

Employment in the Netherlands

Conditions of employment, tax and social security aspects

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Edition 2008

Editor

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Foreword

This brochure deals primarily with the conditions of employment, tax and social security aspects of posting an employee to the Netherlands. The employee may or may not be immigrating. Both cases are discussed.

The contents of this publication are based on the laws as operative at January 1, 2008.

We have elected a format in which the topics are outlined rather than discussed in detail. Because of this approach, it is still important to consult your tax advisor if you are considering taking measures which may have tax implications. Although the brochure has been compiled with the greatest care, the firm of Loyens & Loeff cannot accept any liability for the consequences of its contents being used without its active involvement.

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1. Conditions of employment

1.1 Introduction

Posting to the Netherlands can affect the terms and conditions of employment agreed between the employer and the employee. The duration of the posting is an important factor in this connection. In the majority of cases, the sending company has formulated a secondment policy indicating what is meant by short posting or long posting (the latter being the true expat posting). This chapter deals with several terms and conditions of employment and a number of other subjects that should be borne in mind by the employer and employee in the case of a posting to the Netherlands.

1.2 Applicable law

In the event a foreign employee is posted to work in the Netherlands, it must be determined whether the employment agreement of the individual is governed by Dutch law. That depends on the question whether the contracting parties really want their agreement to be governed by Dutch law. Whether they want to choose for Dutch law can be determined on the basis of a few indicators. First, in the employment agreement itself, an explicit choice for Dutch law can be made. A second indicator is that all provisions in the employment contract refer to Dutch law. Finally, both parties also have to act in accordance with these provisions. But even if all these indicators apply, it is sometimes still possible for a foreign worker to rely on the law of his home country on the basis of the Convention on the Law Applicable to Contractual Obligations of 1980 before a Dutch court. This will be the case if his home country is the country where he habitually carries out his work in performance of the contract, even if he is temporarily employed in the Netherlands. In such a case the employee can rely on the mandatory rules of his home country which would protect him better than similar provisions of Dutch law. Whether the home country is the country where the employee habitually carries out his work in performance of the contract depends on the period of time that he has worked in his home country on this contract, in relation to the period of time that he works in the Netherlands. The longer he has worked in his home country, the more his home country will be regarded as the country in which he habitually carries out his work. It is thus possible that one employment contract will be governed by two different national legislations.

The mirror image of the abovementioned situation can also apply. It is possible that the employer wants the contract to be governed by the law of the employee's home country. In such a case, it is advisable to make an explicit choice for the law of the home country, to formulate the provisions in the contract in accordance with that law and to act in accordance

with the law of the home country. But the employee can rely on certain provisions of Dutch law if the Netherlands is the country where he habitually carries out his work in performance of the contract. This will be the case if he is taken into employment in his home country and is after that almost immediately posted to the Netherlands. Also in this situation the employment contract can be governed by two different national legislations: the law of the home country and Dutch law as far as it concerns Dutch mandatory rules which offer him a better protection than the law of his home country.

1.3 The Posted-Work Directive and the Dutch WAGA

Regardless which law applies on the contract and regardless how long the employee works in the Netherlands: for posted foreign workers it is always possible to rely on certain Dutch rules that always apply. As from the first day of posting to the Netherlands, the Terms of Employment (Cross Border Work) Act (“Wet Arbeidsvoorwaarden Grensoverschrijdende Arbeid, WAGA”) applies to all foreign individuals working within the Netherlands. The WAGA is based on the EU posted Worker Directive of 1996. Pursuant to the WAGA, the provisions of Dutch law relating to the topics mentioned below apply to the employment agreement of each individual working within the Netherlands, in addition to the provisions of the laws primarily applicable to that employment agreement. The Dutch law provisions indicated in the WAGA are intended to serve as minimum protection. Therefore, these Dutch provisions will be superseded by provisions of the applicable law if the latter are more favourable for the employee/posted worker.

The WAGA refers to provisions on the topics below contained in Dutch legislation and in Collective Bargaining Agreements, which have been declared generally binding in the Netherlands.

These topics are:

- a. Maximum working hours and minimum resting hours;
- b. Maximum number of vacation days during which the employer has the obligation to continue salary payment;
- c. Minimum wage, including payments for overtime hours, excluding additional company pension schemes;
- d. Conditions on hiring out of employees;
- e. Health, safety and hygiene at work;
- f. Protective measures regarding employment conditions and working conditions for particular employees;
- g. Equal treatment of men and women, as well as other subjects of non-discrimination.

1.4 Separate regime in case of dismissal

A separate regime applies to the Extraordinary Labour Relations Decree 1945 ('Buitengewoon Besluit Arbeidsverhoudingen, BBA 1945') which provides for the need to obtain permission from the relevant authorities prior to giving notice of termination to an employee. The possible applicability of that Decree is based on a specific scope-rule, which differs from the rule for determining the applicable law. As a rule of thumb it could be said that if a foreign employee after his dismissal will return to the Dutch labour market (i.e. apply for a new job in the Netherlands), the Decree is applicable, which means that the employer has to obtain permission from the employment agency (CWI) before he can dismiss an employee.

