



**GROUPE  
AUDIT**

**SERYAL  
& ASSOCIÉS**

---

**TAXATION OF EXPATRIATES IN BELGIUM**

Special rules have been issued by the Belgian tax authorities concerning the tax treatment of foreign executives, researchers and specialists working temporarily in Belgium.

## **A. PERSONS CONCERNED**

*1. The special tax regime applies to non-Belgian executives who perform exclusively activities which require a special knowledge and responsibility, thus executive functions, and who work in Belgium because :*

- they have been sent to Belgium by a foreign enterprise to work temporarily in one or several branches of said enterprise, or in one or several companies controlled by the enterprise; or
- they have been sent to Belgium by a foreign enterprise which is part of an international group, to work temporarily in one or more Belgian companies which are part of said group, or in a controlling and coordinating office set up within the international group; or
- they have been directly recruited abroad by a Belgian company affiliated with a foreign company, or by a Belgian enterprise that is part of an international group, to work temporarily for the Belgian company or enterprise itself or in a controlling and coordinating office established in Belgium by the international group.

*2. Provided that their activities in Belgium are temporary, the special tax system also applies to :*

- foreign company directors performing “real and permanent” functions in the branches or companies mentioned above;
- foreign specialized personnel of the above-mentioned branches or companies who are so specialized that such recruitment in Belgium is extremely difficult, if not impossible;
- foreign researchers sent from or directly recruited abroad to perform their activities in laboratories and scientific research centers.

*3. The person in question has to demonstrate that he has maintained ties abroad :*

- Elements pertaining to the personal situation of the executive include :
  - 1) the residence of the spouse or children abroad;
  - 2) the availability of a home outside Belgium;
  - 3) the fact that the executive’s children continue to be educated outside Belgium;
  - 4) the ownership of real estate or personal property outside Belgium;
  - 5) the existence of a life insurance policy outside Belgium;
  - 6) the continued participation in a non-Belgian group insurance policy or any other non-Belgian pension or savings plan;
  - 7) the insertion of a “diplomatic clause” in a rent contract which enables a brief notice period for the tenant.
- Elements pertaining to the function of the executive include :

- 1) the continued participation in a non-Belgian social security system;
- 2) the existence of an employment contract (or letter of understanding) of limited duration;
- 3) the temporary assignment to Belgium for the formation or restructuring of an enterprise;
- 4) the obligation to accept a transfer to another country at the discretion of the employer.

## **B. EXPATRIATE CONCESSIONS**

The benefits, which can only be obtained by filing application with the tax authorities (and receiving approval) are in three forms : (1) exclusion from taxable income of certain expatriate allowances or expense reimbursements, (2) exclusion of a portion of the resulting taxable employment income based on the number of days worked outside of Belgium and (3) exemption from reporting non-Belgian source personal income. A more detailed description of the exclusion and method of qualifying for them follows.

### *1. Excludable Allowances and Reimbursements*

Some so-called **expatriate allowances** (tax equalization, housing allowance, cost of living allowance, home leave allowance), are treated as reimbursement of extra expenses which are properly borne by the employer, rather than the employee and are therefore not taxable to the individual employee.

A Circular dated August 8, 1983 makes a distinction between non-repetitive expenses and repetitive expenses. The excludable portion of repetitive expenses listed above is limited to EUR 11.250 per annum for expatriate personnel employed by operating companies, and to EUR 29.750 per annum for expatriate personnel employed by controlling and coordinating offices or research centres.

However, education allowances or reimbursements, even though repetitive in nature, as well as non-repetitive expenses, may be excluded without limit in addition to the above maximum amounts.

The rules concerning excludable allowances and expense reimbursements are very detailed. A brief summary is provided below, but further investigation should be made before making conclusions in specific cases.

As indicated above certain “non-repetitive” expenses are excluded from income in full while “repetitive” expenses are only excluded up to the designated limit.

The following expenses are considered, among others, to be non-repetitive expenses:

- moving costs on arriving in Belgium and on leaving Belgium;
- the cost of setting up and decorating a home in Belgium and other costs of first installation in Belgium.

Repetitive expenses, other than qualifying education expenses, (see below) are excluded up to the EUR 11.250 and EUR 29.750 limits referred to above. Repetitive expenses which qualify for exclusion include allowances granted to cover the differences in cost-of-living and housing between Belgium and the expatriate’s country of origin, home leave and educational leave allowances and tax equalization.

However, the actual allowance paid does not in all cases qualify for exclusion. Instead, the allowance must be analysed to see whether it has been determined by the employer in the way provided under the circular.

A key concept in determining excludable of repetitive expenses is the “home country”. The home country or country of origin has been defined as either the last country where the expatriate was taxed as a resident before his assignment or employment in Belgium, or the country in which the expatriate has maintained the centre of his economic interests, which is not necessarily the country of which the expatriate is a citizen. The determination of the expatriate’s country of origin has a direct impact on the total amount of the tax-free allowances as the excludable expenses may only cover the cost differential between Belgium and the expatriate’s country of origin. This is true regardless of the system used by the employer for determining allowances.

