Expatriate doesn't equal expensive
The Belgian expatriate tax regime explains you how
Belgium has a special non-resident tax regime applicable to certain employees who work temporarily in Belgium for a Belgian entity which is part of an international group of companies.

The purpose of this special tax regime, which was introduced in its present form by an administrative circular of 8 August 1983, is to reduce the costs of employing expatriate specialists and executives in Belgium.

It therefore follows that the related labor cost reductions should accrue to the employer rather than the employee.
1. Qualifying conditions

To qualify for the special tax regime, a number of conditions need to be fulfilled both by the employer and the employee.

A qualifying employer is either:

- A subsidiary or branch office or permanent establishment of a foreign company
- A Belgian company, which is part of an international group
- A scientific research center or laboratory (the obligation of belonging to an international group is not applicable in this case)
- A control or coordination office of an international group

A qualifying employee must:

- Not have the Belgian nationality
- Be a management-level employee, a specialist or a scientific researcher not easily available on the Belgian labor market
- Have a minimum (executive) salary level
- Keep the center of his/her economic interests outside of Belgium
- Be assigned to Belgium by an international group or recruited abroad by a Belgian qualifying employer

The Belgian assignment should be of a temporary nature, though there is no time limit imposed.

In order to determine that sufficient ties have been maintained with the country of origin, both elements of a personal nature and elements which concern the nature of the assignment should be considered.

1. Elements of a personal nature

- Continued residence of close family members outside Belgium
- Continued ownership of home or other real estate outside Belgium
- Children who are educated abroad or at an international school in Belgium
- Ownership of investments and other personal property outside Belgium
- Foreign life insurance contracts
- Participation in non-Belgian benefit plans (pension plans, group insurance, etc.)
- A diplomatic clause in the Belgian home rental agreement (which provides that the rental agreement can be cancelled in case of retransfer abroad)

2. Elements relating to the assignment

- Continued participation in the home country social security system
- Labor agreement of limited duration in Belgium
- Temporary assignment in Belgium within the framework of the establishment or the restructuring of a company
- Possibility to be transferred abroad at any time
2. The special tax regime

a. Generalities
The persons, to whom this special tax regime is applicable, will be regarded as non-residents in Belgium for income tax purposes. As a consequence, they will only be taxable on their Belgian source income, except for their professional income. With regard to this latter income, they must declare in Belgium their worldwide income from sources within the international group to which their employer belongs, but they will not be taxed on the part of their remuneration which corresponds to the number of days worked abroad (the so-called travel exclusion).
In addition, they will not be taxed on overbase allowances or on reimbursements of expenses which are caused by the assignment to Belgium, within certain limits. These reimbursements of expenses are regarded as costs attributable to the employer and are therefore not considered as taxable income for the employee.

b. Non-taxable allowances
The special tax regime applicable to certain executives and specialists working temporarily in Belgium provides for a tax exemption for the allowances or reimbursements paid by the employees to the expatriate, which cover the extra expenses caused by the assignment to Belgium.

i. Non-recurring expenses

- Moving costs
- Installation costs in Belgium

ii. Recurring expenses:

- Difference in the cost of living and cost of housing between Belgium and the home country
- International or private school fees for children who attend primary or secondary school
- Home leave (for travel by plane, only economy class fares will be accepted)
- Losses incurred when the accommodation in the home country cannot be leased or can only be leased below its normal rental value
- Emergency travel (e.g., serious illness or death of a close relative)
- Exchange rate differential
- Differences in the income tax burden between Belgium and the home country (tax equalization - see below)
- Travel expenses of children studying abroad to visit their parents (maximum two trips per year)

b. Calculation of the non-taxable allowances
The actual determination of the non-taxable allowances can be made in two ways, i.e. based either on:

- The method provided by the Belgian tax authorities (so-called Technical note)
- The actual allowances granted as part of an international remuneration package designed by the group

The Technical note method is usually applied for gross salary contracts or for net salaries outside the framework of an international remuneration system. With this method, the non-taxable allowances, which are exempt from taxation, are either determined based on the actual amount of the invoices (e.g., home leave) or calculated based on a formula provided by the tax authorities. The latter method is used for the following allowances:

- Cost of living
- Cost of housing
- Tax equalization

For the determination of these allowances, the tax administration formula transforms the actual Belgian gross salary into a hypothetical base salary in the country of origin, on which the tax-free amounts are calculated.

i. Hypothetical base salary in the country of origin
The hypothetical base salary in the country is obtained by multiplying the Belgian gross salary, less a deemed foreign assignment premium (ii.), by an index figure, depending on the country of origin, to reflect the lower salary levels in the home country.

