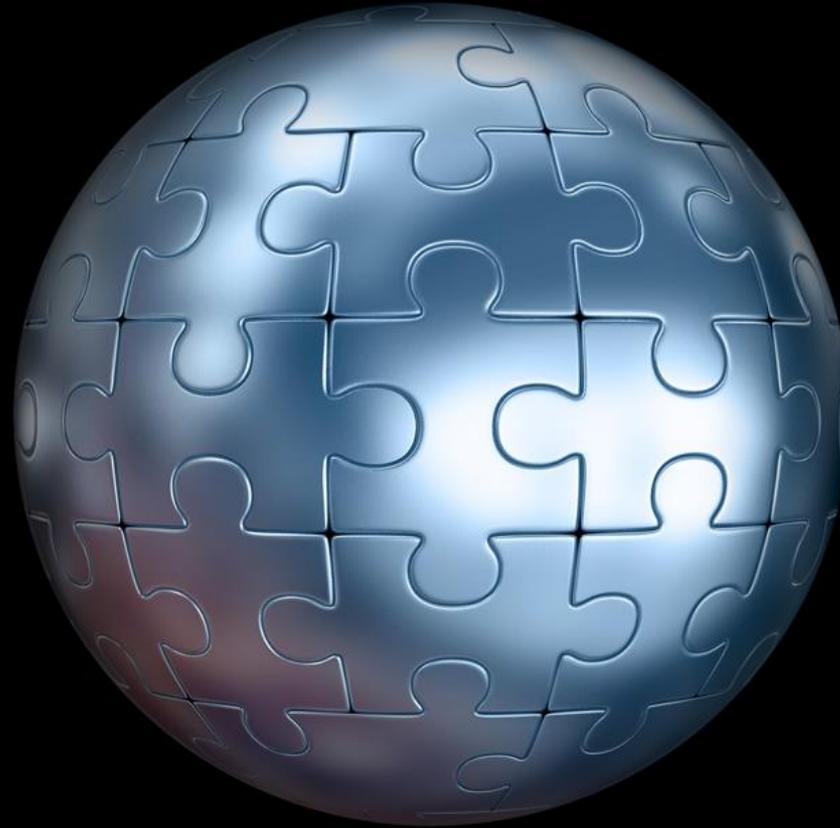


Deloitte.



**Termination of employees from
a cross border perspective**

Deloitte Academy Seminar

17 January 2017

Before we start

Please turn off your mobile phone and laptop



Agenda

Topic

Dismissal cost in Europe

Framework in Europe

Case studies dismissal

- . Assignment
 - . Simultaneous employment
-

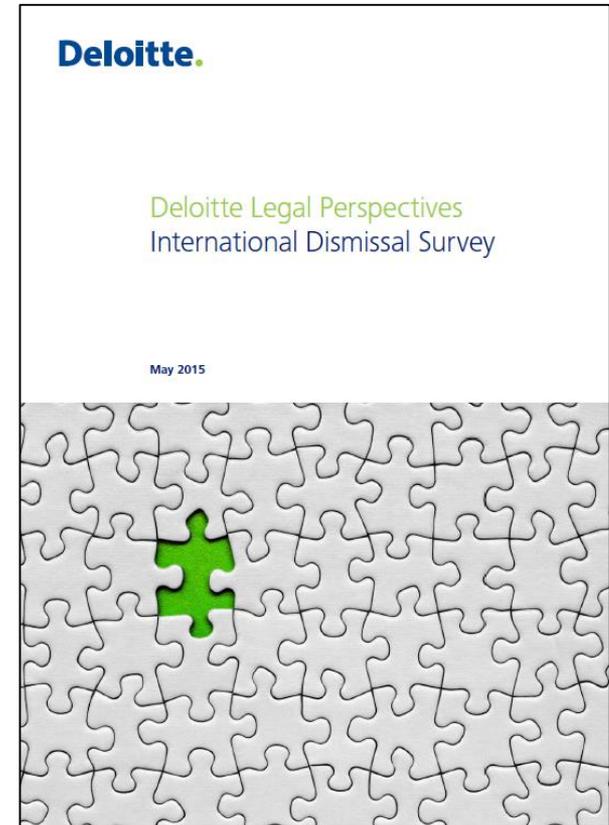
Q&A

Dismissal cost in Europe

Dismissal cost in Europe

International Dismissal Survey

- Third edition released in May 2015
- 31 countries
- Six cost comparisons based on different assumptions (4, 7, or 11 years seniority, different remuneration package)



Dismissal cost in Europe

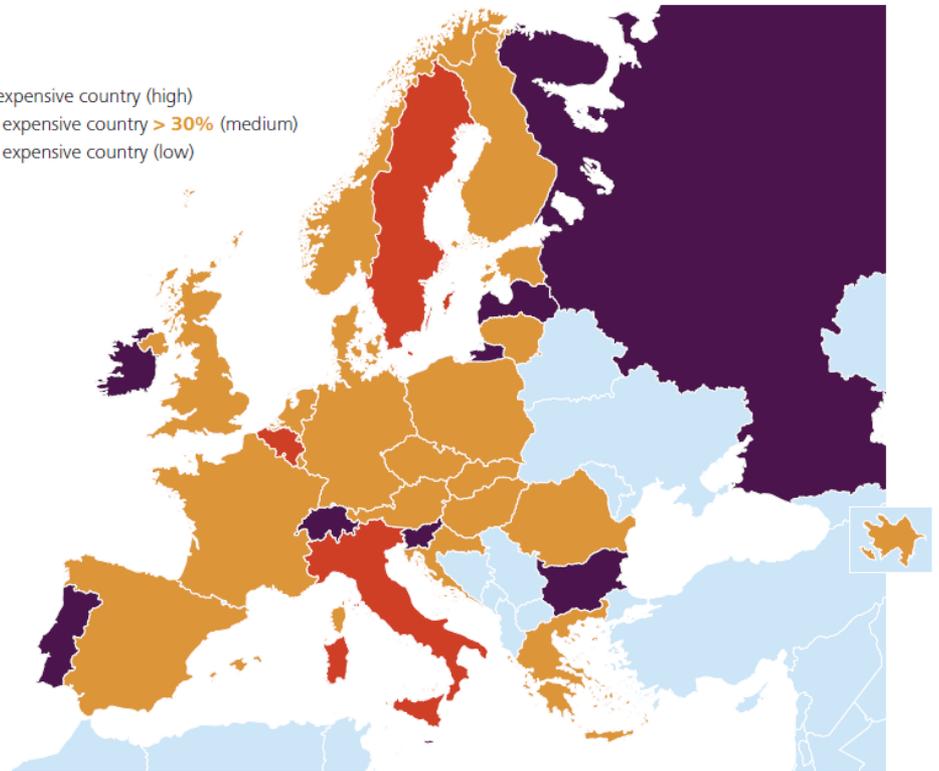
General conclusions

If we compare all scenarios for dismissal **with an objective individual or economic reason**, the top 5 of most expensive countries for employers are:

1. Italy
2. Belgium
3. Sweden
4. Luxembourg
5. Greece

Scenario 1

- > 30% dismissal cost most expensive country (high)
- 30% < dismissal costs most expensive country > 30% (medium)
- < 30% dismissal costs most expensive country (low)



Dismissal cost in Europe

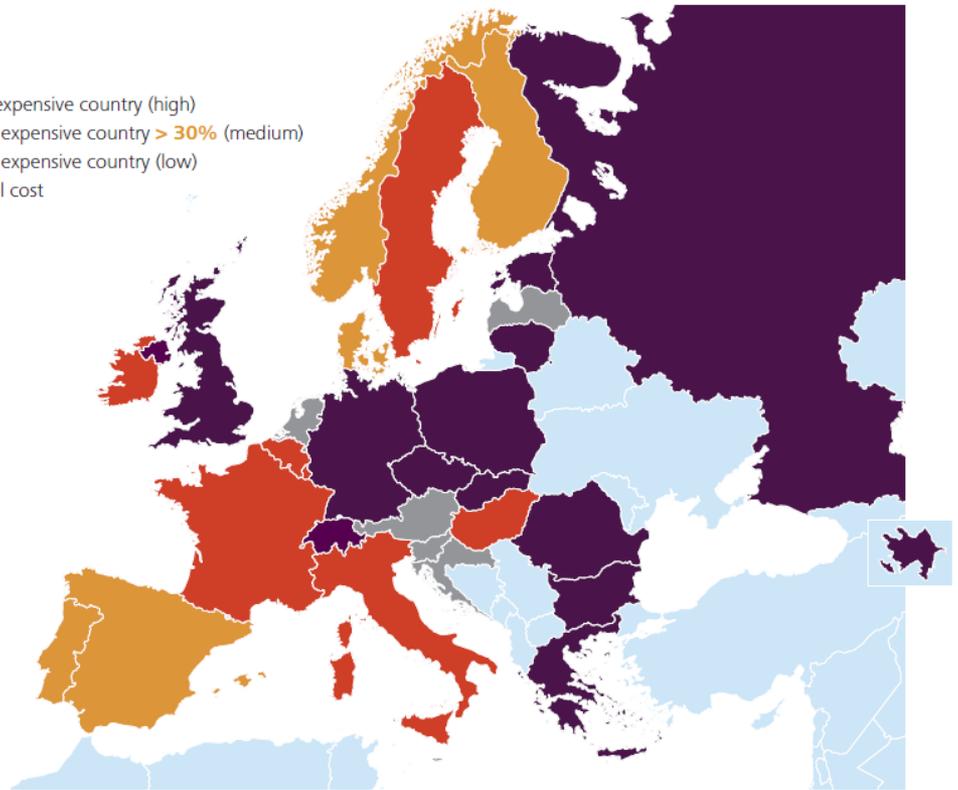
General conclusions

If we compare all scenarios for dismissal **without any objective reason**, the top 5 of the most expensive countries for employers are:

1. Italy
2. Sweden
3. Ireland
4. Luxembourg
5. France

Scenario 2

- > 30% dismissal cost most expensive country (high)
- 30% < dismissal costs most expensive country > 30% (medium)
- < 30% dismissal costs most expensive country (low)
- impossible to assess dismissal cost



Dismissal cost in Europe

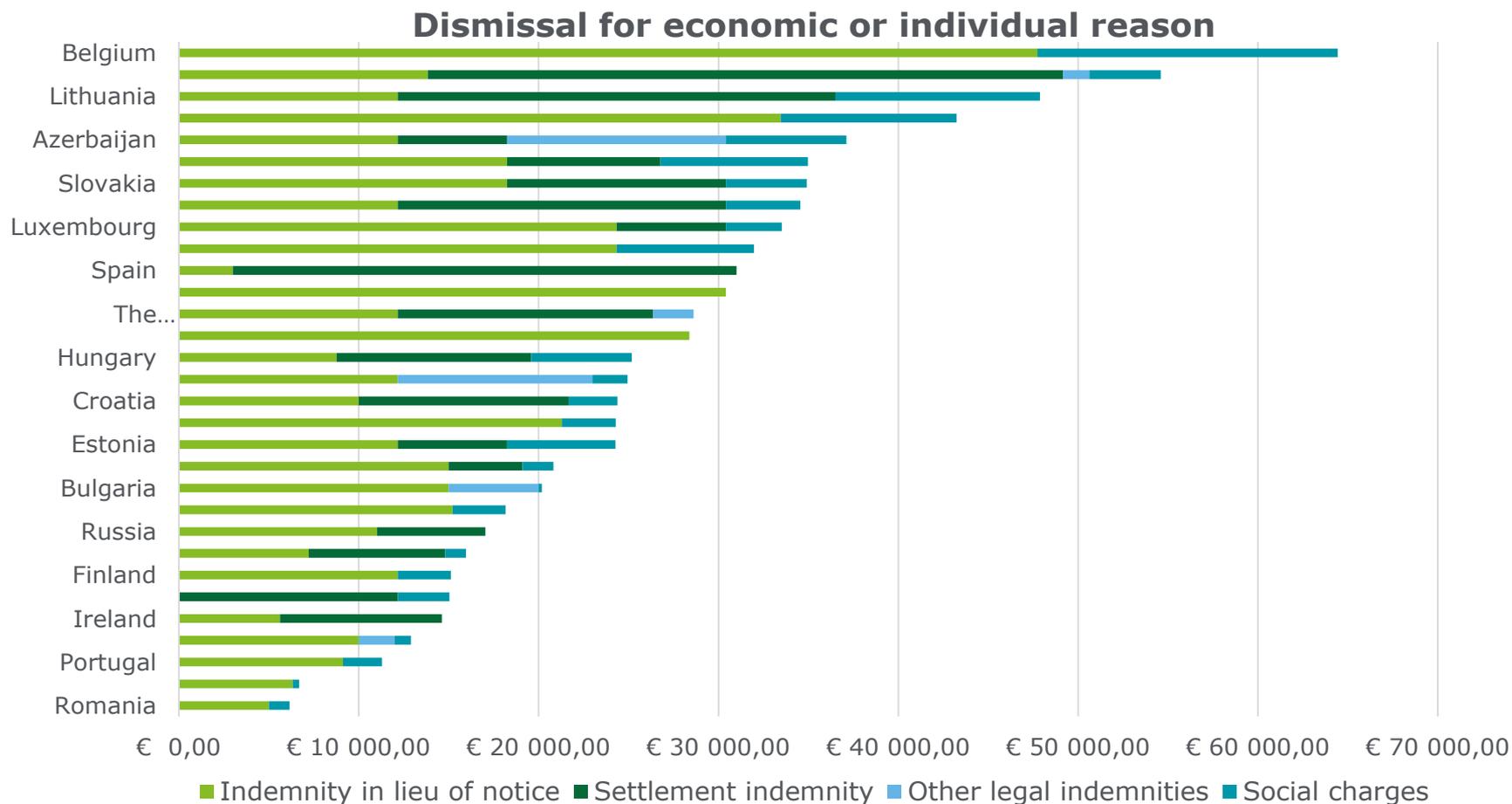
General conclusions

Assumed employee	
Age	35 years
Seniority	7 years
Annual base income	EUR 60,000
Annual variable (performance based) income	EUR 5,000
Annual benefits	EUR 8,000

- **Scenario 1:** employee has been dismissed due to objective individual or economic reasons
- **Scenario 2:** employee has been dismissed without objective reason (unfair dismissal)

Dismissal cost in Europe

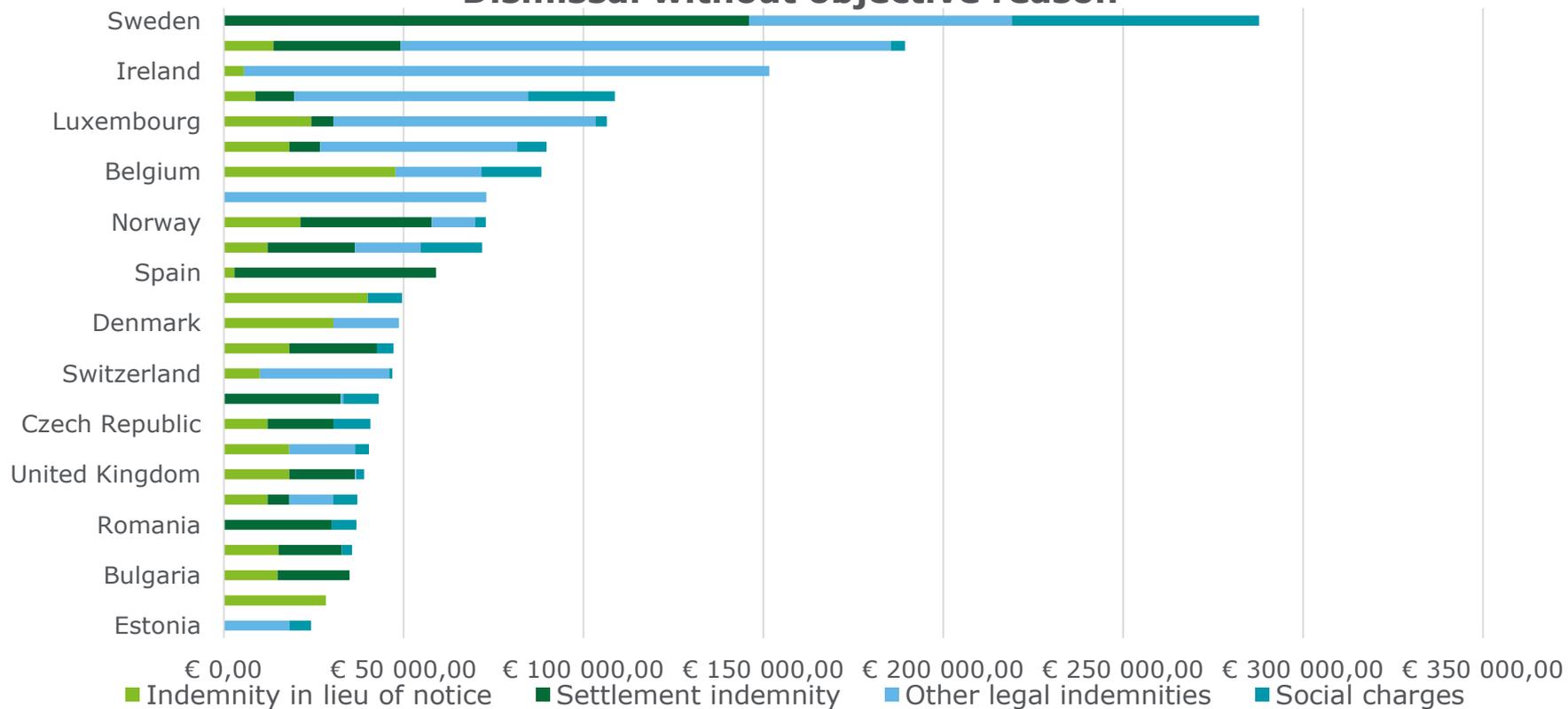
General conclusions



Dismissal cost in Europe

General conclusions

Dismissal without objective reason



Lessons learned & trends

Regulatory body: Upfront approval

The Netherlands

Most countries for some categories of protected employees (pregnant employee, employee representatives)