1.5 Some particular issues of Dutch labour law

Under a European Union Directive, all employers conducting business in the territory of the European Union have the obligation to notify the employee in writing of a number of particulars concerning his contract of employment. If an employee works in another European Member State for longer than a month, the employer must provide the following information:

- a written contract of employment, a letter of appointment and/or a written document containing various particulars of the employment agreement or employment relationship, e.g. the identity of the parties, the place of work, the salary, etc.; the contract of employment, letter of appointment and/or another written document should be in the possession of the employee before he leaves his home country;
- the duration of the period of employment abroad;
- the currency in which the salary will be paid;
- in appropriate cases, the social security aspects related to the period of employment abroad;
- in appropriate cases, for the arrangement concerning the employee's return to his home country.

Apart from that, it is important to mention a few particular issues which are specific for Dutch labour law, without being exhaustive. The issues that will be briefly discussed hereafter are:

- a. The trial period
- b. The non-competition clause
- c. Sickness and reintegration
- d. Liability for accidents and diseases at work
- e. The law on dismissals
- f. Employment contracts for a definite time period
- g. The managing director (statutair directeur)

a. The trial period

For a contract of two years or more or an indefinite period, the trial period is up to a maximum of two months. The trial period in Dutch law is up to a maximum of one month if it concerns an employment contract for less than two years. The trial period can only be two months in such a case if this is prescribed under an applicable collective labour agreement. If the parties agree on a trial period which is longer than one/two months, the legal consequence is that there is no trial period at all. The trial period should be agreed in writing in the individual employment contract or in the applicable collective agreement.

b. The non-competition clause

If the employer wants to agree on a non-competition clause, this has to be laid down in writing in the individual employment contract. The inclusion of such a clause in an applicable collective agreement is not sufficient. If the function of the employee undergoes important changes, it is advisable to agree upon a new non-competition clause, because this clause always relates to a specific function.

A non-competition clause can always be moderated by a court as regards the duration of the clause as well as regards the geographic limit within which the non-competition clause applies. However, in order to do this, the employee first has to start a legal procedure against the employer. The court cannot moderate a non-competition clause at its own initiative.

c. Sickness and reintegration

In case of sickness of the employee, the employer is obliged to pay at least 70% of the salary and holiday allowance during a maximum of two years. He is also prohibited to dismiss the employee for reasons of sickness during this period. Furthermore, the employer and employee are obliged to cooperate as much as possible in order to reintegrate the employee. If the employee does not show sufficient collaboration in this reintegration path, the employer may stop the payment of the salary and if that does not change the attitude of the employee, the employer may dismiss the employee, even if the two years have not yet passed. If the employer does not show sufficient collaboration in the reintegration path, the Social Security Board (UWV) may, after two years, sanction the employer by deciding that he has to pay the salary of the employee one year extra.

d. Liability for accidents and diseases at work

If an employee gets an accident at work or develops an occupational disease, he can hold his employer liable for it. The employer can only avoid liability if he can prove that he has taken all the necessary care in order to avoid the accident/disease, or if he can prove that the accident/disease is the result of acting on purpose or conscious recklessness of the employee. This is very difficult to prove and the past ten years there have been many legal procedures regarding these claims. In most of these cases, the employer was held liable for the accident/diseases at work.

e. The law on dismissals

In the Netherlands, there is a typical regime as regards the law governing dismissals. If an employee has an employment contract for an indefinite period and there is no reason for a termination for urgent reasons, there are two ways in which an employee can be dismissed. The first way is by means of a dismissal permit from the Centre for Work and Income (the CWI). The procedure to obtain such a dismissal permit amounts to approximately 2 to 4 months, dependent on the question whether and how the employee will defend himself in this procedure. If the CWI gives a dismissal permit, the employer can terminate the employment contract in accordance with the terms of notice. These terms of notice vary from 1 to 4 months, depending on the total duration of the employment.

The second way the employment contract can be terminated is by means of a court decision. The employer can ask the court to dissolve the employment contract for serious cause. If the court dissolves the contract, he can decide to a redundancy payment in favour of the employee on the basis of the so-called "cantonal court formula". This formula has been developed by the Dutch cantonal judges and is the multiplication of the years of services with the gross salary per month and a correction factor.

f. Employment contracts for a definite period of time

An employer can conclude three employment contracts for a definite period of time with an employee. If he subsequently concludes a fourth contract after the third contract has terminated, this fourth contract will be automatically for an indefinite period. This will only be different if there is a period of more than three months between two contracts in which the employee neither has an employment contract with the employer nor does he work for the employer by way of a temporary employment agency.

Furthermore, if an employer concludes two or three contract for a definite period of time, the total period of these contracts cannot be longer than three years. After three years, the employee will automatically have an employment contract for an indefinite period.

In an applicable collective labour agreement, it can be stipulated that the number of temporary employment contracts can be more than three or that the total period of temporary employment contracts can be more than three years.

g. The managing director (statutair directeur)

The managing director has a special position. He has to be appointed and dismissed by the stakeholders. If he is dismissed by the stakeholders in accordance with the applicable rules, his employment contract has ended. The employer does not need a dismissal permit from the Centre for Work and Income (the CWI). Nor does he need to ask the court to dissolve the employment contract for serious cause. The only thing that has to be observed by the employer is the notice period for termination. After he has been dismissed, the managing director can try to get a redundancy payment by the court. But he cannot ask the court to restore the employment contract.

