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## flash Alert

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### The Netherlands – New Salary Criterion for Highly-Skilled Migrants

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Highly-skilled migrants working at Dutch-based companies must meet several criteria in order to enter the Netherlands for employment purposes. The main requirement, satisfaction of the salary criterion, is about to change with the increase, as of 1 January 2016, of this criterion. In addition, the Immigration and Naturalization Service (IND) has announced an increase of the legal fees tied to applications for so-called highly-skilled migrants.

#### Why This Matters

This main requirement concerning the salary criterion has made it easier for employers to determine beforehand if an employee will qualify for an expedited immigration procedure regarding highly-skilled migrants.

An additional upshot of this expedited procedure is that it can allow for more effective international assignment planning, since the average processing time is just two to four weeks from the filing date to arrival date, as long as the required supporting documents are provided. (Normally the processing time can take between eight weeks and three months!)

Companies that make use of the procedure need to be aware of the criteria to determine if their employees satisfy the conditions. The new salary criterion applies to every application filed after 1 January 2016, for a new hire, new assignee, and for renewal applications.

#### Background

Dutch-based companies that have acquired official status as "Recognized Sponsor"<sup>1</sup> from the Dutch immigration authorities may benefit from expedited immigration procedures with respect to their qualifying highly-skilled migrants. Because of the expedited processing times and transparent criteria, the highly-skilled migrant procedure is a very popular immigration channel for companies in the Netherlands.

The main requirement is that the employee satisfies the salary requirement which is set for his/her category as noted below.

#### Update to Salary Criterion for 2016

The salary criterion for these highly-skilled migrants is contained in the 1995 Foreign Nationals Employment Act Implementation Decree (*Besluit uitvoering Wet arbeid vreemdelingen*).<sup>2</sup> This also stipulates that the indicated salaries are to be adjusted annually by ministerial regulation with effect from 1 January on the basis of recent index figures for negotiated wages, as published by Statistics Netherlands.<sup>3</sup>

The following gross monthly salaries (including vacation allowance) apply as of 1 January 2016:

- Highly-skilled migrant 30 years and older €4,240 (€4,189 for 2015);
- Highly-skilled migrant younger than 30 years €3,108 (€3,071 for 2015);
- Dutch graduates qualifying for “search year” €2,228 (€2,201 for 2015).

Following changes in subordinate legislation in March 2015, these amounts now **exclude** the (mandatory) 8-percent vacation allowance.<sup>4</sup>

The salary criterion is assessed solely in light of the salary received in cash, i.e., the fixed contractual gross salary in cash. Non-cash salary payments and uncertain salary components such as over-time, tips, and benefit payments are therefore excluded. However, expense allowances may be included provided they are paid monthly into a bank account held by the highly-skilled migrant

It's also important that the salary be paid at least monthly into a bank account held by the employee. The pay slips must be made available for inspection upon first request by IND or Labor Inspectorate ("Inspectie SZW").

#### **KPMG Note**

Fixed allowances such a 13<sup>th</sup> month payment or fixed year-end bonus may only be included in the gross salary if these are laid down in the contract **and** if these are paid to the highly-skilled migrant on a monthly basis. Although it is uncommon that the 13<sup>th</sup> month's salary payment or year-end bonus be paid on a monthly basis, in practice this is the only way it may contribute to the salary calculation.

#### **Applicability of Salary Criterion**

Applications that are filed before 1 January 2016, are subject to the 2015 salary criterion. The 2015 criterion also applies in situations where the Entry and Residence (*Toegang en Verblijf*, TEV) application is filed before 1 January 2016, but the highly-skilled migrant only arrives in the Netherlands in 2016.

In addition to the highly-skilled migrants program, the salary criterion also applies to the following types of applications for a work permit:

**Short stay by highly-skilled migrants** – This program is limited to group employees in a key or specialist position who are employed by a recognized sponsor and work for a maximum of 90 days in the Netherlands within a period of six months.

**Application in the context of an intra-group transfer** – There are special categories for key positions, knowledge transfer, and trainees. The salary criterion for highly-skilled migrants older than 30 years of age applies to the first two categories. For trainees, the lower criterion for migrants younger than 30 years of age applies.

**Highly-skilled migrants resident in another EU member state but working in the Netherlands** – This program is particularly attractive for employers in the border region, who are able to employ highly-skilled migrants although they do not live in the Netherlands.

## **Increased Legal Fees**

Besides the changes in the salary criterion, the IND has also announced an increase of the legal fees. Effective 1 January 2016, the fee for a "Highly-Skilled Migrant" application will be EUR 881, and the dependent fee will be EUR 233.

### *Footnotes:*

- 1 For what constitutes a "recognized sponsor," see [\*Flash International Executive Alert 2013-073\*](#) (3 May 2013).
- 2 See (in Dutch): [http://wetten.overheid.nl/BWBR0007523/geldigheidsdatum\\_15-12-2015](http://wetten.overheid.nl/BWBR0007523/geldigheidsdatum_15-12-2015).
- 3 See (in Dutch) *Staatscourant* 2015 Nr. 45280, published 15 December 2015: <https://www.officielebekendmakingen.nl/stcrt-2015-45280.html>.
- 4 See GMS [\*Flash Alert 2015 -074\*](#) (11 June 2015).

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*Please note that KPMG LLP (U.S.) does not provide immigration services.*

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