

Memorandum on the Dutch 30% (expat) tax ruling



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Our offices:

Amsterdam

Jozef Israëlskade 46
NL-1072 SB AMSTERDAM
T +31 (0)20 570 02 00
F +31 (0)20 676 44 78

Heemstede

Bronsteeweg 10
NL-2101 AC HEEMSTEDE
T +31 (0)23 516 06 20
F +31 (0)23 531 14 58

For further information please contact:

Tax Advisors

Marc Derks (mderks@horlings.nl)
Alex Berkhout (aberkhout@horlings.nl)

Horlings.nl

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1.	In General	4
2.	The Allowance for Extraterritorial Expenses	4
3.	Extraterritorial Employee	4
4.	Changes in 2012	5
5.	Employment contract	5
6.	The application and the term of the "30%-ruling"	5-6
7.	Change of employer	6
8.	Pension and Employee Insurances schemes	6
9.	Tax treatment of reimbursements separately from the "30%-Allowance"	6-7
10.	School fees	7
11.	Choice resident tax payer: "Partial Non-Resident status"	7-8
12.	Forms required	8-11



1. In general

An expatriate transferred to the Netherlands will become subject to Dutch income tax. Such transfer will often incur significant additional costs (like double housing costs, relocation costs, losses on the sale of assets, etc.) due to a temporary stay outside the home country. Since it may be difficult for an expatriate to prove the deductibility of said costs the Dutch tax authorities have created the 30% ruling.

2. The Allowance for Extraterritorial Expenses

The 30% facility allows an employer to grant an expatriate a tax-free allowance to defray the expatriate for the additional ("extra") costs incurred in connection with his or her temporary stay outside the home country. These additional costs are defined as "Extraterritorial Expenses" and can be reimbursed up to the amount of actual expenses incurred (which have to be substantiated) or as a fixed tax-free allowance of up to 30% of the normal wages taxable (without having to provide any evidence), to be referred to as the "30%-allowance". The allowance amounts to 30% of the gross salary, including the compensation, of minimum EUR 52,857 (2017) or 30/70 of the salary excluding the compensation of minimum EUR 37,000 (2017). If your employer wants to pay you the allowance for the "extraterritorial expenses", you need to qualify as an "Extraterritorial Employee".

3. Extraterritorial Employee

The 30% ruling is generally available for expatriates from abroad who perform employment activities that are liable to taxation in the Netherlands. The expatriate must be employed by a Netherlands resident employer or a foreign employer appointed as wage tax agent in the Netherlands and must have been recruited outside the Netherlands or seconded to the Netherlands. The key condition for qualification is that the expatriate has special skills or knowledge not readily available on the Dutch labor market (termed 'the specialists test'). It is not necessary for the expatriate to work in the Netherlands on a temporary basis or stay in the Netherlands. In addition, Dutch nationals may qualify for the 30% ruling provided that they have spent at least 25 years outside the Netherlands before returning to the Netherlands.

Important factors for the "specialists test" are:

- the level of education;
- working experience;
- the remuneration level.

The following categories of expatriates usually qualify for the facility:

- managers assigned within a group who hold a special position in the company;
- scientists with specialized knowledge, Ph.D. graduates and young masters with an university degree;
- expatriates in key positions;
- expatriates who have special know-how, for example because they received training not readily available in the Netherlands;
- product specialists;
- teachers at international schools;
- expatriates of international organizations which are obliged to recruit expatriates from other countries linked to the organizations;
- senior and middle management staff posted to the Netherlands as part of a job-rotation scheme and who have gained at least 2.5 years' experience elsewhere in the group.



4. Changes in 2012

As of 1 January 2012, several changes have been made to the 30% ruling regime.

The main changes are:

- The condition that the employee has specific expertise, which is scarce in the domestic labour market can only be met if the employee earns a minimum annual salary of € 37,000 (2017) exclusive the 30% ruling. For scientists there is no longer a minimum annual salary. For the employee under 30 years who has a master degree the minimum annual salary required is € 28,125 (2017) exclusive 30% ruling. The State secretary does not accept that part-time wage is recalculated to a wage which would have been earned if the employee would have worked full-time.
- The maximum duration of the 30%-ruling has been shortened to 8 years (previous regime: 10 years).
- Dutch nationals may qualify for the 30% ruling provided that they have spent at least 25 years (previous regime: 10 years) outside the Netherlands before returning to the Netherlands. The Dutch Supreme Court has confirmed in 2016 that the 25 year condition, is compliant with EU free movement of workers principle.
- Employees living within 150 km from the Dutch border, during two thirds of the last 24 months before their employment in the Netherlands, are no longer entitled to the ruling. The Dutch Supreme Court has confirmed in 2016 that the 150 km condition, is compliant with EU free movement of workers principle.
- It is possible to obtain the ruling for young employees who took a Ph.D. in the Netherlands and thereafter obtained a job here. For these employees the required minimum salary will be € 28,125 (2017) exclusive the 30% ruling.

