

Pinboard - April 2018

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1. Tolerance of 29 days for French cross-border commuters

The new tax treaty between France and Luxembourg was signed last March 20th. It replaces the treaty signed 60 years ago by including the new international standards on the prevention of double taxation.

The basic rule is that cross-border workers are taxed on their wages in Luxembourg on condition that they carry out their activity physically on Luxembourgish soil. It therefore does not suffice that they work for a Luxembourgish employer; they must travel physically to Luxembourg to carry out their activity. When the occupational activity is performed outside Luxembourg, the country of residence of the cross-border worker is entitled to tax his occupational income for all the days worked in that country. The same applies in theory for days worked in a third country.

In other words, a French cross-border commuter is taxable in France for days worked outside Luxembourg.

To mitigate the consequences of this rule, the two countries have established by consensus a tolerance threshold of 29 days. This enables the Grand Duchy to preserve its full right to tax wages as

a State where the employment is performed, in the event that a French resident in the employ of a Luxembourgish employer carries out his employment activity in another State (France or a third country) during a period that does not exceed 29 days in all.

Thus, a French cross-border commuter may not work more than 29 days per year outside Luxembourg without impact on his taxation in the Grand Duchy. This is more than their German and Belgian counterparts, who may not work more than 19 and 24 days respectively outside of our country whilst continuing to be taxed fully (100%) in Luxembourg.

It is worth noting that date on which this agreement is to enter into force has not been fixed yet.

2. New developments for interns

A bill was introduced last March to regulate internships for pupils and students which are increasing in number. The legislation on the matter has not changed since 1982, whereas it has become difficult in practice to finish a school programme without an internship in a company. The aim of this new bill is to facilitate access to internships in companies by students and their integration in the labour market.

In concrete terms, this bill draws a distinction between two types of internships:

- Mandatory and official internships provided by the education institution

This type of internship is an integral part of an educational programme and requires the signing of a tripartite agreement by and between the educational institution, the intern and the host company.

The bill fixes a term of 9 months at most over a reference period of 12 months (with nonetheless the possibility to exceed that period if the training programme requires a longer internship). The internship may be staggered.

The remuneration of these internships remains optional. The idea of keeping remuneration optional is in response to a request by students so as to increase their chances of finding an internship, which is becoming indispensable in most cases for accrediting a year of studies.

- Internships for acquiring work experience

This second type of internship concerns not only pupils and students enrolled in an educational institution but also those whose enrolment ended twelve months earlier at most. The idea of this non-mandatory internship is to enable students who have graduated to focus on the labour market and benefit from an initial work experience.

An internship agreement must be signed by and between the intern and the employer. Certain mandatory indications must be included (e.g. internship activities, dates, remuneration, etc.).

The term of the internship may not exceed 12 months over a period of 24 months, and may not exceed 6 months with the same employer.

Remuneration varies depending on the length of the internship:

Internship length	Minimum remuneration
Less than one month	No remuneration
Between 1 and 3 months	1/3 of the statutory minimum wage (€666.20)
More than 3 months	½ of the statutory minimum wage (€999.30)

Having defined the 2 types of internship, the bill introduces safeguards to prevent such internships from becoming undeclared work. Accordingly, the number of traineeships in progress in the same company will be limited to 10% of the company's workforce, without exceeding 50 interns. The intern supervisor has to keep a register of internships which can be perused at all times by the staff delegation or the ITM (labour inspectorate).

The bill constitutes a real advancement in the rights of interns as it will bring to bear the legal provisions on working time, weekly rest, official holidays, annual holidays and occupational safety.

The bill also provides for the creation of an exchange platform to facilitate the search for an internship. Students could thus express their desire to gain work experience and employers could indicate that they are actively searching for an intern.

None of these measures is final to date. The bill still has to be debated....

3. Employment of students during the school holidays

The summer is approaching, and many employers hire students during the summer holidays. The minimum wages this year are the same as those in 2017.

Students are considered to be young people aged 15 to 27 (day of 27th birthday), enrolled in an educational institution in Luxembourg or abroad for a full-time programme.

The student contract must be concluded in writing, without fail, at the latest when the student takes up his or her duties.

The employer is required to send a copy of the contract to the ITM within 7 days of the start of employment. This can be done online on MyGuichet (<http://www.guichet.public.lu/myguichet/fr/index.html>).

