

GMS Flash Alert



2022-031 | February 11, 2022

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.

* * * *

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:



Ruben Froger

Partner – Tax

Tel. +31 (0)88 90 93416

Froger.ruben@kpmg.com

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

© 2022 Meijburg & Co is een Nederlandse maatschap van besloten vennootschappen, staat ingeschreven in het Handelsregister onder nummer 53753348 en is aangesloten bij de wereldwijde KPMG organisatie van onafhankelijke entiteiten verbonden aan KPMG International Limited, een Engelse private company limited by guarantee. Alle rechten voorbehouden.

www.kpmg.com

kpmg.com/socialmedia



© 2022 KPMG LLP, a Delaware limited liability partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

KPMG LLP is the U.S. firm of the KPMG global organization of independent professional services firms providing Audit, Tax and Advisory services. The KPMG global organization operates in 147 countries and territories and has more than 219,000 people working in member firms around the world.

Each KPMG firm is a legally distinct and separate entity and describes itself as such. KPMG International Limited is a private English company limited by guarantee. KPMG International Limited and its related entities do not provide services to clients.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click here. To learn more about our GMS practice, please visit us on the Internet: click here or go to <http://www.kpmg.com>.