

Tax reform 2018 – time to decide for non-resident married tax payers

As of 1 January 2018, non-resident married taxpayers will be classified by default under class 1 and will be taxed only on their revenues earned in Luxembourg.

Nevertheless, if they meet the conditions and opt to be classified as a resident taxpayer, they can choose between:

- joint taxation of the two spouses, based on tax class 2;
- purely individual taxation, based on tax class one for each spouse;
- individual taxation with reallocation, based on tax class 1 for each spouse.

The conditions for tax assimilate are as follows:

- At least 90% of worldwide revenues of one of the two spouses are taxable in Luxembourg.¹
- Or, for non-resident taxpayers who live in Belgium, 50% of the household's occupational earnings are taxable in Luxembourg.
- Or the net revenues earned abroad do not exceed €13,000 per year²

If the non-resident taxpayer does not meet any of these three criteria, s/he will not be eligible for the assimilation system and will receive a tax retention form in class 1.

Conversely, opting to be assimilated as a resident taxpayer will automatically entail a calculation of the taxation rate that will be entered in the tax retention form of each spouse (the rate may be joint for the two spouses, or individual, depending on the case).

If the non-resident taxpayer has not decided by 31 October 2017, s/he³ could still report and even change his or her choice at any time during 2018, or even until 31 March 2019.

These new developments affect married resident taxpayers as well, who can henceforth choose to be taxed collectively or individually. They will be given the same deadlines to make their choice known as non-residents.

What impact will these measures have on the employer? A priori, none. As in the past, the employer will be required to apply the tax retention form provided by the employee when calculating the pay.

¹ Subject to approval by parliament, the first 50 days not taxable in Luxembourg by virtue of a double taxation treaty are considered as revenues taxable in Luxembourg for the calculation of the 90% threshold.

² Subject to approval by parliament

³ Subject to approval by parliament

Nevertheless, as of next year, the employer will no longer be able to determine with certainty whether his employee (whether resident or otherwise) is taxed collectively or individually. As already mentioned, married couples may change their mind about how they want to be taxed beyond the tax year concerned. Now, this taxation method (collective or individual) has a maximal impact on interest rebates that can be granted by the employer for tax exemption. In the case of collective taxation, the top limits come to €6,000 in connection with a mortgage loan and €1,000 for a consumer loan, whereas they are €3,000 and €500 respectively in the case of individual taxation. The employer who grants interest rebates will henceforth be required to take into account the lower limits for his married employees.

If the choice to be made proves complex because of numerous individual parameters, Securex encourages employers to make sure that their employees answer the letter before 31 October 2017. In fact, choosing one or another option will undoubtedly avoid the worst-case scenario for the employee, i.e. of being classified under tax class 1.

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