UNION DES ENTREPRISES LUXEMBOURGEOISES

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# TAXATION: CROSS-BORDER EMPLOYEES WORKING FROM HOME
## WHAT SHOULD I KEEP IN MIND AS AN EMPLOYER IN LUXEMBOURG?

**The below developments summarize the various tax rules applicable to cross-border employees working from home (including in the context of the Covid-19 health crisis). The purpose of this brochure is to guide employers in the application of those rules and to assist them in understanding the obligations that might arise at their level.**

**Document prepared by the UEL with the support of the Chambre de Commerce and in collaboration with the ABBL, the ACA, the Chambre de Commerce, the Chambre des Métiers, the clc, the Fédération des Artisans, the FEDIL and the Horesca.**

# SUMMARY OF TAX RULES

**Employers, in case you have cross-border employees working from home, how will they be taxed? What will be the impact for you?**

## General rules

The remuneration of an employee (working in Luxembourg) residing in one of the neighbouring countries, received for working days performed outside Luxembourg (e.g. working from home), is in principle only taxable in the State of residence of the employee (as from the first day of work performed outside Luxembourg). This rule does not apply below a certain number of days referred to as "tolerance" thresholds.

## The "tolerance" thresholds

Employees residing in Germany, Belgium and France and working from home for a number of days within an annual "tolerance" threshold remain taxable in Luxembourg (subject to the applicable provisions in relation to the avoidance of double taxation). This «tolerance» threshold varies from country to country, namely: 19 days in Germany, 24 days in Belgium and 29 days in France. In principle, the number of days is assessed on an annual basis.

However, when this threshold is exceeded, either due to work performed from home or due to business trips, the part of the remuneration relating to working days performed outside Luxembourg is taxable only in the country of residence of the cross-border worker. The computation methods relating to those "tolerance" threstholds vary depending on the jurisdictions.

## Methods to eliminate the double taxation

The taxable salaries derived in Luxembourg can also be taken into account in the country of residence of the cross-border worker, under certain conditions. In this respect, the exemption with progression method is applicable in Germany. This means that a German cross-border employee with max. 19 days of home office per year would have to declare all of his/her remuneration in Germany, so that it can be taken into account in order to determine his/her global tax rate that might be used to tax his/her German-sourced income. The mechanism is similar in Belgium.

In France, double taxation is eliminated by applying a tax credit since the entry into force of the new tax treaty, concluded with Luxembourg on 1 January 2020. As such, a French cross-border worker who does not exceed 29 days of home working per year would be taxed both in France and in Luxembourg on all of his/her remuneration, but would be entitled in France to a tax credit which should be equivalent to the French tax due.

## The specific Covid-19 situation

The days worked from home during the period of the Covid-19 health crisis may not be taken into account for the calculation of the "tolerance" thresholds, subject to certain conditions. Luxembourg has in fact concluded agreements with each of the neighbouring countries, in order to neutralise the days which were worked from home exclusively, due to Covid-19 (and to fictitiously consider them as working days performed in Luxembourg). These agreements are however temporary and apply only if the work from home is carried out due to a force majeure (or similar) related to Covid-19.

## Impact for employers

The circumstances described above must be closely monitored by any Luxembourg employer who has cross-border workers working from home (or who make business trips outside Luxembourg). Indeed, the employer must ensure an appropriate deduction of the tax withheld on wages, the correct assessment of payslips and of certificates of remuneration (especially in light of the automatic exchange of information or in the event of a wage tax audit).

# FOCUS – TAX IMPACT OF WORKING FROM HOME DEPENDING ON THE NEIGHBOURING COUNTRY

## Simplified example

### Working from home of a married cross-border worker (excl. Covid-19), above the "tolerance" thresholds

Philippe works in Luxembourg but lives with his wife in one of the neighbouring countries. He does not have children. He receives an annual gross salary of **EUR 36,000.**

Philippe works remotely from his home (outside Luxembourg) for around **20% of his annual working time,** and does not perform any business trip within his country of residence nor any other country than Luxembourg. Therefore, he will exceed the tax tolerance thresholds, but shall remain affiliated to the Luxembourg social security system. In this case, he will be taxed in his country of residence for that part of his salary corresponding to the time spent working from home (and exempt in Luxembourg).

