



## TAX REGIME FOR IMPATRIATE EMPLOYEES

**The tax regime for impatriate employees allows employers, under certain conditions, to exempt from tax certain elements of remuneration specific to impatriation situations.**

For the needs of their activities, companies are required to recruit qualified employees outside the Greater Region, on the European and/or global market. In order to attract these candidates, companies are often required to cover all or part of the specific costs related to the relocation and installation in Luxembourg (e.g. moving costs, housing, schooling of children) of these highly qualified employees (and their family members).

The assumption by the employer of the costs related, directly or indirectly, to the removal and installation of the highly qualified employee and his family in Luxembourg normally gives rise to the taxation of those expenses as benefits in kind in the hands of that employee. However, the purpose of this preferential tax regime applicable (under certain conditions) to employees impatriated in Luxembourg is to exempt all or part of the benefits granted to the employee. The employer has the main role in the application of this regime since it will be up to him to exclude from the tax base the elements of remuneration eligible for tax exemption when calculating salaries.

On the employer's side, this tax regime allows for the tax deduction of a whole range of eligible expenses (detailed below) to be considered as operating expenses for the employer. In this way, employers optimize their expenses from a tax point of view and remain attractive to the hiring of their future highly qualified employees.

This tax regime governs both the direct recruitment of employees to work in Luxembourg as well as the posting of employees from abroad to Luxembourg.

Since 2011 and until the end of 2020, this specific tax regime was governed by a Circular of the Director of Contributions I.T.L. n°95/2. As from 1 January 2021, the regime was transposed into the amended law of 4 December 1967 on income tax law (I.T.L.) in Article 115 No. 13b I.T.L. and has since been subject to certain revisions.

It is important to note that the old regime provided for by Circular I.T.L. n°95/2 may continue to apply to an impatriate employee whose entry into service in Luxembourg before 1 January 2021 if the latter does not meet the conditions provided by the new regime.

However, if an impatriate employee benefiting from the old regime provided for by Circular I.T.L. n°95/2 meets all the conditions for the application of the new regime of Article 115 n°13b I.T.L., it is mandatory for his employer to apply the new regime retroactively to January 1 of the calendar year in which the employee meets the conditions of the new regime.

Therefore, there is no application option for the old or new regime and a case-by-case analysis must be conducted.

Below, we describe the conditions and benefits of this scheme as it is applicable on 1 January 2024.

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## I. Conditions for the application of the impatriate tax regime

The table below summarises the conditions that must be met by the impatriate and the employer in order to apply the exemptions provided for in Article 115 n° 13b I.T.L.

Conditions common to all employees	Tax residence in Luxembourg on the basis of Luxembourg domestic tax law (i.e. tax domicile or habitual residence in the Grand Duchy)
	Domiciled more than 150 km from the Luxembourg border during the 5 years preceding the year of arrival in the Grand Duchy
	Absence of taxation of professional income in Luxembourg for the 5 years preceding the year of arrival in the Grand Duchy
	Principal occupation of the professional activity for which the tax regime for impatriate employees is granted
	Fixed annual remuneration $\geq$ €75,000 <sup>1</sup> gross excluding cash or in-kind benefits
	Non-replacement of one or more employees who do not benefit from the impatriate tax regime
Conditions specific to secondments <sup>2</sup>	Secondment of a company from an international group to work in a company of the same group in Luxembourg
	Seniority or specialized professional experience of at least 5 years in the international group or in the business sector
	Maintaining an employment relationship with the company of origin
	The employee's right to return to the company of origin at the end of the secondment
	Existence of a secondment contract between the sending company and the host company

<sup>1</sup> Remuneration threshold applicable since 1 January 2023. For the years 2021 and 2022, the threshold was €100,000. In 2020, the threshold was €50,000.

<sup>2</sup> Employee seconded for a fixed term from a company that is part of an international group and located outside Luxembourg to a company of the same group established in Luxembourg.

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Specific conditions for direct recruitment	In-depth specialization in the relevant industry
	Recruitment by a company established in Luxembourg or in the European Economic Area to carry out a salaried activity in Luxembourg
Employer-specific conditions	A maximum of 30% of the workforce (full-time jobs) benefits from the impatriate tax regime (condition not required if the company exists less than 10 years)

## II. Characteristics of the impatriate tax regime

The regime for impatriate employees is characterised by a total or partial exemption from certain specific expenses related to impatriation in Luxembourg and from certain elements of remuneration which are borne by the employer.

