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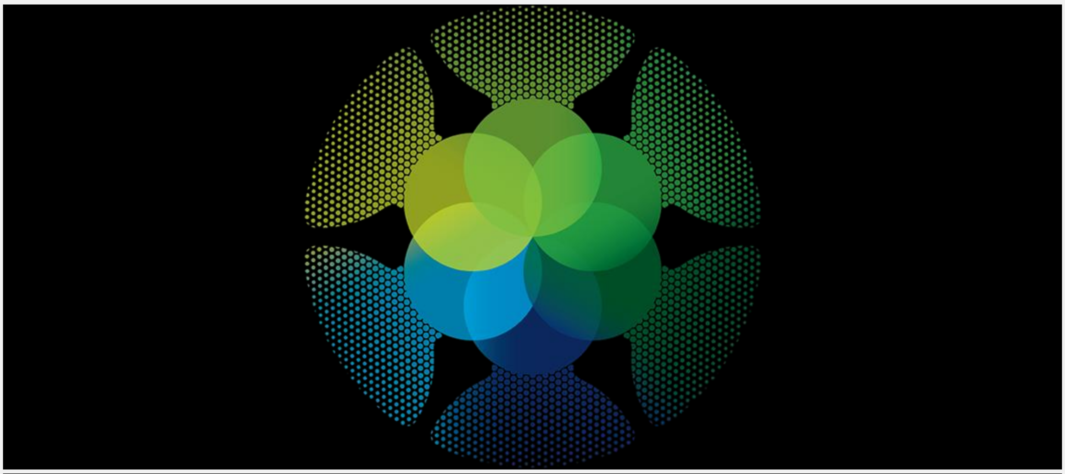

Global Employer Services
COVID-19 | Individual tax

New FAQ on cross-border workers and tax implications of COVID-19 travel restrictions

The COVID-19 pandemic and its consequent travel restrictions forced many cross-border workers to shift their working habits during several weeks to a home office situation, instead of their usual travel patterns, with related unforeseen tax consequences potentially affecting both employers and employees.

In line with the recommendations made by the OECD secretariat, Belgium concluded a series of mutual agreements with neighbouring countries to temporarily derogate from rules laid down in the article 15 of the double taxation agreements concerning the taxation of employees.

These temporary mutual agreements provide a tolerance allowing employers to assimilate days teleworked from the home office to days worked from the (foreign state) location, where the worker would have normally carried out their activity if COVID-19 travel restrictions were not imposed by authorities. The tolerance does not apply automatically but must be requested by workers who would like to benefit from it.

The tax authorities have published a new FAQ (Dutch | French) that provides a series of clarifications on the mutual agreements' scope of application, and details the practical modalities for worker opt-in to benefit from the tolerance.

How can employees opt-in to benefit from the temporary mutual agreements?

To benefit from the COVID-19 driven temporary mutual agreements, employees should have an employer certificate indicating home office days linked solely to COVID-19 measures ready for the tax authorities. They will also need proof of effective taxation of remuneration derived from workdays in the other contracting state, where activities would normally be carried out in the absence of COVID-19 measures.

The employer certificate should contain the following information:

- Employee's personal information (first and last name, address, date of birth);
- The nature of the function performed by the employee;
- A list of homeworking days consequent to COVID-19 measures;
- A list of homeworking days foreseen in the employment contract;
- A list of sick days, vacation days and/or compensation days (if any);
- A sworn statement that the attestation is genuine;
- The date and signature of both employer and employee.

Scope of application

The FAQ confirms that the mutual agreements' coverage is limited to dependent workers regulated by article 15 of the OECD model tax convention (i.e. employees). Self-employed workers and company directors therefore cannot benefit from the tolerance introduced by those mutual agreements.

Interestingly, the FAQ confirms that these temporary agreements do not cover secondments to Germany, France, Luxembourg or the Netherlands. Hence, assignees seconded to those countries for (e.g.) 5 month and have ended their assignment by working from their Belgian home are taxable in Belgium with respect to remuneration derived from Belgian home office workdays.

As a reminder, expatriates in Belgium benefiting from the special tax regime for foreign executives (i.e. special tax status) cannot benefit from the tax treaties concluded by Belgium, and consequently cannot benefit from these mutual agreements unless they reside in any of the other contracting states. Therefore, remuneration derived from days teleworked in Belgium remains taxable in Belgium.

Luxembourg agreement update

Finally, the agreement with Luxembourg has been extended to 31 August 2020.

Contacts

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