The country indexes are determined each year by the tax authorities, taking into account the evolution of the salary level in the different countries.
The Belgian expatriate tax regime

**ii. Foreign assignment premium**

This premium is intended to compensate the adjustment of the remuneration to the international employment. It is expressed as a fixed percentage of the hypothetical base salary: 10% for European countries and 15% for non-European countries.

**iii. Calculations according to the technical note**

The non-taxable allowances are calculated as follows:

- **Cost of living allowance**
  - The cost of living allowance equals 5% of the hypothetical base salary of the country of origin, with an absolute limit of EUR 2,500.00 per year.

- **Housing allowance**
  - The housing allowance is the positive difference between the cost of housing in Belgium (a) and the cost of housing in the country of origin (b):
    - (a) The rental cost of housing in Belgium. However, special rules are applied when the expatriate owns a home in Belgium or when his/her employer puts accommodation at his/her disposal free of charge.
    - (b) The normal housing costs in the country of origin. These are fixed at 12% of the hypothetical base salary in the country of origin.

- **Tax equalization allowance**
  - The tax equalization allowance is the difference between the tax burden in Belgium (a) and in the country of origin (b):
    - (a) The Belgian tax, calculated on the hypothetical base salary of the country of origin before deduction of the foreign assignment premium but after deduction of the personal social security contributions, the travel exclusion and the lump sum deduction for professional charges.
    - (b) The hypothetical foreign tax calculated on the same hypothetical base salary in the country of origin, after deduction of the personal social security contributions (if deductible according to the legislation of the country of origin), and after the standard tax deductions applicable in the country in question.

### Country of origin

In principle, the country of origin is the country of permanent residence of the expatriate prior to his/her transfer to Belgium, but it can also be the country where the expatriate has maintained his/her center of economic interests.

A German national, who prior to his/her arrival in Belgium worked in Germany, in Norway (for two years) and in the Netherlands (for five years), will be deemed to have a Dutch country of origin, unless he/she can prove that he/she has kept the center of his/her economic interests in either Germany or Norway.

<table>
<thead>
<tr>
<th>Country index examples</th>
<th>Base salary x country index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>100</td>
</tr>
<tr>
<td>Belgium</td>
<td>100</td>
</tr>
<tr>
<td>Canada</td>
<td>90</td>
</tr>
<tr>
<td>China</td>
<td>40</td>
</tr>
<tr>
<td>Denmark</td>
<td>100</td>
</tr>
<tr>
<td>France</td>
<td>85</td>
</tr>
<tr>
<td>Germany</td>
<td>100</td>
</tr>
<tr>
<td>Greece</td>
<td>70</td>
</tr>
<tr>
<td>India</td>
<td>30</td>
</tr>
<tr>
<td>Ireland</td>
<td>90</td>
</tr>
<tr>
<td>Israel</td>
<td>72</td>
</tr>
<tr>
<td>Italy</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td></td>
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<tr>
<td>Portugal</td>
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<td>Sweden</td>
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<td>Switzerland</td>
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<tr>
<td>France</td>
<td></td>
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<td>Spain</td>
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</tbody>
</table>

Applicable as of March 2009
The second calculation method, where the calculations are based on an international remuneration system, is applied to a net assignment remuneration package, which is developed according to the methodology of a specialized organization (international tables of, for instance, ORC, MICA, ECA, AIRINC, etc). The purpose of these packages is to ensure that the employee has neither a cost advantage nor a disadvantage from his employment as an expatriate.

In such a system, the amounts of the cost of living allowances, tax equalization, cost of housing allowances, etc., are determined based on scientific studies. The amounts in question are therefore accepted as non-taxable by the Belgian tax authorities within the annual limited amounts mentioned above.

d. Limitation of the non-taxable allowances
There is no limitation with regard to the reimbursement of non-recurring expenses and costs of education other than that these expenses have to be justified appropriately and that they are reasonable.

The reimbursement of relocation and installation costs must be supported by invoices.

The recurring non-taxable allowances (other than the school fees) are subject to one of the following annual maximum limitations depending on the nature of the assignment and the type of company:

- A general limitation of a maximum of EUR 11,250 per year in case of activities of a commercial, industrial or financial nature
- An increased limitation of a maximum of EUR 29,750 per year for activities of a controlling or coordinating nature or of scientific research exercised within a recognized entity

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e. Travel exclusion
In addition to the exemption of the non-taxable allowances, the other major advantage of the special tax regime is that the expatriate is not taxable on that part of his/her remuneration which is related to his/her professional activity outside Belgium.