**Courts:
Post-dismissal review with possible reinstatement**

Austria, Azerbaijan, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden

**Courts:
Judge cannot reinstate but only determine indemnity**

Belgium, Finland, Switzerland, UK, Denmark, Luxembourg

Lessons learned & trends

- In 80% of the countries surveyed, there is no or little difference in cost between a dismissal for **individual** reasons and a dismissal for **economic** reasons
- **West-European countries** face a substantially higher dismissal cost compared to Central-European countries (on average x2)
- In all surveyed countries, **seniority** within the company is the key factor in determining the level of dismissal cost. However, a number of countries have capped the dismissal indemnities (e.g., Denmark / Spain / Switzerland / Netherlands)
- The **computation base** for both the indemnity in lieu of notice and the severance indemnity, where applicable, includes in more than 60% of the countries surveyed the **total remuneration package** (annual base and variable pay as well as benefits in kind). In a limited number of countries, only the base annual pay is taken into account for either the indemnity in lieu of notice
- In 60% of the surveyed countries, **managing directors** do not fall under the compulsory labour rules and parties are free to negotiate dismissal arrangements subject to local corporate governance rules, where applicable. Only a very limited number of countries provide derogatory dismissal rules for high level executives in general

Lessons learned & trends

- In more than 70% of the surveyed countries, a **settlement indemnity** has to be paid on top of the notice or indemnity in lieu of notice to reach a final settlement with the dismissed employee (e.g. most Central-European countries, France, Italy, UK, etc.)
- A **well documented reason** is absolutely key to avoid additional payments for unlawful dismissal
- Be aware of **hidden costs**: severance indemnity, social security contributions, lawyer's cost, outplacement, etc.
- In order to increase **labor flexibility** or promote access to the labor market, several countries have reformed legal provisions regarding termination (e.g., Italy, the Netherlands, Belgium)
- Trend to move away from paying mere indemnities and to promote training to increase chances of **re-employment** (e.g., Austria, the Netherlands, Belgium). This trend does not apply in Central Europe (no additional burden placed on employers, in order to maintain comparative advantage of low-cost workforce)

Framework in Europe

Framework in Europe

Overview framework & main sources



Labor law

Applicable law

- Rome I Regulation on the law applicable to contractual obligations
- EU Directive 96/71 concerning the posting of workers (Posted Workers Directive)
- EU Enforcement Directive 2014/67 of the Posted Workers Directive
- Domestic labor law

Competent court

- Brussels I Regulation on jurisdiction in civil and commercial matters



Social security law

- EU Regulations 883/2004 and 987/2009 on the coordination of social security systems
- Domestic social security law



Tax law

- Double tax treaties and OECD commentaries
- Domestic tax law

Framework in Europe

Labor law – determining the applicable labor law



A. Basic principle within the EU: freedom of choice by the parties

Within the EU, in application of the Rome I Regulation, an individual employment contract is in principle governed by the law chosen by the parties.

B. Restrictions

In spite of the parties' choice, under the said Regulation, employees cannot be deprived of their protection by **more beneficial, mandatory provisions** of the law of the country that would have applied in case of absence of a parties' choice (cf. next slide), namely of:

1. The **habitual working country**, to be assessed by the following criteria:
 - quantitative criterion: where the employee spends most of his working time;
 - qualitative criterion: where the employee has his center of professional interests, namely where he receives his instructions, where or from where he usually performs his obligations, maintains his professional contacts etc.;
 - the habitual working country is not considered to have changed in case of temporary (to be assessed on a case-by-case basis) employment in another country (cf. next slide);
2. The country where **the place of business** in which the employee was **engaged** is situated, if based on the criteria set out above, the habitual working country cannot be determined;
3. The country with which the agreement is **more closely connected** as it appears from the circumstances as a whole.

In case of an assignment, in application of the Posted Workers Directive, the assigned employee also enjoys the **protection of a "hard core" of labor provisions of the country to which the employee is assigned** as of the first day of the assignment.

Framework in Europe

Labor law – determining the applicable labor law



In application of the Rome I Regulation, employees cannot be deprived of their protection by **more beneficial, mandatory provisions** of the law of the country that would have applied in case of absence of a parties' choice. **Are termination provisions "mandatory provisions"?**

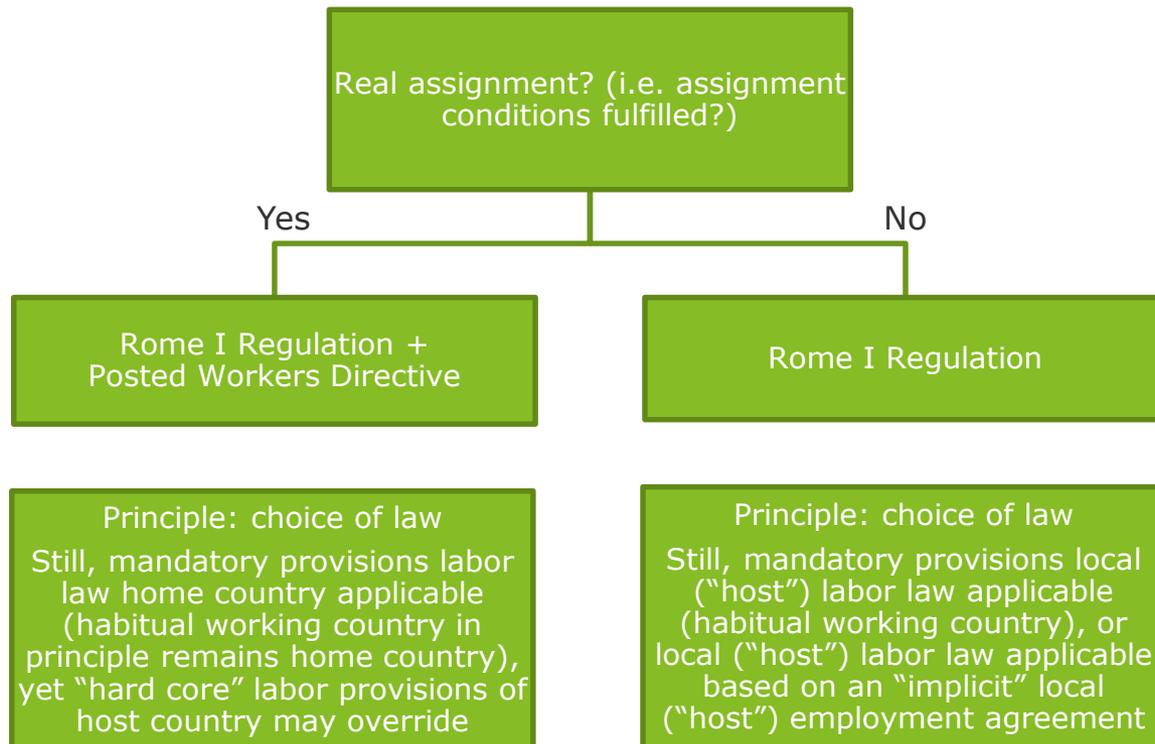
- Germany: no (general termination provisions)
- Italy: yes (according to case law)
- Spain: yes
- UK: yes

If no choice of law was made, the applicable law is that of the country where the employee habitually works, which shall not change if the employee is temporarily employed in another country. **But when does the habitual country change in case of temporary employment in another country, i.e. what qualifies as "temporary"?** The Enforcement Directive of the Posted Workers Directive provides factual elements to be assessed in this regard. General practice and positions of EU Member States differ:

- Germany: 1-3 years according to legal doctrine
- Italy: quite flexible (even for a long term)
- Spain: most likely up until 5 years (parallel with social security)
- Poland: no clear time limit; case-by-case comparison of working periods

Framework in Europe

Labor law – determining the applicable labor law in case of assignments – decision tree



Framework in Europe

Labor law – determining the applicable labor law in case of simultaneous employment – decision tree

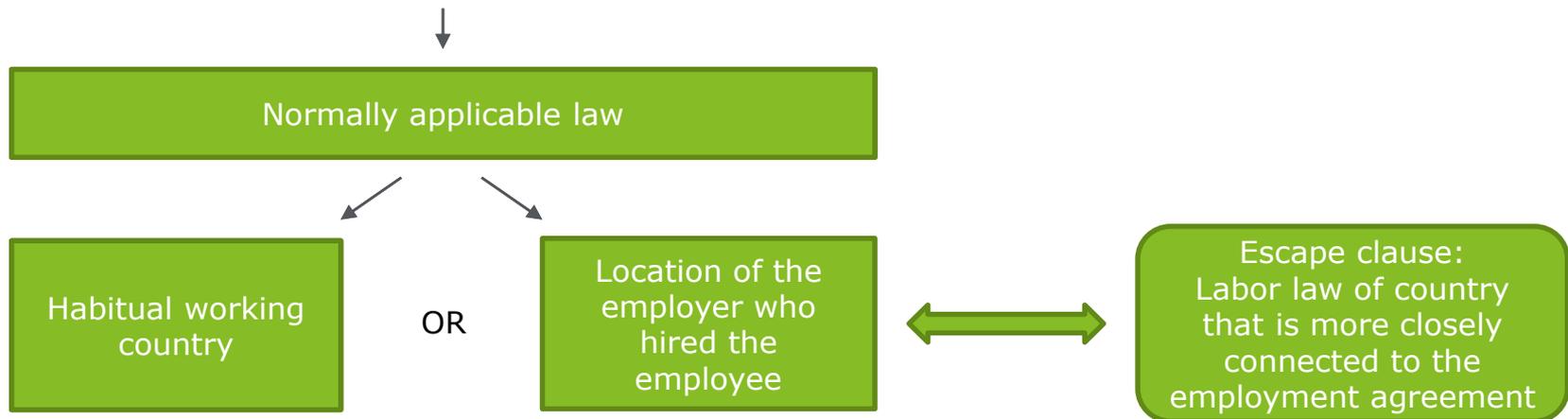


Principle

Choice of law

Restrictions

Employee cannot be deprived of the mandatory labor law provisions of the so-called 'normally applicable law'



Framework in Europe

Jurisdiction – determining the competent court



Within the EU, in application of the Brussels I Regulation (recast), the competent court is determined depending on which party sues the other.

