

Beyond COVID-19: Luxembourg employers and employees ready themselves for the future of work

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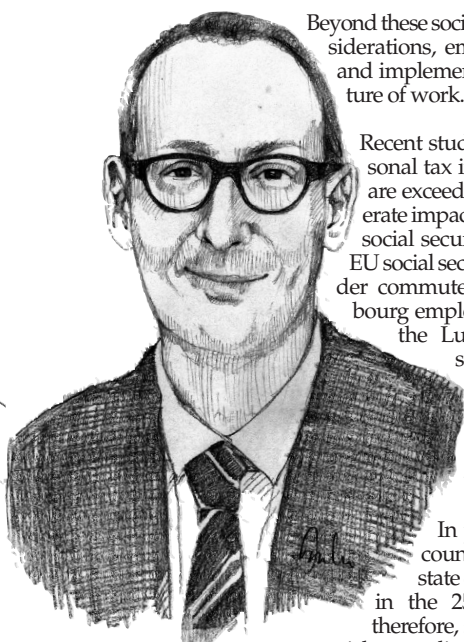
Cross-border relations between Luxembourg and its neighboring countries are still bearing the brunt of the COVID-19 crisis, with many Luxembourg non-resident employees being forced to work from their homes in Belgium, Germany or France since March 2020. International tax and business communities, governments, and the EU social security authorities quickly categorized the crisis as a “*cas de force majeure*” and decided to temporarily freeze the thresholds that would normally trigger a change of affiliation.

During this exceptional situation, to mitigate the risk of these employees being taxed in their home state and/or affiliated in its social security system, Luxembourg concluded amicable tax agreements and bilateral social security agreements with France, Belgium and Germany. As a result, these non-resident cross-border employees remain taxable and affiliated to the member state's social security system where they would have normally worked (i.e., Luxembourg).

It is worth highlighting that these agreements must be checked on a case-by-case basis, as they are limited in duration and subject to specific conditions that are not always fully known.

Employees require additional effort and discipline to regularly complete and deliver their work schedules to their employer. While HR officers must dedicate more time to make sure employees provide this information in a timely manner.

Employers must check the type of employment activities performed abroad (i.e., no contract signatures by employees abroad), maintain proper



Beyond these social security and taxation considerations, employers are also building and implementing their vision of the future of work.

Recent studies⁽¹⁾ have shown that personal tax implications, if thresholds⁽²⁾ are exceeded, may have a more moderate impact than the usually weightier social security implications. Based on EU social security regulations, cross-border commuters working for a Luxembourg employer should be affiliated to the Luxembourg social security system if less than 25% of their working time (or remuneration) over 12 months (hereafter “the 25% threshold”) is performed in their state of residence.

In principle, homeworking is counted as working time in the state of residence and is included in the 25% threshold calculation; therefore, some cross-border employees may risk exceeding this threshold during the COVID-19 crisis. Normally, the employer and employee would need to register with the employee's home country social security authority, and likely remit higher social security contributions than in Luxembourg.

However, as working from home due to the COVID-19 pandemic can be considered as an exceptional situation (“*cas de force majeure*”), it, therefore, does not count towards the 25% threshold during the period agreed between Luxembourg and each of its neighboring states.

In this respect, and to mitigate negative employer and employee consequences, best practices need to be respected, including the golden rule: maintain constant employee-employer communication. Every employee must keep a regular and up-to-date working schedule to justify the location of where (i.e., in which country) they work.

Since the COVID-19 crisis began, employees are seeking increased flexibility in both their everyday lives and in their work environment. To en-

sure the wellbeing of their employees, employers must take several elements into account, including fixing clear limits on the number of working-from-home days and setting rules regarding health, security and data protection.

Also, employers must stay laser-focused on identifying exceptional cases more likely to trigger personal tax and social security issues or questions. These include employees taking special leave, part-time employees, vulnerable workers who are unable to work in the office for longer periods, and high-profile directors and managers.

Employers must also stay alert of the specifics of certain tax treaty provisions that apply to newly implemented working-from-home policies. Properly managing these new working-from-home standards requires long-term efforts and best practices—not just during but, most importantly, after the COVID-19 crisis, when the current social security and tax tolerance and amicable agreements will no longer be relevant.

Looking ahead, these topics are expected to heat up over the summer:

- Belgium should soon decide whether to renegotiate its current tax treaty with Luxembourg to increase the workday threshold to a possible 48 days per year.
- Based on recent communications⁽³⁾, Germany may also want to explore this route with a likely 52 day-a-year threshold; however, this is still subject to discussion at the federal level.
- Although there is no movement in this regard from France, if Germany and Belgium adapt their thresholds, this may motivate France to re-enter the race for better working conditions for their cross-border workers.

We wish you all a pleasant and safe summer holiday!

1) UEL, Taxation: Cross-border employees working from home (https://uel.lu/wp-content/uploads/2020/11/uel_factsheet-homeworking_en.pdf), November 2020.

2) Thresholds are usually 29 days working in France for French tax residents working in Luxembourg; 24 days working in Belgium for Belgian tax residents working in Luxembourg; and 19 days working in Germany for German tax residents working in Luxembourg.