The changes can affect existing situations because after 5 years of benefiting of the ruling there will be a test whether the conditions still are met under the new rules. If an employee does no longer qualify under the new rules he or she will no longer benefit.

5. Employment contract

The employment contract (or an appendix thereto) should specifically refer to the 30%-ruling. The remuneration package should be drafted in the employment agreement in such a manner that the 30% tax-free allowance will be paid in addition to the wage from current employment relating to the employment activities in the Netherlands as an extraterritorial employee. The wage from current employment includes not only the fixed salary elements like the gross salary and the holiday allowance, but it also includes incidental and flexible reimbursements such as bonuses. Since the "30%-ruling" is calculated based on the wage from current employment income, the 30%-ruling is not applicable to indemnity payments in case of dismissal or retirement. It also does not apply to severance payments.



6. The application and the term of the "30%-ruling"

The application for the 30% ruling is a mutual request by the employer and the employee and must be filed to the tax office in Heerlen within four months after the start of the employment activities in the Netherlands. If the application is not made within four months, the facility will only be granted as of the first day of the month following the month in which the application is filed.

Initially the 30% ruling will be granted for a period of 96 months. After 60 months, the tax inspector can ask the employer to prove that the expatriate's skills are still scarce (i.e. second specialist test). If proven, the 30% ruling will be extended for the full length. If not, the 30% ruling ends. In addition, after 60 months the employer can initiate the specialist test again and prove to the tax inspector that the employee is still scarce on the labour market. If proven, the employer has the certainty that the 30% ruling is extended for the full length. The tax authorities cannot question the 30%-ruling in the first 60 months.

Periods of previous stay and employment with an employer in the Netherlands are deducted from the 96 months. This is not the case if since this previous period, the expatriate has not worked (twenty working days per calendar year are disregarded) or stayed (stays of in total less than six weeks for family reunion, vacation etc are disregarded plus a extra long stay for one year in the last ten years not exceeding three months) in the Netherlands for at least ten years before commencing his current employment in the Netherlands.

An expatriate can enjoy the 30% facility before the tax inspectorate has granted its approval to it. In case the 30% ruling is denied by the tax authorities, no taxation of the allowance will take place in case it still concerns a reimbursement for extra-territorial costs (e.g. double housing, flight tickets for visiting family in the home country). If not, the employer has to claim back the taxes on the 30% tax-free allowances paid in the past.

In case the tax authorities deny the granting of the 30% ruling, it is still possible to reimburse expenses tax-free as long as the expenses qualify as extraterritorial expenses. Please bear in mind that the expenses should be actually incurred by the expatriate and reimbursement should only be taken place after handing over receipts and invoices to the employer.

7. Change of employer

An employee who already has the 30% ruling can switch to a new employer and benefit from the 30%-ruling again (for the time left). The period between the one employment and the other may not exceed three months. However, a new application for the 30%-ruling is required and the tax inspector will do the specialist test again.

8. Pension and Employee Insurances schemes

Qualifying employees should be aware that the pension and employee insurance schemes are on the basis of the remuneration package (gross salary, bonuses and all taxable benefits) after the split for the 30% -allowance. This means that the contributions to the pension and general insurance schemes are levied on a lower base and will result in lower future benefits. This can lead to pension- and disability gaps.

9. Tax treatment of reimbursements separately from the "30%-Allowance"

Foreign service premiums, cost of living allowances, tax and social security equalization payments and reimbursements for losses on the sale of assets due to the transfer, cannot be paid without taking out taxes in addition to the 30%-allowance. The 30%-allowance is meant to cover these payments and will lower the amount of the 30%-allowance with an equal amount.



In case expenses qualify as "extraterritorial expenses", they can be reimbursed tax free, but at the same time they lower the amount of the 30%-allowance with an equal amount. Relocation expenses are not regarded as extraterritorial expenses. This in contrast to double housing costs which are regarded as extraterritorial costs and therefore not tax allowable separately from the 30%-allowance. Double housing costs can occur in case the expatriate uses a temporary dwelling in the Netherlands and has his permanent dwelling outside the Netherlands. Other examples of extraterritorial costs are home leave, flights for visiting partner or family, storage furniture, language courses in Dutch and extra costs for housing (extra costs for a permanent dwelling in the Netherlands).

For practical reasons the State Secretary of Finance has approved that 18% of the income from current employment (excluding the rental income) should be considered as a normal expense for housing. In case the costs related to housing are more than 18%, the additional amount above the 18% will be regarded as extra-territorial costs and the 30%-allowance should be lowered for the extra costs of housing. Housing costs for a permanent dwelling in the Netherlands under the 18% are taxable wage. Our advice to employers is to increase the level of income of the expatriate for the costs of housing so that the expatriate should pay for the rent from his net salary including the 30%-allowance paid on top of the higher gross income.