Employer suing the employee

An employee domiciled in the EU can be sued by the employer only in the EU Member State where the employee is domiciled.

Employee suing the employer

The employee can sue the employer:

- at the place of domicile of the employer; or
- at the place where the employee habitually carries out his work; or
- where the place of habitual work is not situated in any one country, the place where the business which engages the employee is or was situated.

Nevertheless, parties can conclude a choice of court agreement only in two cases: after the dispute has arisen or if the agreement allows the employee to bring proceedings in courts other than the one which would otherwise be available for the employee under the rules of the Brussels I Regulation (recast).

Framework in Europe

Social security – determining the applicable social security law



Within the EEA and Switzerland, in application of EU Regulation 883/2004 on the coordination of social security systems, you are in principle subject to the social security scheme of the country where you work, also referred to as the **'you pay where you work' principle**.

However, there are exceptions to this principle, i.e. in cases of assignments and simultaneous employments:

Assignment

- Employees assigned to another country than the one where they normally carry out their activities on behalf of the employer, shall continue to be subject to the **social security of the country where the activities are normally carried out (home country)**; under conditions:
 - employee is subject to home state social security for at least 1 month before assignment;
 - employee is not sent to replace another seconded employee;
 - employee remains under the authority of the sending employer;
 - maximum duration of 2 years (can be extended to 5 years upon mutual agreement between authorities).

Framework in Europe

Social security – determining the applicable social security law



Within the EEA and Switzerland, in application of EU Regulation 883/2004 on the coordination of social security systems, you are in principle subject to the social security scheme of the country where you work, also referred to as the **'you pay where you work' principle**.

However, there are exceptions to this principle, i.e. in cases of assignments and simultaneous employments:

Simultaneous employment

- In case of substantial activities (i.e. at least 25% of working time and/or remuneration) in the residence country → social security of residence country
- In case of no substantial activities (i.e. less than 25% of working time and/or remuneration) in the residence country, working for 1 employer → social security of country of registered seat of the employer
- In case of no substantial activities (i.e. less than 25% of working time and/or remuneration) in the residence country, working for 2 or more employers → social security of residence country or social security of country of registered seat of one of the employers, depending on the location of the employers

Framework in Europe

Social security – applicable social security law on deferred payments



Which social security authorities are competent to levy social security contributions when payments are made at the time that a different social security scheme than the one during the employment, applies?

For example, a (part of the) termination package is paid after the termination when the Belgian social security scheme applies as opposed to the Dutch social security scheme during the employment:



Administrative Commission on EU Regulation 883/2004 decided that the **social security authorities competent at the time the income was generated**, i.e. at the time of the employment in respect of which the payment had been made, **are competent** to levy social security contributions (**relate to principle**).

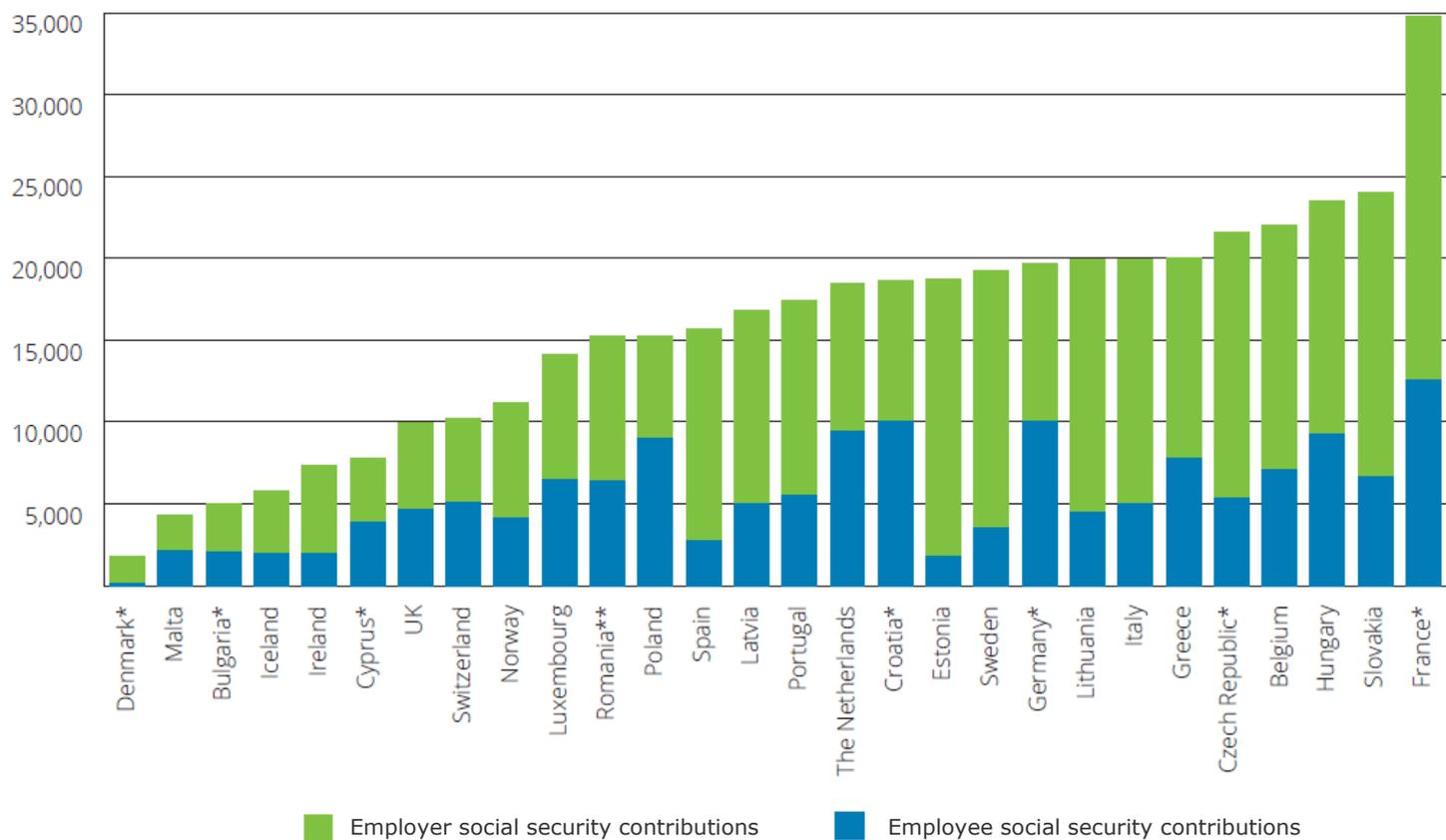
This position is strictly followed by the Belgian social security authorities. However, the application of this decision varies between countries.

