

RSM Belgium | Tax Tax Insights January 2022

Program Law of December 27th, 2021 – new regime for impatriate taxpayers and researchers

As announced in our December 2021 Tax Insights, following the agreement on the federal budget, the Belgian government has decided to adapt the existing special tax regime for foreign executives with a new tax regime effective January 1st, 2022. A transition period has been established for taxpayers who benefit(ed) from the old regime.

The new regime was embedded in the Program Law of December 27th, 2021 (hereinafter: "the Law") published on December 31st, 2021, in the Belgian Official Gazette. This law contains several changes from the draft bill.

NEW REGIME

As with the old regime, the objective of the Belgian legislator is to attract qualified personnel from abroad to Belgium.

This new regime is applicable for a period of 5 years and can, in some cases and under certain conditions, be extended with another period of 3 years.

1. Residency

Taxpayers who make use of the new regime will be considered as residents for tax purposes of Belgium, unless they submit a certificate of residency from the other state to the Belgian tax authorities. In the latter case, they may still be considered as tax non-residents.

The consequence of residency in Belgium is that taxpayers will have to declare their worldwide income in Belgium, which will result in additional tax. They will also be able to make use of double tax treaties between Belgium and other countries, which was not the case under the old regime.

2. Conditions

With a few exceptions, the conditions for benefiting from the regime are identical, whether the taxpayer falls under the impatriate taxpayer regime (applicable for employees or company directors) or the impatriate researcher regime (applicable only for employees).

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2.1. Impatriate taxpayers

The conditions – all of which must be met in order to benefit from the impatriate taxpayer regime are the following:

- During the 60 months prior to employment in Belgium, the individual cannot have:
 - o Been a tax resident of Belgium;
 - o Been residing within 150 km of the Belgian border;
 - o Been subject to non-resident taxation on professional income received in Belgium.
- Receive a gross remuneration of at least 75.000,00 EUR per calendar year for services rendered in Belgium (before deduction of social security contributions, excluding severance payments, compensation for temporary loss of remuneration, meal vouchers and eco-vouchers, net cost allowances, ...).
- A formal approval must be obtained from the Belgian tax authorities.

The individual concerned must have been either recruited directly from abroad by an employer active in Belgium, either assigned within a multinational group and thus made available to an employer active in Belgium, in order to carry out a remunerated activity taxable in Belgium.

It has been explicitly stipulated under the new legislation that company directors can in principle benefit from the advantages of the new regime; there are however exceptions.

2.2. Impatriate researchers

The cumulative conditions to be fulfilled in order to benefit from the impatriate researchers regime are identical to those applicable to impatriate taxpayers, with the exception of the minimum remuneration threshold of 75.000,00 EUR gross per year. In accordance with the new legislation, a researcher is someone who carries out, alone or as part of a team, scientific, fundamental, industrial or technical research activities in a laboratory or company engaged in one or more research and development programs on an exclusive or principal basis (at least for 80% of his working time). In addition, impatriate researchers must either have a relevant doctoral or master's degree in the fields of the exact or applied sciences, civil engineering sciences, medical, veterinary or pharmaceutical sciences, architectural or agricultural sciences, either have at least 10 years of relevant professional experience.

3. Advantages

The main advantage of the new regime is that expenses incurred by the individual and directly resulting from the assignment or employment in Belgium can be borne by the employer, either directly, either through reimbursement and will be considered as costs proper to the employer and are thus tax-free.

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The law provides for a lump sum, in addition to the remuneration, corresponding to 30% of the gross remuneration of the person concerned, with a maximum of 90,000.00 EUR per year¹. Special rules are provided for the year of arrival in and departure from Belgium as well as for the year of expiry of the scheme and in cases where the person concerned has to interrupt his activity and his remuneration is not maintained.

Also considered as reimbursements for employer's own expenses (outside of the 30% flat fee) are:

- The expenses, listed exhaustively, caused by the impatriate's move to Belgium;
- The expenses, listed exhaustively, related to the furnishing of the home in Belgium, which are incurred during the first 6 months following the arrival in Belgium. These expenses are limited to an amount of 1.500,00 EUR¹.
- The cost of school fees for the children of the impatriate or his/her partner who move with one or both parents, if they are of compulsory school age according to Belgian law and, as such, attend nursery, primary or secondary school in Belgium in a private or international school.

Please note that it is up to the individual to justify the amounts of these expenses (outside of the 30%) by means of invoices, receipts, proofs or other documents or, if this would not be possible, any other means of proof permitted by Belgian common law, except for the oath.

4. Procedure

In order to benefit from the regime, a request must be submitted by the employer or the company, by electronic way, to the administration, within a period of 3 months from the date of the taxpayer's entry into service in Belgium. The same applies in the case of a request for an extension of the regime. In addition, the taxpayer concerned must also sign a document confirming his agreement to the application of the regime.

The Belgian authorities have 3 months to respond to this request.

The employer will also have to submit to the Belgian authorities an annual report (before January 31st of each calendar year) listing all the taxpayers who benefited from the new regime the previous year.

TRANSITIONAL PERIOD

Taxpayers and researchers who, as of January 1st, 2022, have not yet benefited from the old regime for at least 5 years and who meet the conditions for the application of the new regime, may opt to benefit from the new regime. In this case, the employer or company must submit an electronic application file to the administration by July 31st, 2022 at the latest. The individual himself should also provide a statement confirming that he or she wishes to benefit from the new regime for impatriates.

¹ Amount subject to adjustment by the King in accordance with the smoothed health index, every 3 years and for the first time for the 2024 income year.

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For taxpayers who were benefiting from the old regime and do not wish to switch to the new system, or in case their application to do so is refused by the administration, a transitional period of 2 years applies, meaning that the benefits of the old regime remain applicable for those individuals until December 31st, 2023.

If you have any questions regarding this topic, don't hesitate to contact our RSM Belgium | Tax team (tax@rsmbelgium.be).

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