



Thinking Beyond Borders: Management of Extended Business Travelers - Luxembourg

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Key message

Individuals domiciled in Luxembourg are subject to income tax on their worldwide income unless exempt under the provisions of a treaty. Under Luxembourg tax law, the concept of 'domicile' is essentially equivalent to the term 'residence' as used in most jurisdictions. In this article, the two terms are used interchangeably.

Non-residents are subject to income tax on certain categories of income from Luxembourg sources. The official currency of Luxembourg is the euro (EUR).

1 Key message

Extended business travelers who are not residents of Luxembourg are likely to be taxed on employment income relating to their Luxembourg workdays.

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Income tax

2 Income Tax

2.1 Liability for income tax

Individual liability to Luxembourg tax is determined by residence status. A person can be a resident or a non-resident.

An individual will be considered domiciled in Luxembourg for tax purposes if either of the following circumstances is met, subject to tax treaty provisions.

- The individual maintains a permanent home in Luxembourg. When an individual's family (spouse and children) resides in Luxembourg, the individual may be considered to have a home in Luxembourg. Special rules may apply, however, for married couples where one of the spouses lives abroad.
- A usual abode is deemed to exist if the individual remains in Luxembourg for more than 6 consecutive months (short periods of absence are disregarded). Tax residence applies as from the first day of the individual's presence in Luxembourg. However, this is not restricted to 6 months in the same calendar year. If an individual arrives on 1 October in year N and is still staying in the country/jurisdiction on 2 April in year N+1, the 6 months' stay will be deemed to have been met. The individual will be deemed to have been resident in Luxembourg from 1 October in year N.

2.2 Tax trigger points for employment income

To consider the start and end dates of residency status, there is no minimum threshold/number of days that would exempt an individual from paying tax in Luxembourg. The determination is essentially based on facts and circumstances. The assignee is considered to be a Luxembourg tax resident as of the first day the individual arrives in Luxembourg (according to Luxembourg domestic tax rules).

2.3 Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income (including non-cash benefits), Luxembourg-sourced income, and gains from taxable Luxembourg assets (such as real estate). Salaried benefits arising from the allocation of transferable stock options to employees may have a deemed market value according to the "Black-Scholes" method.

Specific tax regime for inpatriate workers

Following the entry into force of the 2021 budget law, the Luxembourg tax authorities announced the withdrawal of Circular L.I.R. n° 95/2 of 27 January 2014 regarding the Luxembourg inpatriate regime. This new budget law modifies, among other things, the inpatriate regime in Luxembourg. Impatriate workers who benefited from the old regime and for which the 5 years of contact are not yet reached, will benefit from the new regime.

The New specific tax provisions apply in Luxembourg to inpatriate workers having relocated to Luxembourg since 1 January 2021, to the extent that specific conditions related to employees, employer, and salaried employment in Luxembourg are fulfilled. These provisions aim at exempting part of inpatriate workers' costs and expenses in relation with their inpatriation to Luxembourg. Extended business travelers who do not become residents of Luxembourg should not qualify for this tax regime.

Scope of the Circular

The aim of this law is to attract foreign workers to Luxembourg to respond to a need for skill and labor.

Persons covered

- employees usually working abroad, assigned by a company located outside of Luxembourg, to perform an employment activity in a Luxembourg company, member of the same international group;
- employees directly hired abroad by a Luxembourg company, or a company located in the European Economic Area to perform an employment activity in the company.

Conditions relating to the employer

The employer should meet the following conditions:

- If established in Luxembourg for 10 years or more, no more than 30 percent of the employer's work force may benefit from the inpatriate regime.

In case of intra-group assignment: must be part of an international group.

Conditions relating to the employee

The employee must meet the following conditions:

- Must be a Luxembourg tax resident.
- Must have their primary employment in Luxembourg.
- Must have a minimum gross annual salary of EUR 75,000.
- During the 5 preceding years:
 - may not have been a Luxembourg resident or subject to Luxembourg income tax on professional income
 - must have lived at least 150 kilometers away from the Luxembourg border.
- May not replace a non-inpatriate employee.
- Must be hired to share their knowledge and experience with the Luxembourg staff.
- In case of intra-group assignment:
 - He/she must have the right to return to the home country/jurisdiction employer
 - He/she must have 5 years of seniority within the group/sector.

Application of the exemption

Assignment costs typically represent a heavy financial burden to employers. Thus, the principle of this law is the exemption of the part of relocation expenses exceeding those which the employee would have incurred, had they remained in their home country/jurisdiction. The law provides that the costs should remain reasonable.

