

# Short-term business travelers to Belgium

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## Short-term business travel to Belgium

Short-term business travelers (STBTs) are foreign employees who are coming to Belgium for professional purposes for a short period of time and continue to maintain tax residency in their home jurisdiction, where they hold strong ties. Such a situation often triggers unexpected tax and reporting obligations for themselves and their employers. These obligations can place significant administrative and tax burdens on multinational companies that may be unaware of their exposure to penalties and other regulatory risks. It is therefore important that employers and employees are aware of the formalities to follow when coming to work in Belgium.

## Immigration

Individuals who travel to Belgium and who have the nationality of a country not belonging to the European Economic Area or Switzerland in principle require a work permit (in case the individual will only work in Belgium), single permit (if the individual will work and reside for more than 90 days in Belgium), or professional card (for self-employed individuals) to carry out professional activities unless they would fall under one of the governing exemptions. A single permit needs to be requested before arrival in Belgium and covers both the right to stay in Belgium and the right to work in Belgium. The single permit is of limited duration and must be covered by an employment contract.

However, in all cases (i.e., even if the request for a permit or a professional card is not necessary), the employee must ask for a right to stay in Belgium with the municipal government where he/she lives, except if he/she comes to Belgium for a few days only to attend a meeting, for example. Separate rules are in place for EU citizens traveling to Belgium for professional purposes. The applicable rules should always be looked at on a case-by-case basis.

## Tax residency

Based on the provisions included in the Belgian Income Tax Code, "tax residents" means natural persons who have established their domicile in Belgium or, if they do not have a Belgian domicile, the seat of their fortune. To determine whether the domicile and/or the seat of fortune are located in Belgium, all factual circumstances must be considered.

In addition, there is a refutable, legal presumption that individuals who are registered in the Belgian national register are deemed to have their tax residency in Belgium. Furthermore, individuals are presumed to have their residency in Belgium at the place where their family is living. This presumption is irrefutable for married persons.

Please note that the above can be superseded by the tax treaties concluded between Belgium and other countries.

Most double-tax treaties concluded by Belgium are based on the Organisation for Economic Cooperation and Development (OECD) model. Based on these treaty provisions, an individual is considered to have his/her residence in a country when one of these criteria is met. It is a cascade test.

Assuming that the STBTs maintain their residency in the United States, we will not further elaborate on this topic here. In any case, the residency check should be performed on an individual basis.

## **Income tax**

Belgian residents are taxed on their worldwide income, irrespective of the source of income.

Nonresidents of Belgium are purely taxed on income earned from Belgian sources: salaries, Belgian real estate income, etc. Although tax rates are identical for Belgian tax residents and nonresidents, for Belgian tax nonresidents, taxation depends on whether the 75% rule has been fulfilled. The 75% rule means that in case a nonresident individual's professional Belgian source income reaches 75% of the worldwide professional income during the calendar year (i.e., taxable period), taxation will differ as most of the deductions will not apply under 75%. If the 75% rule will apply, the individual is entitled to personal tax deductions (e.g., tax-free amounts, marital quotient, deductions for children at charge) for the computation of the Belgian taxes due.

Whether or not the STBTs will become taxable in Belgium will depend on the stipulations of the applicable double tax treaty. Furthermore, the provisions captured in the treaty are important to determine which types of income Belgium has the right to impose. Additionally, it may be worthwhile to investigate whether the special tax regime for inpatriate taxpayers and researchers could be applied in case of taxability in Belgium.

Each year Belgian residents and nonresidents must fill in a personal income tax return. A Belgian tax nonresident should in principle file a personal income tax return to declare only the Belgian source income. In this regard, an exception exists for individuals who are not considered residents in Belgium for tax purposes and who only have real estate income which does not reach the threshold of 2.500,00 euros per year. The deadline is generally different, depending on whether it concerns a resident or nonresident personal income tax return. For the nonresident personal income tax return, the filing deadline is usually foreseen by the end of November or early December of the year following the income year.

## **Corporate tax part and permanent establishment risks**

If a foreign worker comes to Belgium, it is possible that his or her presence in Belgium will result in a permanent establishment. There are different types of permanent establishments (material permanent establishment and personal permanent establishment):

- **Material permanent establishment:** a U.S. company is deemed to have a permanent establishment in Belgium if such company has in Belgium a fixed place of business through which the business of the U.S. company is wholly or partly carried on, unless in some specific cases, the activities have an auxiliary or preparatory nature. The place of business needs to be connected to a geographical point in Belgium and it requires a certain degree of permanence (not merely temporary). A place of management (and, in certain cases, a home office) can constitute a permanent establishment if this meets the requirements of the double tax treaty.
- **Personal permanent establishment:** a personal permanent establishment is triggered when a person—other than an agent of an independent status (i.e., general commission agent)—can act on behalf of a U.S. enterprise and has, and habitually exercises, in Belgium an authority to conclude contracts in the name of the U.S. enterprise. That enterprise shall be deemed to have a permanent establishment in Belgium in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to activities of a preparatory or auxiliary character which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment.

Next to the notion of permanent establishment, the Belgian establishment also exists. The concept "Belgian establishment" is broader than the notion of permanent establishment used in most double tax treaties. In some circumstances, this could result in a situation where a Belgian establishment exists, but, according to the double tax treaty, the Belgian tax authorities do not have any taxation rights regarding the Belgian establishment. As such, a person acting on behalf of a foreign company in Belgium constitutes, according to internal Belgian legislation, a Belgian establishment even when that person does not have any power to conclude agreements on behalf of that company.

