

## Amicable agreement on the Double Tax Treaty concluded between Luxembourg and Belgium (24-days rule)

### Luxembourg Tax Alert

#### Summary

On 16 March 2015, the Luxembourg and Belgian governments signed an amicable agreement on the application of the Double Tax Treaty concluded between Luxembourg and Belgium where employment income taxation is concerned. With retroactive effect as of 1st January 2015 onwards, the amicable agreement will include a 24-days tolerance regarding taxation of the days physically worked outside the State of employment.

It has also been agreed that the documents proving the physical presence of an employee in the territory of one State will depend on the nature of the activity. In case of tax audit, when the activity requires the presence of the employee at the place of work, the simple presentation of an employment contract would be considered a proof provided the functions of the employee and the place where the duties are exercised are mentioned therein.

According to article 15 of the Double Tax Treaty concluded between Luxembourg and Belgium (hereafter « DTT»), employment income is taxable in the State where employment is exercised. Nevertheless, the right to tax belongs to the State of residence provided that the following cumulative conditions are met:

- (i) The employee is present in the State of employment for less than 183 days in any aggregate 12-months period commencing or ending in the fiscal year;
- (ii) The remuneration is not paid by or on behalf of an employer established in the State of employment;
- (iii) The remuneration is not borne by a permanent establishment or a fixed base the employer has in the State of employment.

Prior to 1st January 2015, considering the above, a Belgian resident employed by a Luxembourg company was taxable in Luxembourg for the days worked physically in Luxembourg, and in Belgium for any other day worked abroad.

Further to the « Gaïchel VIII » agreement concluded between Luxembourg and Belgian governments, an amicable agreement with retroactive effect as of 1st January 2015 was signed on 16 March 2015 by the Finance Ministers of both countries. This agreement provides that a 24-days tolerance should be considered when applying the provisions of article 15 of the DTT.

Consequently, from the 1st of January 2015 onwards, a Belgian resident employed by a Luxembourg company will remain taxable in Luxembourg on his/her entire employment income provided he/she works less than 25 days outside Luxembourg during a calendar year. Conversely, should the employee work 25 days or more abroad during a calendar year, the remuneration in relation to these non-Luxembourg working days will become taxable in Belgium.

Besides, the supporting evidences to be provided to ascertain the physical presence of an employee in the territory of one State will depend on the nature of his/her activity. When the activity requires the presence of the employee at the place of work, the simple presentation of an employment contract would be considered a proof in the light of the amicable agreement provided the functions of the employee and the place where the duties are exercised are mentioned therein. Moreover, it is interesting to note that under certain conditions, taxpayers will be able to bring forward proof gathered during one recent year, as evidence of their physical presence for previous years. These modalities have been reported in a « [Vademecum](#) », published by Belgian and Luxembourg tax authorities.

For the sake of completeness, it has also been decided to increase to EUR 30 million the amount of the lump-sum financial compensation granted by Luxembourg to Belgium in order to compensate the loss suffered by Belgian municipalities bordering Luxembourg due to cross-border employment. Such compensation amount will be updated every 3 years.

Text of the amicable agreement:

[http://www.mf.public.lu/publications/divers/accord\\_condi\\_180315.pdf](http://www.mf.public.lu/publications/divers/accord_condi_180315.pdf)

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