The exemptions provided for in Article 115 No. 13b of the I.T.L. are described below. It should be noted that the costs related to the impatriation must in any case remain reasonable and be documented by supporting documents.

Moving expenses to Luxembourg	Total Exemption
Home furnishings in Luxembourg (purchase of furniture, household appliances according to local standards)	
Travel expenses for family reason	
Costs of the employee's final return to his or her country of origin	
School fees for children in primary and secondary education	Total Exemption



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Expenses of an annual trip from Luxembourg to the country of origin for the employee and his family	Exemption capped at 30% of the fixed annual salary and € 50,000 per year (€ 80,000 per year if the employee lives in Luxembourg with his or her spouse or partner)
Tax equalisation fees (compensation for the tax charge differential between Luxembourg and the country of origin)	
If the employee maintains his/her former residence in his/her country of origin: housing costs in Luxembourg (rent, heating, gas, electricity, water, taxes)	
If the employee does not maintain his/her former residence in his/her country of origin: differential between the cost of housing in Luxembourg and in the country of origin	

<p><b>Impatriation allowance<sup>3</sup></b></p> <p>(it replaces the "flat-rate allowance covering the difference in the cost of living between Luxembourg and the country of origin and various expenses related to impatriation" under circular I.T.L. n° 95/2)</p>	<p><u>Old regime (Circular No. 95/2 I.T.L.)</u></p> <p>Monthly amount of the exemption set at 8% of the employee's fixed monthly remuneration with a maximum of € 1,500/month. Monthly amount of the exemption increased to 16% of the employee's fixed monthly remuneration</p> <p>with a maximum of € 3,000/month if the employee lives in Luxembourg with his or her non-working spouse or partner.</p>
	<p><u>New regime applicable since 1 January 2023 (Article 115 n° 13b) I.T.L.</u></p> <p>Exemption up to</p> <p>50% under condition that the amount of the premium does not exceed</p> <p>30% of the fixed annual remuneration of</p> <p>the impatriate excluding bonuses and benefits in cash and in kind.</p>

<sup>3</sup> For impatriate employees benefiting from the old regime provided for by Circular n°95/2 I.T.L., the "flat-rate allowance covering the difference in the cost of living between Luxembourg and the country of origin and various expenses related to impatriation" (COLA) still applies.

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## III. Duration of the plan

The period of application of the impatriate tax regime has been increased from 5 years (old regime) to 8 years following the period of their entry into service in Luxembourg.

Example: an employee starts work in Luxembourg on 10/01/2023. He will be able to benefit from the tax regime until 31/12/2031 (2023 + 8).

The tax regime also ends when one of the conditions relating to the impatriate, his employment or his employer, ceases to be fulfilled (e.g. change of employment, transfer of tax residence outside Luxembourg, intra-group transfer).

## IV. Procedure

### Employer's Liability

The application of the regime for impatriate employees is not subject to prior approval by the tax authorities. It is the employer's responsibility to check that his employee falls within the scope of the tax regime and to ensure the correct application of tax exemptions.

In the majority of cases, the tax regime is applied on the payslips of the employee concerned as part of the calculation of the withholding tax on wages.

### Documents to be produced in case of control (non-exhaustive list)

- ▶ Applicant's CV with specialized professional experience.
- ▶ Proof of tax residency (>150 km from the Luxembourg border) 5 years before taking up employment
- ▶ Absence of liability in Luxembourg 5 years before taking up employment.
- ▶ Employment contract.
- ▶ Proof of non-repetitive expenses (invoice for moving expenses, etc.).
- ▶ Proof of repetitive expenses (tuition fees, annual travel expenses, etc.).
- ▶ Lease agreement.
- ▶ Proof that residency in the country of origin remains maintained (or that the differential has been established).



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## Annual reporting to the Tax Administration

Finally, the employer who applies the impatriate tax regime must make an annual report to the Administration of Direct Contributions. In this respect, the employer must communicate, by 31 January of each year at the latest, the list of the employees who benefit from the tax regime.

## How can BDO support you?

- ▶ Analysis of the conditions of the transition from the old to the new impatriate regime
- ▶ Analysis of eligibility of the tax regime for new employees
- ▶ Optimization of the salary package and implementation of the tax regime
- ▶ Annual reporting to the Administration of Direct Contributions
- ▶ Regular follow-up of your questions related to the impatriate tax regime



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## INTERESTED?

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