If a U.S. company or employer has a permanent establishment in Belgium or a Belgian establishment, it can also trigger tax (and potentially other) obligations, such as, for example, the obligation to submit a nonresident corporate income tax return.

## **Social security and certificate of coverage**

Belgium has concluded some social security conventions with other countries. A convention is concluded between Belgium and the United States. This convention applies to employees, independent contractors and certain categories of civil servants. Normally, the worker is subject to the social security system of the country in which he/she works, with certain exceptions stipulated by the convention, for example in the case of secondment. This means that a U.S. employee (who would normally be employed in the United States) would in principle be covered by the Belgian social security legislation during his employment in Belgium. In some cases (e.g., secondment, business meeting), however, the worker could remain under the authority of his or her U.S. employer while performing professional activities in Belgium. This implies a continuation of the U.S. employer authority in Belgium. During this time the employee could remain subject to the U.S. Social Security system. To remain under U.S. Social Security, a certificate of coverage is required. It is important that each situation is looked at individually.

## **Payroll obligations**

Under certain circumstances, it is possible that a STBT from the United States triggers a withholding tax and reporting obligation in Belgium for his or her employer (i.e., the U.S. company). To determine whether a reporting and withholding tax obligation exists for the foreign company in Belgium, it should be investigated whether there is an establishment of the employer in Belgium based on internal Belgian legislation or a permanent establishment based on the double tax treaty (reference earlier discussion on permanent establishment risks). A factual assessment is required in this respect.

Even when there would be a Belgian establishment (based on Belgian internal legislation but no permanent establishment based on the double tax treaty), there might no longer be an obligation to pay withholding taxes in case it would turn out that the employee is not taxable in Belgium based on the double tax treaty between Belgium and the United States. However, the reporting obligation will normally remain applicable, meaning that (nil) withholding tax declarations should still be filed and other formalities (such as drafting the annual fiscal attestations) will still need to be complied with in this case.

From a social security perspective, there would only be an obligation to set up a Belgian payroll in case the individual traveling to Belgium for work purposes would become subject to Belgian social security legislation (reference earlier discussion on social security). This means that if a certificate of coverage would be available covering for the period during which the individual is present in Belgium to work here, no Belgian payroll for social security purposes would need to be set up, as the individual remains subject to foreign social security contributions during his or her presence in Belgium.

Next to the potential obligation to set up a Belgian payroll for withholding tax and/or social security purposes, the foreign company who is the employer might also be obliged to take care of several other affiliations:

- External service for prevention and protection of employees at work
- Affiliation with a work accident insurance policy
- Social insurance fund for the company and/or for the directors, partners and shareholders

Finally, please note that Belgian mandatory rules with respect to employment (minimum salaries, sectoral agreements, mandatory benefits, rules regarding working hours) would be applicable even though the STBT would travel to Belgium under authority of his/her U.S. employer and he would remain subject to U.S. Social Security.

## **Social documents and Limosa obligation**

As an employer sending over an employee to work in Belgium, a Limosa obligation might arise. Any individual not subject to Belgian social security legislation and who comes to work in Belgium on a temporary and/or part-time basis must be able to present a Limosa declaration. The Limosa declaration is the first step toward legal work in Belgium in accordance with European rules. It is a legal obligation. Noncompliance with this obligation may give rise to criminal or administrative sanctions for the employer. All those who have work carried out on their premises, or for whom work is carried out in Belgium, may also be held liable if they do not report to the authorities the fact that no proof of a Limosa declaration has been presented.

There are exceptions to the Limosa obligation which depend on the reasons for coming to Belgium and the duration of the stay. For example, small group meetings, with a closed attendee list, during which the individuals may not be present in Belgium for more than 60 days per year and each meeting should not continue for more than 20 consecutive calendar days; installation and assembly which does not take more than eight days (exception not applicable to the construction sector), etc. Every situation should be looked into considering the factual circumstances to determine whether it would fall subject to one of the possible exceptions.

Filing a Limosa declaration simplifies the employer's administrative obligations in Belgium for a limited duration with respect to the following:

- The terms of employment
- The staff register
- Rules applicable to check on part-time workers
- The individual employee account or pay slip, provided that equivalent employment documents are drawn up in the home country

Unless a Limosa declaration is available, each company employing personnel in Belgium, must draw up a set of labor rules and regulations, containing at least the mandatory subjects. The draft must be advertised on the company's premises during a specific time frame, together with a register in which the employees can write down their remarks. In case there are none, the labor rules and regulations can be submitted to the authorities and will enter into force. They must be kept available for consultation without interference and every new employee must receive a copy upon their start date. In addition, individual accounts, salary slips and a personnel register need to be established as per Belgian labor law, except during a period of 12 months if a Limosa declaration is available.

### **Travel and housing costs**

When a U.S. employee is traveling to Belgium for a short-term assignment or business trip, the travel and housing costs incurred due to this trip or assignment are in principle considered as professional costs, meaning that the U.S. employer can bear these costs directly or reimburse the employee for these costs as costs proper to the employer. These are tax-free for the employee and tax deductible for the company from a Belgian tax perspective.

In case family members would travel to Belgium together with the employee or to visit, these costs will not be considered as a professional expense. Furthermore, in case the employee's family members would come to Belgium for the duration of the (short-term) assignment or business trip, travel and housing costs for the family members will in principle not be considered as a professional expense either.

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