- Non-recurring expenses: removal expenses in respect of the domicile transfer to Luxembourg, housing (furniture, etc.), special travel costs (e.g. birth, wedding, death of a family member), etc.
- Recurring expenses in case of cross-border domicile transfer (limited thresholds): housing costs (e.g. rent, utilities, heating, etc.), yearly home travel, and tax equalization. These recurring expenses are limited to the lesser of EUR50,000 per year (or EUR80,000 per year if the employee shares a house with their spouse or partner) and 30 percent of the inpatriate worker's total annual fixed remuneration.
- School fees (primary and secondary education): born by the employer for the children of the inpatriate worker, of their spouse or partner, if the children move with their parent(s) and have to change school.

- Tax-free lump-sum indemnity for other recurring expenses (i.e. cost of living adjustment and other relocation-related expenses not covered anywhere else by the Law): a 50% exemption on the assignment premium would apply.

Duration of the specific tax regime

The benefit of the specific tax provisions for inpatriate workers is granted for the duration of their inpatriation. It applies until the end of the 8th tax year following the inpatriate's starting date in Luxembourg. Previously, the provision applied until the end of the 5th tax year following the inpatriate's starting date in Luxembourg. If an inpatriate worker has benefit from the inpatriate regime for less than 5 tax year, he automatically falls within the new inpatriate regime, and the above-mentioned provisions will then be applied until the end of the 8th tax year following his starting date in Luxembourg.

Procedure

At the beginning of each year (i.e., by 31 January at the latest), the employer is required to provide the Tax Authorities with a nominative list of employees benefiting from the regime. The employer will maintain sufficient evidence to support the eligibility in case of an audit. In case of doubt, an application can be filed with the tax authorities to obtain certainty about the eligibility

Moreover, in case the foreign employer has no wage tax withholding obligations in Luxembourg and did not elect to levy wage tax in Luxembourg on a voluntary basis, then the concerned inpatriate workers will have to file an individual income tax return in order to benefit from this regime.

Carried interest

Carried interest received by employees of AIFMs or employees of management companies of AIFs qualify as speculative gains, provided they fall within the scope of the law (article 99bis al.1a, 1. ITL).

Tax regime:

These gains are taxable at the normal progressive income tax rates, i.e. maximum 47.18 percent (45.78 percent + 1.4 percent of dependence insurance).

Possible classification as non-taxable capital gains should be checked on a case-by-case basis.

Capital gain realized upon sale of their units, shares or securities of AIFs are taxable according to the usual regime applicable to capital gains:

- taxable at progressive tax rate if holding lower or equal to 6 months
- tax free if held for more than 6 months
- except if the individual holds, or held a substantial participation, i.e. a shareholding of more than 10 percent, at any point of time during the 5 years' period preceding the sale or redemption.

Possible full exemption of the carried interest should be checked on a case-by-case approach.

2.4 Tax rates

Net taxable income is taxed at graduated rates ranging from 0 percent to 45.78 percent, with a top rate of 45.78 percent for the part of the taxable income exceeding EUR 200,004 (EUR 400,008 for spouses/partners filing jointly), including a 7 or 9 percent unemployment contribution.

Excluding specific earned income, Luxembourg source income may be subject to a 15 percent minimum income tax (increased by the surcharge for unemployment fund) at the level of non-resident individuals. However, they may opt for the application of standard progressive tax rates instead of the 15 percent taxation. Progressive rates are applied by adding EUR 11,265 to the actual income.

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Social Security

3 Social Security

3.1 Liability for social security

In Luxembourg, registration with the Social Security Authorities is compulsory for all employees. An exemption from paying Luxembourg social security contributions may be granted under a multilateral social security agreement, or a bilateral one concluded between Luxembourg and the individual's home country/jurisdiction. Generally, the benefits might cover:

- old-age pension, disabilities pension, survivors' pension
- health and medical expenses
- allowances in cash for children.

The employee's part of social security contributions ranges between 12.20 percent and 12.45 percent. The employer's part of social security contributions ranges between 12.335 percent and 15.155 percent. All employer's contributions and most of the employee's contributions are capped.

Employee's part (capped):

- pension (1st pillar): 8 percent
- sickness: 2.8 - 3.05 percent
- maximum annual income basis subject to contributions EUR150,532 for 2023 (index 944,43).

Non-tax-deductible contributions (uncapped):

- Dependence insurance: 1.4 percent minus a deduction of 642,73 (index 944,43) per month on gross salary. No ceiling is applicable.

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Compliance obligations

4 Compliance obligations

4.1 Employees' compliance obligations

The ultimate deadline to submit the 2023 Luxembourg income tax returns to the tax authorities for married taxpayers opting for individual taxation with tax class 1 or for individual taxation with reallocation of income between spouses in tax class 1 and also for married taxpayers or partners opting for joint taxation in class 2 but who have a different tax class on their 2022 tax card is 31 December 2023.

