

Covid-19: More clarifications for the taxation of French cross-border employed workers

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As announced by the Ministry of Finance in a statement dated 24 June 2020, Luxembourg and France finally formalised their agreement on the taxation of cross border workers by signing an agreement on 16 July 2020 confirming that homeworking days performed in France due to the Covid-19 measures will be considered as “*force majeure*”. Therefore, they will not be counted towards the 29-day threshold provided for the purpose of the application of Article 14, paragraph 1 of the Luxembourg-France double tax treaty.

On the same day, France and Luxembourg also signed another agreement providing clarifications on the 29-day period rule that can be summarised as follows:

Clarifications on the computation of the 29-day period:

- Principle: working days (including professional training days) performed in the State of residence or a third State are taken into account for the calculation of the 29-day period. This also includes part of the day performed in the State of residence or a third State which shall be considered as one full day for the calculation of this 29-day period.
- Days excluded from the 29-day period: holidays, weekends, legal holidays, sick days, and days of “*force majeure*” that are beyond the employer and the employee’s will (such as days working from home due to the COVID-19) are not taken into account for the 29-day calculation.
- For cross-border employees working part-time or part of the year, the 29-day period is reduced pro rata to the working schedule and/or working period mentioned in the employment contract. The 29-day rule applies globally on a yearly basis including where the cross-border worker has multiple employment contracts performed in the same year.

Clarifications on taxation if the 29-day threshold is exceeded :

- Principle: If the 29-day threshold is exceeded, the residence State has the right to tax all of the employment income derived by the cross-border worker during the time they worked in their residence State and/or a third State.
- Specific cases :
 - Statutory sickness and maternity allowances are taxable in the State that pays the allowance;
 - Compensation for overtime is taxed in the State where the overtime hours are carried out,
 - Regarding taxation of unemployment income and paid leave, reference should be made to commentaries on Article 15 under the OECD model of tax treaties.

Burden of proof

The cross-border worker must prove which days he was physically present in the employment State. He could for example provide the following documents:

- the employment contract or an employer's certificate mentioning the functions of the cross-border worker and the place they have been carried out, time-sheets, attendance lists of meetings and training sessions, e.g. an extract of the minutes;
- travel tickets (such as train and plane tickets), accommodation expenses (hotel or car rental invoices), ;
- documents proving the purchase of materials, restauration or canteen expenses in the State where the activity is performed, e.g. credit card invoices and receipts;
- nominative mission orders.

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