GMS Flash Alert

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Netherlands - Ministry Changes Stance on Severance Paid to Cross-Border Workers

The Dutch Ministry of Finance has issued new guidance on the allocation of the right to tax severance payments of cross-border workers.[1]

WHY THIS MATTERS

The allocation of severance payments for cross-border workers is complex. In many cases, the position taken by the Dutch tax authorities resulted in double taxation because of the way the severance payment was sourced.

With the new position, a severance payment, going forward, should be sourced over the period of employment on which the severance is based. This, in most cases, will be the entire period of employment; a time-spent apportionment method then has to be applied, i.e., Dutch period employment / total period of employment.

This makes the sourcing more complex.

Global-mobility and international-tax professionals responsible for the tax affairs of internationally-mobile employees need to determine where an internationally-mobile employee has worked during his entire period of employment.

Background

In 2015, the Ministry of Finance provided guidance based on the new commentary on the OECD Model treaty (published on 15 July 2014). In case of a severance payment made to a cross-border worker, the right to tax would in general be allocated on the basis of where the employment duties were performed during the last 12 months prior to the date of termination of the employment contract.

This approach did not match the way other countries did interpret the new commentary and resulted, in some cases, in double taxation because the severance payment was sourced differently.

New Position by Ministry of Finance

The Dutch Ministry of Finance has changed its position. Going forward, the allocation of the right to tax a severance payment, in general, will be based on where the employment duties were performed on which the severance is based. In most cases, this will be the entire period of employment (instead of the last 12 months of employment).

The new guidance will be applicable to **severance payments made after 4 February** (date of publication). Taxpayers may request the Dutch Revenue Service apply this new guidance on all assessments that were not final on 5 February 2022, but proof has to be provided that this does not result in a (partial) non-taxation of the severance payment.

KPMG NOTE

The new sourcing method may result in a much different outcome; the part of the severance payment subject to Dutch income tax (with an associated withholding obligation for the Dutch company) under the old and new guidance will change significantly.

FOOTNOTE:

1 *Belastingverdragen. OESO-commentaar op artikel 15 OESO-modelverdrag; ontslagvergoedingen in grensoverschrijdende situaties*, published in "Staatscourant" (the official gazette), Nr. 3327, 4 februari 2022.

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Contact us

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