

# **The Special Non-resident Tax Regime for Expatriate Employees in Belgium**

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## The Special Non-resident Tax Regime for Expatriate Employees in Belgium

*Belgium has a special non-resident tax regime. It is applicable to certain expatriate employees, who work temporarily in Belgium for a Belgian operation which is part of an international group of companies.*

*The purpose of this special taxation regime, which was introduced in its present form in 1983, is to decrease the costs of employing expatriate employees in Belgium.*

*It therefore follows that the related labour cost reductions should accrue to the employer rather than the employee.*

## 1. Qualifying Conditions

To qualify for the special tax regime, a number of conditions need to be fulfilled both by the employer and the employee.

A qualifying employer is either:

- ◆ A subsidiary or branch office or permanent establishment of a foreign company which is part of an international group;
- ◆ A Belgian company, which is part of an international group;
- ◆ A scientific research center or laboratory (the obligation of belonging to an international group is not applicable in this case);
- ◆ A control or coordination office of an international group.

A qualifying employee must:

- ◆ Not have Belgian nationality;
- ◆ Be a management-level employee, a specialist not easily available on the Belgian labor market or a scientific researcher;
- ◆ Have a minimum (executive) salary level;
- ◆ Keep the center of his/her economic interests outside of Belgium;
- ◆ Be assigned to Belgium by an international group or recruited abroad by a Belgian qualifying employer.

The Belgian assignment should be of a temporary nature, though there is no time limit imposed.

In order to demonstrate that sufficient ties have been maintained with the country of origin, both elements of a personal nature and elements which concern the nature of the assignment should be considered.

The following are examples of each category:

Elements of a personal nature:

- ◆ Continued residence of immediate family members outside of Belgium;
- ◆ Continued ownership of home or other real estate outside Belgium;
- ◆ Children who are educated abroad or at an international school in Belgium;
- ◆ Ownership of investments and other personal property outside of Belgium;
- ◆ Foreign life insurance contracts;
- ◆ Participation in non-Belgian benefit plans;
- ◆ A diplomatic clause in the Belgian lease agreement (clause which provides that the agreement can be cancelled in case of retransfer abroad).

Elements relating to the assignment:

- ◆ Continued participation in the home country social security system;
- ◆ Labor agreement of limited duration in Belgium;
- ◆ Temporary assignment in Belgium within the framework of the establishment or the restructuring of an enterprise;
- ◆ Possibility to be transferred abroad at any time

## 2. The Special Tax Regime

### a. Generalities

The persons, to whom this special tax regime is applicable, will be regarded as non-resident in Belgium for income tax purposes. As a consequence, they will only be taxable on their Belgian source income, except for their professional income. With regard to this latter income, they must declare in Belgium their worldwide income from sources within the international group to which their employer belongs, but they will not be taxed on the part of their remuneration which corresponds to the number of days worked abroad (the so-called 'travel exclusion').

In addition, they will not be taxed on overbase allowances or on refunds of expenses which are the consequence of the assignment to Belgium, within certain limits. These refunds of expenses are regarded as costs attributable to the employer and are therefore not taxable income for the employee.

The advantages of the special tax regime are explained in more detail below.

### b. Non-taxable allowances

These are allowances or reimbursements which are made to cover the extra expenses caused by the assignment to Belgium.

These expenses can be broken down into two categories:

1. Non-recurring expenses:

- ◆ Moving costs;
- ◆ Installation costs in Belgium;

2. Recurring expenses:

- ◆ Difference in the cost of living between Belgium and the home country;
- ◆ Difference in the cost of housing between Belgium and the home country;
- ◆ International school fees for children who attend primary or secondary school;
- ◆ Home leave (for travel by plane, only economy class fares will be accepted);
- ◆ Losses incurred when the accommodation in the home country cannot be leased or can only be leased below its normal rentable value;
- ◆ Emergency travel (e.g. serious illness or death of a near relative);
- ◆ Exchange rate differences;
- ◆ Differences in income tax burdens between Belgium and the home country ("tax equalization" - see below);
- ◆ Travel expenses of children who study abroad, for a maximum of two trips per year, to visit their parents.