The breakdown between the salary earned in Belgium and the salary earned outside Belgium is usually (though not necessarily) obtained by comparing the number of days of professional activity spent in Belgium with the total number of working days for the whole year (or a shorter period in the case of a part-year in Belgium) (the so-called travel exclusion).

\[
\text{Travel exclusion} = \frac{\text{Total number of working days spent abroad}}{\text{Total number of working days}}
\]

For the calculation of the total number of working days per year/period, the total number of calendar days in the year/period has to be reduced with the following days, whether or not a professional activity has taken place on these days:

- Weekend days (Saturdays and Sundays)
- Belgian legal holidays
- Vacation days
- Sickness days
- Compensation days (e.g., to compensate a reduced working week as the result of a collective labor agreement or a legal holiday on a weekend)

For the calculation of the working days spent in Belgium, for each travel abroad for professional reasons, the departure day will be considered as a Belgian working day, and the day of return as a foreign working day. However, one-day trips abroad are always considered to be foreign working days.

The proof of foreign working days is an area frequently audited by the Belgian tax authorities. Documentation must be provided upon audit to prove the professional nature of the time spent outside Belgium, and also demonstrate the actual presence of the employee abroad.
Examples of qualifying documents include:

- Travel tickets and other comparable documents in the name of the employee, with the date and destination. The Belgian tax authorities require the boarding ticket as well as a copy of the airline ticket in case of travel by plane.
- Foreign hotel bills and car rental bills in the name of the employee.
- Proof of payment by credit cards abroad.
- Attendance lists of meetings abroad. The following documents are accepted:
  - A copy of the minutes of a meeting outside Belgium or a report drafted by the employee which lists his presence.
  - A confirmation by the employee or by a colleague in the location visited with regard to the meeting, e.g., a letter, fax or e-mail, or follow-up correspondence which states the date and the place of the meeting.
- Evidence of presence at the foreign company (e.g., a copy of the visitor’s register).
- Documents and declarations by third parties, though the tax administration is reluctant to accept such documents as sole evidence, except in very specific and exceptional circumstances provided that the absence of any other document can be explained.
- Mobile phone bills are also accepted as evidence of presence abroad, since calls outside Belgium are listed separately on these overviews.

For one-day trips (either by company car or not), the receipts for purchases which are paid for in cash and which are reimbursed by the employer are not always sufficient (although the expense claims prove their professional character); therefore payments should always be made by credit card, wherever possible to prove the actual presence abroad (name - place - date).

When expatriates make a business trip to their home country, the professional nature of such trip may be more difficult to prove, especially when they stay in their own home. It is also possible that the professional stay is combined with a family visit. To discourage abuse, the tax authorities request, for such trips, additional evidence which proves the professional nature of the trip, such as a copy of the visitors’ register of the company visited, the minutes of a meeting, etc.

It is therefore important to keep as much pieces of evidence (including name and date) as possible attached to the internal expense reports. Moreover, it is advisable to make a specific file for each calendar year with additional documents, which are not joined to the expense reports, but which can be useful in case of a travel audit.

In any case, it is useful to keep a business diary, since this can prove the purpose of a meeting or a business trip abroad. The diary will nevertheless not be accepted as sole evidence if no other documents can be produced.

All the documents should be kept for several years, since a tax audit can take place several years after the tax year.
**Determination of the working days in a calendar year (2010)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of days</td>
<td>365</td>
</tr>
<tr>
<td>To be deducted:</td>
<td></td>
</tr>
<tr>
<td>Weekend days</td>
<td>104</td>
</tr>
<tr>
<td>Vacation days</td>
<td>25</td>
</tr>
<tr>
<td>Legal holidays</td>
<td>7</td>
</tr>
<tr>
<td>Sickness days</td>
<td>2</td>
</tr>
<tr>
<td>Working days</td>
<td>-138</td>
</tr>
<tr>
<td>Days outside Belgium</td>
<td></td>
</tr>
<tr>
<td>Non-qualifying days</td>
<td></td>
</tr>
<tr>
<td>Departure day: 10 March 2010</td>
<td></td>
</tr>
<tr>
<td>Weekends: 13 and 14 March 2010 + 20 and 21 March 2010</td>
<td></td>
</tr>
<tr>
<td>Total number of non-qualifying days: 5</td>
<td></td>
</tr>
<tr>
<td>Qualifying days (workdays outside Belgium)</td>
<td></td>
</tr>
<tr>
<td>Total number of qualifying days: 12</td>
<td></td>
</tr>
<tr>
<td>Working days spent in Belgium</td>
<td></td>
</tr>
<tr>
<td>(supposing that in example 2 all working days outside Belgium during the year have been taken into consideration)</td>
<td></td>
</tr>
<tr>
<td>Total number of working days of the year</td>
<td>227</td>
</tr>
<tr>
<td>Number of working days outside Belgium</td>
<td>-12</td>
</tr>
<tr>
<td>Number of working days in Belgium</td>
<td>215</td>
</tr>
</tbody>
</table>

