

**Compensation Tax Services  
The 30%-Ruling****1. What is the 30%-ruling?**

The 30% ruling is a tax benefit available to a specific group of foreign employees temporarily working in the Netherlands. Effectively it represents a tax-free allowance of 30% of the taxable salary. The purpose of the allowance is to cover extra-territorial expenses incurred by an expatriate employee as a result of a temporary work assignment to the Netherlands.

**2. What are extra-territorial expenses?**

Extra-territorial expenses are specific costs incurred due to an expatriate's temporary residence in the Netherlands and must arise as a direct result of the employment in the Netherlands. In other words, costs that would not have been incurred if the expatriate employee had remained working in the country of origin.

The legal definition of extra-territorial expenses covers a broad scope. However, the Dutch Ministry of Finance has published a list of costs that generally speaking are accepted as being extra-territorial expenses. For example:

- o cost of living allowance
- o extra housing costs
- o double housing costs
- o application and procedural costs for visa and permits
- o (income) tax advice
- o hotel accommodation
- o home leave travel
- o language courses

Regular business expenses incurred by an expatriate employee are not included in this tax-free allowance, and may be reimbursed under the Dutch wage tax rules applicable to all employees.

It is important to note that it is also possible to reimburse actual extra-territorial costs incurred instead of, but not in addition to the 30% tax-free allowance. Since the actual extra-territorial costs incurred may far outweigh the tax-free reimbursement under the 30% ruling, it is essential that the salary administration conducts an annual review of these costs.

Any reimbursement by the employer to the employee of extra-territorial costs over and above the 30% allowance will be subject to wage tax. However, there is one specific exception in the form of a separate tax-free allowance for certain international school fees. If the tax-free school allowance is not paid by the employer then the employee is not entitled to deduct the school fees on his annual income tax return.

**Date** 2 september 2019  
**Reference** 30% ruling

### 3. Who is eligible for the ruling?

In order to qualify for the 30% ruling the foreign employee must be transferred or recruited to the Netherlands by:

- o a Dutch domestic employer, or
- o a permanent establishment in the Netherlands of a non-Dutch employer, or
- o a non-Dutch employer registered in the Netherlands for Dutch wage tax purposes.

The application for the ruling must be submitted by both employer and employee.

### 4. Qualifying for the 30% ruling

In order to qualify for the 30% ruling the employee must satisfy the following specific criteria:

- The employee must be hired or seconded from abroad. Supervisory Board members and non-resident statutory directors of Dutch companies may also qualify even if they are not present in the Netherlands, provided that they are subject to tax in the Netherlands.
- Employees that lived within a 150 km radius of the border of the Netherlands 8 months of 24 months prior to their employment in the Netherlands, are not considered to be hired from abroad.
- The employee has specific experience or skills not (readily) available on the Dutch labour market. The employee possesses specific experience if the taxable salary exceeds a threshold of € 37,743 (€ 53,918 including the 30% tax-free allowance). Employers are not obliged to pay the maximum of 30% tax-free. Employees with a taxable salary between € 37,743 and € 53,918, may therefore also qualify for a tax-free allowance. Please contact your tax advisor to check the possibilities.
- Master graduates, PhD students/graduates and medical doctors (in-service training) under the age of 30 years, possess specific experience if the taxable salary exceeds a threshold of €28,690 (€ 40,986 including the 30% tax-free allowance).
- The scarcity of the specific experience on the Dutch labour market is determined on the basis of the following factors:
  - o level of education (minimum bachelor level)
  - o level of relevant work experience (at least two and a half years)
  - o level of remuneration in comparison with the level or remuneration in the country of origin. This should be equal to or higher than the level of remuneration in the Netherlands
- The employee must be hired by a Dutch withholding agent, whereby the salary must be paid through a Dutch payroll and consequently is also subject to wage tax withholding in the Netherlands.

**Date** 2 september 2019  
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## **5. Calculation basis**

The taxable salary (income from current employment) and the tax-free allowance for extra-territorial expenses together constitute the basis of the calculation for the 30% ruling. In effective terms the 30% allowance is represented by 30/70 part of the taxable salary for wage tax purposes.

Wages from former employment do not fall within the calculation base (e.g. severance pay). Similarly, pension premiums do not qualify as income from current employment, and the Dutch Supreme Court has also ruled that severance payments cannot be included in the calculation.

## **6. Filing an application**

A request for the 30% ruling must be filed jointly by the employer and the employee. An application form, accompanied by additional documents such as the employment contract and employee's curriculum vitae, should be filed at the tax office in Heerlen.

If an application is filed within 4 months of the commencement date of employment in the Netherlands the 30% ruling will take effect retrospectively. However, if the application is received after the first 4 months of employment, then the ruling will take effect as of the first day of the month following the month in which the application is made.

In order to qualify for the 30% ruling employer and employee must agree a reduction in the agreed remuneration, in the form of a separate allowance of 30% as reimbursement for expenses, to be paid to the employee simultaneously with the reduced amount of salary. For tax purposes the employer and employee should formally agree in an additional clause in the employment contract or an addendum to the employment contract that the employee is entitled to a net allowance of 30/70 of the reduced salary.

