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30% RULING

The 30%-ruling is a Dutch tax facility aiming at attracting foreign employees with specific skills or expertise to work in the Netherlands. The 30%-ruling provides for a tax-free allowance of 30% of the taxable salary of the employee.

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Introduction

The 30%-ruling is a Dutch tax facility aiming at attracting foreign employees with specific skills or expertise to work in the Netherlands. Application of the 30%-ruling gives rise to a substantial increase in net salary or a substantial reduction of employer's costs.

The 30%-ruling provides for a tax free allowance (30%-allowance) which is deemed to cover all so-called "extraterritorial" costs. These are costs incurred for staying outside of the country of origin.

Please note that as of January 1, 2012 the 30%-ruling has considerably changed.

1. Conditions

In order to be eligible for the 30%-ruling the employee should:

- be recruited or assigned from abroad (paragraph 1.1);
- have a Dutch withholding agent (paragraph 1.2);
- have specific skills or expertise that is not or only scarcely available on the Dutch labour market (paragraph 1.3);
- have lived more than two thirds of the period of 24 months preceding to the start of his Dutch employment outside a radius of 150 kilometres from the Dutch border (paragraph 1.4);
- in some occasions meet certain transitional rules (paragraph 1.5).

1.1 Employee recruited or assigned from abroad

A crucial criterion for the 30%-ruling is that the employee is recruited or assigned from abroad. This criterion implies that, to be on the safe side, the Dutch employment/assignment agreement has to be signed before arrival in the Netherlands. We advise to also address this issue on behalf of the spouse who joins the employee to the Netherlands and who intends to find an employment.

Change of employer

In case of a change of employer, the employee is obviously not hired or assigned from abroad. However, as an exception to the rule mentioned above, the 30%-ruling can still continue to be applicable if the employee changes employer, provided that all other conditions of the 30%-ruling are still being met. The ruling can only be continued if the period between the end of the previous employment and signing the contract for the new employment, does not exceed 3 months. This continuation is also possible if the previous employer has "forgotten" to apply for the 30%-ruling.

Please note that a transfer of an employee from one group company to another group company is also considered a change of employer unless both group companies are considered by the Dutch Tax Authorities as a qualifying group of withholding agents ('SGI').

Freelancers

Freelancers from abroad who meet the other conditions of the 30%-ruling, may be eligible as well by "opting-in" as employee. Using "opting-in" would enable the freelancer to benefit from the 30%-ruling while he remains independent for labour law purposes.

1.2 Dutch withholding agent

To apply for the 30%-ruling, the employee should have a withholding agent for Dutch wage tax purposes. A foreign employer may voluntarily register as withholding agent for Dutch wage tax purposes, in order to meet this criterion.

1.3 Specific skills or expertise / scarcity

Specific skills/expertise

An employee is deemed to have specific skills or expertise if his annual taxable salary (excluding the 30%-allowance) meets the salary norm. The salary norm is determined on a taxable salary exceeding € 37,296 (2018).

The salary norm, for employees with a qualifying master degree who are younger than 30 years,

is determined on a taxable salary exceeding € 28,350 (2018).

No salary norm applies for qualifying PhD's, scientists and certain medical specialists.

Salary in kind and variable salary elements will also count for the salary norm. It is however not clear how variable salary elements can be taken into account at the beginning of the employment. It cannot be excluded that the Dutch Tax Authorities will only take the fixed salary elements into account when deciding to grant the 30%-ruling.

Salary received from foreign employment will be added to the Dutch salary for the determination whether the salary norm is met. In case of part-time employment, the part-time salary should meet the salary norm. The part-time salary will not be "recalculated" to a 100% employment salary.

Please be aware that the salary test is a continuous test. If the salary norm is no longer being met, the specific skills or expertise cannot be proven in another way and the 30%-ruling will be cancelled. In this respect please note that the salary norm will be indexed each year.

Scarcity test

Apart from the above mentioned specific skills/expertise test, a scarcity test will apply. However, based on information of the Dutch government the scarcity test will be assumed to be fulfilled if the salary norm is met. Only in exceptional circumstances the Dutch tax authorities will require a scarcity test. In that case the following three factors will be taken into account:

- the education level of the employee;
- the relevant job experience of the employee;
- the salary level of the Dutch job compared to the salary level in the employee's home country.

