

30% RULING GRANTED (2021)

This memorandum provides an overview of key considerations when applying the 30% ruling. The information contained in this memo supplements the 30% ruling grant letter from the tax authorities.

THE CONDITIONS TO APPLY THE 30% RULING

The 30% ruling is a special tax regime for inbound employees. Most of the conditions of the 30% ruling are assessed before this tax regime is granted by the Dutch tax authorities. However, even after the 30% ruling is granted to an employee, certain requirements should be met in order to be able to apply and continue the 30% ruling. Below we will provide you with an explanation in this respect.

This memo is based on the assumption that the 30% ruling is already granted to the employee. Hence, only the requirements to apply and continue the ruling are discussed as well as the points of attention that generally apply for the 30% ruling.

SPECIFIC EXPERTISE: SALARY NORM

One of the requirements to qualify for the ruling is that an employee has specific expertise. This requirement is by an annual-based (taxable) salary norm, i.e. excluding 30% allowance. The applicable salary norms are indexed yearly. Per 1 January 2021 the salary norms are:

- The general (taxable) salary norm is **more than € 38,961**, which corresponds to € 55,659 including (full) 30% allowance.
- For Masters (and university doctorates/ Doctors) younger than 30 years of age the relevant salary norm is **more than € 29,616**, which corresponds to € 42,309 including (full) 30% allowance.
- For scientific personnel/researchers and (specialist) physicians under training of designated educational institutes **no** salary norm is applicable.

For the salary norm, the worldwide taxable salary according to the Dutch Income Tax Act is decisive. This includes, a.o. the applicable deductions (e.g. employee pension contributions), benefits in kind (e.g. company car) and variable pay (e.g. bonus, stock options).

In cases where the salary is not sufficient to reimburse a tax-free maximum allowance of 30%, employers may need to amend the tax free amount and set it lower than 30% so that the salary norm is met.

ANNUAL VERIFICATION (SALARY NORM)

The 30% ruling ends when the conditions are no longer fulfilled. Under the current legislation, a *continuous* test applies in this respect. Hence, if the salary norm is no longer met, the 30% ruling ends, in principle, per the beginning of that tax year. Situations reducing the (taxable) salary, such as (unpaid) leave and/or starting to work part-time, may jeopardize meeting the norm.

Whether the salary norm is actually fulfilled or not may be verified by the Dutch tax authorities. Employers should thus monitor throughout the year and review each calendar year whether this norm was met or not.

APPLYING THE 30% RULING

Upon grant of the 30% ruling, a maximum of 30% of an employee's gross income from current employment is considered to be a reimbursement for extraterritorial costs and can therefore be reimbursed tax free (i.e. regardless of the actual extraterritorial costs incurred).

EXTRA-TERRITORIAL COSTS (ET COSTS)

ET costs are extra expenses incurred due to the temporary stay of an employee outside the country of origin in relation to the employment in the Netherlands. ET costs can be reimbursed on a tax-free basis. Below you find a few examples of ET costs:

- Costs of home leave;
- Cost-of-living allowance;
- Double housing costs;
- Costs of house-hunting and school search trips.

If the 30% ruling is applied, it is not possible to also reimburse the actual made ET costs tax-free. However, if the actual ET costs of an individual employee exceed the maximum 30% allowance, the employer may choose not to apply the 30% ruling and instead reimburse the actual made ET costs tax-free. If the actual ET costs are reimbursed, these expenses have to be proven by receipts upon request.

Under the so-called work-related cost scheme ('werkkostenregeling') ET costs qualify as a specific exemption. In other words, they will not restrict the free margin for the budget of 1,7%/1.18% for tax-free allowances/benefits.

Note that when the 30% ruling ends, the real ET costs can also not be reimbursed tax free anymore.

BASIS FOR 30% RULING / DURATION PERIOD

The 30% ruling only applies to income from current employment. Therefore, the ruling does not apply to e.g. severance payments, which are considered as income from previous employment.

In addition, the 30% ruling can only be applied to income that has a taxable moment (in most cases: at receipt) during the period that the 30% ruling is applicable. Hence, it is not possible to apply the 30% ruling on e.g. payments and stock option gains with a taxable moment after the 30% ruling duration period.

Please note that the duration period of the 30% ruling also ends in case the employment with the wage tax withholding agent (in most cases: the Dutch employer) is terminated. This rule has a broad scope and also applies if e.g. a Dutch assignment ends. If so, the 30% ruling duration period will lapse no later than the end of the next wage tax period following the termination date of the employment/assignment. In most cases this means that the 30% ruling will no longer apply per the end of the following month (assuming that the maximum duration period has not already been reached). Please consider when "gardening leave" is granted, the Dutch tax authorities may argue that the employment already ceased per the moment that the actual activities (active employment) ended. There is case law supporting this position as being a correct interpretation.

Example

An employment contract of the employee is officially terminated on 30 April 2021, but as of 1 February 2021 the employee is relieved from employment activities. The employee is entitled to a bonus, payment of extra-legal holiday hours carried forward from 2020 and a transitional allowance. He has the 30% ruling.

