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Expatriates: Some Aspects of Income Tax and Social Security Contributions

This article is not in anyway intended to reiterate that Belgium grants preferential tax treatment to expatriates temporarily seconded to Belgium. That much is common knowledge, and I have no intention of boring you with the minutiae of how this works in practice.

I shall instead try to draw your attention to certain tax and social security aspects concerning expatriates who come to Belgium to work for an international group.

1. The latest reform notwithstanding, Belgian taxation of earned income is still appalling.
   For instance, a Belgian citizen, married, with two children, without special tax status (precisely because he is Belgian) will pay € 49,684.00 euros in social security contributions and income tax on his or her gross salary of €100,000,00. By way of comparison, a French employee in the same situation will pay € 27,089.00 euros in social security contributions and income tax – assuming a social security contribution rate of 18%.

   The special tax system for expatriates on temporary assignment to Belgium is consequently a matter of raison d'état.
   It essentially grants two allowances from the taxable amount (gross pay less social security contributions): the first, for a maximum of €11,250.00 (or €29,750.00 for a supervisory or coordination office); a second allowance is then computed on the balance, corresponding to the percentage of working days spent abroad.
   If we take again the example of our French employee, who has now moved to Belgium with his family to work in a subsidiary of his French employer, and spends 30% of his working time travelling on business, we note that while remaining subject to French social security, he will have to pay €33,755.00 euros in social security contributions and income tax, i.e. considerably more than if he had stayed in France and, owing to the special tax status, having obtained an allowance of taxable amount of €32,475.00 (which will never be taxed anywhere).

   The special tax status is evidently attractive for employers only if the executive travels a lot, since the more the executive travels, the less gross pay the employer has to outlay for a given net take-home amount. It is also quite obvious that this status offers only a marginal advantage for those who travel little if at all, since the only allowance (on the taxable amount) that they can claim is limited to a maximum of €11,250.00 euros or €29,750.00. As most executives do not qualify for the € 29,750.00 maximum, the only gain from the special tax status in a great number of cases is about €5,625.00 in taxes, plus the fact that no Belgian social security is applied to the €11,250.00, treated as allowances to reimburse expenses incurred specifically for the employer.

Otherwise, for those on gross pay, who live in Belgium with their families and travel more than 30 to 40% of their working time, Belgium is a tax haven, provided they are not liable for tax in their country of origin as is the case of American citizens, for instance.
It is also worth mentioning that if our (French) executive had stayed in France with its family while working for a Belgian employer and carrying out his duties only 70% of his (working) time on Belgian territory, he would remain directly liable for tax in France on 30% of his income earned from his Belgian employer, at the same rate as if all his earned income were taxable in France.

2. In a great number of cases our French executive will be seconded to Belgium under Council Regulation (EEC) 1408/71, in particular Articles 14,1, a) or b) or 17.
   More specifically, Article 14,1,a) makes it possible to remain under the social security system of the country of origin for a foreseeable secondment not exceeding one year; Article 14,1,b) makes it possible to renew this period for one year; and Article 17 applies as soon as the foreseeable duration exceeds one year.
   It should be noted that most companies invoke successively the application of Articles 14,1,a), 14,1,b) and finally 17, although they know from the start that the executive will remain posted for a period exceeding one year. This way of proceeding is not correct.

   Furthermore, Article 14,1,a) cannot be invoked when the person sent is to replace another person. This tends to happen in most of the cases, contrary to Article14,1,a), which is then invoked wrongly.

   If the successive application of Articles 14,1,a), 14,1,b) and 17 creates a problem in the case of a person seconded to replace another person who has come to the end of his or her period of secondment, it can be argued that it is still possible to invoke Article 17, as it stipulates that the competent authorities of the two countries can, by mutual agreement, and in the interest of the employees, provide exceptions to Articles 13 to 16. This article does not explicitly prohibit adherence to the foreign social security system if the seconded person is posted for more than one year and is sent to replace an executive who has reached the end of his or her period of secondment.
   Such an argument, though relevant, should be qualified by the fact that Belgium applies Article 17 to allow secondment for a period of 5 years, for instance, without departing, as a rule, from the other conditions of secondment. In plainer terms, even if Article 17 of the Regulation is invoked, Belgium prohibits its application if it pertains to replacing an executive who has come to the end of his or her 5 years of secondment. Belgium de facto authorises a secondment for a period such that the sum of the period carried out by the executive replaced plus the period of presence of the new executive is equal to five years. This option is indeed provided to Belgium and the State of origin of the executive by Article 17 of the Regulation.

The agreement on social security concluded on 19 February 1982 by and between the United States of America and the Kingdom of Belgium (Belgian Official Gazette, 20 June 1984) provides, in Article 6, for a secondment for five years without any prohibition on the seconded executive to replace a person who has come to the end of his or her secondment.
It is necessary however to note that the Belgian tax authorities interpret this agreement in the same way as Council Regulation 1408/71 Council, and do not allow secondment in replacement of a person who has come to the end of his or her period ofsecondment. This runs against the letter of the totalization agreement, and it will be interesting to see how the American authorities react to the practical application of this interpretation.

Finally, it is must be pointed out that secondment in any form is irreconcilable with the signing of a contract of employment with a local firm. The Belgian authorities are inflexible on this issue.

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