

EMPLOYEE EQUITY PLANS – CHANGES TO DUTCH 30% RULING

GLOBAL EQUITY UPDATE – THE NETHERLANDS



SUPREME COURT DELIVERS TWO JUDGEMENTS ON THE 30% RULING

BACKGROUND ON 30% RULING

Employees from outside the Netherlands who are hired by a Dutch employer or who are seconded to the Netherlands can apply for the Dutch 30% ruling and therefore be entitled to tax-free compensation equal to roughly 30% of their gross remuneration.

The 30% ruling is a concession available for foreign employees who have specific skills or expertise considered to be scarce in the Dutch labour market (other qualifying conditions apply).

This ruling could also apply to Netherlands-sourced income from equity incentives such as stock options or share awards.

SUMMARY OF UPDATE

On 29 January 2016 the Dutch Supreme Court concluded that:

(A) cross-border workers between the Netherlands and Belgium who invoke the “compensation rule” under the double tax treaty may not apply the “30% ruling” to the Belgian part of their wages; and

(B) the ‘three month period between employers’ condition, which is the maximum time an employee can be between employers and continue with the 30% facility, may not be extended.

A - COMPENSATION RULE: TAX TREATY NETHERLANDS-BELGIUM

There is a compensation scheme available through the Netherlands-Belgium tax treaty whereby residents of the Netherlands who also work in Belgium and who are subject to a higher tax liability in Belgium may receive compensation for this higher tax burden.

The compensation scheme value is essentially the difference between the combined Dutch and Belgian tax and social security contributions that are actually due, and the amount that would be due if the wage was fully earned and taxed in the Netherlands.

A case was recently brought to the Dutch Supreme Court where a resident of the Netherlands worked in both the Netherlands and Belgium and applied the 30% ruling. The Supreme Court ruled that the 30% ruling could not be applied to the Belgian part of the wage in determining the compensation value.

B - CHANGING EMPLOYER: THREE MONTH PERIOD

An employee who is entitled to the 30% ruling and who changes employers may be able to continue with the 30% facility with the new employer, provided certain conditions are met. One of these conditions is that the period between the end of employment and start of the new employment is three months or less.

A particular employee who took longer than three months to find a new employer argued that a longer period should apply in exceptional cases. On 29 September 2015 the Advocate General concluded that exceptions may be granted in unique cases, such as if an uncontrollable event prevented the individual from searching for a new job. However, the Dutch Supreme Court ruled that the condition with regard to the three month period between employers, may not be extended. As a consequence, the exception was not granted in this particular case.

ACTION POINTS

- ✓ Companies should pay close attention to the start date of any new employees who may fall within this requirement.
- ✓ In some cases the employer may wish to obtain expert advice, such as where an employee ceases employment with a former employer and is on garden leave, to ensure that they are clear as to when the three month period commences.

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