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**The attractiveness
of the expatriate
tax concessions
in Belgium**

1. General

Belgium has a long tradition of being eager to attract and retain large multinationals companies.

This transpires from a series of tax friendly measures among which expatriate tax concessions.

These concessions are available to foreign highly skilled employees who work temporarily in Belgium for a Belgian entity which is part of an international group of companies. The purpose of this special tax regime is to attract multinationals by minimizing the assignment cost of foreign specialists and executives in Belgium. Since the concessions are aimed at helping to minimize or at least contain the cost of such assignments, the Belgian receiving entity should be able to demonstrate that it does directly (for assignees paid on net terms) or indirectly (for assignees paid on gross terms) derive a competitive advantage from the concessions.

When the concessions are granted, the executive is deemed to be viewed as a Belgian non-resident tax payer.

The concessions provides for the following two tax breaks to be available for qualifying expatriates:

1. Part of the expatriate package qualifies as tax exempt up to a standard annual ceiling of EUR 11,250, eventually increased up to EUR 29,750 for expatriates assigned to a recognized research center or HQ;
2. Foreign duty relief is available for the portion of the package associated with activities performed outside of Belgium.

Both deductions lower the taxable basis on which the normal progressive income tax rates apply.

2. Terms and conditions

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

A qualifying employer is either a subsidiary, a branch or a permanent establishment of an international group of company.

To qualify for the concessions, a specialist or an executive should be:

- ▶ A foreign citizen (Belgian citizens are excluded);
- ▶ Either assigned to Belgium by a foreign affiliate of the group or directly hired abroad;
- ▶ To perform in Belgium a function which require specific knowledge or to occupy a senior position with a significant job content;
- ▶ The assignment to Belgium or employment in Belgium should be of a temporary nature (in this respect, although there is no explicit time limit imposed, ten years tend to become the maximum length during which the tax authorities extend the concessions);
- ▶ The expatriate should have maintained connections with his or her home country.

In order to determine 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:

A. Personal elements:

- ▶ Continued residence of close family members outside 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 Belgium;
- ▶ Foreign life insurance contracts.

B. Assignment elements:

- ▶ Fact of being hired on the foreign labor market;
- ▶ Continued coverage by a foreign social security legislation;
- ▶ Continued participation in non-Belgian benefit plans (second and third pillar pension schemes, etc.);
- ▶ Possibility that the expatriate can be transferred to another country;
- ▶ A diplomatic clause in the Belgian home rental agreement (which provides that the rental agreement can be cancelled in case of retransfer abroad).

3. Benefits

3.1 Non-resident status

The main feature of the expatriate tax regime is the administrative concession of a non-resident tax status which restrict the taxation in Belgium to Belgian source income only but can also create concerns in the home country which need to be carefully addressed and reviewed.

3.2 Non-taxable allowances

The expatriate tax regime provides for a tax exemption of the allowances or reimbursements paid by the employer to the expatriate, which cover the additional expenses incurred as a result of the assignment to Belgium. The reimbursement of those expenses are regarded as costs attributable to the employer and are therefore not considered as taxable income for the employee.

The expatriate tax regime provides for the following reimbursement to qualify as non-taxable:

A. Non-recurring unlimited expenses, justified by actual expenses:

- ▶ Moving costs to and out of Belgium;
- ▶ Settling in costs in Belgium.

B. Recurring unlimited expenses, justified by actual expenses:

- ▶ International or private school fees for children who attend primary or secondary school (university and child care excluded).

C. Recurring limited expenses up to an annual ceiling of EUR 11,250 or EUR 29,750:

- ▶ Difference in the cost of living and cost of housing between Belgium and the home country;
- ▶ Home leave (for travel by plane, economy class);
- ▶ Losses incurred when the accommodation in the home country cannot be leased or can only be leased below its normal rental value;
- ▶ Emergency travel (e.g., serious illness or death of a close relative);
- ▶ Exchange rate differential;
- ▶ Differences in the income tax burden between Belgium and the home country (tax equalization);
- ▶ Travel expenses of children studying abroad to visit their parents (maximum two trips per year).

These expenses are limited annually to EUR 11,250 for executives in operating companies and to EUR 29,750 for executives in research and development units and in controlling or coordinating units (regional or global HQ's).

For expatriates paid on net terms, if a cost of living or housing allowance is determined based on statistical data (referred to as "International tables") or if hypo tax is retained, the non-taxable allowances are assessed directly by reference to the package mix. For expatriates paid on gross terms, the non-taxable allowances are assessed by application of a methodology provided by the Belgian tax administration (referred to as "the technical note").

3.3 Foreign duty relief (or so called "travel exclusion")

In addition to the exemption of the non-taxable allowances, the other 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) obtained by comparing the number of days of professional activity spent in Belgium ("nominator") with the total number of working days for the whole year or a shorter period in the case of a part-year in Belgium ("denominator"). The day of departure is - in principle - considered as a Belgian working day.

The proof of foreign working days is an area frequently audited by the Belgian tax authorities. 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. EY can of course guide and provide its clients with the types of justifying documents.

To collect your travel data, you can complete your calendar via EY GlobalOne. Moreover, EY also offers its clients free of charge the EY Tracer. EY Tracer is a mobile application that uses the GPS functionality on the mobile smartphones to capture the locations and update your EY GlobalOne calendar automatically. It is worth bearing in mind that the Belgian tax authorities recognize the merits of EY Tracer® as an element of proof. EY Tracer will therefore not only make your life easier to capture your business presence for tax purposes but will also help in case of an audit.

How does this work in practice - parralell projection

	Expatriate	Belgian resident
Employer cost (approx 25%**)	EUR 24,733	EUR 28,017
Gross Income	EUR 100,000	EUR 100,000
Benefits in kind (housing, equity, ...)	EUR 20,000	EUR 20,000
Total income	EUR 120,000	EUR 120,000
Less: Non-taxable allowances	EUR (11,250)	
Subtotal	EUR 108,750	
Less: Social security (13.07%)	EUR (13,780)	EUR (15,618)
Subtotal	EUR 94,970	
Less: Travel (e.g. 20 %)	EUR (18,993)	
Taxable basis (to income taxes)	EUR 75,977	EUR 104,382
Tax due*	EUR 25,207	EUR 40,404
Effective tax rate	21.00%	33.67%

*Tax due for a married couple, non-working spouse, two dependent children

** Applicable as from 1 January 2018

4. Process and filing requirements

The expatriate tax regime in Belgium is not granted automatically, but must be requested jointly by the employer and the employee, within six months following the start of the assignment in Belgium.

EY assists its clients with the preparation and introduction of an application file to benefit from the expatriate tax regime on behalf of the expatriate in Belgium. For more information regarding the expatriate concessions or any other concern associated with the cross border duties of your executives, please contact your regular EY acquaintance.

