

March 4, 2015
2015-031

**The Netherlands – EU
Court Decision on 150-Km
Limit for 30% Ruling**

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

flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

According to its recent decision¹, the Court of Justice of the European Union (CJEU) determined that the 150-kilometer criterion in the Dutch 30% ruling does not, in principle, violate European Union (EU) law.

The CJEU issued its decision on February 24, 2015, ruling that there is no violation of EU law unless it appears that the flat-rate “30% ruling” – a form of tax relief or reimbursement for certain cross-border workers in the Netherlands – was systematically to give rise to a net over-compensation in respect of the extra expenses actually incurred by the foreign employees.

It is up to the Dutch national court now to examine and determine whether there is indeed a systematic over-compensation.

Why This Matters

While we now have a determination from the CJEU on the conformity of the 150-kilometer criterion in the 30% ruling with EU law, it is subsequently up to the Dutch court to review the decision and rule in what ways the 30% ruling will have to be altered. Any modifications, and the timing of those modifications, as well as how they impact cross-border commuters, will depend on the outcome of the Dutch court's examination.

Background

The 150-Kilometer Criterion in the 30% Ruling

Employees from abroad with specific expertise that is scarce on the Dutch labor market are eligible for tax relief, which is subject to conditions, the so-called 30% ruling. If the 30% ruling is applicable, 30 percent of the employee's salary can be paid as a tax-free allowance to cover extraterritorial expenses (the additional expenses incurred as the employee is temporarily living and working outside his or her home country). The remaining 70 percent is treated as taxable salary.

However, as of January 1, 2012, only employees who resided more than 150 kilometers from the Dutch border during two-thirds of the 24 months preceding the commencement of their employment or secondment in the Netherlands are eligible for the 30% ruling.

Legal Proceedings on Whether the 30% Ruling Violates EU Law

Legal proceedings in the Netherlands on this measure are currently pending. In these proceedings, taxpayers have taken the position that the 150-kilometer criterion violates EU law, as it excludes employees who resided less than 150 kilometers from the Dutch border from availing of the 30% ruling. Moreover, they claim that the measure is discriminatory

as it restricts the free movement of workers within the EU – a restriction that is explicitly prohibited under EU law. The Dutch tax court had previously ruled that this restriction does not violate EU law; this was also the position taken in the Opinion issued by the Advocate General at the Dutch Supreme Court.² Both the tax court and the Advocate General concluded that employees who live close to the border can easily commute and will therefore not incur extraterritorial expenses, or, may do so to a significantly lesser degree.

Proceedings before the CJEU

In 2013, the Dutch Supreme Court referred this case to the CJEU for a preliminary ruling on whether the 150-kilometer criterion violates EU law and, if so, whether this violation is justified, i.e., the public interest justifies treating like cases differently.

KPMG Meijburg Note

The Dutch national court must now examine the ruling of the CJEU and ascertain whether the flat-rate 30% ruling systematically gives rise to a net over-compensation in respect of the extra expenses actually incurred by the foreign employees. Making this determination could take some time.

An important question that arises is how a national court can investigate third parties who are not claimants in the legal proceedings, but who do fall under the 30% ruling.

Footnotes:

1 For the judgment of the Court, see *C.G. Sopora* (C-512/13) at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CJ0512> .

2 For prior coverage, see [Flash Alert 2015-002](#), January 8, 2015.

* * * *

The information contained in this newsletter was submitted by Meijburg & Co in the Netherlands, a KPMG International member firm. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com> .