

3. FAQ - Human resources

3.1 Working Solutions

What are different remote/teleworking solutions?

Belgian legislation makes a difference between teleworking on a structural basis or occasional remote working.

Structural teleworking means that the employee works from home or any other location than the office on a constant, regular and permanent basis (working remotely as of at least 1 day per week). In this case an agreement in writing is mandatory. Within this framework, the employer is obliged to bear the installation costs for IT programmes, operating costs, depreciation and maintenance costs, etc. Employees working remotely on a structural basis can organise their own working time, but the employer can impose restrictions. It is therefore important to have agreed on the terms in writing.

Occasional remote working is not on a structural, permanent basis, but only exceptionally due to for example personal reasons or force majeure. In this case, it is recommended to have an agreement in writing or a written teleworking policy in place to define the terms and conditions of this teleworking. Within this framework, employees need to perform the number of hours as foreseen in their work roster.

There might also be hybrid situations when it comes to teleworking: e.g. starting the day working from home and drive to the office once the morning rush hour is over, or meet up in the office only for brainstorm sessions or meetings with colleagues and clients, and then work the rest of the day from home. In such cases it is important that the practical aspects are determined and agreed upon between employer and employee on a case-by-case basis.

If the employer allows remote work from abroad, this is also a possibility. However, in this case it is important to keep in mind that there are tax and social security aspects which should be investigated in advance.

Is the employer obliged to provide a compensation for teleworking to the employee?

Based on the distinction between structural and occasional teleworking, the provisions differ.

In case of structural teleworking, the employer must pay a compensation to cover the employee for the costs incurred during the structural teleworking. Within this framework, the employer is obliged to bear the installation costs for IT programmes, operating costs, depreciation and maintenance costs, etc.

When the employee works remotely only occasionally, the employer can agree to bear any costs caused by the occasional telework, but it is, in this case, not mandatory.

Depending on the type of costs the employer wishes to cover, a net allowance could be foreseen under certain conditions. See here below a brief overview. Considering the fact that the Belgian social security authorities and tax authorities have taken a different position in the past, a distinction is being made.

Allowance type	Social security exemption	Tax exemption
Home office allowance	10% of gross monthly salary relating to (only) structural teleworking or up to €129.48 per month	Up to €129.48 per month
Professional use own laptop	€20 per month	€20 per month
Professional use own internet connection	€20 per month	€20 per month
Other costs	Based on actual expenses (proofs, tickets, receipts)	Based on actual expenses (proofs, tickets, receipts)

As per the above, the Belgian tax authorities do not accept that 10% of the gross monthly salary relating to structural teleworking is granted to the employee as a compensation for teleworking. Consequently, should an employer wish to grant this type of allowance, it will in principle be free from social security contributions, but withholding taxes may be due on this amount.

Furthermore, the tax authorities generally accept that a home office allowance is granted to employees working remotely for at least 1 day per week on a structural basis. In order to obtain certainty about the amounts the employer would like to grant to the employee in this regard, a ruling can be obtained in advance.

3.2 Employment Status

What status do branch office employees have towards Belgian authorities?

Assuming that Belgian tax residents, working 100% in Belgium, are concerned, the employees can be employed in Belgium through the Belgian branch of the foreign entity (mentioning the foreign entity on the employment agreement with reference to the Belgian branch).

Belgian labour law will be applicable together with Belgian social security and Belgian withholding tax. In practice, this means that a Belgian payroll will be required, as well as all affiliations imposed by Belgian law and collective agreements on employers. Social documents will also need to be kept available through a social mandatary. The employees have the same rights in Belgium as normal Belgian employees.

Considering that almost all provisions in Belgian labour law are mandatory in nature, it would not be recommended to opt for the selection of foreign labour law in the employment agreements with these employees, but rather Belgian labour law. Even if foreign labour law would be chosen, the same obligations towards the authorities, both by the employee and employee, will exist.

Produced by [Interel](#) teams, on behalf of [visit.brussels](#).

Last update : 08/09/2020

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