

Beneficial tax regime for Qualified Impatriates

The Luxembourg tax authorities have issued their first circular n°95/2 on 31 December 2010. This circular has been consecutively replaced by two circulars, one dated 21 May 2013 and a last one issued on 27 January 2014. The circular details the tax treatment of allowances granted to qualified expatriates (called impatriates in the circular) seconded to Luxembourg or directly recruited from abroad or hired by a foreign company located in the European Economic Area. Offering significant benefits and decreasing the cost of employment, this special tax regime will contribute to making Luxembourg an attractive place to work for qualified international employees.

Effect of the regime

In summary, part of the remuneration package of impatriates who are seconded within international groups (or directly hired from abroad or hired by a foreign company located in the European Economic Area) in order to work in Luxembourg will be tax exempt in Luxembourg. Concurrently, specific expenses borne by the employer for impatriates will be tax deductible.

Tax free allowances

Specific allowances granted to impatriates are tax deductible for the employer but not taxable for the employee. This beneficial regime is granted for a maximum five year period as from the impatriate's starting date in Luxembourg (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 include moving fees such as housing of his/her family during their trip to Luxembourg (but excluding the original rental agreement termination fee), set up and unpacking costs, fitting out expenses

including new furniture and compatible electrical items, travel costs for special circumstances, travel costs for the final return in the State of origin.

- Recurring expenses (e.g. monthly rents or rental equalisation allowances, heating and electricity bills, costs of a yearly travel between Luxembourg and the State of origin and tax equalisation, 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.
- 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).

Scope of application

The circular applies to employees who are seconded within international groups (or directly hired from abroad or hired by a foreign company located in the European Economic Area) in order to work in Luxembourg.

The benefit of the tax allowances are restricted to workers that:

- are Luxembourg tax residents according to Luxembourg tax law during the secondment or hire period, and
- were not Luxembourg tax resident or have not lived within 150 km of the Luxembourg border at some point in time during the five years prior to claiming for the benefit of this specific regime (new condition since 2013).

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 30% 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.

Additional conditions in case of secondment

Definition of international group

According to the 2010 Circular, in respect of secondments within international groups, the group should be established in at least two countries other than Luxembourg. This point is not covered by the 2013 and 2014 circulars but should in principle still be applicable.

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.

Secondees experience

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

Additional conditions in case of hiring

The employee must have acquired a thorough specialisation in a sector or a profession characterised by recruitment difficulties in Luxembourg.

Conditions applicable to the impatriate

The impatriates should perform their main activity in Luxembourg and should not take over the position of another employee who does not qualify for this circular. The criteria of "main activity" is not defined in Luxembourg labour law and will be assessed on a factual analysis.

The impatriates must use their special knowledge and expertise to help the employees of the company.

Their fixed annual remuneration (excluding benefit in kind and in cash) shall be at least equal to EUR 50,000 (gross).

Summary of the main changes of the tax regime

The below summarises the changes since the initial 2010 circular (i.e. further to the 2013 and 2014 circulars).

- The scope of the tax regime is extended to employees hired directly by a foreign company located in the European Economic Area (since 2014).
- No more need to file a request to the Luxembourg Tax Authority in order to apply the tax regime but only a list of impatriates on an annual basis (since 2013).
- No more need for the employment / secondment to be temporary (since 2013).
- No more requirement for a specific diploma for the employee (since 2013).
- Employees benefiting from this specific regime could represent up to 30% of the total of the Luxembourg employees instead of 10% before.
- The new threshold regarding the minimum annual gross remuneration is EUR 50,000 (since 2013).

- Additional restriction: the employee should not have lived within 150 km from the Luxembourg border at some point in time during the five years prior to claiming for the benefit of this specific regime.
- The 2014 Circular clarifies the formalities relating to the withholding tax and employee taxation where the employer is non resident.

Conclusion

This regime is of major importance for the attractiveness of Luxembourg. Industrial, banking and commercial groups commonly use this regime to enhance their Luxembourg business by 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 Luxembourg labour law and its tax regime, and to file the necessary request and liaise with the relevant Luxembourg authorities.

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