GMS Flash Alert

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Belgium - More Details on Revamping Expatriate Tax Regime

Since 1983, Belgium has had a favourable tax regime for expatriates based on a circular letter.[1] However, the Belgian government has announced that in the framework of the 2022 budget – as described in *GMS Flash Alert* 2021-262 (19 October 2021) – the existing expatriate tax concessions will be withdrawn and replaced by a new regime contained in a draft law[2].

The new rules still have to go through the usual law-making processes and will normally be applicable as from 1 January 2022.

WHY THIS MATTERS

The planned changes may dramatically impact the tax treatment of expatriates in Belgium and could affect international assignment policies, the costs of sending expatriate employees to Belgium, and the planning of assignments to Belgium.

It is important to note that taxpayers who qualify for the expatriate tax regime under the new rules will be subject to normal residence rules, unless they can prove they are resident in another country (e.g., their home country). This will have an impact on, among other things, the taxpayers' obligation to report worldwide income – including investment income – in their annual income tax returns.

More Details

Qualifying Employee/Employer

To qualify for the new regime, the employee or director must be either *directly recruited abroad* (by a domestic company which is a subsidiary of the foreign company, or part of a multinational group, a Belgian establishment of a foreign company, or a non-profit association (ASBL-VZW)) or *seconded by a foreign company* that is part of a multinational group (to one or more domestic companies, or one or more Belgian establishments of a foreign company which is a part of a multinational group or a non-profit association (ASBL-VZW)) to carry out a remunerated activity in Belgium.

The employee must comply with several cumulative conditions:

- ✓ for the 60 months prior to the start of employment in Belgium:
    - he has not been a Belgian resident,
    - he has not been living within a distance of 150 km from the Belgian border,
    - he has not been subject to tax as a nonresident for professional income in Belgium, and
- ✓ he must receive a remuneration of more than EUR 75,000 for services rendered in Belgium per calendar year.

The EUR 75,000 figure mentioned above is the employee's gross remuneration (including vacation pay, 13th month, benefits-in-kind, bonusses, etc.) before deductions for social security contributions, but excluding severance pay, compensation for temporary loss of remuneration, and cost proper[3] to the employer (see below on 30 percent).

Specific rules exist with respect to the calculation of the minimum salary requirement of EUR 75,000 in partial tax years (pro rata based on days of employment in Belgium).

The minimum salary of EUR 75,000 is evaluated both at the moment of filing of the expatriate tax application and also during the following years of employment. As such, the employer will have to provide a yearly nominative list to the Belgian tax authorities of the qualifying expatriates at the latest on 31 January of the year following the income year.

No conditions exist regarding nationality (Belgian nationals, foreign nationals, or dual nationals are eligible) and regarding the level of education (see below, however, for foreign researchers).

Nonresident versus Resident

The expatriate will *no longer* be considered as a deemed nonresident, as is the case under the existing expatriate tax regime, and instead will be subject to normal residence rules. Under the new regime, expatriates will thus normally become Belgian tax residents, unless they can provide a residence tax certificate from their home country. This means that they will need to report worldwide income, including their investment income, in their annual income tax return.

Benefits of New Expatriate Tax Regime

The repayment of recurring expenses arising directly from secondment or employment in Belgium is considered tax-free. These costs proper to the employer are equal to 30 percent of the gross remuneration with a cap of EUR 90,000 per year. The payment of these costs proper to the employer are in addition to the individual's gross remuneration.

The costs to the employer are deemed to comprise all regularly-recurring expenses (except school fees), and include:

- additional costs associated with housing in Belgium compared to the country of origin,

- additional costs associated with the cost of living in Belgium compared to the country of origin,
- costs of private travel to the country of origin for the taxpayer, his/her partner, and his/her children of the household, and
- costs associated with the visit to the country of origin on the occasion of a birth, marriage, or death of a family member of the taxpayer or his/her partner.

Subject to certain conditions the following additional costs proper to the employer which are directly paid by the employer or reimbursed by the employer are also tax-free:

- costs relating to relocation to Belgium,
- costs relating to furnishing of the home in Belgium, and
- costs tied to school fees for children in Belgium.

The expatriate must prove the reality and the amount of these expenses by means of supporting documents.

KPMG NOTE

Under the new expatriate tax regime, no longer will tax-free travel exclusion for days worked abroad exist.

Duration of Expatriate Tax Regime and Transitional Period

The new expatriate tax regime will be applicable for a period of five years, with the possibility for extending it by three years.

As a transitional measure, the existing expatriate tax regime will remain applicable for two years (2022 and 2023), but only for expatriates who started working in Belgium before 31 December 2021. Qualifying expatriates can choose between the new and the old regimes.

KPMG NOTE

Expatriates who are currently benefiting from the expatriate tax regime might opt for the new regime if conditions are fulfilled.

In such case, an application needs to be filed by 30 June 2022.

Procedure to Obtain the Expatriate Tax Regime

An electronic application for the expatriate tax regime will have to be filed by the employer within three months following the start of the individual's employment and, if applicable, within three months after the expiration of the first five years of employment. The tax authorities will decide on the request within a period of three months from the receipt of the expatriate tax application. In the event of a positive decision by the authorities, the expatriate tax regime will apply as of the start of the employment in Belgium.

If Conditions Are Not Being Met

The expatriate tax regime will terminate for qualifying expatriates during the five-year employment period (or during the extended three-year period, if applicable) if the employer/company conditions and the minimum remuneration threshold condition of EUR 75,000 are not met.

Specific rules exist in case of a change of employer within the period of employment in Belgium.

Inbound Researchers

The new expatriate tax regime is also applicable for inbound researchers (who are employees but not company directors). A researcher is an employee who, alone or in a group, is exclusively or mainly (at least 80 percent of the working time) carrying out research activities of a scientific, fundamental, industrial, or technical character within a laboratory or a company that carries out one or more research and development programs, and who is in possession of a specific diploma (limited list) or can demonstrate relevant professional experience of at least 10 years.

KPMG NOTE

The main difference with the expatriate tax regime for inbound employees who are not researchers, as stated above, is that there is no condition for the remuneration threshold (i.e., the minimum salary of EUR 75,000 is not applicable for researchers) and that inbound researchers can be recruited from abroad by a domestic company that is not part of a multinational group or that is not a subsidiary of a foreign company.

Next Steps

The draft law on the new expatriate tax regime is not yet final, and the regime's rules may still undergo changes. Expatriate employees in Belgium – or planning to come to work in Belgium – and their employers should consult with their tax service providers about compliance with the new conditions and/or about the choice to remain under the current regime or switch, if applicable, to the new one.

FOOTNOTES:

1 Circulaire. Ci.RH.624/325.294 dated. 08 August.1983. For more on the expatriate tax concession rules, see KPMG's *Taxation of International Executives: Belgium*.

2 See "Accord sur le budget, les réformes et les investissements" on the Belgian prime minister's website at: https://www.premier.be/fr/accord-sur-le-budget-les-r%C3%A9formes-et-les-investissements .

3 "Cost proper to the employer" is terminology used in the Belgian Income Tax Code and refers to costs are inherent/specific to the professional activity. When an employer reimburses such costs, this is not considered taxable income.

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Contact us

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