

March 17, 2014
2014-029

Luxembourg – New Circular Meant to Help Attract Skilled Foreign Workers

by KPMG S.à r.l., Luxembourg
(a KPMG International member firm)

flash International Executive Alert

A Publication for Global Mobility and Tax Professionals by KPMG's International Executive Services Practice

The Luxembourg tax authorities have published a new Circular aimed at attracting skilled foreign workers – those with specialized skills and highly-desired 'know-how'.

The scope of the new Circular is broader than the prior Circular issued in May 2013. Luxembourg's impatriate tax regime¹ may now apply to impatriate workers in Luxembourg who were either hired abroad by a Luxembourg company or by a foreign company situated in the European Economic Area.

Why This Matters

The aim of the Circular is to attract foreign workers to Luxembourg in response to a need for skilled and specialized labor in the Grand Duchy. Due to the issuance of the Circular, employers will have further clarity with respect to the conditions and procedures for hiring skilled foreign workers in or bringing foreign workers into Luxembourg (called "impatriates").

Assignment-related costs (e.g., moving, housing, travel, school fees, etc.) typically represent a heavy financial burden to employers. The Circular may help companies control their assignment-related costs with such provisions as the exemption of the part of relocation expenses exceeding those which would have been incurred had the worker remained in his/her home country.

For many employers, the Circular offers opportunities to potentially increase international assignments, and revise relevant assignment and hiring policies.

This new Circular (L.I.R. no. 95/2) published on 27 January 2014, applies retroactively from 1 January 2014, and replaces circular L.I.R. n° 95/2 of 21 May 2013². Specific tax provisions will apply in Luxembourg to impatriate workers relocating to Luxembourg as of 1 January 2014. There are provisions that exempt certain costs and expenses in relation to this broadened scope of workers and their "impatriation" to Luxembourg.

Scope of the Circular

As for the persons covered, the Circular applies to:

- 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; and
- 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.

The following conditions should be met at the level of the impatriate:

- He must fulfill the criteria of a Luxembourg resident;
- He must neither have been a Luxembourg tax resident nor have been living less than 150 km from the Luxembourg border, nor have been subject to personal income tax

on professional income during the five years preceding the starting date of his/her professional activities in Luxembourg.

The following conditions should be met at the level of the company:

- The company must employ, or commit to employ in the medium-term, at least 20 employees working full-time.

Application of Regime

Conditions Relating to Employee in Case of Assignment

- The assigned employee should have been employed in the international group for five years at least, or have gained five years' of professional, specialized experience in a similar activity;
- A working relationship must exist between the home company and the employee during the period of assignment;
- The assignment must foresee a guarantee for the return of the employee to the home company;
- An assignment contract should be signed between the home company and the Luxembourg company.

Conditions Relating to Employee in Case of Recruitment

The employee must have acquired an in-depth specialization in a sector or a profession experiencing recruitment difficulties in Luxembourg.

Conditions Relating to Employer

The number of impatriate workers should be limited to 30 percent of the total number of employees (working full-time) of the company, except for companies that have existed for less than 10 years.

Conditions Relating to New Dependent Employment in Luxembourg

- The activity performed by the impatriate worker should be his/her main activity;
- The annual fixed remuneration (excluding benefits-in-kind and benefits paid in cash) of the employee should at least amount to EUR 50,000 (gross);
- The impatriate worker should not replace any employee not covered by the Circular;
- The know-how and the specialized knowledge of the impatriate worker should benefit the local employees.

Application of Exemption

As noted earlier, one of the principles of the Circular is the exemption of the part of relocation expenses exceeding those, which would have been incurred had the worker remained in his/her home country. The Circular stipulates that the costs should remain reasonable.

Non-Recurring Relocation Expenses

- Removal expenses in respect of the transfer of domicile to Luxembourg;
- Furnishing and housing “equipment” costs;
- Special travel costs (e.g., birth, wedding, death of a family member);
- Repatriation expenses (back to home country).

Recurring Relocation Expenses in Case of Cross-border Domicile Transfers

Luxembourg Relocation Expenses

- Housing expenses in Luxembourg, provided that the employee maintains his/her former habitual home in his/her home country (e.g., rent, utilities, property tax, etc.). If the former habitual home of the employee is not maintained in the home country, then the eligible expenses will be limited to the housing costs differential between the home country and Luxembourg;
- Yearly travel expenses between Luxembourg and the home country (for the employee, spouse or partner, and the children of the employee's household);
- Tax equalization expenses.

In any case, these recurring expenses can neither exceed EUR 50,000 per year (or EUR 80,000 per year if the employee shares a house with his/her spouse or partner), nor 30 percent of the impatriate worker's total annual fixed remuneration.

School Fees

Also tax exempt are the school fees borne by the employer for the children of the impatriate worker, of his/her spouse or partner, if the children move with their parent(s) and have to change school.

Lump Sum Indemnity for Other Recurring Expenses

This lump sum covers the cost of living adjustment (COLA) and other relocation-related expenses not covered anywhere else by the Circular. The lump sum is fixed at 8 percent of the employee's fixed monthly remuneration, capped at EUR 1,500. The lump sum can be doubled (i.e., 16 percent and capped to EUR 3,000) to the extent the employee shares a common residence or domicile with his/her spouse or partner, and the latter does not perform any professional activity.

Tax Treatment of Expenses and Charges

At the level of the Luxembourg employer, the aforementioned expenses are considered tax deductible. Expenses borne by the employer for impatriate workers, as covered by the present Circular, are not considered as 'employment income' according to Article 95 of the Luxembourg Income Tax Law (LITL).

Any other allowances and benefits-in-kind, which are not covered by the Circular, remain subject to Luxembourg common tax rules (Article 104 LITL and related tax circulars).

Duration of Tax Treatment

The benefit of the specific tax provisions for impatriate workers is granted for the duration of the worker's impatriation. Ultimately, it applies until the end of the fifth tax year following the impatriate's 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.

Moreover, the Circular stipulates that 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 impatriate worker will have to file an individual income tax return in order to benefit from this regime.

Entry into Force

The provisions of the Circular will apply to impatriate workers relocating to Luxembourg from 1 January 2014.

Recap: What Is New?

The scope of the circular has now been extended such that the tax regime may now apply to impatriate workers in Luxembourg who were either hired abroad by a Luxembourg company or by a foreign company situated in the European Economic Area.

Moreover, the circular stipulates that 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 impatriate worker will have to file an individual income tax return.

Footnotes:

1 This regime was provided for in Tax Circular No. 95/2 of 31 December 2010 and modified by Tax Circular no. 95/2 of 21 May 2013.

2 For prior coverage, [see *Flash International Executive Alert* 2013-082](#), 23 May 2013.

* * * *

This article is excerpted, with permission, from "New Tax Circular on Impatriate Workers" in *Luxembourg Tax News* (Issue 2014-03, February 2013), a publication of the KPMG International member firm in Luxembourg.

For further information or assistance, please contact your local IES/People Services professional or one of the following professionals with the KPMG International member firm in Luxembourg:

* Frédéric Scholtus, Director (tel. +352 22 51 51 5333; e-mail: frederic.scholtus@kpmg.lu)

* André Kayser, Manager (tel. +352 22 51 51 5393; e-mail: andre.kayser@kpmg.lu)

* Marie-Eve Garsou, Assistant Manager (tel. +352 22 51 51 5588; e-mail: marie-eve.garsou@kpmg.lu)

The information contained in this newsletter was submitted by the KPMG International member firm in Luxembourg. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash International Executive Alert is an IES publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our IES practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.