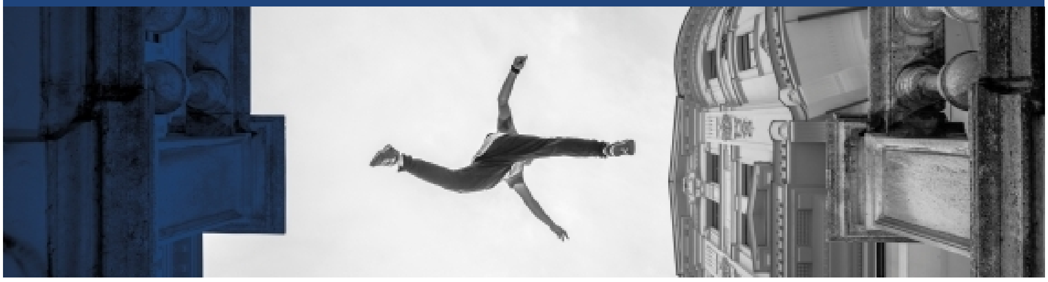
If you cannot see this email, please click here_



Luxembourg Newsflash - 24 June 2022

Cross-border home working: different taxation rules starting 1 July 2022

What does this mean for your company?

The special bilateral agreements signed between Luxembourg and the Belgian, French and German authorities concerning the taxation rules applying to cross-border workers in the context of the COVID-19 pandemic will come to an end on 30 June 2022.

As a consequence, from 1 July 2022, the general rules on the taxation of employment income received by Belgian, French and German cross-border commuters (i.e., employees residing in France, Germany or Belgium and commuting to Luxembourg to perform employment-related activities) will apply.

It will be important to continue to monitor the general rules on the taxation of companies with cross-border commuter employees that telework, and the potential risks involved (e.g., of creating a permanent establishment in a neighbouring country).

It should be noted that the social security agreements should also in principle end on 30 June 2022. However, the Luxembourg government communicated **on their website_** a decision of the members of the Administrative Commission for the Coordination of Social Security Systems in the European Union to set up a transitional period of 6 months starting on 1 July 2022 and ending on 31 December 2022. During this transitional period, an administrative tolerance will be applied, allowing cross-border workers to continue to telework from home, without challenging their social security affiliation if the 25% threshold provided for in the European legislation is exceeded.

Below, we have listed the main tax impacts and risks that your company should monitor.

Taxation of cross-border employees: what rules apply post-pandemic?

Employment income is taxable in the employee's country of residence, unless the employment activity is performed in another country. Thus, the employment income of cross-border commuters is, in principle, taxable in Luxembourg and not in their country of residence.

Depending on the employee's country of residence (Belgium, France or Germany), different thresholds apply below which employment income remains taxable in Luxembourg despite the activities being physically performed elsewhere (whether in the country of residence or in a third country):

- 24 days per year for Belgium (increased to 34 days from 2022 onward)

- 29 days per year for France
  On 19 October 2021, the Luxembourg and French governments committed to increasing the above limit to 34 days as well, and to defining the future terms of this arrangement within 6 months. However, to date, there is no information on the finalisation of this project.
- 19 days per year for Germany

Will these allowances be prorated in 2022?

In principle, no. As of the end of the agreements put in place during the pandemic, cross-border commuters should theoretically have the full allowance of days for use in the second half of the year (unless all or part of it was already taken in the first half of the year, through days worked outside of Luxembourg for reasons unrelated to (measures taken to combat) the pandemic).

However, given the different tax systems involved and the uncertain position of the relevant tax authorities, a case-by-case analysis is highly recommended.

What are the tax consequences if the threshold is exceeded?

Where the applicable threshold is exceeded, the employment income received for the days worked outside of Luxembourg becomes subject to taxation in the employee's country of residence.

French commuters: in principle, the Luxembourg employer must levy French withholding tax on the part of the salary relating to the days worked in France. The specific registration process in France must be followed.

Belgian and German commuters: if the thresholds are exceeded, any additional taxes should, in principle, be levied via personal tax assessment only.

Taxation of Luxembourg corporate employers: what are the potential risks?

The normalisation of widespread teleworking by cross-border commuters may present certain tax risks for Luxembourg employers, such as the risk of creating a permanent establishment or permanent representative in a commuting employee's country of residence. Depending on the combination of certain factors (e.g., the employee's profile), this could even cause the employer's Luxembourg tax residency to be challenged.

Such a risk would materialise in the taxation of all or a portion of the Luxembourg employer's profits in the cross-border employee's country of residence. There are also certain tax compliance requirements to consider.

How can we help you?

Whether you have questions on the taxation of the salaried income of your cross-border employees who telework, need practical guidance with respect to the day-count thresholds and legal obligations in Belgium, France and Germany, or have questions on the tax risks for your company and want to know how to mitigate them, we can provide in-depth advice and practical solutions.

Arendt's tax and legal experts provide you with:

- in-depth and insightful legal analysis of your specific situation covering tax, as well as labour law and social security considerations
- practical guidelines on Luxembourg's registration and withholding requirements
- review of your company's existing policies and procedures paired with tailored advice
- collaboration with foreign tax advisors to review and monitor any risks
- a comprehensive approach with insightful advice on IT and cybersecurity
- training sessions and tailored workshops.

Contact us at **newmodel@arendt.com** to review your situation and find appropriate solutions.

You can also learn more about the employment law, tax and regulatory aspects of telework by watching the recording of our webinar ***Update on telework***.

your contacts

ERIC FORT
Partner
Tax Law

Learn more_

ALAIN GOEBEL
Partner
Tax Law

Learn more_

THIERRY LESAGE
Partner
Tax Law

Learn more_

VINCENT MAHLER
Partner
Tax Law

Learn more_

JAN NEUGEBAUER
Partner
Tax Law

Learn more_

PHILIPPE SCHMIT
Partner
Employment Law, Pensions & Benefits

Learn more_

Arendt & Medernach SA
Registered with the Luxembourg Bar
RCS Luxembourg B 186371

arendt.com

41A avenue JF Kennedy
L-2082 Luxembourg
T +352 40 78 78 1