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The Netherlands – European Commission Opposes 150-Km Limit for 30% Tax Relief

by Anton Steijn, KPMG Meijburg & Co., Amsterdam (KPMG Meijburg & Co. in the Netherlands is a KPMG International member firm)

The European Commission presented its position in a case pending before the Court of Justice of the European Union (CJEU) concerning the 150-kilometer limit for purposes of the “30% tax relief” in the Netherlands – i.e., foreign employees with specific expertise that is deemed to be scarce in the Dutch labor market are eligible for a 30-percent tax relief benefit (also known as the “30% ruling”).

Why This Matters

The fate of this Dutch rule depends on the outcome of the Court’s review against prevailing EU law and the extent to which it will consider the positions argued by the European Commission and the Dutch Advocate General – the rule could continue to apply or it will have to be altered. If the Court determines that the Dutch rules’ condition that employees who were living within 150 kilometers from the Netherlands’ border prior to the start of their employment in the Netherlands are excluded from the 30% ruling violates EU law, treaty provisions, and principles, then the Dutch government will be obliged to alter its domestic rules and, consequently, the provisions of the 30% ruling (e.g., the 150-km condition) will be modified. Any modifications, and the timing of those modifications, will depend on the CJEU’s ruling and the Dutch government’s reaction to it.

Background

Under the tax relief (provided certain conditions are satisfied), 30 percent of an eligible employee’s salary is treated as a tax-free allowance to cover additional expenses incurred because the employee is temporarily living and working outside his or her home country. The remaining 70 percent is treated as taxable salary.

The Dutch Supreme Court referred the case to the CJEU in August 2013. (For prior coverage, see [Flash International Executive Alert 2013-115](#), 15 August 2013.)

Commission’s Position

In presenting its position, the Commission noted that employees from abroad who resided less than 150 kilometers from the Dutch border during more than two-thirds of the 24 months preceding the commencement of their employment or secondment in the Netherlands are not eligible for the 30% tax relief. According to the Commission, the 150-kilometer limit is a prohibited restriction on the free movement of workers. Rather, the Commission stated that it prefers a less far-reaching measure, such as a criterion based on the commuting distance.

It remains to be seen to what extent the CJEU will take account of the Commission arguments in the case pending before it.

Read a May 2014 report¹ prepared by the KPMG member firm in the Netherlands: [European Commission: 150-kilometer Limit as Assessment Criterion for 30% Ruling Is Prohibited Restriction](#).

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