

January, 2024

How are foreign interim workers taxed on their Belgian earnings?

Many Belgian companies and international organizations **are in need of short-term workers**. An employee can be hired through a fixed-term contract, but companies often prefer to **contract with temporary work or recruitment agencies** to hire interim workers, or temps. Hiring temporary employees can help businesses fill staffing gaps, especially during busy seasonal periods or a specific project, and can enable them to **bring in specialist skills**.

If the interim worker lives and works in Belgium, the salary will, in principle, also be taxable in Belgium. However, **if the worker lives abroad** and only spends a limited amount of time in Belgium, or if the foreign recruitment agency pays the salary and **deducts payroll tax abroad**, it **is not always easy to determine** where exactly the earnings are taxable.

Salary is normally taxable in the country where the **employment is physically exercised**. This does not apply when the conditions of the so-called '183-day rule' are cumulatively fulfilled. In that case, the right to tax will go **to the worker's country of residence**, despite the work being physically performed in another country.

One of the conditions of this '183-day rule' is that the salary should **not be paid by (or on behalf of) an employer who is a resident of the country of employment**.

Before we can confirm **who the actual 'employer' is** in the relationship between the interim worker, the foreign agency, and the Belgian client, it is important to check **for whom the work is actually performed**. The 'employer' is normally the one who is entitled to the work produced and, at the same time, bears the risks and responsibilities for this work. Even if the temporary employment agency is the one paying out the salary, there usually will be a **relationship of subordination between the hired worker and the hiring company**. The latter will therefore be regarded as the 'employer' for the application of the double tax treaty. The salary will be considered to be 'borne' by the Belgian employer, which makes the worker taxable in Belgium as from **the first day of employment**. In this case, the interim agency abroad may have **wrongfully withheld** foreign payroll tax.

Belgian tax law explicitly confirms that **if salary is paid out by a foreign company** whose activity consists in meeting the temporary staff needs of a Belgian client but that salary is **then in turn charged** to the Belgian client as payment for the provision of services, it is deemed to be **indirectly borne by the Belgian company**.

We can add to this that if the worker is **not a Belgian tax resident**, the income earned or acquired in Belgium is considered taxable under the **individual non-residents tax**.

TAXPATRIA® can assist you in determining your **non-resident tax position** and help you to **understand the tax consequences** of working on a temporary contract or interim assignment.