



Global Employer Services

Individual tax

Belgium concludes temporary mutual agreements for cross-border workers during COVID-19

In line with the [OECD's recommendations](#), Belgium is concluding mutual agreements with neighboring countries regarding the allocation of taxing rights where employees have been unable to travel to their usual country of employment, and have instead been required to work from home as a consequence of COVID-19.

Belgium has to date concluded agreements with France (19 May 2020), Germany (6 May 2020), Luxembourg (19 May 2020), and the Netherlands (30 April 2020) regarding cross-border workers. In addition, specific agreements for frontier workers have been concluded with France (13 March 2020), and Luxembourg (17 March 2020). For further details, see the Deloitte alerts of [8 May 2020](#) and [17 March 2020](#).

The agreements with [Germany](#) and the [Netherlands](#) were extended on 2 June 2020, and all agreements are valid through 1 July 2020.

Approach adopted in the cross-border worker agreements

The cross-border worker agreements provide for days spent working from home to be regarded as workdays completed in the country where the cross-border worker normally would have exercised employment activities had restrictions resulting

from COVID-19 not been in place. The definition does not apply to workdays that normally would have been working from home days, or days worked in a third jurisdiction, regardless of COVID-19 measures. Taxpayers adopting this approach (i.e., treating days worked from home during the lockdown period as days worked abroad), must do so consistently in both countries.

There is a specific "subject to tax" clause in the agreements concluded by Belgium with France, Germany, Luxembourg, and the Netherlands. Employees may choose to apply the definition to exempt from Belgian tax any remuneration derived from home working days spent in Belgium, but subject to the remuneration being effectively taxed in the country where the duties of the employment normally would have been performed.

The cross-border worker must keep appropriate records, including written documentation from the employer confirming the days the employee was required to work from home specifically because of COVID-19 measures.

Based on the wording of the agreements, the employee must opt-in for this treatment. No further guidance has yet been issued on the procedure and timeframe to do so, for example via a request for employer certification, or a new code in the employee's individual annual tax return.

More information regarding the mutual agreements is available on Deloitte's dedicated [COVID-19 workforce webpage](#).

Implications for employers

The definition does not directly apply to employer reporting and withholding obligations, since double tax treaties and mutual agreements do not directly regulate these obligations.

Employers wishing to apply the definition for payroll purposes where the workforce is in a salary split or split taxation situation are, therefore, advised to obtain the express consent of the relevant employees. Otherwise, the regular rules on reporting and withholding will apply, which may lead to different wage withholding tax obligations depending on whether the employee chooses to apply the definition, as wage withholding tax obligations in Belgium apply only to income that is taxable in Belgium.

Confirmation from the Belgian tax authorities regarding the conditions and formalities necessary for employers to apply the definition for payroll purposes would be welcome. Otherwise, the mutual agreements may not provide the intended relief from additional administrative complexities for employers with a cross-border workforce.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Karolien Martens, kamartens@deloitte.com, + 32 9 393 74 92
- Frédéricq Jacquet, frjacquet@deloitte.com, + 32 2 600 65 29

For general inquiries, please contact:
bedeloittetax@deloitte.com, + 32 2 600 60 00

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