

Luxembourg Tax Alert

Luxembourg implements new tax measures in response to the COVID 19 crisis

19 March 2020

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Following Prime Minister Xavier Bettel's speech of 17 March 2020 regarding the COVID-19 crisis, the [Luxembourg government](#) will implement a series of new measures for direct and indirect taxes.

These measures are both welcome and pragmatic, while additional measures could be announced in the coming days.

Please find below the measures already published concerning direct and indirect taxes.

Extension of the deadline to file tax returns

The deadline for submitting direct tax returns has been extended to 30 June 2020. This decision applies to both legal entities and natural persons (Luxembourg residents and non-residents).

The deadline for submitting, revoking, or amending taxpayers' choice for an individual taxation is extended to the same date.

The tax authorities have confirmed in recent exchanges that the current deadline (and payment) extension is also applicable to Form 931 for the 2019 tax year, which covers the taxation of credit interest paid by EU agents.

Business tax measures

Direct taxes

In terms of direct taxes, new payment deadlines will be granted to companies and self-employed persons.

More specifically, legal entities and natural persons exercising an activity generating a commercial profit, an agricultural and forestry profit, or a profit from the exercise of a liberal profession in Luxembourg, who are experiencing liquidity problems due to the COVID-19 pandemic, may request for the cancellation of tax prepayments for the first two quarters of 2020. The Luxembourg tax authorities have provided [a template in French](#) of this request on their website. Only tax prepayments for income tax and municipal business tax are concerned by this measure (not the net wealth tax advances).

Wage tax withholdings are also excluded from this measure.

In addition, these same persons may apply for a four-month payment deadline for income tax, municipal business tax, and/or net wealth tax without interest for late payment. The Luxembourg tax authorities have provided [a template in French](#) of this request on their website. Only payments with a due date after 29 February 2020 can benefit from this measure.

Indirect tax measures

Within a week, the *Administration de l'enregistrement, des domaines et de la TVA* (AEDT) will proceed with the refund of all pending VAT credit balances up to €10,000. This measure aims to meet the liquidity needs of undertakings and should concern around 20,000 taxpayers established in the Grand Duchy.

For those having VAT credit balances to be refunded above €10,000, it should be noted that Article.55.3 of the Luxembourg VAT law foresees a specific ad-hoc refund procedure.

Cross-border workers *Personal tax impact (tolerance threshold)*

Homeworking can trigger potential additional tax liability in the concerned individuals' State of residence. In light of the current situation, non-resident taxpayers working for a Luxembourg employer are facing the risk of exceeding the tolerance threshold set forth by the relevant tax treaty provisions, with the consequence of becoming taxable in their home country on part of their employment income.

Taking the basic assumption of individuals working full-time and full-year in Luxembourg, French tax residents exceeding 29 workdays per year outside Luxembourg; Belgian tax residents exceeding 24 workdays per year outside Luxembourg; and German tax residents exceeding 19 workdays per year outside Luxembourg would become taxable in their home country on the employment income related to their homeworking days, most likely on their workdays worked in third-States, and likely to enjoy a subsequent tax exemption of these days in the Luxembourg payroll.

Important discussions took place with respect to the potential impact of COVID-19 on these tolerance thresholds. The crucial question is whether the work performed from home by the employees to comply with global COVID-19 preventive measures would affect the tolerance thresholds.

In this respect, the competent authorities of Luxembourg and Belgium concluded on 19 May 2020 an amicable agreement to take into account the Covid-19 pandemic as "Force Majeure" for the cross-border workers in the Luxembourg-Belgium tax treaty context.

For the purposes of article 15, 1st paragraph of the Luxembourg-Belgium tax treaty, workdays worked by Belgian resident cross-border workers from their Home office (and for which they receive a remuneration) solely because of the measures taken to combat the COVID-19 pandemic (or of related measures taken) by Belgian/Luxembourg Governments may be regarded as having been worked in the Contracting State in which the cross-border workers would have exercised the employment without the measures taken to combat the COVID-19 pandemic. Consequently, teleworking workdays (performed from home in Belgium) are not

taken into account while assessing the 24 day-threshold allowed outside the Luxembourg territory, and remain exclusively taxable in Luxembourg.

Importantly, this fiction is however not applicable to workdays that the cross-border workers would have worked either at Home, or in a third State, irrespective of these measures. In particular, it is not applicable to cross-border workers who, in accordance with their employment contract, generally carry out their work from home.

Cross-border workers, who make use of this fiction are required to apply it consistently in both Contracting States, and to keep the required information (e.g. a written attestation from the employer indicating the workdays worked from home exclusively due to the measures related to the COVID-19 pandemic). This fiction is only applicable to the extent that the remuneration for the workdays worked at home in Belgium is effectively taxed in Luxembourg, as the Contracting State in which the cross-border workers would have carried out the employment without the measures taken to combat the COVID-19 pandemic. By applying this fiction, the cross-border worker therefore accepts that these items of employment remuneration are effectively taxed in Luxembourg (i.e. they are included in the taxable basis on which the Luxembourg personal tax is calculated).

