



New amicable agreement by and between France and Luxembourg

Further to the tax treaty for the avoidance of double taxation signed on 20 March 2018 by and between the Government of the Grand Duchy of Luxembourg and the Government of the French Republic, an amicable agreement was just signed on 16 July. It sets out the practical implementing rules for the taxation of income from salaried activities.

I. Tolerance threshold settlement

By way of reminder, French residents who are employed in Luxembourg remain fully liable to Luxembourg tax when they work **29 days maximum** per year in their State of residence and/or in a third State.

The days when the employee is **physically** present in his or her State of residence and/or in a third State in order to carry out his employment are taken into account in this tolerance threshold.

Any fraction of a day shall count as a full day, so that days when the employee is only partially employed in his or her State of residence and/or in a third State shall be fully taken into account for the calculation of the 29 days. **Any fraction of a day will therefore count as a full day.**

In particular, any day or fraction of a day on which the employee is present in his or State of residence and/or in a third State in order to participate in **vocational training** shall likewise be taken into account for the calculation of the tolerance threshold.

II. What about part-time employees?

In the case of part-time work and/or an activity carried out during only part of the year, the threshold of 29 days **is reduced proportionally according to the working time** provided for in the employment contract and/or **the duration of the contract**. Where this proportion does not correspond to a number of full days, the lower number of full days shall be used.

Example: For a French resident employee with a part-time employment contract, the tolerance threshold will be set at 14 days.

Furthermore, the maximum threshold of 29 days must be assessed on an annual and global basis, including in the case of activity carried out during the same year under several separate employment contracts.

III. Days to be excluded:

The following are not taken into account when calculating the 29 days:

- Days of leave;
- Weekly rest days;
- Public holidays;
- Days of incapacity for work;
- Cases of force majeure beyond the control of the employer and the employee. It should be noted that the Covid-19 epidemic is considered to be a case of force majeure for the period from 14 March to 31 August 2020.

IV. What happens if the tolerance threshold is exceeded?

If the threshold of 29 days is exceeded, the taxpayer's State of residence recovers the right to tax the income earned from salaried employment **from the first day and up to the amount of time the employee was actually present** in his or her State of residence and/or in a third State in order to work there.

Example:

- 25 days of teleworking in France
 - 3 days of training in Belgium
 - 5 days of work in France at head office in Paris
- ➔ The French resident employee will be taxed in France for these 33 days.

V. What about the burden of proof?

In the event of a challenge by the tax authorities, it is up to **the taxpayer** to prove that the 29-day threshold has not been exceeded. To do so, he will have to prove his physical presence on Luxembourg territory.

The following documents may be presented **to prove physical presence** (the list is non-exhaustive):

- Employment contract or certificate from the employer stating the duties performed and the place where they are performed;
- Nominative sheets of working hours clocked;
- Personal transport documents (train tickets, plane tickets);
- Nominative invoices relating to accommodation expenses (hotel, car rental);
- Attendance list for meetings or training courses (excerpt from the minutes);
- Documents relating to purchases of equipment, catering, or canteen expenses in the State of activity (credit card bills, receipts, etc.);
- Nominative mission orders.



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