### c. Calculation of the non-taxable allowances

The actual determination of the non-taxable allowances can be made in two ways; based either on:

- ◆ The Belgian Tax Authorities technical note, or,
- ◆ An international remuneration ‘package’.

Technical note: this calculation method is usually applied for gross salary contracts or for net salaries outside the framework of an international remuneration system. With this method, the non-taxable allowances which are exempt from taxation are based either on the actual amount of the invoices (e.g. home leave), or are calculated based on a formula provided by the tax administration. The latter method is used for the following allowances:

- ◆ Cost of living,
- ◆ Housing,
- ◆ Tax equalization.

The tax administration formula transforms the actual gross salary into a hypothetical home country base salary, on which the tax-free amounts are calculated.

**c.1. Hypothetical base salary in the country of origin**

The hypothetical base salary in the country of origin is obtained by multiplying the Belgian gross salary, less a deemed foreign assignment premium (c.2.), by an index figure, according to the country of origin, which reflects where relevant, the lower salary levels in some home countries

$$\text{Base salary} = \frac{\text{Belgian gross salary} \times \text{country index}}{1.10 \text{ or } 1.15}$$

Country index examples

Belgium = 100  
Applicable as of 2002

Austria	100	Japan	60
Canada	85	Netherlands	100
Denmark	100	Norway	100
Finland	85	Portugal	70
France	95	Spain	85
Germany	100	Sweden	75
Greece	70	Switzerland	100
Ireland	80	Turkey	60
Israel	72	UK	85
Italy	85	USA	100

### *Country of origin*

In principle, the country of origin is the country of permanent residence of the expatriate prior to his/her transfer to Belgium, where the center of economic interests is maintained during the assignment.

For example, a German national, who has worked in Germany, then for two years in Norway, then for five years in The Netherlands, before his departure for Belgium, will be deemed to have a Dutch country of origin, unless he can prove that he has kept the center of his economic interests in either Germany or Norway.

### ***c.2. Foreign assignment premium***

This premium is expressed as a fixed percentage of the hypothetical base salary: 10% for European countries and 15% for non-European countries.

### ***c.3. Calculations according to the technical note***

The non-taxable allowances are calculated as follows:

#### ***a. Cost of living allowance***

The cost of living allowance equals 5% of the hypothetical base salary of the country of origin, with an absolute limit of 2,500.00 EUR per annum.

#### ***b. Housing allowance***

The housing allowance is the difference, if any, between the cost of housing in Belgium (a) and the cost of housing in the country of origin (b):

(a) The real rental costs of housing in Belgium. However, special rules are applied when the expatriate owns a home in Belgium or when his/her employer puts accommodation at his/her disposal free of charge,

and

(b) The normal housing costs in the country of origin. These are fixed at 12% of the hypothetical base salary in the country of origin.

#### ***c. Tax equalization allowance***

The “tax equalization” allowance is the difference between the tax burden in Belgium (a) and the country of origin (b):

(a) The Belgian tax, calculated on the hypothetical base salary of the country of origin before deduction of the foreign assignment premium but after deduction of the personal social security contributions, and salary relating to working days abroad (see sub e) and the lump sum deduction for professional charges,

and

(b) The hypothetical foreign tax calculated on the same hypothetical base salary in the country of origin, after deduction of the personal social security contributions according to the country of origin legislation, and after the standard tax deductions applicable in the country in question.

#### ***c.4. Calculations on the basis of an international remuneration system***

This method is applied to a net assignment remuneration package, which is developed according to the methodology of a specialized organization (international tables of, for instance ORC, MICA, ECA, AIRINC, etc.). The purpose of these packages is to ensure that the employee has neither a cost advantage nor a disadvantage from his employment as an expatriate.

In such a system, the amounts of the cost of living allowances, the tax in the home country, the difference in housing costs, etc., are determined on the basis of scientific studies. The amounts in question are therefore accepted as non-taxable by the Belgian tax administration within the annual limits mentioned below.