This amicable agreement has been extended by both Belgium-Luxembourg competent authorities on 19 June 2020, and shall subsequently apply for the period from 11 March 2020 to 31 August 2020.

Similarly, the French and Luxembourg authorities concluded an amicable agreement on 16 July 2020 based on article 24, 3rd paragraph of the current Luxembourg-France tax treaty. This agreement specifies that the COVID-19 pandemic is considered as “Force Majeure”. Based on this, the presence of a worker at his home in France to carry out his employment activities from 14 March 2020 until 31 August 2020 will not be taken into account in calculating the 29 days threshold.

Note that both Contracting States have concluded another amicable agreement on 16 July 2020 based on article 14 of the current Luxembourg-France tax treaty. This agreement provides practical application guidelines for the taxation of employment income, more especially on the computation of the 29 days threshold (basis, days to exclude, exceptions), and in case the threshold is exceeded (exceptions, burden and means of proof).

As far as the tax treatment of wages of cross-border commuters are concerned, Luxembourg and Germany signed a Memorandum of Understanding on 3 April 2020 on the current Luxembourg-Germany tax treaty. This entered into force on 4 April 2020 and was initially applicable to workdays in the period from 11 March 2020 to 30 April 2020. This period has been successively extended until end of July, and will be automatically extended until 31 August 2020 given the absence of any notification by the competent authorities of the

Contracting States (Germany / Luxembourg) providing for the termination of the Memorandum of Understanding (see *infra*). As a consequence, the present agreement applies to working days worked by German resident cross-border workers from their Home office due to Covid-19 from 11 March 2020 to 31 August 2020. This agreement may be subject to further extension.

Both States have confirmed in this agreement that, workdays for which wages are paid in Luxembourg, and are worked in the employee's home office in Germany solely due to measures to fight against the COVID-19 pandemic, will be treated as if they would have been worked in Luxembourg. Moreover, this application requires that the portion of salary attributable to these workdays worked in the home office in Germany is effectively taxed by

Luxembourg (i.e. it is included in the taxable basis on which the Luxembourg personal tax is calculated). German cross-border workers will have to keep appropriate records (i.e. a certificate from the employer certifying the number of workdays during which the employees performed their work in the home office due to the COVID-19 pandemic).

The above measure does not apply if, according to the provisions of their employment contract, employees are habitually working in their home office, or if they work in a third-State (outside of Luxembourg or Germany).

The Memorandum of Understanding also foresees that the short-time working allowance paid in Germany, or in Luxembourg, will qualify as remuneration under the statutory social security scheme of the respective State within the meaning of article 17 (2) of the Germany-Luxembourg tax treaty.

It is foreseen that the Memorandum of Understanding will be automatically extended from the end of one calendar month to the end of the next calendar month, unless it is terminated by the competent authority of one of the Contracting States at least one week before the beginning of the respective following calendar month by written declaration to the competent authority of the other Contracting State.

Considering this current environment, it is strongly recommended to keep record of any relevant documents (e.g. certificate of work issued by the employer) and/or email proving the connection of those workdays with COVID-19.

Employers may also need to upgrade their existing homeworking policy and regulate the different aspects related to homeworking.

Social security impact

Based on the EU Social Security Regulations, cross-border commuters working for a Luxembourg employer should be affiliated to Luxembourg social security system if less than 25 percent of their working time (or remuneration) on a 12-month period (hereafter "the 25 percent threshold") is performed in their State of residence. In principle, homeworking is counted as working activity in the State of residence, therefore taken into account in the 25 percent threshold calculation.

Due to the current highly exceptional circumstances, some employees may be at risk of exceeding the 25 percent threshold. In such a case, the employer and the employee would be required to register with the home country social security authority, and remit social security contributions according to the home country's applicable rates.

However, working from home due to the COVID-19 outbreak can be considered as an highly exceptional situation ("*Force Majeure*"), which should in the best case drive discussions at the EU level to a conclusion based on which, workdays linked to COVID-19 would not count for the 25 percent threshold.

As far as Belgium is concerned, Belgian authorities have confirmed that the homeworking linked to COVID-19 pandemic will not be considered in the 25 percent threshold calculation from 13 March 2020. This exceptional position has been extended until 31 August 2020, and may be subject to further potential extension in the future.

France confirmed on 20 March 2020 that an increase in the time spent in the French territory due to the increased use of remote working will not have any impact with respect to social security coverage. This remains applicable until further notice while an official extension until 31 August 2020 is still pending.