In addition, under the Work Related Cost scheme (in Dutch: werkkostenregeling) an employer may reimburse actual expenses tax-free separately from the 30%-allowance if they incur wholly in connection with the expatriate's employment and should be incurred by Dutch employees under similar circumstances, for example:

- moving expenses at the beginning and end of the assignment period (€ 7,750 plus transport costs);
- professional expenses incurred on business trips;
- a limited fixed allowance for commuting other than public transport;
- the actual expenses incurred for public transport;
- professional education expenses in connection with employment.

10. School fees

In addition to the 30% tax free reimbursement, the actual costs of attending at an international primary or secondary school in the Netherlands, or elsewhere, reimbursed by the employer will not be considered taxable income for Dutch tax purposes, based on the assumption that the allowance is limited to tuition fees and transport. The school fees do not include the cost of boarding schools, the reimbursement of which will be considered taxable income.

A school is regarded to be an international school in case:

- the education is based on a foreign school system;
- the school in principle only accepts children from foreign employees.

11. Choice resident taxpayer: "Partial Non-Resident status"

An expatriate who, by using the normal residence rules (i.e. changed the center of his or her social life to the Netherlands), is considered a resident for Dutch tax purposes, may, for the duration of the facility, opt to be treated as a partial non-resident for Dutch income tax. The choice can be made when applying for the 30% facility, but ultimately in the tax return. The choice can be revised each year.



The partial non-resident status implies the following:

- the partial non-resident will only be subject to personal income tax on worldwide income derived from labour-, self-employed- and/or entrepreneurship activities subject to relief from double taxation under a tax treaty;
- interest and dividend income is not considered taxable income except for so called income derived from companies located in the Netherlands in which the expatriate owns more than 5% of the outstanding shares, directly or indirectly;
- income relating to real estate located outside the Netherlands is not subject to Dutch tax;
- interest related to a mortgage loan can only be deducted if related to a house located in the Netherlands and when it is occupied as primarily dwelling;
- payments related to alimony, life annuity premiums, qualified child care and extra-ordinary expenses are deductible from the taxable base.

Opting for the partial non-resident status is advantageous when an expatriate is wealthy. The choice for the partial non-resident status eliminates the tax burden on interest, dividend and rental income.

12. Forms required

In order to start the procedure to request for a 30%-ruling we need some information from the employer and the employee. Therefore, upcoming you will find the following required documents:

- Questionnaire employer
- Questionnaire employee
- Power of attorney employer
- Power of attorney employee
- Appendix to the employment contract

Questionnaire 30% ruling employer

- Company name :
- Address :
- Postal code + City :
- Country :
- Wage tax number :
- Contact person :
- Telephone number :
- Did you create a letter of scarcity? :



Questionnaire 30% ruling employee

- Initils and surname : _____
- Address (Dutch) : _____
- Postal code + City : _____
- Country : _____
- Telephone home : _____
- Telephone mobile : _____
- Email address home : _____
- Email address work : _____
- Sofinumber/BSN : _____
- Date of birth : _____
- Gender : _____
- Nationality : _____
- Date of arrival in the Netherlands (dd/mm/yyyy) : _____
- Start employment date in the Netherlands (dd/mm/yyyy): _____
- Have you ever been present in the Netherlands before for purposes of work, unemployed presence, holiday, family visits or other personal reasons? If so, please specify these periods.
- Have you ever been working in the Netherlands before? If so, please indicate the period(s) (mm/yyyy to mm/yyyy).
- Have you applied for the 30% ruling before?
 - If yes, please send us a copy of the previous statement.
 - If not, what was the reason the ruling was refused?
- Please send us copies of:
 - your employment contract
 - the job description (can be provided by the employer)
 - your curriculum vitae
 - your identity paper
 - your work permit or knowledge worker statement (if applicable)



POWER OF ATTORNEY

The undersigned:

Name employer :
Address employer :

and

Name employee :
Address employee :

Herewith declare to give full power of attorney to:

Horlings Accountants & Belastingadviseurs B.V., Jozef Israëlskade 46, 1072 SB, Amsterdam.

For the purpose of:

Acting on behalf of the undersigned until further notice in all matters pertaining to the filing of the 30%-ruling.

The attorney is hereby authorized and directed to carry out any and all acts to execute in the name, place and stead of the undersigned any and all documents necessary for the abovementioned purpose.

Thus undersigned on January 25, 2017

Employer,
Name Employer

Employee:

name

name



To Whom It May Concern

This letter certifies that (name employee) born (date) in (place, country), who has the (XXXX) nationality was appointed as (Occupation) at (name Employer) of (country) as per (date start employment).

(name employer) of (country) recruited him/her because of his/her specific expertise that is scarce on the Dutch labor market.

Yours sincerely,

Name Employer

Name.....

Date.....