KPMG
cutting through complexity™

March 27, 2015
2015-047

flash Alert

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

Belgium – Cross-Border Workers and the 24 Days Condition

by Ferdy Foubert and Liesbeth Copejans, KPMG Tax and Legal Advisers, Brussels (KPMG Tax and Legal Advisers in Belgium is a KPMG International member firm)

A new Belgium-Luxembourg agreement introduces an important change concerning how many working days a cross-border employee resident in one country (e.g., Belgium) can work outside the country of employment (e.g., Luxembourg) before there is a tax consequence.[1]

Why This Matters

There are growing numbers of Belgium-Luxembourg cross-border workers. Oftentimes, they face tricky cross-border employment issues. For instance, such employees with work-days outside of Luxembourg can have complex income tax filing positions that oftentimes result in an onerous administrative burden. On the one hand, they are obliged to prove every work-day in the country of employment; on the other hand they must pay income tax in their country of residence if they have just one day of presence outside the country of employment.

The new bilateral agreement potentially lowers this administrative burden significantly, as employees no longer face a tax liability in their country of residence beginning with the first working day outside their country of employment. This is particularly helpful for employees who have only incidental work-days outside of Luxembourg.

Key Changes with the New Bilateral Agreement

On 16 March 2015, the Belgian and Luxembourg governments entered into this bilateral agreement[2], which still has to be confirmed in a protocol to the Belgium-Luxembourg double taxation treaty. The agreement will allow the employee to work 24 days outside the country in which the employer is established before taxation in the individual's country of residence occurs[3]. We elaborate further on this change below.

Taxability When Working More Than 24 Days Outside the Country – Prior to this change, if a cross-border worker is employed by an employer in the other contracting state, article 15 of the Belgian-Luxembourg double taxation treaty provides that employment income is taxable in the employee's country of residence, except if the employment is exercised in the other contracting state. As from 1 January 2015, a cross-border employee will remain taxable on his total employment income only in the country where his employer is resident provided that he is not working more than 24 days per annum outside of this country. For example, an employee who is resident in Belgium and who is working for a Luxembourg employer will be taxable only in Luxembourg on his total employment income if he works 24 days or less per annum outside Luxembourg. If he works more than 24 days outside of Luxembourg, then Belgium (the country of residence) gets to tax that income. The new rules apply as of 1 January 2015.

Context

In the past few years, the Belgian tax authorities have increased the number of audits of returns in which an exemption for income taxable abroad is claimed. This has resulted in many amendments of income tax returns for Belgian taxpayers employed in Luxembourg who also had work-days outside Luxembourg. In many cases, this also implied that relief for double taxation had to be applied for in Luxembourg. The agreement should help to remedy this issue.

* * * *

Footnotes:

1 See the press release (*Communiqué*) of the Luxembourg government of 16 March 2015 (in French) at: https://www.gouvernement.lu/4572038/16-gramegna-overtveldt .

2 See: http://financien.belgium.be/nl/Actueel/150320_belgi_en_luxemburg_ondertekenen_akkoorden_over_grensarbeid.jsp .

3 According to article 15 of the Belgium-Luxembourg double taxation treaty.

* * * *