As per the information posted on the German 'DVKA' website, temporary homeworking linked to COVID-19 pandemic will not create social security implications for German cross-border workers, who work for a Luxembourg employer. This exceptional position has been extended until 31 August 2020, and may be subject to further potential extension in the future.

As such, cross-border employees will continue to be affiliated with the social security system of the State where they work.

EU Commission has issued practical guidance to ensure the free movement of critical workers, as well as information for frontier workers and posted workers affected by the restrictions on free movement of people being imposed by a number of EU Member States as a result of COVID-19.

Immigration update

The Luxembourg Ministry of Foreign and European Affairs has informed that with the end of the State of Covid-19 crisis, the following temporary measures have been adopted:

- Third-country nationals who made their declaration of arrival between 1 January 2020 and 31 July 2020: the period within which they must apply for a residence permit is extended from 3 months to 6 months.
- For residence permits issued by the Grand Duchy of Luxembourg which expired after 1 March 2020: the period of validity is extended until 31 August 2020.
- The stay of third-country nationals holding a short-stay Visa, and those not subject to the Visa requirement whose stay has just exceeded 90 days after 1 March 2020: the stay is regularized until 31 July 2020.
- In order to facilitate their exit from the Schengen area, those concerned are requested to make an appointment with the Passport, Visa and Legalization Office of the Ministry of Foreign and European Affairs for the issue of a 'return visa'.
- With regard to applications for international protection, for all applicants (except in special cases) who arrived before 16 March 2020, a new certificate of submission of an application for international protection will be sent to those concerned very shortly. All persons arriving after 16 March 2020 will be appointed to come in person to the Immigration Directorate to extend their certificate.

Please see the Luxembourg government's website for further information and updates:

https://maee.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2020%2B06-juin%2B24-maee-mesures-immigration.html

https://maee.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2020%2B07-juillet%2B17-mesures-immigration.html

Please read for further information:

<https://impotsdirects.public.lu/fr/archive/newsletter/2020/nl17032020.html>

https://mfin.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2020%2B03-mars%2B17-mesures-fiscales-covid19.html

<https://www2.deloitte.com/be/en/pages/tax/articles/Belgium-tax-alerts/Individual-Tax-Alerts-Belgium-Tax-Alerts-Deloitte-Belgium-Tax-Alerts.html>

<https://meco.gouvernement.lu/fr/dossiers/2020/coronoavirus-entreprises.html>

https://gouvernement.lu/fr/actualites/toutes_actualites/communiqués/2020/03-mars/19-travailleurs-transfrontaliers.html

https://minefi.hosting.augure.com/Augure_Minefi/r/ContenuEnLigne/Download?id=8516AF19-75EF-465F-BE7C-C6E1BA183CD5&filename=2081-993%20-%20CP%20Fiscalité%20frontaliers%20cov-19.pdf

<https://travail-emploi.gouv.fr/actualites/presse/communiqués-de-presse/article/covid-19-situation-des-travailleurs-frontaliers>

https://gouvernement.lu/en/actualites/toutes_actualites/communiqués/2020/03-mars/19-luxembourgeois-deplacement.html

https://www.dvka.de/de/arbeitgeber_arbeitnehmer/coronainfo/coronaav/coronaav.html

https://mss.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2020%2B07-juillet%2B03-accord-allemande.html

https://mfin.gouvernement.lu/fr/actualites.gouvernement%2Bde%2Bactualites%2Btoutes_actualites%2Bcommuniqués%2B2020%2B04-avril%2B02-grenzpendler-heimarbeit.html

<https://ec.europa.eu/social/main.jsp?catId=89&furtherNews=yes&langId=en&newsId=9630>
<https://impotsdirects.public.lu/fr/archive/newsletter/2020/nl06042020.html>

<https://impotsdirects.public.lu/fr/archive/newsletter/2020/nl19052020.html>

<https://finances.belgium.be/fr/Actualites/convention-double-imposition-belgique---luxembourg-accord-entre-autorités-compétentes-sur>
https://www.europarl.europa.eu/doceo/document/P-9-2020-001611-ASW_EN.html

<https://impotsdirects.public.lu/fr/archive/newsletter/2020/nl22062020.html>



https://mfin.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actuualites%2Bcommuniques%2B2020%2B06-juin%2B24-accord-teletravail-france.html

<https://impotsdirects.public.lu/dam-assets/fr/conventions/conv/FR-LU-AccordCOVID19signe.pdf>

<https://impotsdirects.public.lu/dam-assets/fr/conventions/conv/FR-LU-Accord29jourssigne.pdf>

https://mss.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Btoutes_actuualites%2Bcommuniques%2B2020%2B07-juillet%2B01-prolongation-affiliation.html

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