1.6 Residence permit and work permit

Prior to actually working in the Netherlands, it must be determined whether the employee is allowed to reside and actually work in the Netherlands, given the restrictive conditions aimed at protecting the Dutch labour market.

1.6.1 *Residence permit*

All foreign nationals, except those from Member States of the European Union and the European Economic Space (EES), including Switzerland (and the members of their families), who wish to reside in the Netherlands for a period exceeding three months, need to have a residence permit. The granting of such a permit is subject to a number of specific conditions. Firstly, it should be determined that the person does not already have a residence permit. If he does not need one, or has already requested one, the correctness of this should be verified before he is taken into employment. The residence permit will be granted after the work permit has been granted.

Entry visa

In most cases, those wishing to obtain a residence permit must first request an entry visa ('MVV').

Except for nationals of one of the European Member States (European Economic Space and Switzerland), Monaco, the United States of America, Australia, Japan, New Zealand, Canada and Vatican City all persons of other nationalities need an MVV. An MVV is a special type of travel visa in sticker form that is put in the passport and allows the foreign national to enter the Netherlands.

An MVV can only be obtained from the Dutch embassy or consulate in the country in which the foreign national resides, or in the closest neighbouring country where the Netherlands has representation. Once granted, within three days of entering the Netherlands, the foreign national must apply for a residence permit in one of the nine regional front offices of the Immigration and Naturalisation Service (IND). If he meets all the requirements for staying in the Netherlands a residence permit will be granted.

If an MVV is required and a foreign national applies for a residence permit without first having acquired a MVV, his request will not be granted and he will have to leave the Netherlands.

1.6.2 *Work permit*

Work permits are issued pursuant to the Foreign Nationals Employment Act (WAV). This act contains a number of restrictions regarding the right to work in the Netherlands for foreign nationals. In principle, a work permit will only be issued if no one can be found on the EU/EES market to fill the position.

An employer is not allowed to have a foreign employee performing work in the Netherlands without a work permit. For each employee working in the Netherlands without having obtained the required permits his employer is subject to a fine of EUR 8,000. Under circumstances another sanction may be that the company will not be allowed to recruit non EU/EER staff for work in the Netherlands during one year. The employee need not have acted in conflict with the law on purpose of these measures to be imposed. The Public Prosecutions Department has its own guidelines for prosecution. The premise contained in the law is that a work permit must be requested for each foreign national who wishes to work in employment in the Netherlands. There are certain exceptions to this (see further on).

The requirement of having a work permit also applies to part-time work, jobs requiring work experience, training on the job-positions and volunteer positions. Even if the employee is recruited from another company, for instance an employment agency, an employer still has to request for a work permit, or to verify whether the employee has already been issued one. The principal for whom the work is actually being carried out is responsible for ensuring that the regulations contained in the WAV are complied with.

A work permit is not required for the following categories:

- persons who have a residence permit for the purpose of becoming self-employed. These persons must, however, actually be self-employed and request for a residence permit;
- persons who are allowed to stay in the Netherlands on the basis of community law (i.e. nationals of EU/EES-countries, including Switzerland and their family members). They only need a valid passport to perform work;
- persons who have a permanent residence permit, refugees;
- persons who have been granted exception by means of an Order in Council. These include: foreigners who only have come to the Netherlands to work for a very short period of time, for instance to repair machinery, give lectures, install software; and
- foreign nationals who have a residence permit, which contains the appendix, stating that the foreign national is permitted to freely perform work. This appendix is essential.

Although Bulgaria and Rumania have been EU member states since 1 January, 2007, a work permit is still required for nationals from these countries. They do not need a residence permit, however.

Employees who have priority

Pursuant to the WAV a work permit will be refused if there are employees on the 'local' labour market who can fill the position. This labour market comprises not only the Netherlands, but the entire EU/EES. Another requirement is that the position must be advertised timely (at least five weeks before the work permit is requested). This is: before the employee is recruited from abroad. In other words, the position must be advertised within the EU/EES. This costs

time and effort. These grounds for refusal are not applicable in the case of an intercompany transfer of specialized employees.

Partners of intercompany transfer employees are free to work on the basis of the work permit granted to their partners. For intercompany transfers special conditions apply.

Highly skilled migrant workers

Highly skilled migrant workers ('knowledge migrants') are employees (in other words, not self-employed persons) whose income lies above a certain level. This income is EUR 47,565 gross for those over the age of 30; for those under the age of 30, it is EUR 34,881.

Foreign graduates from university are allowed to stay in the Netherlands for one year and find a job as highly skilled migrant worker. The minimum income that is requested here amounts to € 25,000 per annum.

These employees must have either an employment contract or an appointment as a civil servant.

Furthermore, the employer must supply the Immigration and Naturalisation Service ('IND') with a guarantee that this particular person will not be living off the Dutch state.

