

What are the Belgian tax requirements for foreign temp agencies ?

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**.

The temp agency will normally **act as a third party** between client employer and client employee. The agency will typically handle remuneration, work scheduling, complaints, taxes, and so on. However, if the worker is hired through **a foreign recruitment agency**, it is **not always easy to determine** what the tax requirements are. Should the agency withhold payroll tax in the country where it is located or set up a Belgian payroll instead? The Belgian payroll withholding tax is **an advance on the final income tax** due on the worker's salary for the work physically performed in Belgium. Normally, it is **the employer who deducts payroll tax** from the gross salary (often in combination with the mandatory social security contributions) and who forwards it to the authorities (monthly or quarterly). Not complying with this requirement can result in penalties and a late-payment interest.

It is important to understand that if the interim worker's salary is considered taxable in Belgium, **this does not automatically mean** that there is also a payroll tax withholding requirement for the foreign interim agency. There is **a clear difference** between the two. Strictly speaking, it is **the Belgian company that qualifies as the interim worker's 'material' employer** and is therefore obliged to withhold and forward the payroll tax. This will create **practical problems**, since the Belgian company will often have no knowledge of the salary paid out to the interim worker. The Belgian client will normally **only pay a service fee** to the foreign agency for the workers made available.

Is the foreign interim agency **required to withhold** Belgian payroll tax on the salary? There is a general understanding that if the following **three conditions are simultaneously fulfilled**, the interim agency will **not be liable to pay withholding tax** to the Belgian authorities: **(i)** the agency makes interim workers available to a Belgian client; **(ii)** the agency itself does not exercise any activity in Belgium (i.e. no 'Belgian establishment'); and **(iii)** the workers themselves do not provide any services to the agency, only to the Belgian client.

In this context, one needs to consider **all factual circumstances** of the interim employment situation to determine whether the foreign agency **has a 'Belgian establishment' available** for the purpose of the payroll tax withholding requirement.

TAXPATRIA® can help you to understand the tax consequences of **sending interim workers to Belgium** and assist in **setting up a Belgian payroll**.