



Global Employer Services Total Reward and Global Mobility Alert

Draft bill including new tax regime for expats submitted in Parliament

Last week, the draft program law ([Dutch](#) | [French](#)) was submitted in the Belgian Chambre of Representatives.

One of the most eye-catching measures in this bill is the new tax regime for “inbound taxpayers and inbound researchers”, replacing the administrative circular on the “special tax status for foreign executives in Belgium”.

This alert summarises the key features of the new regime, based on the draft program law as submitted in the Chambre. Needless to say that the bill still may be subject to amendments.

Background

Belgium has for many years offered an attractive special tax regime for foreign executives and specialists temporarily employed in Belgium. Broadly, under the special expatriate regime:

- The employee is considered a non-resident, meaning that only Belgian-source income is taxable in Belgium;
- The employee is entitled to exclude tax-free allowances (within certain limits) from taxable income; and
- Taxpayers may exclude from taxation the proportion of compensation relating to days spent on business outside Belgium.

The regime has been a clear differentiator in helping companies to attract and retain talent and expertise in Belgium in a competitive global environment.

The regime was introduced via a circular letter and is not embedded in legislation. The lack of legal basis, the complexity of implementation of the regime, and the fiction of deemed non-residency have all put pressure on the application of the regime.

The proposed new regime submitted to Parliament would align the Belgian regime more closely with that of neighbouring countries and provide a legislative basis for the regime. Considering the changes in the scope, conditions, and benefits of the new regime, it is expected that there will be a significant effect on all companies using the special tax regime as an incentive to attract or retain top talent in Belgium.

Key features of the new regime

Conditions

For employees and self-employed executives in charge of day-to-day management of the company who do not qualify as “researchers” (see below), the following conditions would apply:

- A minimum gross compensation threshold of EUR 75,000 (before payment of an additional lump sum “cost proper to the employer” of up to 30% (see “Benefits” below)). The elements on which the 30% is calculated must be contractually agreed. The threshold would be pro-rated where the employment/directorship does not cover a full calendar year.;
- During the 60 months prior to the start of the employment in Belgium the individual must:
 - Have lived at least 150 kilometres from the Belgian border;
 - Not have been considered Belgian resident; and
 - Not have been subject to Belgian tax on professional income in Belgium; and
- The individual must be recruited directly from outside Belgium by a Belgian entity (not necessarily part of a multinational group) or a not-for-profit organisation.

Belgian nationals satisfying all of the above conditions also may qualify for relief under the new regime.

For qualifying researchers as defined in the legislation the minimum compensation threshold would not apply.

Benefits

- The employer may pay an additional tax-free cost proper to the employer of up to 30% (capped at EUR 90,000) on top of the agreed compensation. A lower percentage or exclusion of specific types of income is also possible (but should be contractually agreed). The EUR 90,000 threshold would be pro-rated where the employment/directorship does not cover a full calendar year.
- It is expected and hoped that the social security position would be aligned with the tax exemption however an explicit exemption of social security is not included in the draft bill submitted to Parliament ;
- The payment of school fees and certain relocation expenses would continue to be tax exempt, subject to conditions;
- The benefits under the special regime would be available for an initial period of five years, with a possible three-year extension; and

- The new regime could continue to apply where there is a change of employer (and provided all other conditions are met).

Belgian residency

Under the new regime, individuals would be Belgian tax resident, as opposed to the default of not resident for Belgian tax purposes under the current regime, resulting in additional tax and other reporting formalities. It still would be possible to establish Belgian non-residency where an annual residency certificate is provided by the other state. On the other hand, individuals would be entitled to invoke double tax treaties concluded by Belgium to prevent potential double taxation.

Procedure

- The application process for the new regime would be shortened, requiring applications to be made within three months after joining the company or not-for-profit organisation (reduced from six months following the month in which the assignment starts under the current regime); and
- Employers would be required to provide an annual listing of beneficiaries to the tax authorities by 31 January of the following year.

Transitional measures

Detailed and complex transitional measures with opt-in/opt-out mechanisms are foreseen which will require close attention and case-by-case consideration.

Individuals who have been in Belgium and subject to the current special expatriate tax regime for more than five years and individuals subject to the current regime who have been in Belgium for less than five years but would not meet the conditions to qualify for the new regime, may continue to benefit from the current regime until 31 December 2023, provided they meet all the requirements of the existing regime. They then would become Belgian tax resident as from 1 January 2024, unless tax resident in another state.

Those individuals who have benefitted from the current special tax regime for less than five years and also would meet the conditions to qualify for the new regime would have the choice either to opt-in to the new regime (for the remainder of the five plus three years) or to opt-out and remain subject to the current regime until 31 December 2023 (provided they meet all the required conditions).

The employer's request (on behalf of each individual separately) in order to opt-in to the new regime would need to be made and communicated to the Belgian tax authorities by 31 July 2022. When not able or not willing to opt-in, no communication would be required. .

How can Deloitte Belgium assist?

Our dedicated and multidisciplinary team of income tax, reward, and employment law specialists is able to assist employers with all compliance related, communication, and change management matters linked to such a major potential change in the field of mobility, reward, and talent. This may include the following:

- Assessment of the cost impact for an organisation and/or its executives and employees;

- Support to customise communication and change management plans for all affected stakeholders;
- Scenario planning for expatriates, employees, and their employers;
- Individual analysis of the opt-in/opt-out possibilities;
- Review of contracts and making amendments to those contracts or drafting of addenda where appropriate;
- Draft, review, and assess the value added by company policies;
- Support in reviewing talent and reward strategies and
- Provision of information sessions.

Contacts

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