Education expenses for the expatriate’s children in primary or secondary schools while repetitive in nature, are expenses which can be excluded in addition to the maximum amounts mentioned above. However, the Circular distinguishes between education expenses incurred in Belgium or abroad. The excludable cost of education in Belgium includes tuition and registration fees, local transport and other expenses imposed by the school, but excludes boarding expenses (food and lodging) and the cost of private lessons. With respect to education costs abroad, the Circular provides that the excludable portion of education expenses incurred outside Belgium shall be determined on a case-by-case basis.

Tax equalization, for purposes of exclusion from taxable income, has been defined to include only the difference between Belgium income tax and the home country income tax which the expatriate would have incurred. Social security charges do not, therefore, form part of the tax equalization concept and reimbursement of such taxes may not be excluded.

It should be noted that expatriates who are paid on a lump-sum basis, rather than receiving specific allowances, may benefit from the Technical Note issued by the tax authorities, which provides formulas for inputting various repetitive allowances.

## 2. *Exclusion for Days Worked Abroad :*

An additional benefit under the expatriate regime is then provided to individuals who travel on business.

The remainder of taxable remuneration, after exclusion of expatriate allowances and expense reimbursements (within the above-indicated limits) may be further reduced to the extent that the expatriate spends part of his business time outside Belgium. Precise rules are provided for determining what qualifies as work days outside Belgium.

### a. Determination of the foreign work days.

Qualifying work days are all days except:

- Saturdays
- Sundays
- Belgian legal holidays
- Vacation and compensatory days
- Sickness days

Qualifying foreign work days are :

- one day trips abroad;
- trips of two or more work days abroad.
- As a general rule, the day of departure is not accepted as a foreign work day whereas the day of return to Belgium is accepted as a foreign work day, regardless of the time of departure from abroad and regardless of the time of arrival in Belgium.
- The only exception to the above general rule is the situation where one leaves Belgium on a Friday (or the day before a Belgian legal holiday) and returns on the following Saturday or Sunday (or on the Belgian legal holiday). In this case, the Friday or the day before the holiday is accepted as a foreign work day.
- Travel from one foreign country to another foreign country without passing through Belgium is to be considered as an ongoing foreign trip.

b. Allowable means of substantiating work days abroad.

According to the Belgian tax authorities the taxpayer must prove :

- 1° the reality of the days present abroad and;
- 2° that these days were spent in the pursuit of his professional activity.

In general this dual proof should be provided by various reliable and coherent elements and documents which are reasonably convincing to the tax inspector, such as :

- travel documents and other related documents bearing the date and the taxpayer's name (boarding pass, etc.);
- invoices relating to the stay abroad (hotel, car rental, etc.);
- payment of travel and lodging costs with a credit card;
- proof of presence at meetings;
- proof of presence at a foreign company (extract from visitor's register, etc.)
- certificates issued by third parties

### **C. FORMALITIES FOR OBTAINING AND RETAINING EXPATRIATE CONCESSIONS**

It should be noted that entitlement to the expatriate concessions provided in the Circular is not automatic. All expatriates and their employers must file special application to obtain the benefits of the expatriate tax regime with the Expatriate Tax Directorate in Brussels.

The requests should set out the reasons why the applicants qualify for the expatriate tax regime (i.e. that they are foreign executives, specialized foreign staff or foreign research staff, that they are on temporary assignment and that they qualify for non-resident status in Belgium) and should include full information on their anticipated compensation.

The Circular provides that the applications should be filed within six months from the first day of the month following the employment or secondment to Belgium.

If the application is submitted too late, the expatriate status will in most cases be refused. It may however be possible to still obtain the status as of a later year.

If the application is approved, the expatriate will be designated a “non-resident” of Belgium for this purpose, thereby entitling him to the benefits of the Circular.

#### **D. SOCIAL SECURITY ON EXPATRIATE ALLOWANCES**

If the Belgian social security legislation is applicable, the compensation and allowances are, in principle, subject to Belgian social security contributions.

However based on a Belgian Supreme Court decision, the Belgian Social Security Administration has taken the position that actual additional expenses, incurred by the (expatriate) employee as a consequence of his employment in Belgium, are expenses proper to the employer and hence not subject to Belgian social security contributions if the following conditions are met.

*1. The employer must be contractually obliged to pay or reimburse such allowances to the employee*

This implies that there should be a legal right for the employee to be reimbursed for the extra costs linked to the expatriation of the expatriate (e.g. in the employment contract or in the company’s compensation policy for expatriates).

*2. The expenses reimbursed must correspond to actual incremental expenses linked to the expatriation*

The employer has to prove that the additional expenses resulting from the expatriation of the employee are actual and real.

It is accepted that these allowances, which are determined either on the basis of tables from international studies or on the basis of the guidelines of the Belgian tax authorities, are considered as actual expenses reimbursed to the expatriate.

*3. The additional expenses are incurred by the expatriate employee who is temporarily assigned to Belgium*

The temporary nature of the assignment will not necessarily equal the time period for which the Belgian Tax Authorities grant the Belgian expatriate status.

The Belgian Social Security Administration will monitor the temporary nature of employment on a case by case basis taking into account the actual circumstances and documentation of every particular situation.

Based on the above, it is therefore possible to avoid the payment of Belgian social security contributions (both employer and employee portions) on allowances granted to expatriates if the above three conditions are fulfilled. This represents an important cost saving for international companies as Belgian social security contributions are levied at a relatively high flat rate without any ceiling.