

GMS Flash Alert

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Netherlands – Decree on Allocation of Severance Payments in an International Context

The Dutch Ministry of Finance published a new decree on the allocation of taxing rights in respect of severance payments in an international context on 15 December 2023.¹ The decree took effect on 1 January 2024. An earlier judgment² by the Dutch Supreme Court (*Hoge Raad*) was the reason for this new decree.

The new decree updates the decree of 25 January 2022.³

WHY THIS MATTERS

This decree changes the way severance payments may be taxed in an international context. As per the decree, now, with regard to the allocation of severance payments, a distinction can be made between tax treaties concluded before and after 15 July 2014.

With the bifurcation of tax treatment under tax treaties signed prior to 15 July 2014, as compared with treaties signed after 15 July 2014, this could make the taxation of severance payments more challenging and more onerous.

More Details

Under the old decree, the power to tax a severance payment was allocated on the basis of the total employment history of an employee. Based on the aforementioned Supreme Court judgment, the Deputy Minister of Finance is of the opinion that with regard to the allocation of severance payments, a distinction can be made between tax treaties concluded before and after 15 July 2014.

- For tax treaties signed before 15 July 2014, a severance payment will be allocated based on the current calendar year and the four preceding calendar years (the '4+ method').

- For tax treaties signed after 15 July 2014, allocation will be based on the total employment history of the employee.

What If Double Taxation Occurs?

The 4+ method may lead to (partial) double taxation if the other treaty country allocates on the basis of the entire employment history. The decree therefore contains a provision that if the application of the 4+ method leads to (partial) double taxation, the severance payment may be allocated on the basis of the entire employment history. This is subject to the condition that there is no (partial) double non-taxation with respect to the two countries party to the treaty.

MEIJBURG & CO. INSIGHTS

The position taken by the Deputy Minister of Finance has made the division of the power to tax severance payments in an international context more complicated.

Employers and their globally-mobile employees receiving severance payments that (partially) refer to a Netherlands employment period may wish to discuss, in advance, the tax implications of the severance being paid with their qualified tax professional or a member of the GMS/People Services team with Meijburg & Co. in the Netherlands (see the Contacts section).

FOOTNOTES:

- 1 *Besluit van 15 december 2023, nr. 2023-24998* (Decree of 15 December 2023, no. 2023-24998)
- 2 ECLI:NL:HR:2022:1436, 21/00747.
- 3 *Besluit van 25 januari 2022, nr. 2022-19850* (Decree of 25 January 2022, no. 2022-19850).

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RELATED RESOURCE

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