

Beneficial tax regime for Highly Qualified Expatriates

Luxembourg Tax Circular L.I.R. n° 95/2 dated 31 December 2010

New Luxembourg tax benefits for highly qualified expatriates working in Luxembourg

On 31 December 2010, the Luxembourg tax authorities issued a new circular detailing the tax treatment of allowances granted to highly qualified expatriates seconded to Luxembourg or directly recruited from abroad. Offering significant benefits and decreasing the cost of employment, this special tax regime for expatriates is a long waited provision. Together with the existing R&D tax regime (please see R&D client briefing on www.cliffordchance.com/publications) this regime will increase the attractiveness of Luxembourg for international groups. The provisions apply to new expatriates coming to Luxembourg as from 1 January 2011.

Effect of the regime

In summary, part of the remuneration package of expatriates who are seconded within international groups (or directly hired from abroad) in order to work temporarily in Luxembourg will be tax exempt in Luxembourg.

- Lump sum indemnities (e.g. cost of living allowance) are deductible up to 8% of the monthly fixed remuneration but may not exceed EUR 1,500 (16% and EUR 3,000 respectively for couples if the partner has no professional activity).

Tax Free Allowances

Specific allowances granted to "highly qualified workers" are tax deductible for the employer but not taxable for the employee. This beneficial regime is granted for a maximum 5 year period (after this period the employer and the employee cannot benefit from the regime). The main allowances are:

- Moving and relocation expenses are fully tax deductible for the employer and not taxable for the employee. These includes moving fees such as housing of his/her family during their trip to Luxembourg, set up and unpacking costs but excluding the original rental agreement termination fee; travelling expenses; fitting out expenses including new furniture and compatible electrical items, etc.);
- Recurring expenses (e.g. monthly rents or rental equalization allowances, heating and electricity bills, vacation flight tickets, tax equalization, etc.) are only deductible up to EUR 50,000 p.a. (or EUR 80,000 p.a. for couples) and may not exceed 30% of the total annual fixed remuneration of the employee. However children's education fees are fully deductible / non taxable if the children are being educated in Luxembourg; and

If you would like to know more about the subjects covered in this publication or our services, please contact:

Employment/Labour law:

[Albert Moro](mailto:Albert.Moro@cliffordchance.com) +352 48 50 50 204

[Isabelle Comhaire](mailto:Isabelle.Comhaire@cliffordchance.com) +352 48 50 50 402

Tax:

[Francois-Xavier Dujardin](mailto:Francois-Xavier.Dujardin@cliffordchance.com) +352 48 50 50 254

[Maxime Budzin](mailto:Maxime.Budzin@cliffordchance.com) +352 48 50 50 456

[Julien Lamotte](mailto:Julien.Lamotte@cliffordchance.com) +352 48 50 50 262

To email one of the above, please use
firstname.lastname@cliffordchance.com

Clifford Chance,
2-4 Place de Paris, B.P. 1147,
L-1011 Luxembourg,
Grand-Duché de Luxembourg
www.cliffordchance.com

Specific Request to be filed

The employer will have to file a request with the Luxembourg tax authorities within 2 months following the start of the secondment or hire. This request must evidence and justify the need and skills of the employee. On a yearly basis (i.e. before 31 January), the employer must provide the authorities with a list of its employees benefiting from this regime. The tax authorities will check annually whether the conditions are met.

Definition of Highly Qualified Workers

The circular applies to employees hired from abroad (or seconded within an international group) in order to work temporarily in Luxembourg. The benefit of the tax allowances are restricted to workers that:

- bring a relevant economic contribution or new added value activity to the Luxembourg business; and
- are Luxembourg tax residents according to Luxembourg tax law during the secondment or hire period but were not Luxembourg tax residents (or subject to tax in Luxembourg on their income from employment) within the last 5 years before his/her start in Luxembourg; and
- have a University degree and high technical skills or at least 5 year experience in the specific industry/sector concerned.

Conditions applicable to the employee

The employees should perform their main activity in Luxembourg and should not take over the position of another employee who does not qualify as a "highly qualified worker". The criteria of "main activity" is not defined in Luxembourg labour law and will be assessed on a factual analysis.

Their fixed remuneration shall be at least equal to the monthly social security ceiling (i.e. a monthly fixed gross remuneration of EUR 8,788 as from 2011).

Conditions applicable to employers

The benefit is only granted to Luxembourg entities employing (or committing themselves to employ) at least 20 people on a full time basis.

The total number of "highly qualified workers" may not exceed 10% of the Luxembourg employees (on a full

time basis). This condition is however not applicable if the employer has been established in Luxembourg for less than 10 years.

Secondment within International Groups

▪ Definition of International Group

In respect of secondments within international groups, the group should be established in at least 2 countries other than Luxembourg.

▪ Secondment Conditions

The Luxembourg entity should enter into a secondment agreement with the initial employer. An employment relationship must exist between the initial employer and the employee during the whole period of secondment. The secondee must have a right to return to work for the initial employer at the end of his/her secondment.

In addition, the secondment arrangement must comply with the provisions of the Luxembourg Labour Code applicable to secondments and where necessary with the provisions of the law dated 29 August 2008 on the free movement of European citizens and on immigration policies.

▪ Secondee experience

The secondee employee shall have at least 5 years of service within the international group or justify at least 5 year experience in the industry/sector concerned.

Conclusion

This new regime is a major stepping-stone for the attractiveness of Luxembourg. Industrial, banking and commercial groups should consider this new opportunity to enhance their Luxembourg business through attracting qualified employees benefitting from tax free allowances. However care needs to be taken to ensure that all the conditions for benefitting from this regime are met.

Clifford Chance can provide you with an integrated service and dedicated team who will be happy to answer your questions, to design a tax efficient remuneration package, to draft the secondment contract in accordance with the Luxembourg labour law and its tax regime, and to file the necessary request and liaise with the relevant Luxembourg authorities.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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