Upon transferring from one employer to another it is possible to re-apply for the 30% ruling, provided that the employee realizes new employment within three months of the old employment, and also provided that the same criteria continue to apply.

## **7. Approval of the 30% ruling**

The tax authority generally makes a decision within three months of receipt of the application. A formal appeal may be filed against a rejection of the application.

## **8. Duration of the 30%-ruling**

Once the application has been approved, the ruling remains valid for five years. However, if the employee has lived or worked in the Netherlands at any time during the twenty-five years period immediately preceding the application for the 30% ruling, this will reduce the maximum term of the ruling. Any one-day stay or work in a particular month during that period will reduce the maximum validity of the ruling by one month.

**Date** 2 september 2019  
**Reference** 30% ruling

Periods of working or living in the Netherlands that started prior to the twenty-five years reference period, but ended within the twenty-five years reference period are fully deducted from the maximum term of the ruling.

Please be informed that the duration of the 30% ruling used to be 8 years. The reduction of the duration of the 30%-ruling from eight years to five years is applicable as of January 1, 2019. Should an employee already have obtained the 30% ruling prior to January 1, 2019, then transition legislation may be applicable depending on the end date of the employee's 30% ruling.

## **9. Tax position**

### Resident taxpayer

Income tax is levied on Dutch resident and non-resident taxpayers. Resident taxpayers live and work in the Netherlands and are subject to tax on their worldwide income, based on a box system:

- o Box 1: income from employment (including pension payments and life annuities) and home ownership (progressive rate of maximum 51,75%).
- o Box 2: income from a substantial interest (5%, or more if held with immediate relatives). Box 2 income is subject to a flat rate of 25%.
- o Box 3: income from savings and investments. Average net wealth is calculated annually, of which a certain percentage is considered as deemed income. The deemed income depends on the value of the assets. The deemed income is taxable at a flat tax rate of 30% and a tax free threshold of € 30,360 is applicable for a single taxpayer (€ 60.720 for joint taxpayers).

### Partial non-resident taxpayer

Non-resident taxpayers are taxed solely on income derived from a Dutch source, and their income from employment is taxed in box 1. Income is calculated pro rata, based on the actual days worked in the Netherlands. Under the 30%-ruling an employee may opt to be treated as a partial non-resident taxpayer, even though he actually lives in the Netherlands. As a partial non-resident, the employee will be considered a resident taxpayer for box 1 income and a non-resident taxpayer for box 2 and box 3. As a result, the income that should be reported in box 2 and box 3 will be very limited. For example, box 3 income will be limited to real estate in the Netherlands that is not used as a main residence. All other passive income remains tax free.

Expatriate employees with a partial non-resident status, combined with a 30%-ruling, are entitled to the same personal allowances and tax credits as domestic residents, but also become subject to Dutch estate and gift tax.

A request to the tax authorities to be treated as a partial non-resident taxpayer can be filed simultaneously with the annual tax return, and the choice may also be revised annually.

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#### US citizens and US Green Card holders

US citizens and US Green Card holders who are living in the Netherlands and who are granted the 30%-ruling are treated as real non-resident taxpayers, regardless of whether they have applied for partial non-resident status. They are required to maintain records of work days in and outside the Netherlands, holidays, sickness etc.

#### **10. Other potential financial consequences**

##### Social security

As a result of the 30%-ruling an employee receiving the 30% tax allowance and who is subject to the Dutch social security system, will pay Dutch social security premiums based on 70% of the gross salary. As a consequence, potential future Dutch social security benefits will also be based on 70% of the gross salary.

In principle employees with a gross salary of more than € 79,896 (100%; 2019 figures) will not be affected, since both social security contributions and benefits are based on a maximum income of € 55,927 (70%).

##### Pension

The agreed reduction of salary in exchange for a tax free 30% allowance, also has consequences for the accrual of pension. If any pension entitlement is accrued on basis of the full salary amount prior to the agreed reduction, the total pension capital will be taxed at once, and will also be subject to a 20% interest penalty. This can possibly be avoided through introduction by the employer of a so-called Salary Exchange Regulation, whereby pension continues to accrue on basis of the 100% pre-ruling salary.

#### **11. Addendum to the employment contract**

The Dutch tax authorities require that the terms of the 30%-ruling are formally set down in a separate clause in the employment contract to be entered into, or by means of an addendum to the existing employment contract. By signing the addendum to the employment contract, the employee's remuneration is effectively reduced to 70%. Not only does this salary reduction carry tax and labour law consequences in the Netherlands, it may also imply comparable consequences in other countries.

The addendum to the employment contract may contain separate terms to provide the employee with a 30%-allowance on past employment remuneration (for example severance pay). As already stated above, Supreme Court proceedings are currently pending on this subject and we therefore recommend that you contact us directly if you wish to receive further information on this aspect,

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