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ING BUSINESS INSIGHTS

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MOTIVATE YOUR EMPLOYEES

A PRACTICAL GUIDE TO…

Welcoming French expat managers to Belgium

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IN A NUTSHELL

- ✔ Under certain conditions, French expatriate personnel can benefit from a special tax status.
- ✔ To acquire and maintain that status, the French expatriate should demonstrate at any time the closest ties with his/her home country, while not being treated as a resident by France.
- ✔ This has implications on both professional and personal levels.

Belgium has a very attractive tax status for foreign executives or experts who temporarily work and live in Belgium. However, securing that status requires careful planning, both on a professional and personal level.

As confirmed by the OECD and various other sources, income taxes and social contributions are quite high in Belgium. As a rule, our high salary costs could discourage international groups from sending executives or experts to Belgium. "Most of the time, it would be very expensive for the employer to ensure that these workers enjoy at least the same net income during their stay in our country", says Frédéricq Jacquet, Senior Director at Deloitte Belgium. In other words, multinationals would hesitate to send experts or executives to Belgium at a reasonable cost, which could affect the country's attractiveness for opening a branch or legal entity on its territory. This could bring a sizeable cost in terms of missed opportunities for the Belgian economy and for this reason, Belgian authorities have created a special tax status for foreign executives.

THE EXPERTS

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RETAINING NON-RESIDENT STATUS

"Basically, under certain conditions, the expatriate will retain his/her non-resident tax status for the purpose of Belgian income taxes, even though he/she has moved to Belgium for the duration of his/her assignment, often with the entire family", says Frédéricq Jacquet. At the same time, France will typically consider that the expatriate has become a non-resident in France, according to both French domestic legislation and the double tax treaty in force between Belgium and France. The non-resident status in Belgium will apply as long as the executive will not be seen to have established his/her residence or centre of his/her economic interests in Belgium. This creates uniquely attractive conditions for the expatriate and his/her employer.

THE EXPATRIATE STATUS IN SUMMARY

- ✔ The expatriate is deemed to be a non-resident in Belgium from a Belgian tax standpoint. Which means exclusively Belgian-source income will be subject to taxes and social contributions. Any workday spent outside Belgium (traveling abroad for his/her employer) is not taxed in Belgium.
- ✔ Based on the actual facts and circumstances, France may also consider the expat as a non-resident. This means it will consider that Belgium is granted the power of taxation on foreign income, including salary derived from working days outside Belgium, even if Belgium does not effectively tax that part of the income. "Practically, an executive who travels abroad for half of his/her work time will be taxed on half his/her income", Frédéricq Jacquet comments. "And there are also savings available for social security contributions. You can see how this is attractive for doing business in Belgium."
- ✔ The company can also grant a tax-free allowance to the executive, taking into account expenses incurred during the assignment to Belgium; costs which are proper to the employer. Moreover, both the tax office and social security accept that part of the gross salary is made up of that allowance. "There is a technical note from the authorities to calculate the tax-free allowance, but in a nutshell, it means that the expatriate can receive up to 11,250 euros a year – 29,750 euros in some cases - free of tax."
- ✔ Some other expenses can also be covered by the company without tax or social contributions. Moving costs incurred while arriving/leaving Belgium, costs of setting up a household in Belgium and tuition fees in international schools are some typical examples.
- ✔ Financial revenues obtained in France will be subject to the French tax system for non-residents: both interests and dividends from French origin will be subject to a 15% tax retained by the bank.
- ✔ Real estate revenue from French properties will be subject to French tax on non-residents: a tax of at least 20% of the net income and social contributions amounting to 15.5% of the net income (these social contributions can be avoided if the individual is affiliated to the Belgian social security system or any other EU social security system other than France per a recent EU court decision).
- ✔ Revenue from financial investments made in Belgium as a non-resident private investor are tax exempt in Belgium, while at the same time, it will not be taxed in France.

"THE EXPATRIATE SHOULD CONSULT WITH A TAX EXPERT AND REVIEW HIS/HER INVESTMENT PORTFOLIO IN ORDER TO DECIDE WHAT HE/SHE SHOULD KEEP IN FRANCE AND WHAT HE/SHE SHOULD TRANSFER TO BELGIUM"

ELIGIBILITY AND FILING REQUIREMENTS

To obtain the special tax status, the Belgian company employing the executive and the executive him/herself must submit a request to the Foreigners' Tax Service. These requests should be submitted before the end of the sixth month counting from the first day of the month following the start of the assignment in Belgium. "There is quite an amount of paperwork involved", says Frédéricq Jacquet. "In short, the company and the executive have to prove that this expatriation is happening for professional reasons and that the executive intends to return to France at some point in the future to resume his/her life there."
In order to do that, the company and the executive have to provide a snapshot of the executive's situation upon his arrival in Belgium, to prove that he/she still has significant ties to France. One such proof could be the A1 form which allows the executive to retain his/her affiliation to the French social security scheme during the temporary secondment to Belgium and keep accruing pension rights in France."
Once granted, this special tax status is renewed year after year for as long as nothing changes in the expatriate's situation and for a maximum duration of 10 years. "Quitting his/her job for another employer would, for instance, jeopardise his/her status; as would some private decisions."

