

GMS Flash Alert

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The Netherlands - New Salary Criterion for Highly-Skilled Migrants

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 2017, of this criterion. In addition, the Immigration and Naturalization Service ("IND") has also announced an increase of 1.8 percent in the legal fees tied to applications for highly-skilled migrants.

WHY THIS MATTERS

Meeting the salary criterion requirement can make it easier for certain employers to determine beforehand if an employee will qualify for an expedited immigration procedure. Employers that are "Recognized Sponsors" can enjoy expedited immigration procedures for their highly-skilled migrants provided, principally, they satisfy the salary criterion.

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 new criteria to determine if their employees satisfy the conditions. The new criteria apply to every application filed after 1 January 2017, including renewal applications.

Background

Dutch-based companies that have acquired official status as a "Recognized Sponsor"¹ from the Dutch immigration authorities may benefit from expedited immigration procedures with respect to their so-called 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 2017

The salary criterion for these highly-skilled migrants is contained in the Foreign Nationals Employment Act Implementation Decree (*Besluit uitvoering Wet arbeid vreemdelingen*).² 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.³

The following gross monthly salaries (including vacation allowance) apply as of 1 January 2017:

- Highly-skilled migrant 30 years and older €4,324 (€4,240 for 2016);
- Highly-skilled migrant younger than 30 years €3,170 (€3,108 for 2016);
- Dutch graduates qualifying for “search year” €2,272 (€2,228 for 2016).

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

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 is 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 the IND or Labor Inspectorate (“Inspectie SZW”).

KPMG NOTE

Fixed allowances such a 13th 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 13th month’s salary payment or year-end bonus are 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 2017, are subject to the 2016 salary criterion⁵. The 2016 criterion also applies in situations where the Entry and Residence (Toegang en Verblijf; TEV) application is filed before 1 January 2017, but the highly-skilled migrant only arrives in the Netherlands in 2017.

The salary criterion also applies to applications for a residence permit that are filed for “intra corporate transfer” applications under the recently implemented ICT Directive⁶.

In addition to these residence permit applications, the salary criterion also applies to the following types of applications for a *work permit*:

Short stay by highly-skilled migrants – This scheme 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 scheme is particularly attractive for employers in the border region, who are thus 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 in the legal fees. Effective 1 January 2017, the fee for a “Highly-Skilled Migrant” application will be EUR 926, and the dependent fee will be EUR 237.

FOOTNOTES:

1 See *Flash International Executive Alert* 2013-073, 3 May 2013, a publication of the KPMG GMS practice. For a copy, please see your usual KPMG GMS contact.

2 See (in Dutch) *Besluit uitvoering Wet arbeid vreemdelingen, Geldend van 29-11-2016 t/m heden* at: <http://wetten.overheid.nl/BWBR0007523/2016-11-29> .

3 See (in Dutch) *Staatscourant* 2016 Nr. 68598, “Bekendmaking van de Minister van Sociale Zaken en Werkgelegenheid van 7 december 2016, 2016-0000257951, tot wijziging van de bedragen, genoemd in de artikelen 1d en 1i van het Besluit uitvoering Wet arbeid vreemdelingen voor het jaar 2017,” at: <https://zoek.officielebekendmakingen.nl/stcrt-2016-68598.html>.

4 See GMS [Flash Alert 2015-074](#) (11 June 2015).

5 For prior coverage, see GMS [Flash Alert 2015-149](#) (15 December 2015).

6 See GMS [Flash Alert 2016-133](#) (18 November 2016).

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in the Netherlands:



Heleen Snieders
Director – Immigration
+31 (0)88 90 93420
Snieders.Heleen@kpmg.com

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