**In this specific case, the resulting tax cost for Philippe will in principle be:**

- **+ higher** if he resides in GERMANY
- **+ higher** if he resides in BELGIUM
- **- lower** if he resides in FRANCE

In general, the tax impact for each employee in the event of exceeding the tolerance thresholds can be either positive or negative, depending on their country of residence and their personal tax situation. **A case-by-case analysis is thus always required.**

# KEY DATES

**BEFORE 2020 <**

**General rules:**
Application of the 19 and 24-days «tolerance» thresholds for Germany and Belgium. Former tax treaty applicable in France, no "tolerance" threshold

**JANUARY > MARCH 2020**

**General rules:**
Application of the 19, 24, and 29-days of "tolerance" thresholds for Germany, Belgium, and France (new tax treaty)

**MARCH > DECEMBER 2020**

**Specific Covid-19 rules:**
Covid-19 agreements allow neutralising the days in home office for the calculation of «tolerance» thresholds until the end of 2020, for Germany, Belgium and France

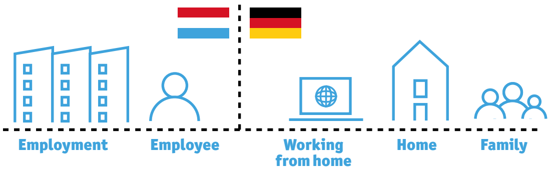
**> FROM JANUARY 2021**

**General rules:**
Application of "tolerance" thresholds (unless the Covid-19 agreements are renewed)

# PRACTICAL CASES

## Case 1

### Working from home of a cross-border employee (excl. Covid-19) within the "tolerance" thresholds

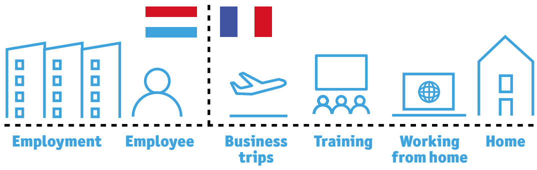



**Facts:** John works as a cook in Luxembourg, but lives with his family in Germany. In order to be able to bring his children to school more often, he works from home 18 days a year. It should be noted that John does perform neither business trips in Germany nor in any other country than Luxembourg. He wonders if he has to report and be taxed on those days in Germany.

**Result:** John does not work more than 19 days a year in Germany. His salary would therefore remain taxed at 100% in Luxembourg.
However, he should report 100% of his Luxembourg salary in Germany, which may be considered for the determination of his German global tax rate.

## Case 2

### Working from home of a cross-border employee (excl. Covid-19) above the "tolerance" thresholds

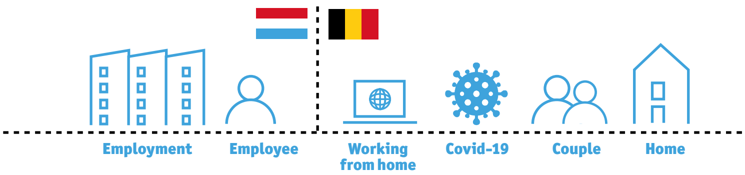



**Facts:** Paul works as an accountant in Luxembourg but lives in France. In order to limit back and forth trips to Luxembourg while being on business trips, he works from home 20 days per year (which includes his business travel days). Added to this, he performes 10 days of annual training in Ireland. He wonders whether he has to report and be taxed on those days in France.

**Result:** Paul works more than 29 days a year outside Luxembourg. His salary should therefore be taxed exclusively in France up to the 30 days spent outside Luxembourg (and exempt in Luxembourg). The remaining part of his salary will follow the commun tax rules.

