

GMS Flash Alert

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Netherlands – COVID-19: Ending Mutual Agreements with Germany, Belgium

During the COVID-19 pandemic, The Netherlands has had mutual agreements with Belgium and Germany to apply a certain degree of flexibility in terms of taxation of cross-border workers.

Considering that the measures taken in response to the COVID-19 pandemic have been largely repealed, the competent authorities of all three countries have agreed that the mutual agreements between The Netherlands and Belgium and between The Netherlands and Germany shall remain applicable only until 30 June 2022.

WHY THIS MATTERS

Employers might soon need to account for all administrative obligations and compliance requirements that had been customary for them before the COVID-19 pandemic changed things and motivated authorities to enter into these agreements.

Unless employees return to their host-country/commuter country office location, their tax situation will change.

There may be different administrative obligations to fulfill as 30 June approaches.

Context

COVID-19 has led to many cross-border employees being displaced, which could result in a switch of their tax position if the taxation rules normally in place are applied. In recognition of this fact, Dutch authorities agreed with Germany and Belgium to modify the tax position under the normal rules as applied to those employees.

Cross-border workers from The Netherlands who commute to Germany or Belgium for work, and work on-site in

Germany or Belgium, because of COVID-19 restrictions, have had to stay in their state of residence, The Netherlands, and have had to work from their home office there.

Under the mutual agreement, in such circumstances, the worker is deemed to be performing his work in the contracting state in which he would have carried out his activity normally without the COVID-19 pandemic.

Therefore, under the agreement, where an employee who usually lives in The Netherlands and works in Germany or Belgium has to work in his home office in The Netherlands due to the COVID-19 pandemic, his work activity is deemed to have been performed in Germany or Belgium (in cases where the employee prefers this), whichever is the normal place of work.

Such mutual agreements exist between many countries, especially in the European Union. The agreements were intended to be temporary and will now come to an end on 30 June 2022.¹

Context: The Netherlands-Belgium Agreement and The Netherlands-Germany Agreement

The mutual agreement between The Netherlands and Belgium was concluded on 30 April 2020, and the mutual agreement between The Netherlands and Germany was concluded on 6 April 2020.

Based on the agreements, as of 11 March 2020, employees who perform their work in their home countries due to COVID-19 restrictions are deemed to have spent these work-days in the country where they ordinarily would have worked in the absence of any COVID-19 restrictions. This rule is not applicable where employees would have ordinarily worked in their home countries regardless of COVID-19 (e.g., where working from home was contractually agreed with the employer). The employee can choose whether to apply the mutual agreement.

It is important to highlight that as long as the mutual agreements are in force, their application is only possible if the cross-border employee is working from home due to measures taken to counter the COVID-19 pandemic.

In the light of the purpose of these agreements, it is understood that the term ‘measures’ must be interpreted broadly. That term also covers recommendations, guidelines, and practices of employers related to the COVID-19 pandemic. The agreements are not applicable to employee’s work from home that is unrelated to the COVID-19 pandemic.

Agreements to End

As of 1 July 2022, both mutual agreements will no longer apply. As a result, employees who perform their work in their home country, from that date, will not be deemed to have spent these work-days in the country where they ordinarily would have worked in the absence of COVID-19 and will be taxable in their home country for any home-country working days.

Employers therefore might need to reconsider, and change, the current payroll administration.

FOOTNOTE:

1 See (in Dutch) De Rijksoverheid. Voor Nederland, "[Coronavirus en werken in de grensstreek: Ondernemers in grensstreek met België of Duitsland](#)."

On the future of the agreement between the Netherlands and Belgium, see (in Dutch) this release from Belgium’s Federale Overheidsdienst Financiën, "Nieuws", "[Dubbelbelastingverdrag België- Nederland: akkoord tussen bevoegde autoriteiten over thuiswerk verricht gedurende de COVID-19 gezondheidscrisis](#)."

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