There are no other requirements. It does not matter what level of education this person has, as the level of education need not have any bearing on the productivity or innovativeness of the knowledge migrant. This way, employees who have a non-university (or bachelor's) degree and work for small to midsize companies can also provide an important contribution to the Dutch economy.

One should keep in mind that the activities of a knowledge migrant need not be limited to his activities for one particular employer. As long as the income criterion is met, the migrant can stay and can work for any employer in the Netherlands. However, the employer must always be able to supply above guarantee. This means that, if the migrant's income were to fall below this level – for instance because he decided to work part-time – then he would lose the status of knowledge migrant. The employer is required to report this and to request a work permit for this employee.

Another example of knowledge migrants are those working on a Ph.D.; there is no age or income limitation for them. Also postdoctoral or university professors who are younger than the age of 30 are to be considered knowledge migrants, regardless of their income.

An exemption from the need for a work permit exists for those who are in the Netherlands on a grant, who receive certain monthly stipends or who participate in a European program. It should be noted that the residence permit (!) is limited to a period of five years.

Who are not regarded knowledge migrants?

Categories of persons who do not qualify as knowledge migrants include -inter alia- professional soccer players, clergymen, self-employed persons and students. The latter are even required to apply for an extension to their residence permit annually.

Duration of the residence permit for knowledge migrants

Knowledge migrants receive a five-year residence permit if they have an employment contract for an unlimited period of time. If they have an employment contract for a limited period of time, the residence permit is granted for this same period, with a maximum of five years. In these cases, the residence permit will not have to be extended regularly. This leads to savings in administrative charges.

1.7 Registration with the municipal authorities

If a foreign national wishes to stay in the Netherlands for a period of more than three months, he must register with the municipal authorities. For this purpose he must submit:

- a valid passport (this also applies to the spouse and children);
- a certified copy of his birth certificate (this also applies to the spouse and children);
- a marriage license (if applicable);
- if either partner was previously married, a copy of the divorce decree.

1.8 Validity of a foreign driving license

As a rule, residents of the Netherlands are required to have a Dutch driving license in order to drive a motor vehicle. There are, however, a number of exceptions to this rule. Holders of driving licenses issued in other Member States of the European Union are entitled to drive in the Netherlands on their foreign license for a year (maximum) after registering as a Dutch resident. Before this period expires, the person either has to take a driving test to acquire a Dutch driving license, or exchange his own foreign license for a Dutch one.

Holders of driving licenses issued in countries outside the EU may drive in the Netherlands on their foreign license for a maximum period of six months after registering as a Dutch resident. Before this period expires, the person in question has to take either a driving test in the Netherlands to acquire a Dutch driving license, or exchange his own foreign license for a Dutch one.

It is advisable to inquire whether or not a foreign driving license is valid upon arrival in the Netherlands.

Special rules apply to employees and spouses benefiting from the 30% ruling.

2. Taxation

2.1 Residence

For Dutch tax purposes, it is essential to know whether an employee who is posted to the Netherlands is considered a resident of the Netherlands. If so, he is considered a resident tax-payer; if not, he is considered a non-resident tax-payer. A non-resident tax-payer can elect to be treated as a resident tax-payer. An employee benefiting from the 30%-ruling may have the status of a partial non-resident tax-payer.

Dutch residency is determined on the basis of the facts and circumstances. The existence of a long term relationship of a personal nature with the Netherlands is regarded as a very important factor. Dutch case law shows that the following circumstances are relevant in this regard:

- the place where he has his home;
- the place where his family (partner) resides;
- the place where he works;
- the length of his stay in the Netherlands;
- other personal ties with the Netherlands, such as (club) memberships, bank accounts, etc.

An employee who has been posted abroad can, for tax purposes, be considered as a resident in more than one country. This may result in double taxation. However, most tax treaties that have been concluded between the Netherlands and other countries provide a solution for this.

The regulations that apply to resident tax-payers differ substantially from those that apply to non-resident tax-payers. Therefore we have chosen to discuss the two situations separately. Employees who are resident tax-payers should refer to section 2.2. Section 2.3 is relevant to those who are non-resident tax-payers. In section 2.4, the specific situation related to employees who benefit from the 30%-ruling and who are partial non-resident tax-payers is explained.

2.2 Resident tax-payers

This section applies to employees who are resident of the Netherlands for tax purposes (see section 2.1) and partly (for income in Box 1 only) for partial non-resident tax-payers (see section 2.4).

2.2.1 *Income tax*

2.2.1.1 *Unlimited tax liability*

The resident tax-payer is liable for income tax on his worldwide income. The tax year runs from January 1 through December 31.

2.2.1.2 *Sources of taxable income*

2.2.1.2.1 *General*

Income is taxed in three different Boxes.

- Box 1, income from work and home;
- Box 2, income from substantial interest; and
- Box 3, income from savings and investments.

2.2.1.2.2 *Box 1: Income from work and home*

The income from work and home, taxable in Box 1, includes:

- wages, pensions, social security benefits, etc.;
- business profits (of entrepreneurs);
- income from work not being salary or profit from a company (e.g. freelance activities, extra earnings, etc.). Special rules apply for this type of income;
- negative income for income provisions (e.g. refund of previously deducted life insurance annuity premiums);
- periodic payments like alimony and certain state benefits. Children's alimony is not taxable;
- deemed rental income of a privately owned principal residence.

