

# NEWSLETTER

*It smells of summer, sunny days and holidays. Just before you pack your suitcases and head of into the sun we would like to keep you up to date with the latest changes in employment and tax law.*

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## Working in Luxemburg, living in Germany

Memorandum of understanding on the double tax treaty

between Germany and Luxemburg 26<sup>th</sup> May 2011

After long and pertinacious negotiations Luxemburg and German tax authorities have finally found a common approach to income tax for those employees who live in Germany but work in Luxemburg:

### a) The principle

The salaries of employees living in Germany and working in Luxemburg are still being submitted to Luxemburg taxes, as far as their professional activities have been performed physically on Luxemburg' soil. However, the right to levy taxes belongs generally to Germany once these activities are performed in the country of residence or somewhere else outside of Luxemburg.

### b) De minimus threshold

The memorandum introduces a de minimus threshold of 20 days. Below this threshold Germany relinquishes its right to levy taxes.

For those living in Germany and commuting to Luxemburg this means that their salary is completely being submitted to Luxemburg taxes if they've been working less than 20 days outside of Luxemburg. In this case their income for these days remains tax free in Germany. However, their income remains liable for determining the applicable progression reservation.

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### **c) All kinds of activities**

According to the Memorandum the different kinds of activities no longer play a role. There is no longer a difference being made between “productive” activities (e.g. meetings with clients, working from home) and “non-productive” days (taking part in seminars, office Christmas parties etc.).

### **d) Determining the amount of working days abroad**

In order to determine how many days have been worked abroad one looks at the number of working days on the basis of the employment contract. These are the days of the calendar minus those on which the employee doesn't have to work according to his employment contract (weekends, vacations and bank holidays).

Residual leave of less than 10 days from former years is being treated like usual vacation. However, special rules apply if there's more than 11 days of residual leave.

In 2011 a fulltime employee would usually have to work 223 days according to his employment contract.

### **e) Splitting the salary**

in order to determine the amount of salary that is to be split one takes into account all parts of a salary, recurring (salary, benefits in kind) as well as one-time payments (bonuses, payment in lieu of holiday). This overall salary is to be divided per the number of working days as defined per employment contract and multiplied with the number of days spent working outside Luxembourg.

### **f) Sickness and maternity pay**

Meanwhile it's been agreed that sick pay by the employer and sick benefits by the Caisse de Santé as well as maternity pay are to be submitted to Luxemburg taxes. For such payments no German taxes have to be paid even if the employee stays in bed in Germany.

### **g) Open questions**

Unfortunately, no agreement has been reached yet on the question of how to treat salary payments during a leave of absence before the end of an employment contract, statutory compensation (tax free in Luxemburg) and voluntary compensation for the loss of an employment (partially tax free in Luxemburg). Apart from that it is still unclear how to treat redundancy programmes. However, the Tax authorities from Trier have promised to issue tax assessments in cases as these only on a provisional basis until another memorandum has been signed.

### **h) Applicability**

The Memorandum has come into force on 27<sup>th</sup> May 2011 and is therefore generally applicable to all tax refunds for which no final decision has yet been made.

This is the case when

- no German income tax return has been handed in yet,
- a German income tax return has been handed in but hasn't been issued yet,

Or

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- a German income tax assessment has been issued but it hasn't yet come into force because the assessment has been declared provisionally in view of the ongoing discussions leading towards the Memorandum, or because the period to appeal hasn't run out or it has been issued under the subject to review.

In case one of your employees has been working abroad for more than 19 days in **2010** it is theoretically still possible to recalculate the salary and adapt the "certificate de remuneration".

However, this could lead to a lot of effort for those clients for whom we have already finalised the annual accounts. To these clients we would like to suggest that we calculate the amount liable to German taxes so that the employees themselves can ask the Luxemburg tax authority for a refund of the overpaid taxes in Luxemburg.

For those clients whose annual accounts 2010 haven't been done we would simply adapt the salaries retroactively.

For the year 2011 a final review for each employee is only possible at the end of the year or if an employee leaves the company – at the end of the contract. We will therefore continue to deduct Luxemburg income tax as usual. Where necessary we will recalculate the salary in January 2012 according to the rules of the Memorandum.

We do ask you though to monitor closely how many days your employees who are living in Germany are working outside of Luxemburg and to forward this information to us. Apart from that we would ask you to keep detailed records of vacations showing whether 2011-vacations have been taken or remaining leave from former years.

Please get in touch in any case if one of your employees should have worked abroad for more than 19 days and as well if you feel you would like to know more about this topic.

(Katharina von Randow)

***Dear clients,***

***We all wish you happy holidays, continuing good business and remain available for you in any way during the summer months.***

***Best regards,***

***July 2011***

***Alhard von Ketelhodt***