



Mobility: Tax alert

September 2022

The Netherlands

Limitations to 30%-facility announced

Executive summary

On Budget Day, 20 September 2022, the Netherlands Government announced, amongst others, detailed plans to amend the 30%-facility. Most important change is the introduction of a cap on the salary to which the 30%-facility can be applied. Note that the plans are subject to approval of the House of Representatives and the Senate.

Background: the 30%-facility

Expatriates sent to work in the Netherlands, or individuals hired from abroad by a Dutch employer, may qualify for the 30%-facility if certain conditions are met. This facility provides special tax benefits to employees with specific expertise who are recruited from abroad and is available for a maximum period of five years.

One of the main benefits of the 30%-facility is that up to 30% of the Dutch taxable current employment income can be paid as a tax-free allowance to cover additional living costs. Currently, no maximum compensation applies.

In the Spring Memorandum, a 30%-facility cap was announced, and this amendment has been incorporated in the 2023 Tax plan presented on Budget Day.

There will be two main changes to the 30%-facility:

- ▶ There will be a maximum salary to which the 30%-facility can be applied
- ▶ The employer should decide at the start of each year whether actual extraterritorial costs or the 30%-allowance will be paid to the employee

Salary cap

Effective 1 January 2024, the salary on which the 30%-facility can be applied will be capped on the maximum salary for top executives in the (semi) public sector (€216,000 in 2022).

If accepted, this would mean that the maximum tax-free allowance would be €64,800 (based on the 2022 figure). Any income in excess of €216,000 will not qualify for any additional 30% tax-free allowance.

There will be grandfathering rules for employees to whom the 30%-facility is applied in the final payroll period of 2022, typically the December run. For such employees, the proposed salary cap will apply as of 1 January 2026.

Actual costs versus 30%-allowance

For employees to whom the 30%-facility is granted, the employer can choose to either reimburse the actual extra costs of living abroad (known as 'extraterritorial costs') tax free, or to pay up to 30% of the gross Dutch taxable salary as a tax-free allowance. If the 30%-facility is chosen, the actual extraterritorial costs reimbursed are taxable.

The choice can be made annually but will apply for the full calendar year. Currently, such a choice can be made at the end of the year with retroactive effect for the entire calendar year.

Under the Budget Day plans, the choice should be made in the first wage tax month of the calendar year and there will be no option to reverse the decision later, except in the following circumstances:

- ▶ If during the year the employee no longer meets the conditions for the 30%-facility, but still qualifies as incoming employee, as from that moment the employer can then reimburse the actual extraterritorial costs, even if in the first period the 30%-allowance was paid
- ▶ At the start of the employment, the final choice must be made by the fifth month for the remainder of the year. For the first four months of employment a different choice is permitted
- ▶ If the application for the 30%-facility is filed more than four months after the start of the employment in the Netherlands (this means that the 30%-facility will not be granted as from the start of the employment), the final choice must be made from the start date of the 30%-facility

Next steps

Due to the announced changes in the 30%-facility, employers should:

- ▶ Review which employees will potentially be affected by the cap
- ▶ Consider whether employees with an expected early 2023 start date and a salary above €216,000 may bring forward their start date to the end of 2022 to benefit from the grandfathering rules

Review existing policies for employees and how to manage the effects of the 30% cap: consider if employees are to be (partly) compensated

- ▶ Review current processes with respect to the reimbursement of actual extraterritorial costs versus the payment of the 30%-allowance: the employer should understand the expected costs for the upcoming year to make a considered decision
- ▶ Communicate these legislative changes to impacted employees.

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