Deductible expenses:

- expenses for commuting by public transport;
- interest and other costs related to mortgage loan(s) and ground rent paid for long lease;
- expenses for "income provisions", e.g. annuity premiums;
- alimony or maintenance expenses to a former spouse or partner;
- living expenses for children under the age of 30 (fixed amounts);
- medical and other extraordinary expenses;
- weekend expenses for severely handicapped persons over the age of 27;
- educational expenses, under conditions;
- expenses for a building listed as a monument;
- charitable donations;
- loans to starting entrepreneurs.

Some of the deductible items are related to the total income of the three Boxes.

Partner-rule

Married people and persons officially registered as partners are automatically considered partners for tax purposes. Other unmarried individuals can also qualify as partners for tax purposes. Both individuals should make this election when filing a request for a preliminary tax refund or when filing the annual income tax return. On the basis of this election the unmarried individuals will be considered partners for tax purposes for the period of the calendar year they have a joint household for at least six months and are registered at the same address. Being partners, it is possible to divide certain (joint) income and deductible items between the partners, as they wish. The same applies for taxable assets and deductible debts and liabilities in Box 3 (see 2.2.1.2.4). The election to be treated as partners can be made each calendar year.

Income from employment

Income from employment (world-wide) consists of wages and certain other kinds of (wage substituting) benefits, including pensions. Employment income is discussed in more detail in section 2.2.2. Expenses incurred in connection with employment are not deductible, except commuting expenses when travelling by public transport. The private use of a company car is subject to wage withholding tax. The benefit is calculated at 25% of the official Dutch dealer-quoted price of the car¹. Only in case the employee can prove that the private mileage did not exceed 500 kilometres per year the taxable benefit is nil. In this regard, a special declaration ('Verklaring geen privé-gebruik') can be requested from the tax authorities. It is necessary to keep a detailed kilometre registration and supplemental documents.

Income from other activities. Self employed persons

Specific regulations apply to income resulting from other activities, not being wages or business profits and to income arising from practising an independent profession. To be regarded as a person carrying on a trade or business or an independent profession, the person concerned must satisfy certain criteria. If these criteria are not met, the income will generally be taxed as income from employment. The tax authorities can - upon request - issue a so called "Verklaring Arbeidsrelatie" or VAR, confirming the self employed status. A self employed person can, under certain conditions, elect to be treated as an employee.

Dutch real estate

Income attributable to home ownership, the house being the principal place of residence, is calculated as 0.55% of the official value of the house (WOZ-value, value determined by the municipality), with a maximum of EUR 9,300. Because of this fixed income calculation, the costs of home ownership (except for mortgage costs and ground rent) are not deductible.

¹ However, the benefit is calculated at 14% of the official Dutch dealer-quoted price of the car for environmentally friendly cars with a low CO₂-emission

As interest paid is deductible (for a maximum period of 30 years), home ownership is generally a negative source of income if the house is used as the principal place of residence.

A second residence or other real estate rented out or not, is taxed in Box 3 (see 2.2.1.2.4).

If the mortgage for the principle place of residence is linked to an endowment insurance (the mortgage is repaid out of the insurance lump sum payment), such endowment insurance may be taxable upon expiration, in Box 1, when exceeding a certain exempted amount. Transitional rules apply for endowment insurances that existed on January 1, 2001. If the conditions are not met, the endowment insurance is taxed in Box 3.

Please note that if you sell your principle residence in the Netherlands and purchase a new residence, additional regulations may apply with respect to the mortgage interest deduction ('bijleenregeling').

2.2.1.2.3 Box 2: Income from substantial interest

If an individual, together with his fiscal partner, owns at least (directly or indirectly) 5% of the shares or of any class of shares of a company, the income is taxed in Box 2. Certain expenses can be deducted. Also, the balance of certain personal deductions (not deducted in Boxes 1 or 3) can be deducted in Box 2.

Capital gains

Although the main rule is that capital gains and losses are tax exempt and that capital losses are not deductible, an exception applies to capital gains on shares if the shareholder has an (in)direct substantial interest in a company (more than 5%). Then, capital gains are taxed and capital losses are deductible in Box 2.

2.2.1.2.4 Box 3: Income from savings and investments

The value of almost all assets of an individual minus most of his debts and liabilities, is the basis for calculating a fixed notional income of 4% in Box 3. Personal allowances may reduce this taxable basis if not deducted in Box 1. The income actually realized is not taxed.

2.2.1.3 Tax rates

The total income tax liability is the result of the income tax calculated on the taxable income in all three Boxes together.

In the first two tax brackets of Box 1, also the national insurance contributions are levied (see also 3.2.5.).

The total amount of income tax and – if applicable – national insurance contributions are reduced with the applicable levy rebates (see 2.2.1.4).