**Determination of the taxable income in Belgium**

Total salary (after deduction of Belgian or foreign social security contributions and tax-free allowances): EUR 62,000.

Gross taxable income in Belgium: \( \text{EUR 62,000} \times \frac{215}{227} = \text{EUR 58,722.47} \)
3. Recognition of the status of non-resident employees

The special non-resident tax regime for expatriate employees in Belgium is not granted automatically, but must be requested jointly by the employer and the employee.

The employer should file a request with the appropriate department with the Belgian tax authorities for each expatriate, within six months following the month of their arrival in Belgium.

In case of a late filing of the request, the special tax status can only be applied as of the year following the year of the request, provided the employee has not yet been assessed as a resident taxpayer.

For those years for which the special tax status is not applied (because of a late request), the employee will be taxed as a non-resident, but without the benefit of the special regime, i.e. no tax-free allowances and no travel exclusion (deduction for working days outside of Belgium).

The application should mention the following data:

a. Employer
   General information proving the international dimension of the group (organization chart, articles of association and description of the activities of the company in Belgium). This information is only required the first time a request is filed by the employer or when there is a material change to the facts originally presented. The employer must sign a formal request for each new qualifying expatriate.

b. Employee
   - Personal data (name, family status, date of birth, etc.)
   - Date of assignment or of direct recruitment outside Belgium
   - Elements which show that the expatriate has kept the center of his/her economic interests abroad, with appropriate supporting documents which prove that the assignment is of a temporary nature (the supporting documents are very important to obtain recognition as a qualifying expatriate)

   - A breakdown of the salary structure and the overbase allowances
   - The country of origin
   - A detailed job description
   - A copy of the Belgian home lease contract
   - Evidence of continued coverage under a foreign social security legislation (if applicable)
   - A copy of the employment contract
   - A formal request, signed by the employee

On the basis of the application file, the tax authorities will check if the foreign employee meets all the conditions to qualify for the special tax regime. The employer will be notified of the decision in writing. However, there is no limit as to the period within which the authorities are required to take their decision and it is therefore not unusual that the decision is not taken until one or two years after the request. However, the employer can, at its own risk, already take the expatriate tax benefits into consideration (e.g., in the monthly payroll tax calculation) before the decision is notified.

If the expatriate starts working for another employer in Belgium, the special tax regime is suspended automatically, though a new request may be made in the name of the new employer, which will be considered on a case by case basis.

After granting, the special tax regime remains applicable for an unlimited period of time, as long as the employee meets the qualifying conditions.

4. Social security rules applicable to non-resident employees

It often happens that an employee posted to Belgium remains temporarily covered under the home country social security system and is therefore exempted from Belgian social security (detachment). This is possible under the European Regulation 1408/71 or based on bilateral agreements on social security.

If the expatriate is subject to Belgian social security, some limited relief is available. Similar to the income tax exemption, a number of assignment related costs can be reimbursed free of social security. These include moving expenses, home leave, emergency travel, cost of living, tax equalization, housing allowances, school fees reimbursement, etc.

These reimbursements of expenses are considered as business expenses and are therefore not considered as salary for the application of social security legislation. Belgian social security regulations are not entirely identical to the income tax rules, and an exemption for income tax purposes therefore does not automatically imply an exemption for social security purposes (and vice versa).
5. Investment and real estate income

As qualifying expatriates are considered as non-resident taxpayers, they are not taxable on their foreign source investment income (dividends, royalties, interest) and real estate income. Exemption from taxation is also possible on interest from a Belgian bank account. Although in this respect the requirements of the EU savings directive should be respected. To obtain exemption of Belgian withholding tax, a certificate should be given to the appropriate Belgian financial institution which proves the non-resident status.

The tax authorities now automatically release this certificate to EU expatriates upon formal acceptance of the “expatriate status”. This certificate is valid during three years but can be extended for two additional years. After five years, the expatriate must file a new request to be exempted from withholding tax.

