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FROM CROSS-BORDER WORKERS TO PENSIONERS ABROAD

A BELGIAN PERSPECTIVE ON DETERMINING TAX RESIDENCY
WITHIN THE FRAMEWORK OF DTAC^S



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PRESENTATION STRUCTURE

- Cross-border agreements and differentiated fiscal pressure: an incentive for tax residency fraud?
- Pensioners abroad and the burden of proof
- Verifying tax residency : investigations and data triangulation



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CROSS-BORDER AGREEMENTS AND DIFFERENTIATED FISCAL PRESSURE

AN INCENTIVE FOR TAX RESIDENCY FRAUD?



A VERY SHORT INTRODUCTION TO CROSS-BORDER WORK AGREEMENTS

- Cross-border work clauses were included in the DTACs with France (1964), Germany (1967) and the Netherlands (1970).
- Such clauses usually constitute exceptions to the general principles of article 15 (taxation in the state of activity) by allowing taxation in the state of residence so long as the taxpayer fulfills certain conditions (residence, work in the border zone).
- Nowadays, such a system only subsists with France (Additional protocol of 2008), for a transitional period until 2033



CROSS-BORDER WORK AGREEMENT WITH FRANCE

The Protocol requires from taxpayers the fulfillment of three conditions:

- Having their only permanent home in the French border zone since at least the 31/12/2011 and keeping it since then without interruption ;
- Exercising their salaried activity since 31/12/2011 *continuously* in the Belgian border zone;
- Not working outside of the Belgian border zone for more than thirty days each calendar year.



CROSS-BORDER WORK AGREEMENTS FOR TAXPAYERS

- According to the OECD (2025), Belgium has the **highest** tax wedge for the **average** single worker amongst developed economies.
- Benefitting from the exceptions contained in these agreements may, therefore, results in **significant fiscal pressure reduction**.
- A significant number of people have therefore attempted to fake residency as to benefit from reduced taxation as provided for in these cross-border work agreements while maintaining (undeclared) residence in Belgium.



FRAUD DETECTION AND REACTIONS

The identification of these fraudulent mechanisms has led the Belgian Tax authorities to place increasing emphasis on the determination of tax residency

A significant number of inquiries were carried through several means :

- Mobilisation of the investigation department (checking potential residences in Belgium);
- Demand for credible and tangible proof of residence in France (lease contract, electricity or water consumption);
- Exchanges of information with the French tax administration (spontaneous and on request);
- Triangulation of different databases (national registry, registry of real estate property) with open-source data (e.g. Google Maps).

The systematisation of those investigative practices resulted in numerous corrections and the recovery of substantial amounts of money for the Belgian Treasury.



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PENSIONERS ABROAD AND THE BURDEN OF PROOF

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CONTEXT

- Per the Federal Service of Pensions, in 2024, 205.548 people who receive a Belgian pension were living abroad for a total annual amount of 1.7 billion €.
- Under the provisions of a number of DTACs, some of these pensions may be taxed in the State of residency of the taxpayer (as defined by the DTACs).
- Given the significant differences in tax rates and tax progressivity across the European Union, pensioners may consider moving abroad to optimize their financial situation.



TAX RESIDENCY VERIFICATION

In this context, Belgian tax authorities have adopted an increasingly systematic approach to verifying both residency and fiscal residency before granting tax exemptions by:

- Systematically requesting a valid tax residency certificate;
- Systematically verifying that the taxpayer does not also have a permanent residence in Belgium;
- Requiring concrete and credible proofs of residence in the other State;
- Verifying continued tax residence in the other State as a criterion for ongoing tax exemption.



CONCLUSION

- Belgium is a high fiscal-pressure State with important economic and labour market connexions with its neighbours (France, the Netherlands, Germany, Luxembourg)
- Specific tax-regime (cross-border work) and differentiated fiscal policy may provide incentives for residence change (including faking such residence changes). Such a dynamic is as valid for workers as it is for pensioners.
- Over time, Belgian tax authorities have grown increasingly concerned over this issue. In practice, we have developed more databases and verification processes to detect and solve tax residence fraud issues.



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