

PAYROLL ALERT

TELEWORK REGIME FROM 1 JULY 2022

During the Covid-19 pandemic and in order to open up telework to border workers, Luxembourg had negotiated with its neighboring countries (France, Belgium and Germany) transitional agreements to suspend the applicable counters for the determination of the tolerance thresholds in tax and social security matters.

The objective of this "Payroll alert" is to summarize the tax and social security rules applicable on 1 July 2022.

A. Overview of the existing tax agreements

A.	Belgium	Germany	France
Applicable tax convention	CDI 17/09/1970, article 15	CDI 23/04/2012, article 14	CDI 20/03/2018, article 14
OECD Compliance	Yes	Yes	Yes
Tolerance threshold	24 days increased to 34 days (bill approved in Finance Committee - awaiting publication of law)	19 days	29 days (34 days under discussion)
Legal bases	Agreement 16/03/2015 Circ L.G. - Conv. D.I. no 59 31/03/2015	Agreement 26/05/2011 Circ L.G. - Conv. D.I. no 56 26/03/2012	Protocol CDI point 3 Agreement 16/07/2020 Circ L.G. - Conv. D.I. no 61 21/10/2020

B. Application of the tax tolerance thresholds for the transitional period from 1 July to 31 December 2022

B.	Belgium	Germany	France
Application of the tax tolerance thresholds from 1 July 2022 to 31 December 2022 - Transitional period	The 34 days are not prorated (source close to the Belgian Ministry of Finance; no official source)	The 19 days are not prorated (Circular L.G. - Conv D.I. no 64 dated 23 March 2022)	The 29 days are not prorated (press release of the French Ministry of Economy dated June 28, 2022)

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C. Rules applicable when the tax threshold is exceeded

C.	Belgium	Germany	France
Remuneration for days worked partly in Luxembourg and partly in France or in a third country	Prorating of the taxation according to the real time of activity in each State (in practice, the time is generally counted in full hours)	Prorating of the taxation according to the real time of activity in each State (in practice, time generally counted in full hours)	Prorating of the taxation according to the real time of activity in each State (in practice, time generally counted in full hours)
On-call premium (taxation)	State of residence	Agreement provides for prorating on the basis of the annual pro rata, but Finanzamt Trier defends State of residence	-
Remuneration of the actual work done in case of intervention during an on-call period	Prorating according to the actual working time in each state	State of effective performance of overtime	State of effective performance of overtime
Right to tax wages paid by the employer for a period of illness	Luxembourg	Luxembourg	Luxembourg
Wages paid as part of exemption from work during the notice period	Prorating of the tax on the basis of the situation at the time of the termination of the employment contract. Not taken into account for the calculation of the 24-days threshold (because no effective activity)	Prorating of the tax on the basis of the calendar year preceding the year of termination of the employment contract. Not taken into account for the calculation of the 19-days threshold (because no effective activity).	References OECD comments, so taxation in the State(s) where the employee would likely have worked during the notice period. Not taken into account for the calculation of the 29-days threshold (because no effective activity).
Redundancy pay	Prorating the tax on the basis of activities during the entire employment relationship	Prorating the tax on the basis of the calendar year preceding the year of termination of the employment contract	References OECD comments, therefore prorating the tax on the basis of the last 12 months before the end of the employment contract

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D. Calculation of the tolerance thresholds

D.	Belgium	Germany	France
Taking into account days worked partly in Luxembourg and partly in the country of residence or in a third country	Any fraction of a day worked partially outside Luxembourg, even for a short period, counts as a full day	Any fraction of a day worked partially outside Luxembourg counts as a full day	Any fraction of a day worked partially outside Luxembourg counts as a full day
Taking into account the days or fractions of days of training outside Luxembourg	Yes (considered as working days)	Yes (considered as working days)	Yes (considered as working days)
Taking into account days or fractions of days of on-call/permanence/on-call at the employee's home	Yes (considered as working days) No distinction between passive on-call duty and effective work during on-call duty	-	-
Taking into account days or fractions of days of illness / maternity leave	No	No	No
Taking into account days or fractions of days of teleworking (work performed at home instead of the usual place of work)	Yes (considered as working days)	Yes (considered as working days)	Yes (considered as working days)
Consideration of telework time worked in addition to normal work time at the usual place of work	No, provided that the work time is marginal (e.g. reading emails before the work day)	-	-
Calculation of the threshold in case of part-time work	Prorated according to the time worked under the contract	No prorating	Prorated according to the time worked under the contract
Calculation of the threshold in case of activity only part of the year	Prorated according to the number of months (any month started counts as one month)	Agreement does not provide for prorating, but Finanzamt Trier has a different position	Prorated according to the length of occupancy

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E. Social security rules

E.	Belgium	Germany	France
In normal circumstances, ordinary application of the 25% rule according to Regulation (EC) 883/2004	Yes	Yes	Yes
Covid-19 Agreement	Yes	Yes	Yes
Entry into force	13/03/2020	Mid-March 2020 (no official date)	Mid-March 2020 (no official date)
Due date	31/12/2022 ¹	31/12/2022 ¹	31/12/2022 ¹

¹ The members of the Administrative Commission for the Coordination of Social Security Systems in the European Union have decided on a transitional period of 6 months starting on July 1, 2022 and ending on December 31, 2022. Belgium, Germany and France have confirmed that the derogations will be extended.

The procedure to adopt in terms of social security for cross-border employees

According to the European regulation (EC) No 987/2009, it is the employee's responsibility to contact the competent authority in his country of residence in order to obtain a ruling on the applicable legislation.

Consequently, in order to guarantee the respect of the procedure (article 16 of the regulation 987/2009), we recommend to our customers to make sure that the cross-border employees wishing to use telework have completed the necessary formalities with the competent authority of their country of residence.

- ▶ The employee fills out the appropriate form provided by the competent social security organization in his or her state of residence
<https://ccss.public.lu/fr/employeurs/secteur-prive/travail-plusieurs-pays/organ-etrangers.html>
- ▶ The employer countersigns this form before sending it
- ▶ The employer formalises the telework via an amendment or a policy signed between the employee and the employer
- ▶ **1st case** ²: If the social security threshold is not reached → the competent social security organisation of the country of residence confirms that the employee must be affiliated to social security in Luxembourg. The employer then sends a request for an A1 certificate to the CCSS.
- ▶ **2nd case** ³: If the social security threshold is exceeded → the employer must apply for an A1 certificate in the employee's country of residence.

How can BDO assist you?

- ✓ Advise you on the process the employer must take depending on the employee's country of residence
- ✓ ² Apply for A1 certificate (if Luxembourg is eligible for affiliation)
- ✓ Review the overall compliance of the process taken directly by the employer and the employee
- ✓ ³ Put you in touch with the BDO offices in border countries (Germany, Belgium, France)

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