Box 1

Taxable income		tax	national	total	total
exceeding	up to	in %	insurance in %	in %	in EUR
0	17,579	2.45	31.15	33.60	5,906
17,579	31,589	10.70	31.15	41.85	5,863
31,589	53,860	42.00		42.00	9,353
53,860		52.00		52.00	

Box 2

The tax rate applicable for income taxed in Box 2 is 25%.

Box 3

Income in Box 3 is taxed at a flat rate of 30%.

Tax exempt amounts in Box 3 are available under specific conditions:

- general: EUR 20,315
- children: EUR 2,715 per minor child
- old age: dependent on income from work and home
- special tax reduced company savings scheme: EUR 17,025
- green and social-ethic investments: EUR 54,223 at a maximum
- certain direct and indirect investments (e.g. in starting companies, cultural investments): EUR 54,223 at a maximum.

Debts are deductible in as far as they exceed EUR 2,800. For partners, special rules apply.

2.2.1.4 Levy rebates

Each individual who is a resident of the Netherlands has a right to a rebate on the income tax/national insurance contributions due, the levy rebate. Income tax is calculated on the taxable income in three Boxes, the national insurance contributions are based on the taxable income of Box 1 only.

There are various rebates:

- General rebate EUR 2,074
- Labour rebate EUR 1,443 at a maximum; additional rebates for individuals of 57 and older
- Combination rebate EUR 112
- Supplementary combination rebate EUR 746
- Single parent rebate EUR 1,459
- Supplementary single parent rebate EUR 1,459

- Old age rebate EUR 486
- Single old age rebate EUR 555
- Young handicapped rebate EUR 666
- Parental leave rebate per hour EUR 3.86
- Lifecourse leave rebate EUR 191

Every resident individual has a right to (at least) the general levy rebate. This means that a spouse/partner who has no income of his/her own can receive the general rebate upon request from the tax office in monthly instalments as a preliminary refund.

If an individual is not compulsorily covered under the Dutch social security system he/she is entitled to the tax part of the levy rebate only.

Some of the levy rebates are settled when deducting wage tax, some can only be claimed when filing a personal income tax return.

2.2.2 *Wage tax*

2.2.2.1 *Wage*

The term wage is defined very broadly and comprises cash benefits, benefits in kind and also entitlements.

Income in cash

Besides normal wages, cash benefits include expat allowances, commissions, bonuses, etc.

Income in kind

Benefits in kind include the private use of a company car, free housing, free meals, free travel, stock option rights, goods, etc. There are general and specific rules to determine the taxable amount of benefits in kind.

Entitlements

The third category, entitlements, includes conditional rights to receive one or more future benefits in cash or in kind. Taxation of most entitlements is deferred to the time the benefits are received. Examples of such entitlements are pension rights, entitlements from a life course plan ('Levensloopregeling') and the right to benefits under one of the employee insurance schemes (see 3.3.).

Tax-free allowances

In certain cases, an employer is allowed to make tax-free payments or provide income in kind tax-free. For example, as a reward for certain periods of long service. The amount of these tax-free allowances is capped. The employer can also have the employee participate in a tax-reduced company savings scheme.

Pension schemes

The term "pension" is strictly defined for tax purposes. It does not refer to the General Old Age Pension based on the social security system. A pension scheme that complies with the pension definition is a qualifying pension scheme. In that case, the employee's contributions are deductible and the employer's contributions are tax-exempt. The benefits are subject to taxation at the time of payment. However, if a pension scheme does not qualify for Dutch tax purposes, the employee's contributions are not deductible and the employer's contributions constitute taxable income.

Participation in a foreign pension scheme requires particular attention in this respect, since such a scheme will often not meet the Dutch conditions. In order to qualify for Dutch tax purposes a corresponding approval can be requested from the Dutch tax authorities with respect to the foreign pension scheme. If the scheme is approved, pension contributions paid by the employee are tax deductible and the employer's contributions do not constitute taxable income for the employee.

Employees seconded to the Netherlands who continue building up pension rights under an approved foreign pension scheme (i.e. with a foreign pension fund of insurance company) will receive a preservative tax assessment ('conserverende aanslag') with respect to their pension rights so accrued. The annual increase of these pension rights is subject to taxation. However, if certain conditions are met, the income tax is not actually due. The preservative tax assessment will be imposed and renewed every year. If at any time the conditions are no longer satisfied, the income tax will actually have to be paid. If employees participated in a Netherlands pension scheme, they will also receive such assessment upon emigration for the total value of the pension rights accrued.

Stock option rights

Stock option rights are taxed at the moment of exercise. This means that at the moment of exercise the gain realised upon exercise, i.e. the difference between the fair market value of the underlying shares at the moment of exercise and the exercise price of the stock option rights, is taxed.

Until January 1, 2005 a different tax regime for stock option rights was applicable. With respect to certain stock option rights this 'old' tax regime may still be applicable after January 1, 2005.

The old tax regime remains applicable to the following stock option rights:

- A. Unconditional stock option rights that were granted before January 1, 2005;
- B. Stock option rights that vested before January 1, 2005;
- C. Stock option rights vesting in various tranches: if one or more tranches vested before January 1, 2005 the old tax regime also applies to the tranches vesting after January 1, 2005.

