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The Netherlands – Decree on International Aspects of Pensions, Annuity Entitlements

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A new Dutch decree updates a decree from 2008[1] which addresses the accrual of pension rights by incoming employees and the settlement of pensions of outgoing employees. This new decree applies to all employment commencing as of October 28, 2015.

Why This Matters

It has been common practice in the Netherlands to provide no tax deduction or credit for pension contributions by employers and employees in respect of foreign pension plans.

The new decree means that corresponding approval can be granted for foreign pension plans and once the plan has received corresponding approval from the Dutch authorities, contributions to such foreign pension plans would not be subject to tax in the Netherlands.

As a result, there could be potential savings for companies with international assignees in the Netherlands contributing to foreign pension plans and potentially lower tax burdens on such assignees.

Payroll administrators would no longer have to withhold and remit the tax (formerly) owed on the contributions made to foreign pension plans, as long as the rules were satisfied.

Background

The Netherlands, in principle, does not recognize foreign (company) pension plans. As a result, employer's contributions are taxable and employee's contributions are not tax deductible.

The decree dated October 9, 2015,[2] published by the Deputy Minister of Finance, updates the rules on the international aspects of pensions and annuity entitlements.

Decree of October 9, 2015

The new decree includes provisions for inbound assignees, outbound assignees, and self-administrated entities.

Below we briefly describe the main implications for inbound assignees.

Upon request, corresponding approval can be granted for foreign pension plans. Corresponding approval allows for a tax relief for contributions into a non-Dutch pension plan. In this respect, three categories should be considered: 1) employees from the European Union (EU) and the European Economic Area (EEA), 2) employees from specific treaty countries,[3] and 3) employees from other countries. Before this decree, employees from the EEA were covered under "other countries."

Each category is subject to its own concessions:

	EU / EEA countries	Treaty countries	Other countries
Limitation of tax credit	According to home country rules, not subject to limitation of Dutch pension plans	If not substantially different from Dutch pension plans, according to Dutch rules	Home country rules, but not more than what is allowed for Dutch pension plans
Maximum applicable period	5 years	10 years[4]	5 years

This new decree applies to all employment commencing as of October 28, 2015. The designations under the old decree will continue to apply as the general rule. Upon request, the existing designation can be changed to a new designation. Changing a designation is, in any case, worth considering in the case of EEA pension plans and situations where a 10-year designation can be obtained by virtue of a tax treaty.

KPMG Note

Corresponding approvals granted to EEA employees and employees from one of the applicable treaty countries should be reviewed in the light of this update. For EEA employees, the tax benefit might increase under this new decree. For employees from an applicable treaty country, the tax benefit may include eligibility for an extension of the corresponding approval from five to ten years. If the new decree offers better conditions compared to the old decree, a new request should be filed to enable taxpayers to enjoy benefits under the new decree.

Footnotes:

1 Decree of January 31, 2008, nr. CPP2007/98M (*Staatscourant*, Jaargang 2008, Nr. 27, Gepubliceerd op 7 februari 2008).

2 Decree of October 9, 2015, nr. DGB2015/7010M (*Staatscourant*, Jaargang 2015, Nr. 36798, Gepubliceerd op 27 oktober 2015).

3 The Netherlands has concluded various tax treaties that contain a non-discrimination provision regarding pensions, such as with Belgium, Denmark, Germany (per January 1, 2016), and the United States.

4 If the treaty does not include a limitation, the maximum period for corresponding approval is ten years.

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The information contained in this newsletter was submitted by the KPMG International member firm in the Netherlands.

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