## Case 3

### Working from home of a cross-border employee during Covid-19




**Facts:** Sarah works as an engineer in Luxembourg, but lives with her partner in Belgium. In order to reduce her travel time, she sometimes works from home, on an ad hoc basis (namely about 2 days per month). It should be noted that Sarah does perform neither business trips in Belgium nor in any other country than Luxembourg. Thus, before the Covid-19 crisis, she carried out 6 days of work from home. During the Covid-19 crisis, she performs 100% of her salaried activity in home office, in order to follow the health recommendations imposed by the authorities. She wonders whether she would have to report and be taxed on those days in Belgium.

**Result:** Sarah should be able to benefit from the neutralisation of the days during which she worked from home during the Covid-19 period. Consequently, she would be deemed not to exceed the tolerance threshold of 24 days per year for the year 2020 (since she is considered to have performed only 6 days of actual work from home in Belgium). She should thus remain taxed in Luxembourg over this period. But her entire salary may be taken into account to compute her Belgian global tax rate.

# EMPLOYERS – DID YOU KNOW?

### Covid-19 agreements

The Covid-19 agreements (allowing to neutralise the days worked from home) mainly cover only salaried income. Consequently, other income (such as directors' fees, self-employed profits) are, in principle, not covered by these agreements. They remain subject to the common tax rules.

The neutralisation of days worked from home during the Covid-19 period only applies in principle if the home office is carried out due to force majeure related to the health situation. This means that an employee who was required by their employment contract to work from home on a regular and mandatory basis before the Covid-19 period will not be able to benefit from the neutralisation rule in this regard. Employers should therefore be careful with these cases, in order to correctly apply Luxembourg wage withholding tax.

Please note that specific Covid-19 agreements have been reached for social security purposes, and specifically regarding the neutralisation of the 25% threshold.

### Corporate taxation

When a Luxembourg employer has cross-border workers working from home, they must also ensure that this situation does not risk to create a permanent establishment of their company in the employee's countries of residence. If this is the case, the employer shall then ensure that they meet the tax and reporting obligations that may result for their business in that country.

### Social security (excl. Covid-19 specific rules)

Cross-border workers who perform less than 25% of their working time/remuneration in their country of residence over a period of twelve months (for a Luxembourg employer) remain covered by the Luxembourg social security system. When this threshold is exceeded, the country of social security of the employee changes. For a cross-border worker, the change of social security affiliation towards their country of residence usually generates a higher cost. This is also the case for their Luxembourg employer, who will generally have to bear higher employer's social security contributions.

# PRACTICAL GUIDELINES

## Supporting documents to be kept by the employer

- Up-to-date work calendar per employee detailing the place of work (namely, days worked in Luxembourg, in the country of residence, and in a third country)
- Certificate justifying which are the home working days of employees which were carried out due to Covid-19
- All relevant supporting documents in the event of a Luxembourg (or foreign) wage tax audit, within the limits of the applicable legal framework and in accordance with regulations relating to data privacy and data protection
- Any A1 certificate confirming the affiliation to the Luxembourg social security system when your cross-border workers are working from home (or traveling outside Luxembourg).

## Important points to be considered carefully by the employer

- Ensure the proper application of the specific Covid-19 provisions according to each specific case
- Check if an amendment to the employment contract or to the internal company policy must be performed in order to cover the employee work from home (in particular for the Accident Insurance Association)
- Identify employees potentially exceeding of the tax tolerance thresholds and the 25% threshold in relation to the social security affiliation
- Ensure that the payslip is in line with the tax situation of the employee working from home
- Check if any specific obligations in terms of employment law may apply to you when your employees are working from home
- Check any eventual filing obligation that may arise locally

# TO GO FURTHER:

**Luxembourg:** The ACD and Guichet.lu regarding home working (including the Covid-19 period)
**Germany:** The tax treaty, the mutual agreement and the circular
**Belgium:** The tax treaty, the amendment and the circular – instructions from the Belgian Ministry of Finance
**France :** The tax treaty and its protocol, the amendment, the mutual agreement and the circular

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**This document has been developed with the support of the Chambre de Commerce.**

For any additional questions in respect of the above, please liaise with your current contact among our members or the House of Entrepreneurship or please consult the following websites: ABBL, ACA, Chambre de Commerce, Chambre des Métiers, clc, Fédération des Artisans, FEDIL, Horesca.



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