GMS Flash Alert

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Netherlands – Bill Under Review Would Scale Back 30% Ruling Further

As of 1 January 2024, the 30% ruling for highly-skilled employees recruited from abroad will be scaled back even further if the Upper House (*Eerste Kamer*) of Parliament (*Staten-Generaal*) in the Netherlands also adopts the bill.[1] Under current review are potential changes affecting expatriate employees that could have detrimental effects on their tax position as compared to their position under existing rules. This is in addition to the amendment of the 30% ruling that was approved last year and takes effect from 1 January 2024.

As we previously reported, the 30% ruling can no longer be applied on employment income exceeding the WNT-norm (which is € 233,000 in 2024). For employees who were already using the 30% ruling in December 2022, grandfathering rules apply until 1 January 2026.

(For prior coverage, see *GMS Flash Alert* 2023-186, 29 September 2023.)

WHY THIS MATTERS

With the plan to scale back the 30% ruling even further, this means that in future, the benefit to expatriate employees will be much-reduced over the course of time, resulting in a higher tax burden with respect to a taxpayer's employment income as well as personal income as compared to their counterparts who had been able to benefit from the 30% ruling throughout the five years that they were eligible to claim it. It also could mean higher assignment costs for employers.

Additionally, the abolishment of the so-called partial foreign taxpayer status might lead to double taxation (more on this below) – affecting, for example, U.S. nationals.

Now and Then: 30% Ruling and the Planned Scale Back

Currently, employees falling under the 30% ruling do not pay any tax on a maximum of 30% of their salary during a maximum period of five years.[2] The 30% ruling is intended to compensate for any additional expenses foreign employees incur when coming to work in the Netherlands (extraterritorial expenses such as accommodation expenses).

As a result of an adopted amendment to the 2024 Tax Plan during the parliamentary review stage, the 30% ruling will be scaled back over the course of five years to a 10% ruling. More specifically, during the first 20 months of the five-year period, 30% of the salary can still be paid tax-free. During the next 20 months this percentage will drop to 20% and during the last 20 months the tax-free amount will be 10% of the salary.

Transitional rules will apply to employees already using the 30% ruling in December 2023. The scaling back of the tax-free amount will not affect them. This will therefore apply to both employees already falling under the 30% ruling and to foreign employees whose employment in the Netherlands started before 31 December 2023.

Partial Foreign Taxpayer Status Abolished

Currently, employees who live in the Netherlands and who fall under the 30% ruling can make use of the partial foreign taxpayer status. This means that they are treated as nonresidents/foreign taxpayers for the purposes of Box 2 (income from a substantial interest) and Box 3 (income from savings and investment), despite the fact that they live in the Netherlands.

Another adopted amendment to the 2024 Tax Plan will abolish the partial foreign taxpayer status as of 1 January 2025. Employees who were already applying the 30% ruling on 31 December 2023, can still benefit from the partial foreign taxpayer status through to 2026 under transitional rules.

30% Ruling Capped

The adopted amendments are a significant further scaling back of the 30% ruling. As noted above, it was announced in the Tax Plan last year that as of 1 January 2024, the 30% ruling could no longer be applied to salaries exceeding the public sector pay cap (in Dutch referred to as the "Balkenendenorm") (in 2023: EUR 223,000).

Transitional rules also apply to this 30%-ruling pay cap. For employees who were already using the 30% ruling in December 2022, the pay cap will not apply as of 1 January 2024, but, rather, as of 1 January 2026.

(For prior coverage, see *GMS Flash Alert* 2023-186, 29 September 2023.)

Option for 30% Ruling or Reimbursement of Actual Expenses

As of 1 January 2023, employers each year can opt to either apply the 30% ruling or reimburse, on an expense claim basis, the actual extraterritorial expenses incurred by the employee.

MEIJBURG & CO. INSIGHTS

Due to the various measures scaling back the 30% ruling, in terms of the option for the 30% ruling or reimbursement of actual expenses, we recommend calculating the effects of both options so that a well-considered choice can be made.

It is important to understand the planned changes (though they are awaiting approval from the Upper House of Parliament) and their potential impact on an employer's business and its assignees who are subject to Dutch tax law, so

MEIJBURG & CO. INSIGHTS continued:

that expectations can be appropriately set, costs can be mitigated, and proper compliance achieved. Given a recent court case it is even more important to inform employees that are affected by the changes, because employers may have an information obligation based on this court ruling (see *GMS Flash Alert* 2023-191, 13 October 2023).

Affected parties may wish to contact their usual qualified tax professional; alternatively they may contact a member of the GMS tax team with Meijburg & Co. in the Netherlands (see the Contacts section).

FOOTNOTE:

1 *Belastingplan 2024* and *Memorie van Toelichting Belastingplan 2024* published on 19 September 2023. For more information in Dutch and related links, click here.

2 For more information on existing rules, see section 2.8 of *Taxation of International Executives: The Netherlands*, a publication of KPMG International.

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RELATED RESOURCE:

This article is excerpted, with permission, from "30% ruling scaled back even further," a publication of Meijburg & Co. in the Netherlands.

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