#### **d. Limitation of the non-taxable allowances**

There is no limitation with regard to the reimbursement of non-recurrent expenses and the costs of education other than that these expenses can be justified appropriately and that they are reasonable.

The refund of relocation and installation costs must be supported by invoices. As an alternative, it may be possible to allocate a fixed percentage of either the gross or the net monthly salary as a relocation allowance for a number of installation costs, though in this case as well, it must be demonstrated that the proposed fixed percentage is reasonable and that the resulting allowance is indeed used to cover the expenses in question. In such a case, the allowance must be contractually provided.

The other recurring non-taxable allowances are subject to one of the following annual maximum limitations, depending upon the nature of the assignment:

- ◆ A general limitation of a maximum of 11,250 EUR per year in case of activities of a commercial, industrial or financial nature;
- ◆ A limitation increased to a maximum of 29,750 EUR per year for activities of a controlling or coordinating nature or of scientific research.

## e. Travel exclusion

A major advantage of the special tax regime is that the expatriate is not taxable on that part of his/her remuneration which is related to his/her professional activity outside Belgium.

The breakdown between the salary earned in Belgium and the salary earned outside Belgium is usually (though not necessarily) made by comparing the number of days of professional activity in Belgium with the total number of working days for the whole year (or a shorter period in the case of a part-year in Belgium).

For the calculation of the total number of working days per year/period, the following days should be deducted, whether or not a professional activity has taken place on these days:

- ◆ Weekend days (Saturdays and Sundays);
- ◆ Belgian legal holidays;
- ◆ Vacation days;
- ◆ Sickness days;
- ◆ Compensation days (e.g. to compensate a reduced working week as the result of a collective labour agreement).

When the employee travels abroad for professional reasons, the departure day will be considered a “*Belgian*” working day, and the day of return as a “*foreign*” working day. However, one-day trips abroad are always considered to be foreign working days.

The proof of foreign working days is an area frequently audited by the Belgian tax administration. Documentation must be provided upon audit to prove the professional nature of the time spent outside Belgium, and also demonstrate the actual presence of the employee abroad.

Examples include:

- ◆ Travel tickets and other comparable documents in the name of the employee, with the date and destination. The Belgian tax administration requires a boarding ticket as well as a copy of the airline ticket in case of travel by plane.
- ◆ Foreign hotel bills and car rental bills in the name of the employee.
- ◆ Proof of payment with credit cards abroad.
- ◆ Attendance lists of meetings abroad.  
The following documents are accepted:
  - A copy of a report drafted for internal use with regard to a meeting outside Belgium or a report drafted by the employee which lists those present.
  - A confirmation by the employee or by a colleague in the location visited with regard to the meeting, e.g. a letter, fax or e-mail prior to the meeting, or follow-up correspondence which states the date and the place of the meeting.
- ◆ Evidence of presence at the foreign enterprise (e.g. a copy of the visitors register).
- ◆ Documents and declarations by third parties, though that the tax administration is reluctant to accept such documents as sole evidence, except in very specific and exceptional circumstances assuming that the absence of any other document can be explained.
- ◆ Mobile phone accounts are also accepted as evidence of presence abroad, since calls outside Belgium are listed separately on these accounts.

For one-day trips (whether or not by company car), the receipts for purchases which are paid for in cash and which are refunded by the employer are not always sufficient (although the expense claims prove their professional character); therefore payment should always be made by credit card, wherever possible to prove the actual presence abroad (name - place - date).

When expatriates make a business trip to their home country, there may be uncertainty sometimes regarding the professional nature of the trip, particularly when they stay in their own home. It is also possible that the professional stay is combined with a family visit. To discourage abuse, the tax administration requests, in such a case, additional evidence which proves the professional nature of such trips, such as a copy of the visitors register of the company visited, the minutes of a meeting, etc.

It is therefore important to keep as much evidence (named and dated) as possible attached to the internal expenses reports. Moreover, it is advisable to make a file for each calendar year with additional documents, which are not joined to the expense reports, but which can be useful in case of a travel audit.

It may even be useful to keep a business diary, since this can prove the purpose of a meeting or a business trip abroad. The diary will nevertheless not be accepted as sole evidence if no other documents can be produced.