Lessons learned & trends

Employer and employee social security contribution rates



Annual gross income of EUR 50,000



(*) Considering the salary is paid in 12 instalments (since there is a monthly capped amount)

(**) Minimum and average national gross salary for 2015

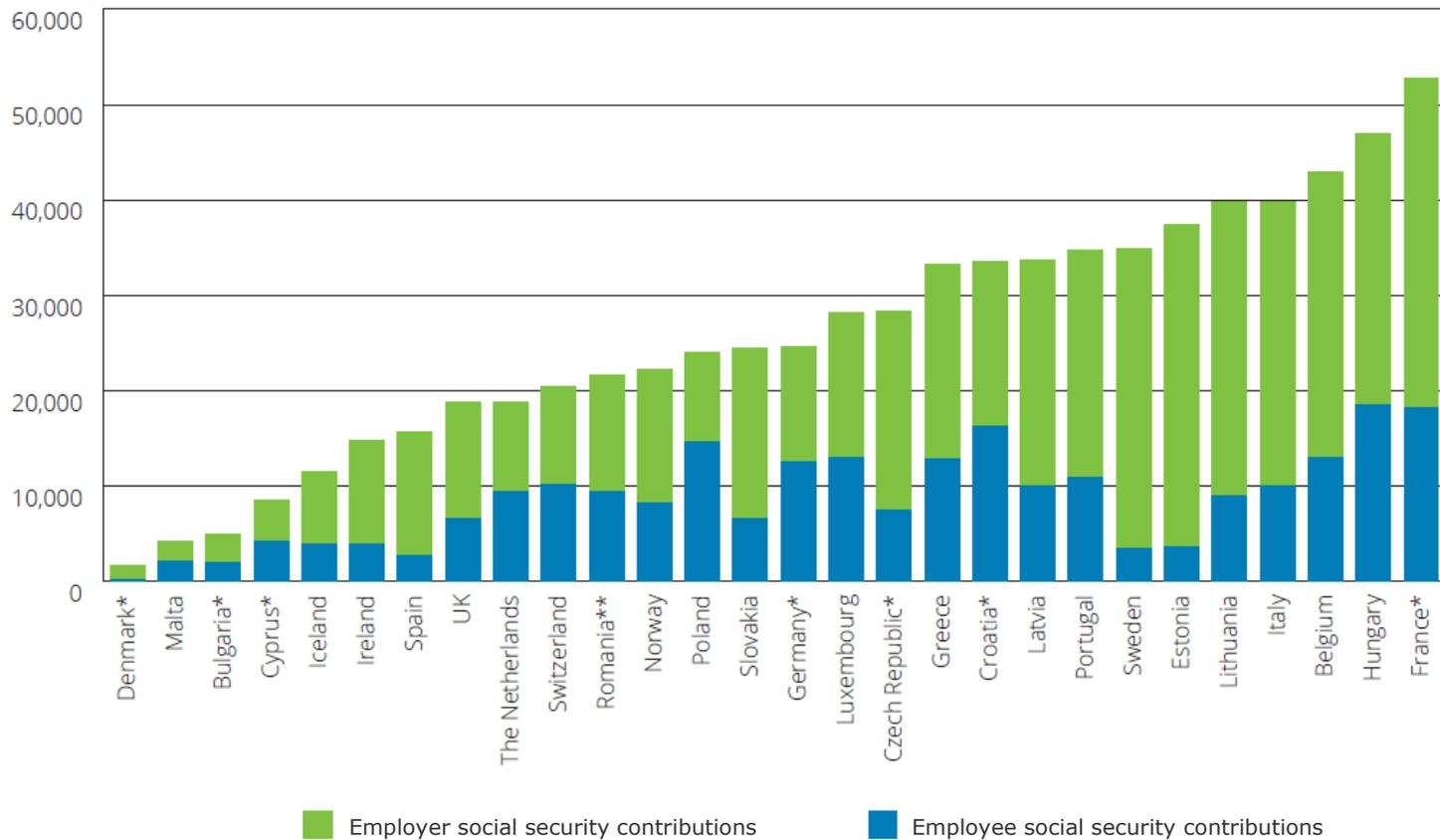
* Data up until December 2015

Lessons learned & trends

Employer and employee social security contribution rates



Annual gross income of EUR 100,000



(*) Considering the salary is paid in 12 instalments (since there is a monthly capped amount)

(**) Minimum and average national gross salary for 2015

* Data up until December 2015

Framework in Europe

Social security – unemployment benefits in cross-border situations



A. Basic principle: unemployment benefits in the EU Member State where you have worked

Within the EU, in application of EU Regulation 883/2004, employees are entitled to unemployment benefits in the EU Member State where they have worked (+ residence requirement)

B. Special rules if the Member State of residence is not the competent country of last activity

If the Member State of residence is not the competent country of last activities, special rules apply (however: December 2016 proposal for revision by EC). These special rules provide a different framework for “frontier workers” and “workers residing outside the competent country of last activity, other than frontier workers”:

- 1. Frontier workers** (persons working in a country other than the country of residence, returning to the residence country at least once a week):
 - Unemployment benefits in the Member State of residence
 - Optional registration as job-seeker in country of last activity
- 2. Workers residing outside the competent country of last activity, other than frontier workers:**
 - Choice: unemployment benefits in the country of last activity (after switch of residence to that country) or in the Member State of residence
 - Possibility to reconsider under certain conditions

Framework in Europe

Tax – determining the applicable tax law



The applicable tax law has to be considered from an **international and national level**:

- The **double tax treaties** concluded between the country of residence and the country of income source allocate the right of taxation
- Upon which the **domestic law** of the appointed country will determine the national taxation rules

The general rule is that employment income falls under **article 15 of the OECD model convention**, the article dealing with employment income.

- If further to a dismissal the salary and benefits remain paid during the notice period, there is no different tax treatment. The salary and benefits further paid are considered income relating to the activities performed during this notice period and thus the general principles as set out under article 15 apply, being the **income is subject to tax in the country in which the activities are performed**. Depending on the factual circumstances, there may be exceptions to this general rule
- However, if the employee is entitled to a severance payment, it needs to be **verified which qualification/nature to be given to this income** as this may have an impact on the sourcing of this income

In order to fully understand the rules as set out in the double tax treaties, the OECD has issued interpretative guidelines, updated in 2014, called the OECD commentaries to the double tax treaties.

Framework in Europe

Tax - termination payments – 2014 OECD guidelines



Nature of the indemnity

1. Notice period during which salary and benefits remain paid

- Employment income (normal rules apply)
- No specific guideline laid down in Commentary, but income clearly relating to activities performed during notice period

2. Redundancy payment

- Employment income (normal rules apply)
- New Commentary: "2.7 A different situation is that of a severance payment (also referred to as a "redundancy payment") which an employer **is required (by law or by contract) to make to an employee whose employment has been terminated**. Such a payment is often, but not always, calculated by reference to the period of past employment with the employer. Absent facts and circumstances indicating otherwise, such a severance payment should be considered to be **remuneration** covered by the Article **for the last 12 months of employment**, allocated on a **pro-rated basis to where the employment was exercised during that period**; as such it constitutes remuneration derived from that employment for the purposes of the last sentence of paragraph 1."

Framework in Europe

Tax - termination payments – 2014 OECD guidelines



Application of 2014 OECD Commentary

- Commentary (2014) **more recent** than treaty
- If fair interpretation supported by text of existing Double Tax Treaty (in force)
 - I.e. clarifications, etc.
 - Application of most recent Commentary in principle allowed
- If interpretation not part of / not supported by text of existing Double Tax Treaty (in force):
 - - Either “gap” in the agreement is filled (“gap filling Commentary”); or
 - - Commentary is reversing prior positions
 - Application of most recent Commentary not allowed

Framework in Europe

Tax - termination payments – Belgian '*current*' tax authorities' position



Treaty application (taking into account 2014 OECD Commentary) ⇔ Belgian tax authorities' position:

Nature of payment **influences application of treaty allocation rules** (circular letter 25 May 2005) (!)

- If compensating nature
 - Link with professional activities exercised **at moment when employment agreement is terminated**
 - All countries in which employed at moment of termination of the agreement are competent to tax (pro rata)
- If non-compensating nature
 - Link to all (present and past) activities performed in framework of the terminated employment relationship
 - All countries (in which currently or previously employed) are competent to tax (pro rata)

Framework in Europe

Tax - termination payments – Belgian '*current*' tax authorities' position



1. Severance payments made in accordance with **Belgian employment law**

- Non-compensating nature
 - Extra-legal entitlement, on top of legal entitlement(s)
 - Different parameters taken into account
- Compensating nature
 - Legal entitlement

2. Severance payments made in accordance with **foreign employment law**

- Non-compensating nature
 - If the severance payment is **granted automatically** based on different criteria such as seniority (the legal system does not provide for a notice period), the payment should be considered as non-compensating
- Compensating nature
 - A contrario, it can be assumed that the payment is considered as compensating if – like in Belgian employment law - the severance payment is **paid in lieu of a notice period**

(!) **No legal basis** for Belgian tax authorities to apply this distinction

- “Ubi lex non distinguit, nec non distinguere”
- Principles of interpretation of (tax) law

Framework in Europe

Tax - termination payments – Belgian 'current' tax authorities' position



The Belgian tax authorities are currently updating their circular letter as they informed us that they will align their position with the 2014 OECD commentaries and issue a new circular letter. In the meantime, the OECD commentaries may be applied and bind the Belgian tax authorities.