The old tax regime for stock option rights, i.e. the tax regime before January 1, 2005, can be summarised as follows:

- Stock option rights are taxed at the moment the stock option rights vest, i.e. when they are no longer subject to a condition precedent;
- An additional levy applies if the employee exercises the option rights within three years after the date of grant;
- Employees could elect the moment of exercise to be the taxable event, instead of the vesting date. This is the so-called 'election regime'.

2.2.2.2 Deductible expenses/cost allowances

Deductible expenses

Expenses incurred for the purpose of earning employment income - with some exceptions – cannot be deducted in the individual's income tax return.

Cost allowances

Allowances for expenses of a personal nature are subject to tax, whereas allowances paid for costs of having both a business and a personal component are not always fully exempt. Allowances for expenses of a strictly business nature are tax exempt.

Commuting

An employer can give a tax-free allowance of EUR 0.19 per kilometre, irrespective of how the employee commutes between home and work. If the employee, however, travels by public transport the employer may elect to reimburse the actual cost on a tax free basis instead. In that case the employee must submit the tickets to the employer. The employer has to keep these tickets and record them in the administration.

30%-ruling

Under certain conditions, employees coming from abroad may be entitled to the 30%-ruling and receive a fixed tax-free allowance for extraterritorial expenses. This facility is explained in section 2.4.

Other examples of expenses and possible allowances are:

(N.B. Deviating treatment of allowances under 30%-ruling! see 2.4)

<i>Expenses</i>	<i>allowance employer taxable or tax-free</i>
relocation expenses (transport)	tax-free
Further relocation expenses	tax-free up to 12% of gross salary, capped at EUR 5,445
accommodation expenses	taxable in principle
<i>Other travel</i>	
'OV-jaarkaart' (public transport/student's season ticket)	tax-free
private car	EUR 0.19/km tax-free, excess taxable
company car	private use taxable
company bicycle	under conditions tax-free or one time taxable
<i>Business trips</i>	
business travel	tax-free
excursions and educational trips	tax-free
congresses, seminars, symposia, etc. (incl. travel expenses and accommodation)	tax-free
<i>Other expenses</i>	
books, magazines (if professional literature)	tax-free
representation allowance	tax-free under conditions
food, drinks	if business nature, under conditions tax-free
personal care	taxable (except for entertainers, presenters and athletes)
clothing	taxable unless, under conditions, specific work clothing
word processors, computers and similar equipment; video equipment, musical instruments, audio equipment and working tools if (also) used for professional purposes	tax-free under conditions, (sometimes only depreciation tax-free; special rules for PC's)
office space at home if more than 70% of income earned within or from home and 30% of income earned within home office space (if second working place available: 70%)	20% x rent or 20% x fair market rental value tax-free
teleworkers, furnishing office at home	tax-free if expenses do not exceed EUR 1,815, under conditions
study expenses	tax-free under conditions
telephone and internet	tax-free if at least 10% business use

2.2.2.3 Preliminary tax refund

In order to realize the tax benefit with respect to tax deductible items at an earlier point in time than through the final income tax assessment, a request can be filed with the tax inspector to

pay the tax refund in advance during the current year through a preliminary tax refund. This only applies to certain types of expenses and some of the levy rebates (see 2.2.1.4.) The deductible amounts should be estimated as accurately as possible. The tax refund is paid by the tax office into the individual's bank account directly on a monthly basis. After having filed the income tax return for the (calendar) year, an income tax assessment is issued with respect to the final amount of tax due for the year. The preliminary tax refund is credited with this final amount of tax due.

2.2.2.4 Tax rates/levy rebates

The wage tax rates are based on the annual income tax rates. However, there may be some small differences due to the way in which the wage tax is levied. The amount of wage tax withheld can be credited against the amount of income tax due.

2.2.2.5 Payroll deductions

In general, employers are required to deduct the wage tax due from the employee's wage and pay it to the tax authorities. The amount deducted can later be credited against the income tax due. In some cases, no tax assessment is imposed and thus the payroll deduction is the final tax due (see section 2.5.1).

Only Dutch employers and non-Dutch employers with a permanent establishment (e.g. an office or a branch), a permanent representative in the Netherlands or a deemed permanent establishment (see below), are required to withhold wage tax. A non-Dutch employer may, under certain circumstances register as an entity being required to withhold wage tax and social security contributions. In this respect, please note that non-Dutch employers are held to withhold social security contributions although they do not have a permanent establishment in the Netherlands in case the employee is subject to the Dutch social security system. Furthermore, the Dutch Wage Tax Act determines that non-Dutch employers, who professionally hire out employees to a Dutch principal (either, a third party or a group company), have a "deemed permanent establishment" in the Netherlands. This means that such non-Dutch employer is held to register as a withholding entity for Dutch wage tax purposes.

If an employee is employed by a non-Dutch employer not having a permanent establishment, a deemed permanent establishment or a permanent representative in the Netherlands and the employer is not registered to withhold wage tax, there is no wage tax liability; the employee is required to file an income tax return.