All the documents should be kept for several years, since an audit can take place several years after the tax year.

Determination of the working days in a calendar year (2003)

Total number of days		365
To be deducted:		
· Weekend days	104	
· Vacation days	25	
· Legal holidays	10	
· Sickness days	<u>12</u>	
		<u>-151</u>
Working days		<b>214</b>

Days spent outside Belgium

From April 1, 2003 (departure) to April 21, 2003 (return), without returning to Belgium for the weekends:

Non-qualifying days

- Departure day: April 1, 2003
- Weekends: April 5 and 6, 2003 + April 12 and 13, 2003 + April 19 and 20, 2003
- Legal holiday (Easter Monday): April 21, 2003
- Total number of non-qualifying days: 8

Qualifying days (workdays outside Belgium)

- Total number of qualifying days: 13

Working days spent in Belgium (supposing that in example 2 all working days outside Belgium during the year have been taken into consideration)

Total number of working days of the year	214
Number of working days outside Belgium	<u>-13</u>
Number of working days in Belgium	<b>201</b>

Determination of the taxable income in Belgium

Total salary (after deduction of Belgian or foreign social security contributions and tax-free allowances): 62.000 EUR.

Gross taxable income in Belgium:  $\frac{62.000 \text{ EUR} \times 201}{214} = \mathbf{58.234 \text{ EUR}}$

### 3. Recognition of the status of non-resident employee

The special non-resident tax regime for expatriate employees in Belgium is not granted automatically, but must be requested jointly by the employer and employee.

The employer should submit a request to the appropriate department within the Belgian tax administration for each expatriate, within six months of arrival in Belgium.

In case of a late filing of the request, and if the employee has not yet been assessed as a resident taxpayer, the special tax status will only come into force in the year following the year of the request. For those years for which the special tax status is not applied (e.g. because of a late request), the employee will be taxed as a non-resident, but without the tax benefits of the special regime: i.e. no tax-free allowances and no travel exclusion (deduction for working days outside of Belgium).

The request file should contain the following data:

Employer: general information proving the international nature of the group (organization chart, articles of association and description of the activities of the company in Belgium). This information is only required the first time a request is made or when there is a material change to the facts originally presented. The employer must sign a formal request for each new qualifying expatriate.

Employee:

- ◆ Personal facts (name, family members, dates of birth, etc.);
- ◆ Date of assignment or of direct recruitment outside Belgium;
- ◆ Elements which show that the expatriate has kept the center of his/her economic interests abroad, with appropriate supporting documentation. (the supporting documents are very important to obtain recognition as a qualifying expatriate);
- ◆ Documents which prove that the assignment is of a temporary nature;
- ◆ A breakdown of the salary structure and the overbase allowances;
- ◆ The country of origin;
- ◆ A detailed job description;
- ◆ A copy of the Belgian lease contract;
- ◆ Evidence of continued affiliation to foreign social security (if applicable);

- ◆ A copy of the employment agreement;
- ◆ A formal request, signed by the employee.

On the basis of the application file, the tax administration will check if the foreign employee fulfils all of the conditions to qualify for the special tax regime. The employer will be notified of the decision in writing. However, there is no limit to the period within which the administration is compelled to take its decision and it is therefore not unusual that the decision is not taken until several years after the request, though the employer can at its own risk already take the expatriate tax benefits into consideration (e.g. in the monthly payroll tax calculation) before a decision is taken.

If the expatriate starts working for another employer in Belgium, the special tax regime is suspended automatically, though a new request may be made in the name of the new employer, which will be reviewed on a case by case basis.

After qualification, the special tax regime remains applicable for an unlimited period of time, as long as the employee fulfils the qualifying conditions.

## 4. Social security rules applicable to non-resident employees

It often happens that an employee posted to Belgium remains temporarily in the home country social security system (and exempt from Belgian social security). This is possible under the European Regulation 1408/71 for countries within the European Economic Area and Switzerland or based on bilateral agreements on social security.