1.4 Kilometer norm

Only employees, who have lived more than 16 months of the 24 months preceding to the start of the Dutch employment outside a radius of 150 kilometers from the Dutch border, will qualify for the 30%-ruling. This especially affects employees from Belgium, Germany and Luxembourg.

1.5 Transition ruling

An employee who has used the "old" 30%-ruling for less than 60 months on December 31, 2011, can continue that ruling until the end of the 60 months period (or the end date of the 30%-ruling if that is earlier). An immediate preceding employment period with a previous employer, for which the 30%-ruling was granted as well, also counts for these 60 months. After these 60 months period has elapsed, the employee needs continuously to comply to the salary norm (see paragraph 1.3) and to the 150 kilometer norm (see paragraph 1.4). If the employees does not comply to these two norms the 30%-ruling will end as of that date. If the period of 60 months already passed on December 31, 2011, the old ruling can be continued until the end date mentioned on the original 30%-approval document provided that the salary criterion is met.

2. Duration period

The 30%-ruling can be granted for a maximum period of 8 years (96 months). The 30%-ruling will end on the last day of the salary period after the salary period in which the actual performance of employment activities has ended provided that this latter salary period is within the 96 months period.

Discount ruling

The maximum duration period is reduced with earlier periods of stay or employment in the Netherlands. Periods of earlier stay or employment, which have ended more than 25 years before the start of the employment in

the Netherlands, are not taken into account, though.

For the above test, periods of work in the Netherlands, not exceeding 20 days per calendar year are disregarded. Further, periods of stay in the Netherlands not exceeding 6 weeks per year for personal reasons, or once for a period of three consecutive months, are disregarded.

Each period of earlier presence in the Netherlands will be separately rounded up to full months for the application of the discount ruling.

In this respect, please note that periods in which an employee for Dutch wage tax purposes in the past 25 years will also be deducted from the maximum application period of 8 years, regardless the place of work and residence.

3. Tax free allowance

3.1 Base for the 30%-ruling

The basis for the calculation of the maximum 30%-allowance is the taxable wage from current employment. This includes variable wage such as bonus payments, income from stock options and other taxable wage, in cash or in kind. The 30%-ruling does also not apply to redundancy payments, i.e. wage from past employment. The tax-free 30%-allowance is maximized at 30/70 of the taxable wage from current employment during the application period of the 30%-ruling. The 30%-allowance has to be agreed upon separately.

The 30%-ruling is not applicable insofar as a relief for double taxation will be granted for part of the wage.

Without further stipulations this 30%-allowance is payable on top of the agreed salary. However, from a budget perspective most employers prefer to grant the 30%-allowance as an

integral part of the remuneration package. For that purpose it is required to conclude an addendum to the employment agreement in which the agreed salary is reduced in accordance with labour law and in exchange for the 30%-allowance. This reduction may affect income related payments (credits, subsidies, etc.).

As mentioned in paragraph 1.3 the salary norm must continuously be met. This may imply that the reduction of the agreed salary and the tax-free allowance should be less than 30%

3.2 Extraterritorial costs

The 30%-allowance can be paid without further substantiation of the extraterritorial costs that are deemed to be reimbursed through this allowance. Alternatively, it is also possible to provide a higher tax-free reimbursement, in case the actual extraterritorial costs exceed the 30%-allowance. Extraterritorial costs are defined as the extra costs for staying outside of the country of origin. Such costs relate for example to:

- travelling costs of home leave;
- extra costs of living;
- finding suitable housing and schools for the children;
- double housing;
- residence permit applications and changing of official documents (work permits excluded);
- language courses.

The 30%-allowance is supposed to cover all extraterritorial costs, which implies that these extraterritorial costs may no longer be reimbursed tax free in addition to the 30%-allowance.

Apart from the 30%-allowance, other professional costs, not being extraterritorial costs, relating to the employment may partially or entirely be reimbursed tax free, in accordance with the criteria of the Dutch Wage

Tax Act 1964.

