

THE REFORM OF THE EXPAT TAX REGIME IN BELGIUM AS OF 1/1/2022

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I. INTRODUCTION

As from January 1, 2022 a new expat regime is applicable in Belgium.

After 38 years, the expat regime (based on an Administrative Circular letter of 8/8/1983) has been updated in Belgium and inserted in the Belgian Income Tax Code, in order to provide more legal certainty and adapt the Belgian tax regime to the legal and tax needs of today.

The purpose of the expat regime was and still is to promote Belgium as an attractive and competitive place to do business, especially for internationally active groups of companies. It must ensure internationally operating companies to assign and hire key global talent and decision makers to Belgium at an acceptable and competitive cost (taken into account the very high individual income tax rates (more than 50%) as of a relative low salary level (approx. 42.000 euro of taxable income) and high (uncapped) social security contributions.

II. GENERAL PRINCIPLES OF THE NEW EXPAT REGIME

TAX STATUS OF THE PERSONS WHO WILL BENEFIT FROM THE NEW EXPAT REGIME

The individuals who will be benefiting from this system will have in principle the Belgian resident tax status. (This in opposition with the previous system where expats were always considered *by fiction* as “non-residents” of Belgium for income tax purposes). This means that as a “resident” of Belgium they have to declare their worldwide income in Belgium. However, a tax exemption with progression can be requested for income which would be taxed outside of Belgium on the basis of a double tax treaty.

SCOPE OF APPLICATION

The expat must be recruited from outside Belgium or seconded to Belgium.

He or she must in the 60months prior to the employment, NOT have been (1) a resident of Belgium (2) nor have lived within 150 km from the Belgium board (3) nor have been taxed as a non-resident of Belgium for professional income in Belgium.

A minimum gross salary of 75,000 euros will in principle be required to apply for the new expat regime, except for the category of “researchers”. For “researchers” no minimum salary is requested but they will need a Master degree or the equivalent of 10 years of professional experience.

TAX BENEFIT OF THE NEW REGIME

In order to make the system attractive a fixed percentage of maximum 30% of the salary can be qualified as non-taxable “costs proper to the employer” in Belgium.

In line with the tax treatment, 30% of the salary can also be exempted from social security contributions in Belgium, but limited to 90,000 euros. This means that above a salary of 300.000 euro (30% of 300.000 euro = 90.000 euro) no tax benefits or social security exemption will be applicable. We hope however, that this cap will be revised or deleted by the government in the future, if it appears that this makes the regime less attractive in comparison with similar systems who already exist in our neighboring countries.

Near to the capped 30%, uncapped costs proper to the employer related to (1) the move to Belgium, (2) related to the furnishing of the house and (3) the school costs paid for the children, will be, under certain conditions, seen as “tax free allowances”.

TERM OF THE NEW REGIME

The regime is applicable for five years, with a possibility to ask for a prolongation of this term, under certain conditions, for three years, which means that the new regime can be applied for a maximum of eight years.

REQUEST FOR APPLICATION

The new expat regime is applicable for expats coming to work to Belgium as from January 1, 2022. A request for the application of this new regime needs to be made in principle within 3 months as of arrival in Belgium (by employer and employee). However, for 2022 a delay will most probably be accepted until July 31, 2022.

TRANSITION PERIOD

The expats who are currently benefiting from the expat tax regime, as laid down in the Administrative Circular letter of 8/8/1983, but would not meet the conditions of the new regime do not immediately lose the benefits of the existing regime as of January 1, 2022. A transition period of two years has been foreseen, until December 31 2023.

It will be important for companies who are actually employing expats, under the actual system, to verify if they will meet the conditions for application under this new regime, as they can opt to switch to the new tax regime. Please note that a request needs to be done with the competent tax authorities before July 31, 2022.

For more specific questions, please do not hesitate contact our specialist, Mrs. An De Reymaeker, Tax Lawyer and Partner (an.dereymaeker@vandendijk-taxlaw.be).

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