3) Andreas Steier, «Das war der Digitalgipfel zum Doppelbesteuerungsabkommen mit Luxemburg» (<https://www.andreas-steier.de/blog/das-war-der-digitalgipfel-zum-doppelbesteuerungsabkommen-mit-luxemburg>), 25 June 2021.

documentation of working activities in and out of Luxembourg during and after the crisis, and know whether these activities were performed from the employee's home office or elsewhere.

On 1 July 2021, the Luxembourg authorities confirmed that the following relevant amicable tax and social security agreements have been extended as follows:

	Tax agreements	Social security agreements
France	Start date: 14 March 2020 Extended until 30 September 2021	Start date: 19 March 2020 Extended until 30 September 2021
Germany	Start date: 11 March 2020 Extended until 31 July 2021 (automatic month-by-month extension)	Start date: 17 March 2020 Extended until 31 December 2021
Belgium	Start date: 11 March 2020 Extended until 30 September 2021	Start date: 13 March 2020 Extended until 31 December 2021

From in-office, to remote to hybrid work: what does the future of work look like?

More than one year after the Covid-19 crisis surprised us all and threw millions of workers into remote-working mode, we now have the necessary perspective and enough data to reflect on how we want to move forward with work. Is full-time home office sustainable in the long run? Should we all go back to the office full-time? As is often the case, the answer lies in the middle and a hybrid way of working may be the best way to move forward. At ING, we are preparing for that.

Adjusting to remote working

What emerged during the last 18 months of crisis mode is the need for a new approach to work. We are trained and used to experience gradual progressive adjustments and improvements to our way of working. We learn new things, test, adapt, keep what works and scrap the rest and reiterate. The pandemic hit us at a speed we underestimated. From one day to the next, we suddenly had to take a leap of faith and hope that we would make it through.

And, eventually, things worked pretty well indeed. At ING, the Agile Way of Working allowed us to adapt and regroup in a really short time. The pandemic proved to be the best stress-test possible for our assumptions and that framework gave us most of the needed elements to succeed:

- Aligned (small) teams with a clear purpose,
- clear roles and individual expectations,
- ceremonies to navigate remotely and

keep the focus and the pace to deliver on our obligations (daily stand ups, bi-weekly planning and retrospective check-ups, review with internal stakeholders to confirm we are fulfilling their requests and re-adapt, etc.).

Since “delivering on time” is just showing one part of the story, we added some tools to verify the health indicators of our (remote) teams. Understanding the high performing teams in terms of Trust, Alignment, Psychological Safety and Intrinsic Motivation gives us a long-term view on the stability of teams and the energy levels needed to sustain the pace and deliver high quality results.

Indeed, for several managers and employees there has been a shock phase, a real grief process to work through. Leaving the “old way of working” has been hard for many and not having a framework to refer to did not help. The role of the manager is clearly shifting. Rather than increasing skills vertically, we realize that a T-Shaped growth is necessary to increase the collaboration of all teammates. Expanding laterally (leading as a coach, understanding and applying the elements of intrinsic motivation, etc.) boasts the opportunities for managers and teams. We are taking people to a new level of awareness and of potential.

A new normal: getting ready for the hybrid way of working

We are now preparing for a new normal with the implementation of the hybrid way of working. Our goal is a mix of working from home and working from the office. We are choosing to have the best of both worlds, identifying what activities we can best carry out at home versus in the office, taking into account the fact that peo-

ple are made to have social interactions. It's also important to take into account the situation of each employee as well. A 35 year old with a family has little in common with a 55 year old living alone. An employee living in a studio apartment and another in a house in the countryside also have different psychological needs. But how do we match the needs of all staff members? How can we give employees flexibility? By asking them! Asking teams to define their new way of working together. What are the needs for each job of the team and for each individual in the team? How will team meetings be organised? Without forgetting to integrate one day of full team presence in the office to ensure socializing and in person meetings.

A new, new normal? That's to say that staff will be asked, once again, to adapt. Whether we come back to the previous situation (100% working in the office) or we go for a hybrid mode of working, it is again a real change for all and organizations will have to accompany that change.

It can be done by showing the vision, explaining it to leaders and managers, asking them to agree with their teams on the new way of working, and adapting the leadership style focusing on creating a psychological safe environment, on building trust, on creating inclusion, on ensuring the equality of opportunities for all and on assessing collective and individual performance by the outcomes delivered.

We have to keep in mind that the satisfaction of our employees is our priority, and that they also will re-organize their life with their own version of the new normal. We therefore must be prepared to stay agile and adapt, in order to cope with any scenario. In such an environment, all colleagues may speak up, come up with new ideas, improve current process and add a feature to colleague's ideas.

Lessons learned

Still, we want to make sure that the lessons learned during the pandemic will be incor-

porated into our future way of working. Different tools of the Agile Way of Working can be transferred to “non-agile” teams. You don't need to force people into Scrum, Kanban & co. just for the sake of it. Backlog management, prioritization, frequent check-ins and retrospective reviews help any team perform better.

The tools and technologies have proven themselves and remote working proved to be sustainable. But there will always be a need to meet and interact face to face. That's the reason why the hybrid mode, combining a collaborative environment part of the time (at the office) with the possibility to work with few disruptions (at home) will be the best way forward.

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LES RENCONTRES STRATÉGIQUES DU MANAGER

HUBERT VEDRINE

“LES CEO ET LA GÉOPOLITIQUE ISSUE DU PASSÉ, SIÈCLES ET MILLÉNAIRES DONT LES EFFETS PERSISTENT.”

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