Qualifying expatriates are only taxed on income from real estate located in Belgium. The calculation of taxable income depends on the use of the property (principal residence, leasing to an individual for private purposes, leasing to a company, ...).

6. Example of the impact of the application of the special tax regime

**Facts**
- Family status: married with two dependent children (over three years old)
- Belgian social security (not applied on tax-free allowances)
- Home country: United Kingdom
- Percentage of travel on business outside of Belgium: 10%
- Total annual gross salary: EUR 75,000.00
- Belgian rent: EUR 744.00/month (annual total: EUR 8,928.00)
- Income year 2010 (tax year 2011)

**Determination of the hypothetical UK base salary**

The hypothetical UK base salary is needed to determine the non-taxable allowances for cost of living and housing differentials. The calculation is as follows:

\[
\text{EUR 75,000.00} \times 85\% = \text{EUR 57,954.55} \\
\text{1.10}
\]

**Cost of living differential**

EUR 57,954.55 x 5% = EUR 2,897.73

(but limited to an annual maximum of EUR 2,500.00)

**Housing costs differential**

Belgian rent (EUR 8,928.00) minus 12% of the hypothetical UK base salary

<table>
<thead>
<tr>
<th></th>
<th>EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgian rent</td>
<td>8,928.00</td>
</tr>
<tr>
<td>12% of EUR 57,955</td>
<td>-6,954.55</td>
</tr>
<tr>
<td><strong>Housing costs differential</strong></td>
<td><strong>1,973.45</strong></td>
</tr>
</tbody>
</table>

**Tax equalization**

EUR 75,000.00 x 85% = EUR 63,750.00

<table>
<thead>
<tr>
<th></th>
<th>EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgian tax on hypothetical base salary</td>
<td>13,490.54</td>
</tr>
<tr>
<td>UK tax on hypothetical base salary</td>
<td>-11,878.64</td>
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<tr>
<td><strong>Difference</strong></td>
<td><strong>1,611.89</strong></td>
</tr>
</tbody>
</table>
The Belgian expatriate tax regime

### Total of tax-free allowances

<table>
<thead>
<tr>
<th></th>
<th>EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of living</td>
<td>2,500.00</td>
</tr>
<tr>
<td>Housing</td>
<td>1,973.45</td>
</tr>
<tr>
<td>Tax equalization</td>
<td>1,611.89</td>
</tr>
<tr>
<td><strong>Total of tax-free allowances</strong></td>
<td><strong>6,085.35</strong></td>
</tr>
</tbody>
</table>

### Taxable income

<table>
<thead>
<tr>
<th></th>
<th>EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>75,000.00</td>
</tr>
<tr>
<td>Belgian social security - employee</td>
<td>-8,957.85</td>
</tr>
<tr>
<td>Tax-free allowances (cfr. above)</td>
<td>-6,085.35</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>59,956.80</strong></td>
</tr>
<tr>
<td>Percentage of foreign travel (10%)</td>
<td>-5,995.68</td>
</tr>
<tr>
<td><strong>Gross taxable income (before cost deduction)</strong></td>
<td><strong>53,961.12</strong></td>
</tr>
<tr>
<td>Income taxes (including special social security contributions)</td>
<td><strong>16,196.74</strong></td>
</tr>
</tbody>
</table>

### Net salary

<table>
<thead>
<tr>
<th></th>
<th>EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>75,000.00</td>
</tr>
<tr>
<td>Social security contribution - employee</td>
<td>-8,957.85</td>
</tr>
<tr>
<td>Income taxes (including special social security contributions)</td>
<td>-16,196.74</td>
</tr>
<tr>
<td><strong>Net salary</strong></td>
<td><strong>49,845.41</strong></td>
</tr>
</tbody>
</table>

### Employer cost

<table>
<thead>
<tr>
<th></th>
<th>EUR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>75,000.00</td>
</tr>
<tr>
<td>Social security contribution - employer</td>
<td>22,385.21</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>97,385.21</strong></td>
</tr>
</tbody>
</table>

The advantage of the special expatriate tax regime for the employer is illustrated by the fact that to deliver the same net salary as calculated above (EUR 49,845.41) a gross salary of EUR 92,014.29 (instead of EUR 75,000.00) would be required with a related employer cost of EUR 122,090.80, i.e. an additional annual employer cost of EUR 24,705.59 (25% increase).
Contact

Would you like to receive more information on our Human Capital services?
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