

MEMO SPLIT SALARY ARRANGEMENT

1. Principles of the Double Taxation Agreements

The split salary arrangement is based on the application of the Avoidance of Double Taxation Agreements. These agreements clearly specify which country has the taxation right of each type of income.

The following by-line is however limited to the taxation principles regarding employment income.

Belgium has concluded about 40 double tax treaties, amongst others with the Netherlands, France, Germany, and the UK.

Most of these double tax treaties are based on the O.E.C.D. Draft Convention. Therefore, the O.E.C.D. Draft convention is used as reference.

1.1. Employment income

Article 15 of the O.E.C.D. Draft convention specifies as general rule that income as an employee is taxable in the state where the employee lives.

If the activities as an employee are carried out in another state, the income is taxable in that other state, and exempt in the state where the employee lives (exception 1).

However, if the activities as an employee are carried out in that other state, and the three following conditions are met simultaneously, the income will remain taxable in the state where the employee lives : (exception on the exception)

- the activities in the other state do not exceed 183 days in each fiscal year;
- the remuneration is paid by, or on behalf of, an employer who is not a resident of the other state;
- the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other state.

Therefore, if the remuneration is paid or borne by an employer who is a resident of the working state, the remuneration as employee will be taxable in that state, and will be exempt in the state where the employee lives.

The Belgian system for not taxing the foreign income is the commonly used system of exemption with "progression retention".

This means that the other taxable income in Belgium is taxed at the rates which would have been applicable if all of the income had been taxable in Belgium. In practice, Belgium grants a tax reduction equal to the average tax rate on the total income applied on the foreign income.

1.2. Other implications

Neither the double tax treaties, nor Belgian internal legislation provide for a minimum or a maximum amount of compensation that can be taxed by a foreign country.

Normally, the determining factor is the **physical presence** for business purposes in the foreign country and the fact that the remuneration is effectively paid by an employer established in that country. Special conditions can however justify disproportionate splits.

One must be careful that enough substance can be provided to defend the existence of the multiple employment situation.

It is therefore recommendable to have formal employment contracts with each foreign company and to be paid from the payroll of the foreign countries.

Substance can be evidenced to the tax authorities by the following items :

- 1) Effective presence in the other country ;
- 2) Effective function in the other entity ;
- 3) Salary in relation to the importance of the function and the time spent in the other country ;
- 4) Evidence of 1, 2 and 3 can be provided by :

- activity reports ;
- travel reports ;
- travel invoices ;
- border documents ;
- separate employment contracts ;
- all other acceptable proof.

2. Social security implications

For persons which have the nationality of an E.U. Member State, the Council regulation n° 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, will apply. This regulation foresees specific rules relating to the social security scheme which will be applicable.

Article 14, 2, b provides that a person, normally employed in the territory of two or more member states, will be subject to the social security scheme of the member state in whose territory he resides, if he pursues his activity partly in that territory.

As a result, the foreign remuneration will be subject to the Belgian social security contributions for employees, as you are residing and working in Belgium.

Several formalities have to be fulfilled when establishing a multiple employment contract.

The formalities to be complied with for the payment of the Belgian social security contributions on the foreign income can be summarised as follows :

- The foreign employer has to register (request a social security number) with the Belgian social security institute and pay the Belgian social security contributions;
- A certificate (E-101) stating that the individual is subject to Belgian social security contributions must be completed.

In practice, the formalities and the payments can be made by the Belgian company acting as an intermediary between the social security institute and the foreign companies.

On 1 May 2010, new regulations on social security coordination in the European Union entered into force (883/2004 and 987/2009).

When working in more than one member state and residing in the state where you pursue a substantial part of your activity, as an employed or as a self-employed person, you are subject to the legislation of your state of residence.

When working in more than one member state and being employed by various undertakings or employers in different member states you are also subject to the legislation of your state of residence.

If your state of residence does not correspond to the state in which you pursue a substantial part of your activity (in the case of an employed person) or to the centre of interest (in the case of a self-employed person), other rules will apply.

The formalities to be complied with for the payment of the Belgian social security contributions on the foreign income are the same as described above, except for the certificate E 101. Now, an A1 document must be completed.:

If you need some more information, please do not hesitate to contact us.

A handwritten signature in blue ink, appearing to read 'V. Triempont', is written over a light blue grid background.

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