

Telework for French residents: toward greater flexibility?

No one doubts the benefits of telework nowadays. Authorizing employees to telework is perceived as a real advantage by them. In the quest to strike a better work-life balance, telework appears like a real remedy to the traffic jams they have to face daily, and therefore a real time saver. Nevertheless, the international social security and taxation rules constitute real obstacles for cross-border workers.

- I. The European Regulation (EC) no. 883/2004 on the coordination of social security systems which entered into force on 1 May 2010, has established a general principle according to which an **employee may be affiliated only in a single state, the state in which s/he works.**

When employees work 25% of their working time or receive 25% of their remuneration in their country of residence, all remuneration paid in different countries is covered by the social security of their country of residence.

Telework days are counted in this 25% mark, thereby limiting the possibilities for cross-border workers to telework if they wish to remain affiliated with social security in Luxembourg. A change of social security system would moreover require employers to affiliate their respective company as a “foreign undertaking” with the social security organization of their employees.

- II. The rationale is different when it comes to taxation. The general principle in double-taxation treaties is that of territoriality: employees pay taxes in the country where they work. This principle is an obstacle to telework as well. More specifically, employees would have to pay taxes in different countries. In the absence of a tolerance threshold, the situation of French residents is more complex than that of their Belgian or German counterparts.

Furthermore, for employers in Luxembourg who authorize telework, the withholding at source introduced in France as of 1 January 2019 also entails additional formalities, whereas the entry into force of the new treaty between France and Luxembourg is still pending. It is therefore necessary to clarify matters again at this juncture.

- **What about the current taxation of teleworkers who are French residents?**

Salaried income is taxable in Luxembourg only when the work is carried out physically on Luxembourgish territory. When the work is performed outside Luxembourg, those days are in principle taxed in France. It therefore does not suffice for French employees to work for a Luxembourgish employer; they must also travel physically to Luxembourg to perform their work there.

Unlike with Germany and Belgium, **there is no legal tolerance level to date** between France and Luxembourg. Pursuant to the treaty of 1958, currently in force between France and Luxembourg, cross-border residents in France would have to be taxed in France as of the first day of telework, and for all their telework days.

One reply to a parliamentary question in April 2012 has however tempered this initial approach. The Socialist Member of Parliament Christian Eckert had obtained the following reply: *"if an employee of a Luxembourgish company works one day a week in a telecentre in France, the remuneration s/he receives in that capacity remains taxable in Luxembourg, if it is assumed and paid by the company situated in the latter state."*

In practice, it is a tempering measure that was taken into consideration by Luxembourgish employers so as to continue to tax fully in Luxembourg employees who are French residents and telework one day a week. Nevertheless, there is no guarantee that this practice will not be challenged in the event of an audit by the French tax authorities.

- **Scheduled changes**

On 20 March 2018, a new treaty was signed by and between France and Luxembourg. It replaces the one signed 60 years ago to enshrine the new international standards on the prevention of double taxation. This treaty henceforth set a **tolerance threshold of 29 days**. It enables the Grand Duchy to retain in extenso its right to tax wages as the State in which the work is performed, in the event that a French resident who is employed by a Luxembourgish employer performs his work in another State (France or a third State) during a period not exceeding 29 days in all. In other words, a French cross-border worker may telework up to 29 days and continue to be taxed entirely (100%) in the Grand Duchy.

However, if this 29-day limit is exceeded, on the basis of the work schedule of their employees, Luxembourgish employers will have to tax in Luxembourg only the wages relating to the days during which the employees worked physically in Luxembourg. Wages paid to employees who are French residents, by way of days worked in France or in third countries, will be taxable in France.

Furthermore, in view of the **implementation of withholding at source in France since 1 January 2019**, Luxembourgish employers whose employees telework will have to pay to the French tax



authorities the tax corresponding to those work days. In order to do this, Luxembourgish companies will have to register in France. They can also decide to appoint a tax representative to attend to the formalities for them. It is undeniable that this change in legislation by our French neighbours has complicated matters for Luxembourgish employers.

Initially, the new Franco-Luxembourgish treaty was to enter into force on 1 January 2019. To that end, the text of the treaty had to be ratified by both countries. It was approved by the French Senate in December 2018 and ratified by the French National Assembly on 14 February of this year. In the Grand Duchy, a bill was introduced in this respect on 4 December, but the necessary ratification procedures have not been completed to date.

The treaty of March 2018 has therefore not entered into force at this time, and it would appear that it will not do so before 1 January 2020. It will be some time still before the 29-day tolerance threshold enters into force to provide a little more flexibility for employers who wish to offer their employees greater flexibility through telework.

The information published in this article is valid only on the date of publication of said article. As social legislation is frequently amended, please contact us concerning any question or intended use based on this article or a previously published article.

Pursuant to Article 2, §2 of the Act of 10 August 1991, as the Legal Department of SECUREX Luxembourg SA is not authorised to practice law, it shall limit its action at all times to disseminating information and documentation.

Such documentation and information thus provided under the legal subscription always constitute typical examples or summaries, are of indicative value, and lay no claim to being exhaustive. The addressee is solely responsible for the use and interpretation of the information or documentation referred to in this article, advice or acts he deduces as well as the results he obtains from them.