Belgium and Luxembourg Relax Tax Rules for Cross-Border Workers

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The finance ministers of Belgium and Luxembourg on March 16 signed a mutual agreement introducing, with effect from 2015, a tolerance threshold of 24 days for the taxation of cross-border workers. In other words, if the cross-border worker does not spend 25 days or more outside the state where he usually works, that state will still be able tax his remuneration.

Under the Belgium-Luxembourg income tax treaty, Belgian-resident cross-border workers pay tax in Belgium unless they work in Luxembourg and spend at least 183 days in any 12-month period in Luxembourg, or work for either a Luxembourg employer or a Luxembourg permanent establishment of their employer. However, a 2002 protocol to the treaty clarifies that "paid employment is exercised in the other Contracting State when the activity for which the salaries, wages, and other remuneration are paid is actually exercised in that other State, i.e. when the employee is physically present in that other State to exercise this activity there."

The Belgian tax authorities have been auditing many cross-border workers and asking them to prove that they were physically present in Luxembourg. Many have difficulty proving that they were in Luxembourg for every working day of the year.

The Belgian and Luxembourg tax authorities will establish common rules to audit cross-border workers and to increase legal certainty for all concerned (tax inspectors, workers, and employers). The manual is being amended and will introduce a gradation in the level of evidence to be provided, depending on the activity of the worker. Employees who carry out an activity that requires their presence in the workplace can simply show a copy of their employment contract that clearly states what sort of work they do and where they do it. In some cases, the worker will be able to rely on the evidence gathered for a recent year to justify his physical presence in a previous year.

Furthermore, Luxembourg will pay higher compensation (€30 million) for the tax losses incurred by Belgian communities whose residents are working and paying taxes in Luxembourg. This compensation will be reviewed every three years.

Belgium and Luxembourg have also agreed to exchange information about advance rulings they have issued that relate to their respective residents, since they may be relevant for the other state.

Further, Luxembourg asked Belgium to review the decision that payments to Luxembourg must be reported by Belgian companies. (Prior coverage.)

Since January 1, 2010, Belgian companies and PEs of foreign companies must report in their annual tax return all (direct and indirect) payments they make to tax havens totaling €100,000 or more (article 307 Income Tax Code 1992). If the payments are not reported, they are not tax deductible.

When the payments are reported, they are tax deductible only if the taxpayer can show that the payments were made in the context of actual, genuine transactions with other persons, and not as part of a tax avoidance scheme.

Luxembourg was put on the tax haven list because the OECD Global Forum on Transparency and Exchange of Information concluded that Luxembourg had not effectively or substantially implemented the OECD standard on the exchange of information. The Belgian government acknowledged the efforts made by Luxembourg since then and said it will take them into account when applying article 307 of the Tax Code.

Marc Quaghebeur, De Broeck Van Laere & Partners