Enquete with a couple of other European countries lead to the following concluding:

Austria	Not likely to follow (*)
Czech Republic	No statement
Germany	Does not follow
France	No statement
Hong Kong	Not likely to follow (*)
Italy	Does not follow
Luxembourg	Follows
The Netherlands	Follows
Norway	No statement
Poland	Follows if reciprocity
Romania	No statement
South-Africa	No statement
Sweden	No statement
Switzerland	Follows if reciprocity
United Kingdom	Follows (**)

(*) They look at the total employment history of an individual and not only at the last 12 months, therefore they are not 'likely' to follow the OECD Commentaries

(**) The taxation of garden leave is not limited by Article 15 (1)

Examples

Framework in Europe

Example – assignment

FACTS

- Swedish employee residing in Poland
 - Polish employer
 - Employment agreement governed by Polish labor Law
 - *1st period*
 - 100% in Poland
 - *2nd period*
 - 25% in Poland
 - 75% in Germany
 - *3rd period*
 - *Assignment to Belgium for 2 years*
- **Applicable labor law:** Polish labor law + overriding mandatory provisions of Belgian labor law ('Act of 5 March 2002', transposition of the Posted Workers Directive)
- **Applicable social security scheme:** Polish social security scheme (maintenance of home social security scheme)
- **Applicable tax law:** based on OECD commentaries, Belgian tax authorities will have the right to tax the severance indemnity as the last working place was Belgium

Framework in Europe

Example – simultaneous employment

FACTS

- Dutch employee residing in the Netherlands
 - Employment agreement with Belgian employer, governed by Belgian labor law
 - Employment percentages:
 - 20% in Belgium
 - 30% in the Netherlands
 - 50% in Luxembourg
- **Applicable labor law:** Belgian labor law + possibly mandatory provisions of Luxembourg labor law ('normally applicable law') (depending on all relevant facts)
- **Applicable social security scheme:** Dutch social security scheme (more than 25% of activities in country of residence)
- **Applicable tax law:** based on OECD commentaries, Belgian tax authorities will have the right to tax 20% of the indemnity, as the employee worked during 20% of his entire working time during the last 12 months in Belgium

Case studies dismissal

Assignment

Case studies dismissal

Assignment – facts and assumptions

- **French national, 58 years old** at the time
- Worked as an **employee in France** for a French employer **as of 1 January 2002**
- **As of 1 July 2010**, his French employer **assigned** him to work for the **Belgian HQ company** during a period of 5 years, yet being prolonged **until 30 June 2016**
- He benefitted from the **special tax regime** throughout his Belgian assignment
- **Initially French social security** applicable, **subsequently Belgian social security** applicable during assignment in Belgium due to it being prolonged (longer than 5 year limit for social security)

Case studies dismissal

Assignment – applicable labor law

- Employment agreement and assignment letter: **choice for French law**
- However, the employee could claim that his **habitual working country is Belgium** or that he ***de facto* works for the Belgian company**

Habitual working country is Belgium

- Should Belgium be considered the habitual working country (based on the explained criteria to assess this), **Belgian labor law** (incl. termination regulations) would apply (assuming that Belgian labor law is indeed more advantageous to the employee than French labor law)

Case studies dismissal

Assignment – applicable labor law

Belgian company considered *de facto* employer

- Should the Belgian employer be considered the *de facto* employer, he would have an “implicit” **Belgian employment agreement** (next to his existing French one – it being in a suspended state), entailing that **Belgian labor law** (incl. termination regulations) would apply to the assignment period (assuming that Belgian labor law is indeed more advantageous to the employee than French labor law)
- Risk of **qualification as prohibited “lending of personnel”**, *cf.* Labour court of appeal Brussels 2011: prohibited lending of personnel due to transfer employer’s authority to Belgian employer based on:
 - Decisions regarding evaluation and bonus taken by Belgian employer
 - No e-mails nor instructions from French employer during assignment
- Risk of **double claim for termination indemnities**: initial French employment agreement based on French law as well as for the period of the Belgian assignment on the basis of the (implicit) Belgian employment agreement based on Belgian termination rules

Case studies dismissal

Assignment – expat package elements to be taken into account to calculate termination package according to Belgian labor law



To be included

- Base salary
- Bonuses
- Group insurances
- Company car
- Other benefits (mobile phone, laptop)
- Mobility allowance
- Hardship allowance



Debatable

- Housing allowance (most likely included)
- Cost of living allowance
- Tax equalization/ net contracts



Not to be included

- Moving expenses
- Schooling allowance
- Home leave allowance
- Settlement allowance

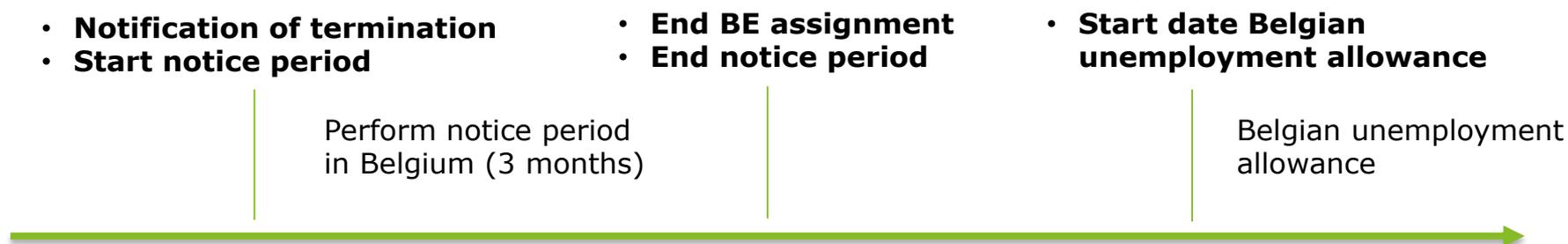
Case studies dismissal

Assignment – financial impact of applicable labor law

	French labor law	Belgian labor law
French or Belgian labor law on his full group seniority	<ul style="list-style-type: none">• Notice period indemnity: 3 months' salary• Dismissal indemnity provided by the CBA: approx. 4 months' salary• Indemnity to cover unfair dismissal (worst case): 12 months' salary Total: approx. 19 months' salary	<ul style="list-style-type: none">• Notice period indemnity: approx. 15 months' salary• Indemnity to cover unfair dismissal (worst case): approx. 1 months' salary Total: approx. 16 months' salary
Belgian labor law only on the assignment period, French labor law on his full group seniority (in case the Belgian company is considered the <i>de facto</i> employer)	Idem as above Total: approx. 19 months' salary +	<ul style="list-style-type: none">• Notice period indemnity: approx. 7 months' salary Total: approx. 7 months' salary

Case studies dismissal

Assignment – impact of remaining in Belgium on social security and unemployment allowance

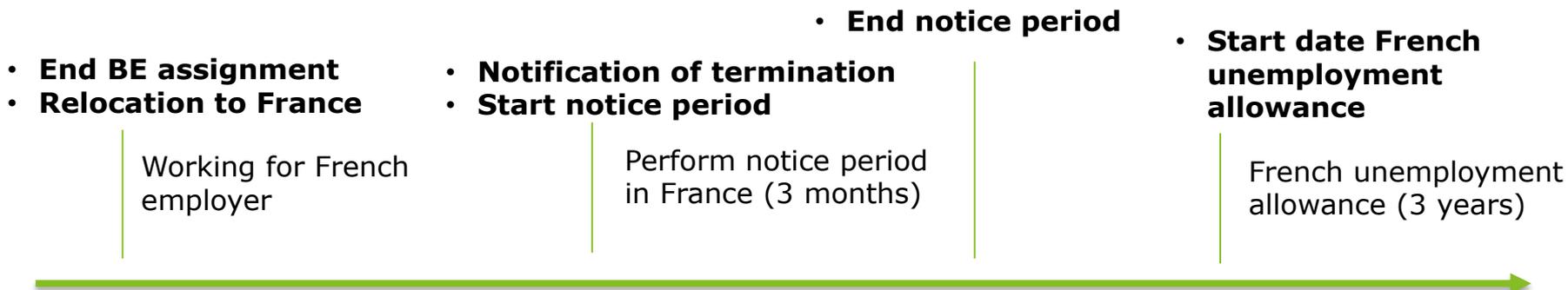


Implications

- **Belgian social security** on termination package (due to prolongation assignment and affiliation to Belgian social security after 5 years of assignment)
- **Belgian unemployment allowance** (unlimited in time), as subject to Belgian social security and residence in Belgium, at approx. EUR 1,623/month, decreasing digressively after the first 3 months

Case studies dismissal

Assignment – impact of remaining in Belgium on social security and unemployment allowance