If the expatriate employee is however subject to Belgian social security, some limited relief is available, as by analogy with the income tax exemption, a number of assignment related costs can be reimbursed free of social security. These include moving expenses, home leave, emergency travel, cost of living, tax equalization, housing allowances and school fees reimbursement, etc. The exemption is given on the same basis as for income tax.

These reimbursements of expenses are considered as business expenses and are therefore not considered as salary for the application of social security legislation. Belgian social security regulations are not entirely identical to the income tax rules, and an exemption for income tax purposes therefore does not automatically imply an exemption for social security purposes (and vice versa).

## 5. Passive income

As qualifying expatriates are considered as non-resident taxpayers, they are therefore not taxable on foreign source passive income. Exemption from taxation is also possible on interest from a non-resident Belgian bank account, though this may change following implementation of the E.U. savings directive. To obtain exemption of Belgian withholding tax, a certificate should be given to the appropriate Belgian financial institution which proves non-resident status.

From a real estate perspective, qualifying expatriates are only taxed on income from real estate situated in Belgium. The calculation of taxable income depends on the use of the property (principal residence, leasing to an individual for private purposes, leasing to a company, ...).

## 6. Example of the determination of the taxable income and related tax liability of a non-resident employee with a gross Belgian salary

### Facts

- ◆ Family status: married with two dependant children (over three years old);
- ◆ Belgian social security (not applied on tax-free allowances);
- ◆ Home country: United Kingdom;
- ◆ Percentage of travel on business outside of Belgium: 10%;
- ◆ Total annual gross salary: 75,000 EUR;
- ◆ Belgian rent: 744 EUR / month (annual total: 8,928 EUR).

### Determination of the hypothetical UK base salary

The hypothetical UK base salary is needed to be able to determine the non-taxable allowances for cost of living and housing differentials:

$$\frac{75.000 \text{ EUR} \times 85\%}{1,10} = \mathbf{57.955 \text{ EUR}}$$

#### ◆ Cost of living differential

57.955 EUR x 5% = **2.898 EUR** (but limited to an annual maximum of 2,500 EUR)

#### ◆ Housing costs differential

Belgian rent (8,928 EUR) minus 12% of the hypothetical UK base salary

	<u>EUR</u>
Belgian rent	8.928
12% of 57.955 EUR	<u>-6.955</u>
Housing costs differential	<b>1.973</b>

#### ◆ Tax equalization

75.000 EUR x 85% = 63.750 EUR

Belgian tax on hypothetical base salary	16.430
UK tax on hypothetical base salary	<u>-11.321</u>
Difference	<b>5.109</b>

**Total of tax-free allowances**

	<u>EUR</u>
Cost of living	2.500
Housing	1.974
Tax equalization	<u>4.591</u>
	<b>9.065</b>

**Taxable income**

	Non-resident employee <u>EUR</u>
Gross salary	75.000
Belgian social security - employee	-8.568
Tax-free allowances (cfr. above)	<u>-9.065</u>
Subtotal	57.367
Percentage of foreign travel (10%)	<u>-5.737</u>
Gross taxable income (before deduction)	<b>51.630</b>
Income taxes	17.382

**Net salary**

	<u>EUR</u>
Gross salary	75.000
Social security - employee	-8.568
Income taxes	<u>-17.382</u>
Net salary	<b>49.050</b>

**Employer cost**

	<u>EUR</u>
Gross salary	75.000
Social security contribution - employer	<u>21.342</u>
Total	<b>96.342</b>

The advantage of the special expatriate tax regime for employers in minimising the cost of recruiting foreign executives is illustrated by the fact that to deliver the same net salary as calculated above (EUR 49.050) without this advantage would require a gross salary of EUR 96.027 with a related employer cost of EUR 127.416, ie an additional annual employer cost of EUR 31074 (32 % increase)

## 7. Other Ernst & Young publications

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- ◆ Doing Business in Belgium
- ◆ Tax News International: quarterly issue
- ◆ Ernst & Young News: quarterly issue
- ◆ International Income Tax & Social Security in Belgium
- ◆ Worldwide Corporate Tax Guide (annual update)
- ◆ The Global Executive (annual update)
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