed according to the provisions of the fiscal code, with deductions for social security contributions, health insurance contributions, and income tax.

Additionally, both the value of the specific transnational secondment allowance that does not exceed the taxable ceiling and the one that exceeds the taxable ceiling are declared for each seconded employee in Declaration 112 "Declaration regarding the payment obligations of social contributions, income tax, and the nominal record of insured persons"; both are considered part of the total gross income obtained by each seconded employee.

To exemplify the aforementioned, let's consider a hypothetical case involving two employees of a commercial company in Romania operating in the construction sector. The company seconded these two employees to Germany for a secondment period of one year.

Based on the working hours reported by the two employees for April 2024, the net value of the transnational secondment allowance (transnational per diem) that they will receive from the Romanian employer will be as follows:

1. Popescu Paul, construction engineer

The net transnational secondment allowance is €3,246  
 $€3,246 * 4.9758 \text{ lei/euro} = 16,151.44 \text{ lei}$

2. Marinescu Ion, bricklayer

The net transnational secondment allowance is €1,976

$€1,976 * 4.9758 \text{ lei/euro} = 9,832.18 \text{ lei}$

To determine how much of the transnational secondment allowance for April 2024 will be considered taxable income, the non-taxable ceiling must first be established as follows:

1.  $(3 * \text{Minimum wage} * \text{Number of secondment days}) / \text{Number of working days}$   
 $= (3 * 4,582 \text{ lei} * 30 \text{ days}) / 22 \text{ days} = 18,744.55 \text{ lei}$

2.  $35 \text{ euros} * 2.5 * 30 \text{ days} * 4.9758 \text{ lei/euro} = 13,061.48 \text{ lei}$

Following the analysis of the above calculations, it is observed that the non-taxable ceiling will be the lower value established, namely 13,061.48 lei. Thus, it is concluded that the non-taxable value of the transnational secondment allowance for April 2024 is 13,061.48 lei.

Returning to our hypothetical case, we will observe that for the employee Popescu Paul, this non-taxable ceiling is exceeded, whereas for the employee Marinescu Ion, it is not. Under these conditions, for the transnationally seconded employee Popescu Paul, the amount from the net transnational secondment allowance that will be considered income assimilated to salaries and included in the gross salary income, and taxed according to the regulations of Law No. 227/2015 regarding the Fiscal Code, will be 3,089.96 lei ( $16,151.44 \text{ lei} - 13,061.48 \text{ lei} = 3,089.96 \text{ lei}$ ).

Regarding the accounting records of these values, the transnational secondment allowance will be considered and recorded in the accounts as an advance for settlement (treasury advance) in correspondence with a debt account to third parties, both accounts detailed for each seconded employee. The tax liabilities (income tax, health insurance, accident insurance, etc.) that the employee is obliged to pay in the country where they are transnationally seconded, if they exist, will be recorded in debt accounts to third parties.

The accounting entries in this case would be:

- **Recording the per diem received by the seconded employee:**
  - 542 “Advances for settlement” = 462 “Various creditors”
- **Justifying the per diem:**
  - 625 “Travel, secondment, and transfer expenses” = 542 “Advances for settlement”
- **Payment of the per diem by bank transfer or in cash:**
  - 462 “Various creditors” = %
    - 5124 “Bank accounts in foreign currency”
    - 5314 “Cash in foreign currency”

## 2. CONCLUSIONS

In conclusion, we can assert that the transnational secondment of employees from Romania to other countries in the European Union can be considered a form of work manifestation, and the remuneration associated with it provides employees with an opportunity to increase their own salary income.

## REFERENCES

- \* \* \* Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.
- \* \* \* Law No. 16/2017 regarding the posting of workers in the framework of the provision of transnational services
- \* \* \* Law No. 227/2015 regarding the Fiscal Code
- \* \* \* Government Emergency Ordinance No. 93/2023 published in the Official Gazette No. 993/01.11.2023
- \* \* \* Government Decision No. 518/10 July 1995
- \* \* \* [w.w.w.cursbnr.ro](http://w.w.w.cursbnr.ro)