BELGIAN SPECIAL EXPATRIATE REGIME
IMPORTANT CHANGES AS OF JANUARY 2022!

As a reminder, Belgium applies a so-called "special tax regime" for expatriates temporarily working in Belgium. These expatriates are foreign nationals who are either executives (employees and directors), specialized employees or researchers and who are hired directly outside Belgium, transferred or seconded to a Belgian based company or branch that is part of an international group of companies. A draft law regulating this new expatriate regime has meanwhile been published.

1 Legal basis

Whereas the current expat regime is based on an administrative letter dated August 8, 1983, law shall determine as per 1 January 2022 the conditions of the new expat regime. One of the objectives is to avoid disputes about the legality of the Belgian expatriate status, as has occurred in the past.

2 Summary of changes, comparison old versus new

Below is an overview of some of the changes to be contemplated :

	Current expatriate regime	New expatriate regime
Income requirement	Belgian tax authorities apply a gross (minimum) yearly income threshold of about 41.000 EUR. This threshold includes base salary and taxable benefits (in kind), however excluding (amongst others) cost of living allowances and bonuses and is applicable to executives, researchers and specialized employees.	The gross income threshold is likely increased up to **75.000 EUR per year(!)**. This threshold includes base salary, benefits (in kind) **and bonuses , however excluding termination indemnities, replacement income and benefits exempted from taxes in accordance with article 38 of the Belgian Income Tax Code 1992.** **Said income threshold does not apply to researchers insofar they comply with several conditions** (which are expected to be amongst others (1) employee status and (2) a master degree in specified areas or 10 years of relevant experience in such fields).

		In case the expatriate would change employer during the year, **the minimum income threshold will be evaluated pro rata the number of days of activity** for the new employer. The same pro rata rule applies when arriving in Belgium (or leaving Belgium) in the course of a year.
What about the condition of being temporarily active in Belgium?	An expat is temporarily working in Belgium as long as he/she can demonstrate that he/she kept sufficient links with his/her country of origin.	The new expatriate regime is expected to apply for a **maximum period 5 years**, with the possibility toextend **with another 3 years.**
Distance requirement as a condition to obtain the special tax regime?	No such condition exists.	The expatriate **cannot have lived, during 60 months preceding the filing of the request, less than 150km from the Belgian border**.
What if the expatriate has already been taxed in Belgium?	Prior to the filing of the request for applying the special tax status, and during a period of 60 months, the expatriate may not have been a resident (and taxed in Belgium as a tax resident). Non-resident expatriates that already benefited from the expatriate regime may not benefit again from the expatriate regime if they would return to Belgium within a period of 36 months.	**During a period of 60 months preceding the filing of the application of the expatriate regime, the expatriate may not have been a Belgian resident (and taxed in Belgium as a resident), nor been subject to Belgian taxes as a non-resident on his/her professional income.**
Reimbursement of costs (“expatriation allowance”)	The expatriation regime includes so-called tax free allowances covering a cost of living allowance, a housing allowance and a tax equalization allowance, in total capped at 11.250 EUR per year (or in some case at 29.750 EUR). On top of these tax free allowances, the employer can also reimburse, free of taxes, moving and relocation costs, school fees (international school) as of the age of 6 till 18 and	Expatriation costs can be reimbursed tax free, **up to 30% of the gross income, however capped at 90.000 EUR per year.** M**oving and relocation costs, school fees (international school) and furnishing costs should remain reimbursable separately**, i.e. basedon invoices. This expatriation allowance is **to be**

	several other non-recurrent costs that can be linked to the expatriation, and on the basis of invoices.	**determined contractually**!
Timing to file for an application	A request for applying the special tax status is to be filed within 6 months following the month of arrival in Belgium. Tax authorities were not bound by any specific timing to decide about the filed request. The filing of the request can be done by mail or registered post.	Under the new expatriate regime, a request needs to be filed **within 3 months**. Tax authorities now must revert with their decision **within 3 months** after the filing of the request. In case the expatriate regime needs to be **extended, a new request is to be filed within 6 months prior to theexpiry of the first 5-year period**. **Electronically filing** will be mandatory (online tool).
Fictitious non-residency forincome tax purposes	Expats residing in Belgium with their family currently qualify as fictitious non-residents. Consequently, tax rules for non-residents apply, even though, from a strict legal point of view, they would qualify as residents and should be taxed as such accordingly. Being a fictitious non-resident, one shall not be effectively taxed on foreign source income.	The expatriate shall **no longer qualify as a fictitious non-resident**. Hence, expatriates living in Belgium with their family will be treated as Belgian tax residents and taxed as such. The only advantage they have is that part of their income (30%) shall be treated as a tax-free reimbursement of costs. They will have to comply with all reporting obligations that apply to Belgian tax residents (e.g. foreign bank account or life insurance beneficiary).
Travel exclusion	Travel exclusion reflects part of the income that relates to foreign business trips (i.e. outside Belgium) made by the expatriate in the execution of his activity and which is exempt from taxation in Belgium.	The concept of **a travel exclusion will no longer apply**.

