

Flash News

Belgium-Luxembourg cross-border workers: publication of a Circular letter dated 31 March 2015

31 March 2015

The Luxembourg tax authorities have published on 31 March 2015 the Circular letter L.G. – Conv. D.I. n° 59 dealing with the taxation of cross-border employees in Luxembourg and in Belgium.

This Circular letter follows on the signature of the mutual agreement on 16th March 2015 and of a “vade-mecum” regarding evidences to prove presence in Luxembourg (or in Belgium).

Background

Following the announcement made early February, the Luxembourg Minister of Finance Pierre Gramegna and the Belgian Minister of Finance Johan Van Overtveldt signed a mutual agreement on 16 March 2015 regarding the taxation of cross-border employees in Luxembourg and in Belgium.

In addition, a “vade –mecum” was signed between both countries relating to the physical presence evidence that should be provided for obtaining the exemption in Luxembourg (or Belgium).

The purpose of the mutual agreement is to relax the rules applicable to cross-border employees between Belgium and Luxembourg with respect to the taxation of their employment income in Luxembourg and Belgium.

Article 15 of the double tax treaty concluded between Luxembourg and Belgium¹ addresses the taxation of employment income and indicates that the income related to professional activities exercised in Luxembourg is taxable in Luxembourg.

Over the past couple of years, we have seen that the Belgian authorities in particular started to strictly apply article 15 for Belgian resident employees of Luxembourg companies. We see that such employees have been subject to more frequent tax audits in Belgium resulting in non-Luxembourg workdays being taxed in Belgium.



¹ *Income and Capital Tax Treaty (1970), as amended by the 2002 protocol, the 2009 protocol and the exchange of notes of 16 March 2015.*

Due to this change in approach a number of practical difficulties have arisen (e.g. tracking of workdays, how to prove physical presence, ambiguous application of remuneration exemptions at the level of payroll, regularising situations in both countries further to an audit). The two States decided to have a mutual agreement addressing the situations and applications of article 15.

Content

The Circular letter L.G. – Conv. D.I. n° 59 dated on 31 March 2015 actually publishes the text of both the mutual agreement and the “vade-mecum” as referred to above.

1. Mutual agreement

The mutual agreement signed on 16 March 2015 confirms, retroactively as from 1 January 2015, the introduction of a derogation to the current article 15 of the double tax treaty concluded between Belgium and Luxembourg.

More specifically, a Belgian resident employee performing activities in Luxembourg for his Luxembourg employer and physically present in Belgium and/or in other third States to perform activities for a period or periods not exceeding in the aggregate 24 days in the fiscal year concerned is considered actually performing his/her duties in Luxembourg during the entire fiscal year and vice versa.

In practice, as from 1 January 2015, a Belgian tax resident is allowed to perform activities outside Luxembourg (the usual work State) for a maximum of 24 days without altering the power of taxation in Luxembourg (i.e. not being taxed in Belgium). An amendment to the double tax treaty will confirm the mutual agreement.

2. The “vade-mecum”

The “vade-mecum” published by the Belgian tax authorities details the evidence that namely clarifies how a Belgian tax resident can prove his/her physical presence in Luxembourg within the scope of article 15 referred to above.

Regarding such proof, a distinction is made between:

- Employees who exercise an activity for which the presence at the workplace is essential. This means that employees cannot carry out their activities elsewhere (e.g. a cashier in a store). Employees falling in this category have to submit an employment contract clearly stating what duties are performed and where they are performed; and
- Other employees (i.e. employees whose presence at a fixed workplace is not required or unlikely, such as a sales representative) or employees performing work that can be performed at a fixed place of work but who may also need to work at home or elsewhere) will, as before, still have to provide (various) proofs of their physical presence in Luxembourg upon request (e.g. badges, gas invoices, train/airfare tickets, GSM invoices, assignment orders).

Contrary to the mutual agreement, it appears that the “vade-mecum” does not include a time limit for its application. Consequently, it may also be used as a reference to settle the cases relating to prior January 2015. In this context, it is important to note that the “vade-mecum” does not require Belgian residents to prove their physical presence in Luxembourg on a daily basis (and vice versa).

Conclusion

It seems that the Belgian and Luxembourg authorities do not plan to publish further practical instructions for the implementation of the mutual agreement.

A number of questions remain therefore unanswered at this stage such as but not limited to the counting of days (e.g. portion of days spent in Luxembourg, vacation, training, sickness and travel days).

To get more details on the Circular letter L.G. – Conv. D.I. n° 59 published on 31 March 2015 visit the Luxembourg tax authorities’ website:

http://www.impotsdirects.public.lu/legislation/legi15/Circulaire-LG-Conv_D_I_-n_-59-du-31-mars-2015.pdf

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