4.2 Employers reporting and withholding requirements

The Luxembourg employer has a legal obligation to withhold the correct amount of tax on salaries paid to employees.

Advance payments of tax, together with tax withheld at source, are deductible from the final income tax liability. Any overpayment of tax may be refunded subject to conditions. Tax withheld on wages and pensions is adjusted annually.

The Luxembourg government has transposed in the Luxembourg Tax Law of a section of the EU Directive in respect of the automatic exchange of information on salaries, pensions and directors' fees.

Therefore, Luxembourg paying entities/employers have to report prior end of February 2024 the information related to calendar year 2023 salaries to the Luxembourg tax authorities.

Each year on 30 June, the EU Member States of residence of the employees will be automatically provided information on this income (i.e., salaries, pensions and directors' fees), and will be able to tax this income based on the applicable tax treaty provisions.

If an expatriate establishes residence in Luxembourg during the course of the year, the expatriate will generally be required to provide the Luxembourg tax authorities with evidence of salary earned during the part of the year when the expatriate was not resident in Luxembourg. The computation of the expatriate's salary for the entire year allows the determination of a possible refund of tax withheld in excess.

Generally, the amount of tax prepayments is based on the amount of income tax due for the previous year. The income tax withheld monthly on employment or pension income is computed according to tax tables set forth by the government.

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Other issues

5 Other issues

5.1 Work permit/visa requirements

Visa, work and residence requirements should be checked before the individual enters Luxembourg. The type of documentation required will depend on the purpose of the individual's entry into Luxembourg.

5.2 Double taxation treaties

In addition to Luxembourg's domestic arrangements that provide relief from international double taxation, Luxembourg has entered into double taxation treaties with 98 countries/jurisdictions to prevent double taxation and allow cooperation between Luxembourg and overseas tax authorities in enforcing their respective tax laws.

5.3 Permanent establishment implications

A permanent establishment ("PE") could potentially be created as a result of extended business travels by an employee.

This should only be applicable to employees and not to independent agents that act on behalf of an enterprise in the ordinary course of business.

This would depend on the type of services performed and/or the level of powers granted to the employee. For instance, a PE could be created if the employee has the power to negotiate and sign contracts on behalf of the employer, or to lead to the conclusion of contracts on behalf of the employer, routinely and without material modification by the latter.

There are also some exceptions to this principle, for instance when the contracts only concern the use of facilities solely for the purpose of storage, display or delivery of goods or the maintenance of a fixed place of business solely for the purpose of carrying on other activities of a preparatory or auxiliary character.

For a complete check of these implications, reference should be made to article 5 of the Organization for Economic Co-operation and Development (OECD) Model Convention and to the provisions of the relevant treaty applicable to a specific case.

In addition, on 7 June 2017, Luxembourg signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). One of the main purposes of the MLI is to enable countries/jurisdictions to meet the treaty-related minimum standards that were agreed as part of the final Base Erosion and Profit Shifting (BEPS) package, i.e. the minimum standard for the prevention of treaty abuse and for the improvement of dispute resolution.

The MLI also contains a number of alternatives or optional provisions. Part IV of the MLI (art. 12 to 15) describes the mechanism by which the permanent establishment definition in existing tax treaties may be amended pursuant to the BEPS Action 7 Final Report to prevent the artificial avoidance of permanent establishment status. Luxembourg made reservations on most of the changes dealt with in part IV.

5.4 Indirect taxes

Value-added tax (VAT) should be applicable to sale of goods and supply of services. Individuals carrying out economic activities (trading, producing, consulting etc.) independently should in principle register for Luxembourg VAT purposes. The standard VAT rate applicable in Luxembourg is 16 percent for the year

2023, the Luxembourg government agreed to temporarily reduce the VAT rates by 1% (except the Super reduced rate of 3%) with effect from 1st January 2023 to 31st December 2023.

5.5 Transfer pricing

Luxembourg applies the OECD transfer pricing guidelines for multinational enterprises and tax administration, as well as certain provisions set forth under the BEPS actions. Hence, the Luxembourg tax authorities may raise transfer pricing questions when the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction and no corresponding recharge is performed, in other words, if a cross-border benefit is being provided. The transfer price would be dependent on the nature and added value of the services performed.

5.6 Local data privacy requirements

Luxembourg has data privacy laws.

5.7 Exchange control

Luxembourg does not restrict the flow of European or foreign currency into or out of the country/jurisdiction.

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