GMS Flash Alert

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The Netherlands - 2017 Budget Measures Impact Foreign Employers, Supervisory Directors

The Dutch Cabinet presented the package of measures for the 2017 Tax Plan to Parliament's Lower House on Budget Day, September 20, 2016.[1] In this GMS *Flash Alert*, we highlight some of the important changes proposed affecting employers, including proposals for payroll tax and social security contributions, and employment relationships concerning supervisory directors. The proposals are intended to take effect on January 1, 2017, unless another date is explicitly stated.

WHY THIS MATTERS

The changes proposed in the budget and associated legislation will introduce greater flexibility with respect to supervisory directors, which could help to lower administrative burdens and costs for employers; however, in cases where supervisory directors and employers elect not to apply the deemed employment relationship to supervisory directors during the transitional period, such directors might see their costs rise as they now become responsible for income-related health-care insurance contributions. As from January 1, 2017, regardless whether parties have an approval for opting in, the costs for the company can decrease since they do not have to pay the income-related health-care insurance contributions.

Simplified rules and fewer conditions around the transferring of payroll tax and social security contributions withholding obligations to a Dutch group entity by a foreign group, will ease employment-related constraints, red tape, and personnel-related (including assignment-related) costs for affected employers.

The small reduction to employers' health insurance contributions should also help employers lower their employment-related costs. Payroll administrators should be prepared to make the necessary adjustments once these measures are enacted.

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Rescinding of Deemed Employment Relationship of Supervisory Directors

The deemed employment relationship of supervisory directors will be rescinded as of January 1, 2017. (For prior coverage, see GMS *Flash Alert* 2016-053, April 15, 2016.) In anticipation of this amendment of the law, approval had already been given that as of May 1, 2016, supervisory directors and the companies that they supervise can jointly elect to not apply the deemed employment relationship to supervisory directors. If parties elect this option, companies no longer have to withhold and remit payroll tax on the remuneration paid to supervisory directors with effect from May 1, 2016, and the supervisory directors are themselves liable for the income-related contributions for health-care insurance under the Healthcare Insurance Act. As of January 1, 2017, this will apply to all supervisory directors. No employee insurance contributions are payable on the remuneration paid to supervisory directors (this remains unchanged).

As of January 1, 2017, it is still possible for supervisory directors to (continue to) fall under the Payroll Tax Act via the opting-in rules. The opting-in rules can be applied if it is preferable (for example, due to the application of the 30% ruling) to regard the employment relationship with supervisory directors as a deemed employment relationship. This means that payroll tax is withheld and remitted on the remuneration. Typical of the opting-in rules, supervisory directors must pay the income-related contributions for health-care insurance under the Healthcare Insurance Act. To take advantage of the opting-in rules, a request must be submitted to the Dutch Tax and Customs Administration.

As a result of the rescinding of the deemed employment relationship of supervisory directors, the net equivalent of the supervisory director's remuneration may decline (depending on their personal situation), due to the fact that supervisory directors are liable for the income-related contributions for health-care insurance under the Healthcare Insurance Act themselves, rather than the company.

Taxation on Remuneration of Foreign Directors and Supervisory Directors for Personal Income Tax Purposes

Based on the tax treaties that the Netherlands has concluded with various countries, it usually is entitled to tax the full remuneration paid to a foreign supervisory director and/or director of a company established in the Netherlands. In order to actually levy personal income tax, a statutory tax base must be present in national legislation. By rescinding the deemed employment relationship as of January 1, 2017, it appeared that in many cases national legislation did not offer a tax base for taxing the full remuneration paid to supervisory directors in the Netherlands. To repair this, it has now been proposed to stipulate that the Netherlands, by virtue of national law, can tax the full remuneration of directors or supervisory directors who are subject to tax, irrespective of whether this constitutes business income, or salary, or income from other activities.

Extension of Possibility of Transferring Payroll Tax and Social Security Contributions Withholding Obligations for Group Members

Foreign groups, upon request, can transfer the payroll tax and social security contributions withholding obligation for employees who are subject to personal income tax in the Netherlands to a Dutch group entity. This is subject to the condition that the employees are seconded to the Dutch group entity. For the foreign group entity, keeping Dutch payroll records is relatively expensive. For this reason, it has been proposed to extend the current possibility to transfer the payroll tax and social security contributions withholding obligation to a Dutch group entity.

The condition that there must be a secondment to the Dutch group entity will therefore be canceled. This change will mean that each foreign group entity can transfer the withholding obligation to any Dutch group entity that is prepared to take on the withholding obligation. Both group entities will have to submit a joint request to the Dutch Tax and Customs Administration for this.

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Rescinding of Requests for Annual Salary Details

In the absence of missing or incorrect return data, the Dutch Tax and Customs Administration may make a request of the employer for the annual salary data of its employees after the end of a calendar year. During the last few years, improvements have been made to the payroll tax return process so as to help ensure the timeliness and accuracy of the payroll tax return data. For this reason it has been proposed to rescind, as of January 1, 2017, the possibility of the Dutch Tax and Customs Administration requesting annual salary details.

Income-Related Contributions for Health Insurance under the Health Insurance Act

As of January 1, 2017, the income-related contributions for health insurance under the Health Insurance Act payable by the employer will be reduced from 6.75 percent to 6.65 percent. The maximum contribution base for the Health Insurance Act is EUR 53,697 as of January 1, 2017.

Other Measures

Changes under the Clarification of the Wages and Salaries Tax and National Insurance Contributions Reduced Remittances Act (*Wet vermindering afdracht loonbelasting en premies volksverzekeringen*; WVA) have modified the R&D remittance reduction (in Dutch: WBSO) rules. The WBSO is a tax incentive plan that is designed to compensate part of the salary costs, other costs, and expenses for research and development (R&D). For employers, the WBSO reduces the amount of payroll tax and social security contributions payable.

FOOTNOTE:

1 For the government's press release on the budget (in Dutch) including links to budget documentation, click here.

RELATED RESOURCE:

This article is excerpted, with permission, from "Budget Day 2016: changes to payroll tax and social security contributions, the R&D remittance reduction and the Box 3 taxation of foreign taxpayers" (September 22, 2016), a publication of the KPMG International member firm in the Netherlands, Meijburg & Co. For the complete report, click here.

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