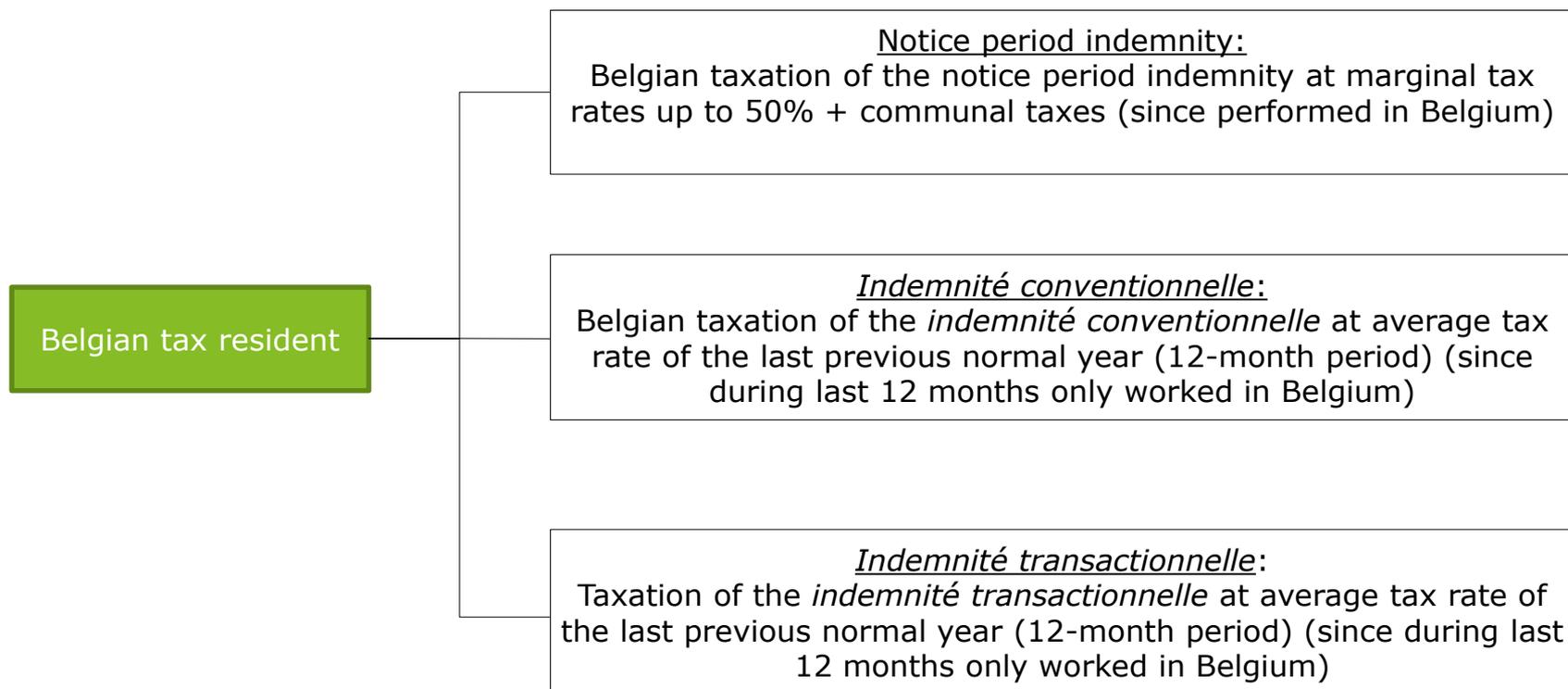


Implications

- **French social security** on termination package (due to relocation to France, working on French territory, “you pay where you work” principle)
- **French unemployment allowance** (for 3 years – special regime for unemployed persons close to pension age), based on the last salary paid during the performance of the notice period in France (substantially higher than the capped Belgian unemployment allowance, up to a maximum amount of +/- 9,000 EUR)
- **NOTE: French unemployment allowance** entitlement also possible without working in FR, when remaining under Belgian social security, but with residence in France upon termination (as “resident of other country (FR) than competent country of last activity (BE), other than a frontier worker”: right of choice BE/FR OR as “frontier worker”: entitlement in FR only)

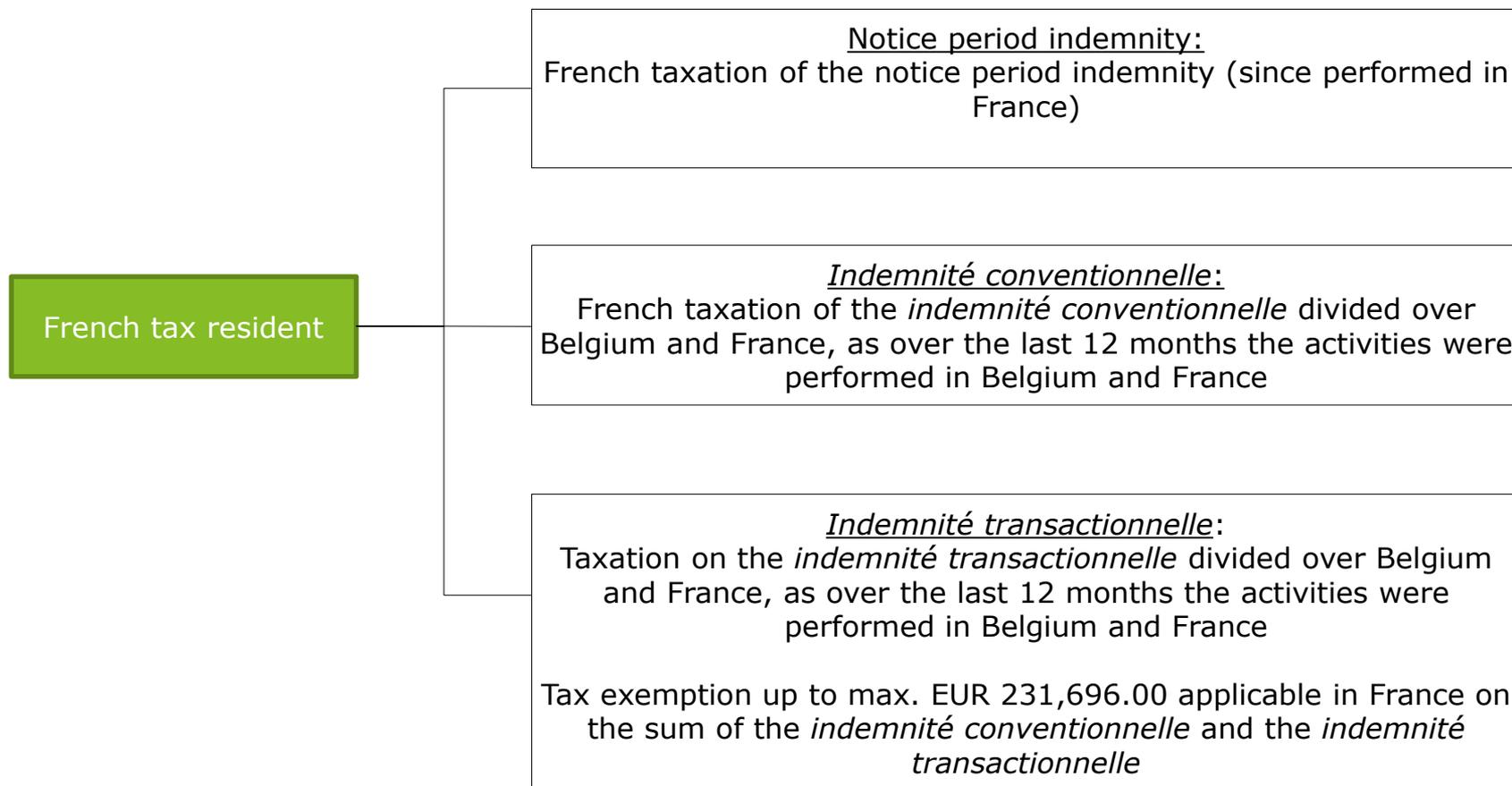
Case studies dismissal

Assignment – tax comments



Case studies dismissal

Assignment – tax comments



Case studies dismissal

Assignment – conclusion

Agreement was found between parties to:

- **End the assignment** on 30/06/2016
- **Repatriate the employee to France** on 01/07/2016 and establish residency in France as of that date
- **Perform x months** in France and **terminate** on 31/12/2016 to ensure:
 - **French social security;**
 - application of the **French unemployment regime** as of the first day (up to 3 years);
 - **Taxation divided over Belgium and France.**

A **settlement agreement** was concluded, based on **French law** only

Parties benefitted from the **tax exemptions in France**

Simultaneous employment

Case studies dismissal

Simultaneous employment – facts and assumptions

- **Belgian national** and **resident**
- **Started working** for the group **as of 29 July 2002**
- **Simultaneous employment setup** in the course of employment and at moment of termination:
 - **Belgian company A: 10.5%**
 - **Belgian company B: 31.5%**
 - **Dutch company: 42%**
 - **Luxembourg company: 16%**

Case studies dismissal

Simultaneous employment – facts and assumptions

- **Framework agreement** with **Belgian labor law (incl. termination regulations)** chosen to be applicable
- **Local employment agreements** in the Netherlands and Luxembourg with **Belgian labor law (incl. termination regulations)** or **the local labor law** chosen to be applicable
- **Director mandates** in several group companies and **statutory director mandate in the Dutch company**
- Due to the statutory director mandate in the Netherlands, **no prior approval for the dismissal was necessary**
- **Belgian social security** applicable (performing more than 25% of working time in Belgium)

Case studies dismissal

Simultaneous employment – applicable labor law

- *Cf.* discussion of applicable law to determine termination rights:
 - **Basic principle: freedom of choice by the parties** → Belgian or local labor law (depending on the agreements)
 - **Restriction:** employees cannot be deprived of their protection by **more beneficial, mandatory provisions** of the law of the country that would have applied in case of absence of a parties' choice, namely of: the **habitual working country**, the country where the place of business through which the employee was engaged is situated, or the country with which the agreement is more closely connected
- In the end, **Belgian termination regulations are more beneficial** to the employee than Dutch or Luxembourg termination regulations → Belgian termination regulations applied to totality of simultaneous employment setup

Case studies dismissal

Simultaneous employment – applicable labor law – overview legal vs. contractual termination costs

	Local statutory dismissal provisions	Contractual (Belgian law)
Dutch part	<ul style="list-style-type: none">• Notice period indemnity: 3 months' salary• Transition compensation: 3.5 months' salary Total: 6.5 months' salary	<ul style="list-style-type: none">• Notice period indemnity: 12 months' + 12 weeks' salary Total: 12 months' + 12 weeks' salary
Luxembourg part	<ul style="list-style-type: none">• Notice period indemnity: 6 months' salary• Transition compensation: 2 months' salary Total: 8 months' salary	<ul style="list-style-type: none">• Notice period indemnity: 12 months' + 12 weeks' salary Total: 12 months' + 12 weeks' salary
Belgian part	<ul style="list-style-type: none">• Notice period indemnity: 12 months + 12 weeks' salary Total: 12 months + 12 weeks' salary	<ul style="list-style-type: none">• Notice period indemnity: 12 months' + 12 weeks' salary Total: 12 months' + 12 weeks' salary

Case studies dismissal

Simultaneous employment – tax comments

According to the OECD rules, severance payments are to be considered as payments for remuneration of employment and fall under the scope of Article 15 of the OECD Model Convention.*

The following principles apply for the allocation of taxing rights over the remuneration of employment:

1. You pay where you work – remuneration is taxable in Work State;
2. You pay where you reside – remuneration is taxable in Resident State, only in the following cases:
 - The employee is present in the Work State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; or
 - **The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State;** or
 - The remuneration is not borne by a permanent establishment which the employer has in the other State.

