# Tax Implication of Secondment Agreement in the Democratic Republic of Congo [DRC]

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The secondment arrangements are often used to temporarily assign an employee from a foreign office to a local entity. The major determinant of an individual's liability for the income tax is the individual's residency status.

The idea behind a secondment arrangement is that the secondee will remain employed by the original employer during the secondment, and will, following the termination of the secondment, "return" to the seconder.

However there is a risk that the secondee may (technically) become the host's employee, despite the parties' intentions. This depends on the facts of the particular case.

The question of who is the employer is important, particularly for the host. This is because the law imposes a number of liabilities on an employer and a number of rights on the employee.

**1. In order to avoid the risk of the secondee becoming the host's employee the parties should ensure that:**

- The secondee does not owe any duties directly to the host, but only to the seconder;
- The host does not owe any duties to the secondee, but only to the seconder;
- The seconder retains day to day control of the secondee;

The seconder carries out any appraisals and disciplinary or grievance procedures. The secondee does not become integrated into the host's organisation (for example it should be clear on any staff list that they are a secondee). This could cause particular difficulties as the secondee may hold management or supervisory roles and attend team briefings or social events).

Even if the secondee does not become an employee of the host, they may be held to be the host's "worker. This concept appears in the DRC legislation and is defined as an individual who works under a contract (of employment or otherwise) under which they undertake to personally perform work for another who is not a client or customer of a profession or business undertaking carried on by the individual. If the secondee could be found to be the host's worker, there are a number of statutory employment rights that they would be have against the host.

**2. Continuity of employment**

If the secondee remains employed by the seconder, their statutory period of continuous employment will be unbroken. This will be important for the secondee as any there are a number of employment rights that require a qualifying period of service (for example unfair dismissal). The secondee may therefore want reassurance that their continuity will be unbroken and possibly a contractual promise that they will be treated as if their statutory continuity was unbroken if there is a break in continuity

**3. Who pays the employee?**

Usually the seconder will continue to pay the secondee's wages and all connected costs (in particular income tax).

**4. Personal taxation:**

***a. Basis***

There is no personal taxation per se in the DRC: taxes due by individuals are remitted to the authorities by the employer. Both residents and nonresidents are taxable on employment income derived from the DRC. Individuals engaged in a business are taxed under the rules governing companies, i.e. all income accruing in or derived from the DRC is subject to tax in the DRC.

***b. Residence***

An individual is resident for tax purposes if he/she spends more than 6 months in the country.

***c. Filing status***

Although the tax law contains provisions applicable to individuals, “personal taxes” are collected through business entities.

***d. Taxable income***

All income accruing in or derived from the DRC is subject to tax. Employment income is restricted to salaries and other remuneration received as compensation for activities carried out in the country. All fringe benefits are taxable, except for housing, transport and legal family allowances.

**5. Other taxes on individuals:**

***Social security***

An employee must contribute to the national social security at a rate of 3.5% of gross salary. The employer is required to contribute 5% of the salary paid (for staff in provinces other than Katanga province) or 9% (for staff in Lubumbashi province) to social security.