The period of employing a student may not exceed 2 months per calendar year, whether under one or more contracts. A bill was recently introduced to give students greater flexibility. The idea is to express this maximum period of 2 months in number of hours (i.e. twice 173 hours). Students would thus be authorized to conclude part-time contracts for a period exceeding two months, while staying within the maximum number of 346 hours.

The minimum remuneration depends on the student's age:

Age	Gross hourly rate (index: 794.54)	Gross monthly pay (index: 794.54)
15 to 17	€6.9315	€1,199.15
17 to 18	€7.3936	€1,279.10
18 and more	€9.2420	€1,598.87

The hiring of the student must be reported to the Social Security Office. No social security contribution is payable, except the employer's contribution of 0.9% for accident insurance.

The remuneration paid to students working during school holidays is exempted from withholding tax. The employer is nonetheless required to file an exemption request with the Direct Taxation Department.

4. Reimbursement form for paternal leave

Since 1 January 2018, wage employees who become fathers are entitled to 10 days leave upon the birth of a child or the adoption of a child under 16.

Under the new paternal leave framework, the first 2 days are covered by the employer and the subsequent 8 by the State budget.

The employer must file an application with the Ministry of Labour for the reimbursement of 8 days of wages paid. To that end, he must complete the form available online at Guichet.lu.

http://www.guichet.public.lu/entreprises/catalogue-formulaires/conges/remboursement-conge-paternite/remboursement-conge-paternite_FR.pdf

The following supporting documents must be added:

- The employee's certificate of affiliation with the Social Security Office;
- The birth certificate of the child or a copy of the declaratory judgement of adoption;
- Pay slips covering the period of paternity leave and the month prior to said leave.

The form, duly completed, dated and signed, and the supporting documents, must be returned to the Ministry by e-mail at pappeconge@mt.etat.lu, within 5 days as of the birth or arrival of the adopted child. It is worth noting that the salary taken into account for the reimbursement is limited to a fifth of the statutory minimum wage, i.e. €9,992.95.

Securex can help you fulfil these formalities.

5. Change for yellow number plates

The year-long lull in Belgian residents driving a car registered in Luxembourg has apparently come to an end. Checks have actually been on the rise in recent weeks, with heavier penalties being imposed.

According to Belgian law, drivers must be able to present a certain number of documents during a roadside check:

- A copy of the employment contract or mission order (document proving the subordination relationship);
- A document drawn up by the Luxembourgish employer attesting that he has placed the vehicle at his employee's disposal;
- For rented vehicles, the user must have an up-to-date rental contract. If the rental is extended, the rental company must be asked to update the contract;
- If the driver of the car is not the Luxembourgish employee, he must prove that he lives under the same roof with the latter. It is therefore recommended to keep a document indicating the composition of the household with the documents of the vehicle;
- On the other hand, a VAT certificate is no longer necessary.

Up to now, the inability to produce the required documents during a roadside check elicited a simple warning at first. The motorist was then asked to produce the documents at the Police station within a given period.

The warning has now been abandoned, and the driver is ticketed immediately. Consequently, any Belgian driver of a car with Grand-Ducal number plates who cannot produce all the documents required by Belgian law will be ticketed on the spot. He will have to pay the Belgian road and circulation taxes for the vehicle, plus a fine of at least €100 and at most €1,250. It is therefore highly recommended to make sure that all the necessary documents are available in the car.

6. How to be kept informed about leave left for family reasons

The new system of leave for family reasons offers parents greater flexibility by providing a number of days of leave to be used per the age bracket of the child.

- Children up to 4: 12 days
- Between 4 and the day preceding the child's 13th birthday: 18 days
- Between 13 and up to 18: 5 days, but only if the child is hospitalized

This new distribution requires employers and employees to keep closer track of the number of days taken during each period. For the sake of proper management, the employer must be informed about the number of days of leave for family reasons already used by the employee.

The Minister for Labour, Nicolas Schmitt, confirmed that the employer was not authorized to request globally and systematically the record of days of leave for family reasons taken by all his staff, by reason of data protection under the new European legislation. Conversely, faced with an individual

request, the employer could ask the employee to produce this information, and the latter is required to comply.

Since the end of March, the leave left for family reasons can be consulted at all times on MyGuichet.lu. The employee will thus be able to request a certificate of this balance.

To access [MyGuichet.lu](https://myguichet.lu) and obtain this certificate, employees must first obtain a LuxTrust certificate in a personal capacity and create their secure space.

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