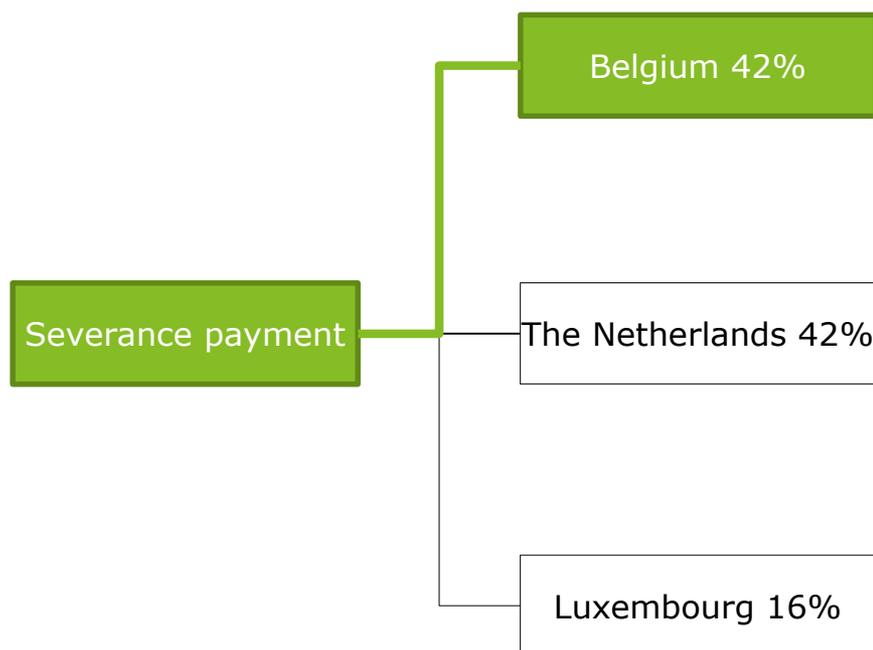
OECD Commentaries relating to severance payments:

*“Absent facts and circumstances indicating otherwise, such a severance payment should be considered to be **remuneration covered by [Article 15 of the Model Convention] for the last 12 months of employment**, allocated on a pro-rated basis to where the employment was exercised during that period.”*

* These principles are based on the Model Convention provided by the OECD, which does not have a binding status. States may deviate from these provisions in their double tax treaties. It is therefore strongly advised to always check the relevant double tax treaty in every single case.

Case studies dismissal

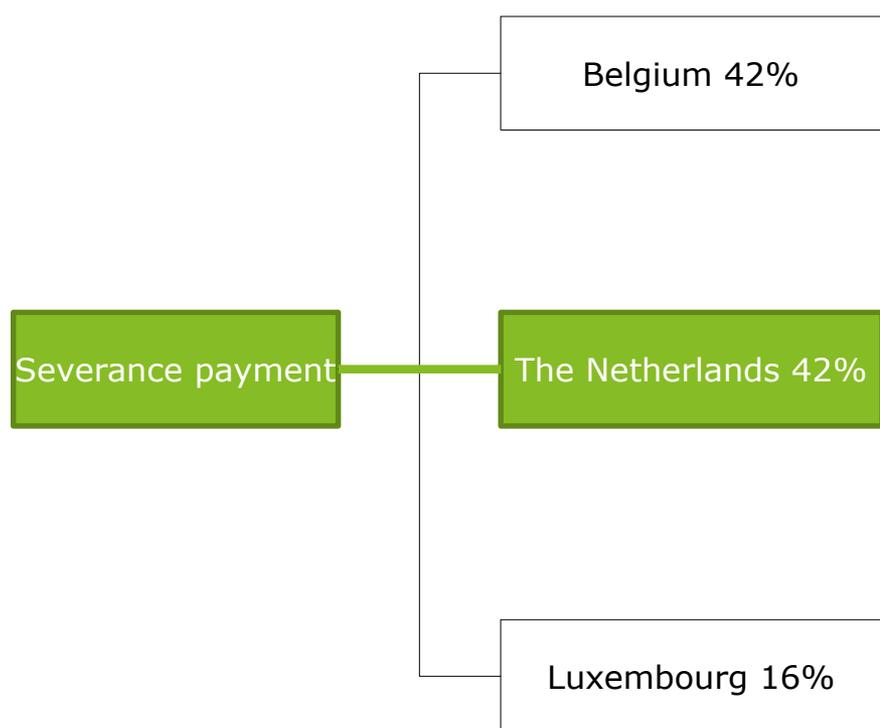
Simultaneous employment – tax comments – application to the case at hand



- Right of taxation is granted to each country in which the individual has worked during the last 12 months (new OECD)
- Follows the contractual split
- Severance payment : 42%
- Taxation:
 - Taxed separately at the average tax rate of the previous year
 - 8% communal taxes on Belgian and exempted Dutch part

Case studies dismissal

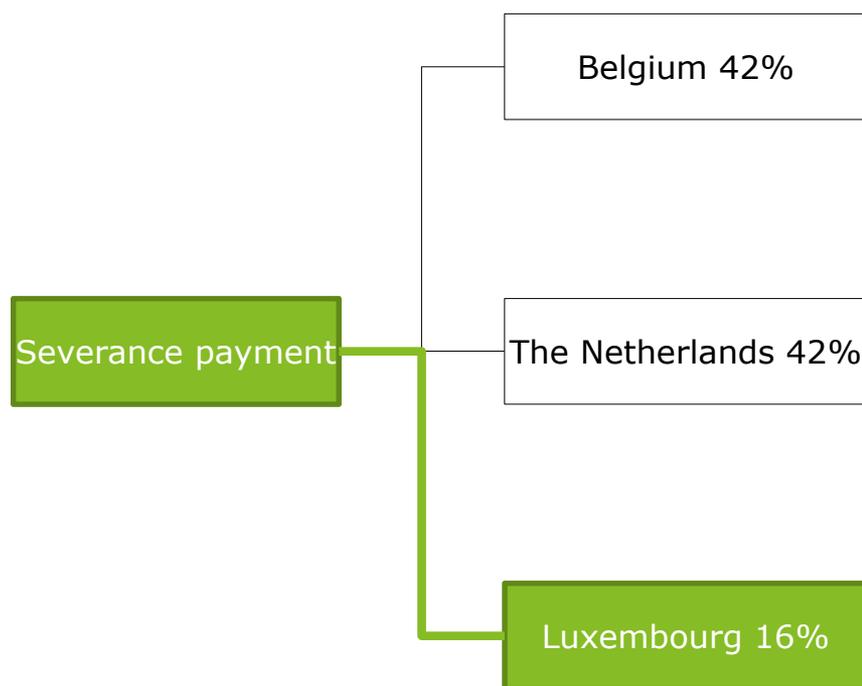
Simultaneous employment – tax comments – application to the case at hand



- Based on last 4 years (High Council of Justice) or last 12 months (new OECD):
 - Follows the contractual split
- Severance payment: 42%
- Taxation:
 - No exemption
 - Progressive tax rates:
 - 0 – 19K => 36,5%
 - 19K – 33K => 42%
 - 33K – 57K => 42%
 - Above 57K => 52%

Case studies dismissal

Simultaneous employment – tax comments – application to the case at hand



- Follows OECD commentaries (last 12 months): follows contractual split
- Severance payment: 16%
- Taxation:
 - Legal severance payment (6 months)
 - Voluntary severance payment (2 months)
 - Delta severance payment:
 - Taxed according to non-periodical salary (max. 43,60%)

Case studies dismissal

Simultaneous employment – conclusion

- **Settlement agreement** with all concerned parties under Belgian law, including a **clause waiving any claims** regarding the employment relationship with any of the employers
- **Total termination package paid out through the different employers** in the different countries to ensure a **tax efficient solution**

Q&A



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