

Consultation Agreement on Interpretation of Income from Employment, Pensions, Annuities and Government Service Provisions Under Tax Treaty Between Germany and Luxembourg – Details

15 January 2024

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Details of the [consultation agreement](#), signed on 11 January 2024, have become available. The agreement is concluded under the mutual agreement procedure article of the [Germany - Luxembourg Income and Capital Tax Treaty \(2012\)](#), as amended by the 2023 protocol (see, [Germany and Luxembourg Sign Consultation Agreement on Interpretation of Income from Employment, Pensions, Annuities and Government Service Provisions Under Tax Treaty \(12 January 2024\)](#)). The most important details are summarised below.

Employment income

Employment income is as a main rule directly allocated to the residence or employment state on the basis of the actual employment time. To the extent that a direct allocation is not possible, the employment income is allocated pro rata based on the actual employment time during a calendar year.

For the determination of the actual employment days the following rules apply:

Sickness days, holidays and free compensation days for overtime work are not regarded as working days. Weekend days and public holidays count as work days if a salary is paid or a free days compensation is granted for working on those days.

The determination of the actual working time and the pro rata allocation of the employment income takes place on the basis of the working time minutes.

The actual salary includes salary, benefits in kind, supplementary remunerations (e.g. holiday payment, Christmas bonus) paid during a calendar year. All those payments are (in)directly allocated on a pro rata basis.

Once only additional payments such as jubilee bonus are allocated pro rata based on the activities carried out in both the residence and employment state. This rule does not apply to care payments replacing a pension or pension claim.

Transport sector

For employees engaged in the transport sector the employment income is allocated pro rata on a day basis. Employment income derived from an employer resident in one of the treaty states for activities carried out in a third state are allocated to the residence state of the employee.

Travels between the home and the work place are not taken into account for the pro rata allocation because they are not regarded as carrying out an employment activity.

Tele-working

The 34 days rule for teleworking also applies for part-time work and the 34 days are in that case not pro rata shortened.

Work release

Payments for (ir)revocable work release are allocated to the state where the work would have been carried out.

Social security payments

Those payments are taxable in the source state and include, amongst other items, short-time working payments, disability payments, wage continuation for maternity leave, reintegration and pre-pension payments.

Subject to tax rule

The subject to tax clause is deemed to be met if income is included in the taxable base and actually taxed. Income is also deemed to be taxed if it is exempt by an allowance, costs deduction or a loss carry forward.

The subject to tax clause is not met for over-time salary which in Luxembourg is fully tax exempt or exempt income such as lottery prizes.

Entry into force

The consultation agreement applies from 1 January 2024 and applies also to pending cases which were not finalized on that date or which were the subject of a Mutual Agreement Procedure (MAP) on that date.

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