The condition that the employer (in Belgium) must be part of an international group of companies remains. Definitions are provided for an "international group" as is the case for "researchers".

The employer will have to provide the competent tax authorities, prior to January 31 of each following year, an overview of all employees for who the expatriate status regime applied during the previous year.

3 What about a transition period?

Existing expat statutes, granted under the current regulation shall phase out in 2 years as fromJanuary 2022 onwards.

Expatriates benefiting from the current expat status regime for a period of less than 5 years can chose to apply, as from January 2022, the new expatriate regime, provided their situation meets all new conditions. If such choice would be made, they have to file a "new" request prior to June 30, 2022. This choice is irreversible. The period during which they havealready benefitted from the current expat status regime will be deducted from the 5 to 8 year period under the new expatriate regime.
If the tax authorities reject the new request, the expatriate will also lose as of that moment theapplication of his current expat status regime.

4 Social security

It is expected that social security authorities will follow the tax authorities' position about the reimbursement of expatriation costs (as is the case in under the current expat status regime),but yet to be confirmed.

5 Comparative simulations

The below overview tries to make a comparison between the old and new expatriate regime on the basis of the information known at this stage.

Assume an expat, married, partner and 2 children at charge.

- Simulation 1 : Current special expat status, including a 20% travel and a capped amount of tax free allowances of 11.250 EUR per year. The gross income os equal to 97K EUR per year.

- Simulation 2 : New expatriate regime. Expatriation allowance contractually fixed at 25K EUR per year. The same gross income is applied as in simulation 1.

- Simulation 3 : New expatriate regime. Expatriation allowance contractually fixed at 25K EUR per year. The same employer cost as in simulation 1.

	Simulation 1	Simulation 2	Simulation 3
Gross income (monthly income x 13,92 instalments)	97.000,00	97.000,00	75.375,63
Expatriation costs reimbursed	0,00	25.000,00	25.000,00
(Minus) Tax free allowances	-11.250,00	0,00	0,00
Subtotal	85.750,00	122.000,00	100.375,63
(Minus) 30% expatriation cost relief (*)	0,00	-25.000,00	-22.612,69
Subtotal	85.750,00	97.000,00	77.762,94
(Minus) Belgian social security for employees	-10.776,18	-12.614,15	-10.112,51
Subtotal	74.973,82	84.385,85	67.650,43
(Minus) Travel exclusion (20%)	-14.994,76	0,00	0,00
Taxable income	59.979,06	84.385,85	67.650,43
(Minus) Income taxes (federal + regional)	-13.689,53	-25.892,93	-17.525,22
(Minus) Municipal taxes (7%)	-958,27	-1.812,50	-1.226,77
(Minus) Special social security contributions	-520,78	-731,28	-620,50
30% expatriation cost relief	0,00	25.000,00	22.612,69
Tax free allowances	11.250,00	0,00	0,00
Travel exclusion	14.994,76	0,00	0,00
Net estimated income	**71.055,25**	**80.949,14**	**70.890,64**
Estimated employer cost	**120.085,92**	**147.364,94**	**120.085,92**

(*) Capped at the amount of the reimbursed expatriation costs (assumption)

While a significant employer cost increase would occur comparing simulation 1 and 2, simulation 3 again levels out the employer cost to the level of simulation 1. In simulation 3, the minimum income threshold of 75K EUR is not far. For employees under the current special tax regime and opting-in for the new regime, supportive simulations shall be required to better understand the impact of such opting-in for both employee and employer. Also, these comparative simulations were made on the basis of a travel exclusion of (only) 20%. It indirectly shows however that expatriates with a high travel exclusion percentage will see their benefits decrease significantly and therefore pay more taxes if they would indeed opt-in. Finally, such opting-in also impacts the current employment contract which should then be amended.

6 Conclusion

It is clear that the new expatriate regime aims for more strict and transparent conditions, almostsimilar to the conditions of the Dutch 30%-rule. Employers should start evaluating what to do with expatriates who are keen on applying the new expatriate regime and chose to opt-in as well as with expatriates whose current special tax status shall in any case vanish in a rather short timing.

Provided above comments are based on a draft law, updates will be provided from time to time.

We are happy to assist you with analyzing your expatriate population in light of the newexpatriate regime and help you making important decisions in this respect.

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