EXPERT ADVICE REQUIRED

In summary, the expatriate should maintain the centre of his/her economic interests outside Belgium, in accordance with Belgian law, while transferring enough interests to Belgium so as to avoid being considered a French resident. "The balance is hard to establish and it has to be carefully evaluated on a case-by-case basis", says Nadia Hamya, partner at Taj France. "I strongly advise the expatriate to consult with a tax expert and review his/her investment portfolio in order to decide what he/she should keep in France and what he/she should transfer to Belgium. This will help in adopting his/her position vis-à-vis the French tax authorities. However, he/she should also make sure not to transfer too much of his/her assets.
If the executive still owns a house, or even better, some real estate investments and/or rented out apartments, in France, making a real estate investment in Belgium should not cause any issue, especially if we take into account that real estate has higher valuations in France", says Frédéricq Jacquet. Of course, as we pointed out earlier, if he/she rents out his/her property, the generated income will be taxed by the French authorities, though not by the Belgian ones.

IMPÔT SUR LA FORTUNE?

What about the famed French Impôt sur la fortune (wealth tax)? "Becoming a French non-resident has important consequences", says Nadia Hamya. "Financial assets will not be included in the basis for establishing the ISF and only French real estate will come into consideration. In short, the French expatriate will be subject to the ISF only if the net value of his/her French real estate is higher than 1.3 million Euros."

WITH A LITTLE HELP FROM ING

Expatriate private financial affairs is one of the areas where ING can help. "We have a special offer for multinationals that are clients at ING", explains Dave Deruytter, Head of Expatriates, Non-residents and Privilegio at ING Belgium. "Our offer for expatriate personnel actually starts before the expatriates arrive in Belgium and continues beyond their stay here. For example, we make sure that their bank account is set up as a non-resident account and have their bank cards ready for when they arrive. We can also take care of their rental deposit once they have found the place where they will stay, as well as arrange their home insurance. Expatriates enjoy special conditions, just as all employees of our Privilegio Companies."
More importantly however, ING goes well beyond that. "Since the account is flagged as a non-resident account,

we devote extra care to make sure that no decision of which we are aware can have a negative impact on the non-resident status", Dave Deruytter explains. "If the Expat asks us to transfer his/her portfolio to Belgium to benefit from lower taxation, we will remind the client that this may put him/her at risk. The same goes for contracting a mortgage: before doing anything, we advise the executive to check with his/her tax advisor that he/she will retain the special tax status."

"Privilegio is something extra for expatriates", Dave Deruytter stresses. "It consists of special conditions we offer to employees of our company clients. We even go as far as providing any expat coming to Belgium with general information on how to relocate here, whether or not he/she is a current or future client." This information is available free of charge on the "expats" section of the ING website.

"As a matter of fact, most French citizens – expatriates or otherwise – already choose to open an account at ING when they come to Belgium; 47% of them to be precise."

BONUSES AND STOCK OPTIONS

Bonuses and stock options are considered to be part of the salary package. Which means that they will also be taxed in Belgium. "This however, has slightly intricate consequences", says our expert at Deloitte. Typically:

- ✔ Stock options granted before the Belgian assignment, but vested or exercised during the assignment in Belgium will typically be partly taxed in Belgium and partly in France, prorata temporis.

- ✔ It becomes a little more complicated with stock options granted while assigned in Belgium, but vested or exercised in France after moving back there. "According to Belgian rules, the stock options are taxable upon grant", reminds Frédéricq Jacquet. "France may however want to tax the benefit in kind upon the moment the stock options are exercised. When international double taxation occurs, the taxpayer needs to file a claim in Belgium and Belgian authorities will accept to refund the tax prorata temporis for the time spent in France.

SOME EXTRA CARE NEEDED

To conclude, Frédéricq Jacquet stresses tax related fine print that also needs to be considered by the employer. "It mainly regards the fact that the French company will want to make sure that the move is tax neutral for the employee. Basically, it will 'retain' the equivalent of the French tax (the hypothetical tax) when distributing the salary and will use that sum to pay the effective Belgian taxes. Any tax due exceeding the amount retained will also be covered by the employer", he explains. "Which means the Belgian tax authorities will consider such payment made on behalf of the expatriate as a benefit that has to be taxed as well. This can be a bit tricky to solve but a tax advisor will help them overcome this hurdle.

The 6th State Reform has also made the expat status somewhat more delicate to manage. "The rules regarding the personal tax deduction such as marital quotient or dependent children have been affected and other rules such as the tax benefits linked to mortgages have been regionalised. This requires localising the expat in one Region or another to determine which set of regional rules are applicable, even if the expat is a non-resident. Despite these slight inconveniences, the special tax status for foreign executives remains very interesting for French companies."

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