The 30% ruling will expire in the month following the month that the employee is relieved from his employment duties, which is ultimately 31 March 2021. Payment of the bonus and extra-legal holiday hours should be done via the March 2021 payroll in order to be able to apply the 30% ruling. If paid in April 2020, the 30% ruling cannot be applied on the bonus paid in April 2021, neither on the amount of extra-legal holiday hours, regardless of the fact that both amounts relate to (active) performance in 2020.

The transitional allowance is considered as income from previous employment. The 30% ruling cannot be applied, regardless the moment this is paid.

As per January 1, 2019 the maximum duration period of the 30% ruling was decreased to 5 years (with grandfathering rules applicable until December 31, 2020). Previous periods for work of personal stay in the Netherlands are, in principle, deducted from the maximum duration period. No reduction will apply at all if the previous stay in the Netherlands in the preceding 25 years did not exceed:

- i) 20 workdays in any calendar year, and
- ii) 6 weeks for personal reasons in any calendar year (a one-time period of 3 consecutive months is allowed within the 25 year look-back period).

Please note that the period of previous stay in the Netherlands for a study or an internship will be deducted from the maximum granting period. These simply will exceed the above thresholds in general.

The start date of the 30% ruling will align with the first day of employment in the Netherlands (instead of the first day of the month as was standard practice and policy until mid 2020).

Example

An employer who has not stayed or worked in the Netherlands previously, starts the employment in the Netherlands on the September 13, 2020. The application has been filed within 4 months following the employment start date. The start date of the ruling will be September 13, 2020 and the end date is September 12, 2025.

ADDENDUM

The 30% ruling does not apply unless the 30% allowance (or a lower percentage) was contractually agreed upon separately from the salary in the employment contract between employer and employee (typically via reducing the employee's salary to 70% and granting a tax-free allowance of 30%). This can be formalized in the employment contract or in a related addendum. A copy of this required document should be kept in the payroll / personnel administration.

The Dutch tax authorities also require that for employer's being able to make payroll corrections due to considering an excessive gross salary reduction, the agreed should include that the application of the 30% ruling in the payroll via reduction of the gross wages cannot result in a lower taxable salary than what is

needed for meeting the salary norm. Hence, the written agreement concerning applying the 30% ruling by the employer is very essential.

CHANGE OF EMPLOYER

In case an employee agrees to a new employment within 3 months after termination of the former (active) employment, the 30% ruling can be continued. If the employee does not find a new job within the 3 months period, the 30% ruling ends permanently.

For sake of clarity, it is not necessary that the employment also start within these 3 months, i.e. the new employment must have been concluded within that time frame. Therefore, it is allowed to start later.

EXCHANGE OF FOREIGN DRIVING LICENSE

After the 30% ruling is granted, the incoming employees (and their families) are eligible to convert their foreign driving license into a Dutch license (if needed) without having to do Dutch driving exams.

INTERNATIONAL SCHOOL FEES

In addition to the 30% ruling, school fees of primary and secondary schools that qualify as an international school may be reimbursed tax-free. Please note that it can only be reimbursed tax-free if the school meets the requirements of the Dutch wage tax legislation.

The employer must either pay the school fees directly to the school or the employee pays the school fees and the employer reimburses its costs via an expense claim.

Employers will not always want to incur extra costs and, therefore, may not be willing to reimburse international school fees. Since these costs can be paid tax free, it may be agreed upon between employees and employers to apply a salary sacrifice scheme, meaning that the employee will temporarily accept a lower gross salary in exchange for a tax free reimbursement of the school fees. This can be attractive to both the employee and employer, but must be implemented properly. It is not just an administrative matter. For completeness' sake, please note that a salary sacrifice scheme will reduce the taxable salary (which is relevant considering that the salary norm must continuously be met).

PARTIAL NON-RESIDENT ELECTION

Resident employees with the 30% ruling, can elect to be treated as partial non-resident taxpayers in Box II (income from substantial interest in a company) and

Box III (income from savings and investments). As such, the scope of Dutch taxation decreases significantly and therefore this election is almost always most beneficial. Dividend tax paid however is not creditable when this election is made, but generally this disadvantage is insignificant when compared to the level of advantages when claiming this partial non-resident position.

US nationals (or greencard holders) electing for partial non-resident treatment also incur a beneficial treatment in Box I (income from home and work). They are only liable to tax on Dutch sources of income only. As such, they can claim relief for their salary relating to foreign workdays. We recommend they keep track of their workdays by keeping a detailed workday calendar.

Final note on US nationals as the US taxes its citizens regardless of where they effectively live. Although claiming the partial non-resident position is generally best for 99% of all cases, where an exception applies this may especially be true for taxpayers who are US nationals or greencard holders.

If you are looking for more information on the topic, please visit our website:

https://www.ttt-group.com/knowledge-base-category/tax_ruling_codex/

Contact

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