

GMS Flash Alert



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Netherlands - Decree on Taxation of Directors Paid by Foreign Companies

The Dutch Ministry of Finance recently published a decree¹ announcing a revocation of a previously-issued decree as of 1 January 2023. The earlier decree had provided for the application of the exemption with progression method to the taxation of directors' fees from a foreign company, which has had the effect of exempting such directors' fees from Dutch taxation. (For prior coverage, see [GMS Flash Alert 2020-308](#), 9 July 2020.)

The difference in tax liability between directors of Netherlands-based companies and foreign companies will be eliminated.

WHY THIS MATTERS

This change in policy may result in an increase to a director's overall income tax liability (as of the tax year 2023).

This could have an impact on the assignment costs of globally-mobile directors, and on assignment policies in respect of this area of taxation, not to mention the tax compliance obligations related to such directors.

Background

A Dutch resident taxpayer who is receiving director's fees from a foreign company is eligible for treaty relief. The right to tax directors' fees is, under the tax treaties concluded by The Netherlands, allocated to the state where the company is a resident (note that exceptions may apply, and the specific tax treaty should be considered in each individual case).

In most tax treaties concluded by The Netherlands, treaty relief is granted by way of the foreign tax credit method.

MEIJBURG & CO. NOTE

This treaty provision means that the income tax liability in respect of directors' fees in the state where the company is located may be offset against the Dutch income tax liability (this foreign tax credit is limited to the amount of Dutch tax due on the directors' fees). This will result in an adverse effect if the foreign tax liability is lower than the associated Dutch income tax liability, as The Netherlands will levy an additional amount of tax for the difference.

Policy with Decree in Place – Applying Progression Method

In order to avoid this adverse effect, the Dutch Ministry of Finance had published a decree stating that, subject to conditions, the exemption with progression method could be applied. Directors' fees are then exempt from Dutch taxation (and only with an effect on the graduated rates). The conditions are that the director's fees have been subject to income tax in the foreign state in the same manner as ordinary employment income. No beneficial rate may be applicable and the entire director's fee must be subject to tax in the other country.

MEIJBURG & CO. NOTE

This decree is often invoked as the application of the exemption with progression method is usually more advantageous than the foreign tax credit method.

Change in Policy under New Decree

Recently, the Ministry of Finance published a decree announcing that the aforementioned decree will be withdrawn as of 1 January 2023 (i.e., have an impact as of the tax year 2023). This has the effect of eliminating the difference in the tax burden between directors of Dutch-based and foreign companies.

MEIJBURG & CO. NOTE

Consequently, if the tax treaty concluded with the country of the company that pays the director's fees provides relief by way of the foreign tax credit method, the director's overall income tax liability may increase.

If the foreign income tax liability is lower, an additional amount of income tax will be due on the Dutch income tax return.

FOOTNOTE:

1 *Besluit voorkoming dubbele belasting. Voorkoming onder de toepassing van belastingverdragen. Wijziging van het besluit van 18 juli 2008, nr. CPP2007/664M Directoraat-generaal Belastingdienst/Corporate Dienst Vaktechniek Besluit van 8 juli 2022, nr. 2022-178650.*

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Contact us

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