School fees may be reimbursed tax free in addition to the 30%-allowance, if children are attending an international school. The school fees are defined in such a way that also the fees for international departments of non-international schools can be reimbursed tax free if the following conditions are met:

- the education is based on a foreign system;
- the school or department is in principle only accessible for children of foreign employees.

4. Application procedure

For the application of the 30%-ruling a joint request must be filed by the employer and the employee.

If the request is filed within four months as from the first day of employment, the 30%-ruling retroactively applies as from that first day of employment. If the request is not filed within four months, the 30%-ruling only applies as from the first day of the month following the month during which the request was filed. The same applies in case of a change of employer (see paragraph 1.2). Therefore, it is important to file at least a provisional request within four months after the first day of the (new) employment, even if not all relevant information is available yet.

If the employee meets all requirements, the Tax Authorities will issue a 30%-notification. Otherwise, they will issue a rejection. Such a rejection is eligible for appeal and can ultimately be brought before the Dutch tax court.

LIMES international is acknowledged by the Dutch Tax Authorities as a pilot firm for the 30%-ruling fast lane track. LIMES international is thus allowed to independently judge if an employee will be eligible for the 30%-ruling. LIMES international will, based on information provided employer and employee judge if the employee is eligible for the 30% ruling within 5 working days after providing the information.

The Dutch tax authorities will issue the official 30%-ruling notification within approximately 2 weeks.

5. Payroll issues

The 30%-allowance may already be paid beforehand, i.e. while the application procedure is still pending. Obviously, if the 30% application is rejected, taxes over the reimbursement should be recovered from the employee in arrears. Alternatively, the reimbursement paid must be grossed up at the expense of the employer.

In the view of the Tax Authorities, the 30%-ruling can only be taken into account in the payroll administration of the employer. This may cause inconvenience and hassle if the 30% ruling is issued after the end of the year during which it can first be applied. In such situation it may be necessary to update the payroll retroactively and file corrected wage tax returns ("correctieberichten").

6. Planning opportunities

6.1 Resident employees

Under the 30%-ruling, a Dutch resident employee may elect the so-called partial non-resident taxpayer status. This choice can be made each tax year and can be revised on a year-by-year basis. The partial non-resident taxpayer status implies that for box 1 income (business profits, labour income and income from owner-occupied dwelling) the employee is considered to be a Dutch resident taxpayer. However for box 2 (substantial interest) and box 3 income (savings and investments), the employee is considered to be a deemed non-resident taxpayer. As a result, e.g. investment income will not be subject to Dutch taxation, except for income from Dutch sources, such as Dutch real estate property. The employee may still claim personal deductions, such as alimony and annuity payments, though. Further, partner regulations, such as optimisation of allocation of certain deductible costs, are not affected by this choice.

Logically foreign withholding taxes on box 2 and 3 income cannot effectively be credited against Dutch tax.

Dutch resident US nationals, who have elected the partial non-resident taxpayer status, are considered to be US residents for tax treaty purposes. One of the consequences thereof is that they do not have to report their world-wide income from employment in box 1, but only the income related to the employment activities physically carried out in the Netherlands.

Finally, the election for partial non-resident taxpayer status must be made while the relevant tax assessment is still open to appeal, but preferably when filing the Dutch personal income tax return. In most cases the partial foreign taxpayer status is advantageous for the employee.

6.2 Pension

The employee who participates in a Dutch pension scheme, can build up pension rights over his pensionable wage, including the 30%-allowance. The Dutch wage tax facility for pension contributions will then apply: the employer's contribution remains tax free, employee's contributions remain tax deductible.

Please note that the employee's contribution concerning the participation in the company pension plan affects the taxable wage of the employee. Since the taxable wage has to meet the salary norm continuously (see paragraph 1.3) to remain eligible for the 30%-ruling, the employee may consider to waive his pension rights in order to increase his taxable wage. As an alternative to pension rights such employee may be better off with a life annuity. Details are described in our "Life Annuity rather than Pension Contribution" leaflet.

6.3 Net salary agreement

The 30%-ruling could also be applicable for net salary and tax equalisation agreements. In that case the 30%-ruling leads to a substantial reduction of the employer's costs.



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