

OUT WITH THE OLD, IN WITH THE NEW: BELGIUM UNVEILS NEW EXPAT TAX SYSTEM

Insights
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The Belgian federal government recently adopted a new tax regime for expatriate employees and executives temporarily employed in the country. The new system went into effect on January 1, 2022, and replaced the previous expatriate tax system governed by the Circular Letter of August 8, 1983. Compared with the Circular Letter, the new regime provides more legal certainty to employers as well as qualifying employees and directors by incorporating the rules into the Income Tax Code. What do employers with a Belgian presence need to know about this new system?

To Whom Does This Apply?

The new regime applies to both income taxpayers and researchers. The term "income taxpayers" refers both to employees and company executives, whereas researchers refers only to employees who hold a specific scientific master's or doctoral degree or demonstrate a minimum of 10 years' relevant professional experience in a specific scientific field.

Belgian national expatriates may also qualify for relief as income taxpayers or researchers under the new tax regime, which is contrary to the old system's requirement that only allowed foreign national expatriates to be eligible.

What Changed?

There are two significant changes for employers to be aware of, related to the status of residence and new benefits.

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Status of Residence

While the old tax system provided appealing benefits to foreign employees and executives, it was heavily criticized for being prone to abuse and difficult to administer. This is primarily because qualifying expatriates were considered non-resident taxpayers in Belgium even if they resided in Belgium with their families. Due to this non-resident tax status, only Belgian source income was subject to income tax in Belgium.

This non-residency status resulted in numerous instances of financial statelessness, as the home countries of the expatriates often did not consider them to be resident taxpayers either. Consequently, the salaries they received from their employer in Belgium, which corresponded to the working days spent outside the country, was not subject to tax in Belgium nor in their home countries.

Under the new regime, Belgium's ordinary tax rules determine whether qualifying expatriates are regarded as resident or non-resident taxpayers in Belgium. If an individual has their domicile or center of personal and economic interests in Belgium, then they are considered residents for tax purposes – and are thus subject to personal income tax in Belgium on their worldwide income. If an individual is deemed a non-resident taxpayer, they have to provide an annual residency certificate by the foreign state where they reside.

Benefits Under the New Regime

Qualifying expatriates have up to 30% of their annual income exempt from tax, which is capped at an annual maximum of EUR €90,000 (USD \$84,620.62). Certain expenses that are reimbursed by an employer as a direct consequence of the employment in Belgium might also be exempt from tax, subject to certain limitations. These expenses may include moving fees, living and housing expenses, and school tuition fees.

The new regime is individual-centric rather than employer-centric, which allows expatriates to continue qualifying for the benefits if they move to another employer in Belgium, provided that all conditions continue to be met. Furthermore, such benefits under the new tax regime are available for an initial period of five years, with a possible three-year

extension if the expatriate files a new request demonstrating that the qualifying conditions are still satisfied.

Conditions for Qualification Under the New Regime

To qualify under the new regime, individuals will have to satisfy the following conditions:

Conditions for Incoming Taxpayers

For incoming taxpayers to qualify under the new system, the expatriate employee or executive must satisfy the following conditions:

- 1. Recruitment:** The expatriate must either be directly recruited abroad or through an assignment or transfer within a multinational group or non-profit organization.
- 2. Absence of a Link with Belgium:** During the 60 months preceding the start of employment in Belgium, the expatriate must not have any link with Belgium. A “link” with the country includes (a) being a tax resident; (b) having lived within a distance of 150 kilometers (92.2 miles) from the Belgian border; or (c) being subject to the non-resident tax on professional income in Belgium.
- 3. Minimum Remuneration:** The expatriate must meet a minimum annual gross salary threshold of EUR €75,000 (USD \$84,620.62) which will be assessed at the time the application for the tax system is submitted. This minimum salary includes the gross salary holiday pay, end-of-year bonus, benefits of all kinds and variable remuneration. The minimum threshold will be pro-rated if the employment/directorship does not last an entire calendar year.

Conditions for Researchers

For researchers to qualify under the new tax regime, the employee must satisfy the following conditions:

- 1. Recruitment:** The expatriate must be directly recruited from outside Belgium by a Belgian entity. This entity does not necessarily have to be part of a multinational company or a non-profit organization.
- 2. Absence of a Link with Belgium:** During the 60 months preceding the start of employment in Belgium, the expatriate must not have any link with Belgium. A “link”

with the country includes (a) being a tax resident; (b) having lived within a distance of 150 kilometers (92.2 miles) from the Belgian border; or (c) being subject to the non-resident tax on professional income in Belgium.

3. Master's/Doctoral Degree or Relevant Experience: To qualify as a researcher, the expatriate must either (1) hold a specific scientific master's or doctoral degree in expertise areas such as natural sciences, applied sciences, medical sciences, agricultural sciences, or engineering or (2) demonstrate a minimum of 10 years' relevant professional experience in these fields.

4. Time Devoted to Research: The expatriate must dedicate at least 80% of their working time to research activities.

Application Procedure

An employer or company must submit an application to the Tax Administration within three months from the start of an expatriate's employment in Belgium in order for that individual to benefit under the new tax regime, which has been reduced from six months under the old regime. The employee or executive concerned must also attach a signed "for approval" certificate to the employer's application.

After the application is sent out, the Tax Administration must make a decision within three months as to whether an expatriate falls under the new tax regime. If the application is approved, then the tax system will apply to the individual from the start of their employment in Belgium.

Additionally, by January 31 of each year, employers must provide the Belgian tax authorities an annual listing of all the qualifying employees and/or directors under the new tax regime for the preceding year.

Conclusion

The Belgian government has provided a transitional two-year grace period for employees and executives who have benefited from the old regime, regardless of whether they meet the requirements under the new regime. Such individuals are able to opt out of the new regime and remain under the prior system until December 31, 2023. Afterwards, those that meet the new regime's conditions will be covered by that system starting on January 1, 2024, while those that

do not will no longer be entitled to the expatriate tax treatment.

While the grace period provides all actors affected with time to adjust, employers as well as their employees and executives should determine whether the expatriates satisfy the more restrictive requirements under the new tax system. If your organization does business or employs individuals in Belgium, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#) to learn more about the implications of the proposed legislation and to assess what changes, if any, are needed to bring the organization and its employees and executives into compliance. We will continue to monitor the situation and provide updates as warranted, so you should ensure you are signed up for the [Fisher Phillips Insight System](#) to receive the most up-to-date information.