

GMS Flash Alert

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Netherlands - Knowing Where Your Employees Live and Work Is Even More Important

Do employers always have a handle on where their employees live and work? An obvious question, but a very important one for tax and social security purposes that has new significance now. The Dutch Supreme Court (*Hoge Raad*) has ruled that 'good employment practices' obliges employers, in certain circumstances, to inform employees about changes to legislation and regulations that are important for an employee's tax position.¹

WHY THIS MATTERS

This is an important court ruling for companies with an international workforce, because the Hoge Raad ruled that employers have an information obligation in respect of their employees with regard to tax developments under certain circumstances. This may not be a simple matter, because legislation and regulations are constantly changing.

Background

The case before the Hoge Raad concerned pilots employed by a Dutch airline who did not live in the Netherlands. The Dutch tax authorities had imposed very high additional personal income tax assessments on these pilots. As a result of changes to the relevant tax treaty, the airline should have withheld payroll tax, but had not done so.

This, and because not informing the pilots about changes to the tax treaty could have adverse consequences for them, led the Hoge Raad to rule that there is a warning or information obligation. Other contributing factors were that the airline had a large number of employees who did not live in the Netherlands, it had its own tax department, and knew about the changes to tax legislation.

Is the Employer Liable?

The Hoge Raad referred the case back to the Court of Appeals (*gerechtshof Den Haag*) to determine whether, and the extent to which, the employer was obliged to inform the pilots.

If the outcome of this case is such that the employer indeed has an information obligation concerning tax matters regarding its employees, this might represent a burdensome change for employers in general. It is generally hoped that the Court of Appeals' ruling will provide more insight regarding when and to what extent (other) employers have an information obligation concerning tax matters that may affect their employees.

The judgment by the Court of Appeals is still pending.

MEIJBURG & CO. INSIGHTS

The Hoge Raad ruling is itself sufficient reason for companies to take action now to help ensure they promptly inform their employees (both resident and nonresident) about tax changes relevant to them.

It is conceivable that companies are not always up-to-date on tax changes in their employees' countries of residence. Meijburg & Co can help companies identify the changes (so that they, in turn, can inform their employees) and examine how the changes will affect the tax and social security position of each employee.

FOOTNOTE:

1 Hoge Raad, 22-09-2023, ECLI:NL:HR:2023:1276.

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RELATED RESOURCE:

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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:



Sandy Govers

Senior manager

Tel. +31 (0)88 90 93416

govers.sandy@kpmg.com

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

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