2.2.3 Gift tax, inheritance tax and transfer tax

Those who receive a gift from a resident of the Netherlands, owe gift tax. Those who receive a (real or fictitious) inheritance from someone who was a resident of the Netherlands at the time of death, owe inheritance tax. The place of residence of the receiver / heir (or person who is deemed to have received something pursuant to inheritance tax law) is not relevant.

These rules also apply to expats who make a gift or pass away while living in the Netherlands, even if they – within the context of the 30%-ruling – opt to be treated as partial non-resident tax-payers for income tax purposes. The tax is levied over the market value of the gift or inheritance and is imposed at a progressive rate, depending on the extent of the gift and taking into account exemptions and the relation to the giver / deceased. Children are taxed at a rate that lies between 5% and 27%.

Someone who has lived in the Netherlands, but has moved elsewhere and makes a gift within a year after leaving the country, is considered as a Dutch resident at that point in time for gift tax purposes – regardless of his or her nationality.

A similar rule applies to those who have the Dutch nationality, have left the country and make a gift or leave an inheritance: if this takes place within ten years after leaving the country they are considered Dutch residents at that point in time. In the case of a Dutch person who had emigrated to Switzerland and who died before ten years had lapsed, the European Court of Justice ruled on February 23, 2006 that the fiction of residence in the Netherlands is not in conflict with the free movement of capital of the EC Treaty. In the case of a Dutch person who had emigrated to Belgium and who died before ten years had lapsed, the Dutch Supreme Court ruled accordingly on December 22, 2006. In certain situations, a giver or testator who lives abroad can request to be seen as a (fictitious) resident of the Netherlands for gift or inheritance tax purposes.

On gifts or inheritances received from someone who, at the time of giving or passing away, did not live (really or fictiously) in the Netherlands, transfer tax can be due. It is due on specific assets that are located in the Netherlands, such as real estate or shares (representing a so-called substantial interest) in a real estate company. There are no exemptions and the deduction possibilities of debts are limited. The rates are the same as those for inheritance and gift tax. Certain aspects of the transfer tax may be incompatible with European Law. Several court cases are pending. A final judgement has not been passed yet.

It is of course possible that in the case of an inheritance or gift, inheritance tax, gift tax, transfer tax or a similar tax is due in another country as well. The Netherlands has entered into a treaty for the purpose of avoiding double taxation in this area only with a limited number of countries. If there is no applicable treaty, then in some situations, in the case of a giver or deceased who was (considered to be) a resident of the Netherlands, the Netherlands will show some lenience based on the Decree on the Avoidance of Double Taxation 2001.

2.2.4 *Real estate transfer tax*

The transferee is subject to tax on the transfer of real estate (or certain rights regarding such property) located in the Netherlands. The tax is charged over the value of the property at a rate of 6%.

2.2.5 *Import duties, VAT and excise duties*

In the event that personal property is transferred to the Netherlands because of a change of domicile (removal), import duties and VAT may be due, and some products can also be subject to excise duties. A distinction should be made between personal property transferred from a country outside the EU and personal property transferred from another Member State of the EU. If this property is transferred from a country outside the EU in connection with the change of domicile, it is possible – under certain conditions – to obtain an exemption from taxation.

In general, the removal of personal belongings needs to be shown to and proven before the customs authorities. They will need quite some evidence for that. This means a lot of paperwork. To make a short list of the extra documents:

- labour contract;
- declaration from employer (about time limit stay in NL);
- contract of rent or purchase residence;
- proof of registration in new hometown;
- proof of end of registration former hometown;
- copy of passport(s);
- signed inventory lists (2 copies).

2.2.5.1 *Moving from outside the EU to the Netherlands*

If an employee transfers his principal place of residence from a country outside the EU towards the Netherlands, the importation of his personal property is subject to import duties, VAT and possibly excise duties*. In order to get the aforementioned exemption from taxation, the employee has to apply for an authorisation (licence) from the Dutch customs department. The relocation company (international remover) can generally take care of such applications and the other paperwork for customs. The exemption applies both to household goods and to other personal property, under the following conditions:

- a. The employee must have lived abroad for at least 12 consecutive months;
- b. The employee must have owned and used (in case of non-consumer goods) the goods abroad for at least 6 months prior to bringing them into the Netherlands. This has to be demonstrated explicitly;
- c. The employee must declare the personal property within 12 months after the actual transfer of domicile;

* Note: No exemption can be obtained for alcoholic products, tobacco or tobacco products, company cars or articles for professional aims.

- d. The employee is not permitted to sell, lease, lend or otherwise transfer the goods within 12 months after the date of declaration for importation.

In particular situations or circumstances (force majeure), permission from customs can be asked for deviation of the rules and conditions.

2.2.5.2 Moving from another EU Member State to the Netherlands

The internal frontiers between the EU Member States have been abolished and individuals can transfer their personal property from another EU Member State towards the Netherlands without fulfilling any formalities. This rule is only valid for belongings that are already in free circulation and on which all taxes have been paid. There are no customs formalities involved.

2.2.6 Registration tax on private cars and motorcycles (BPM)

If an employee who has transferred his principal place of residence brings his car (or motorcycle) into the Netherlands, the car has to be registered in the Netherlands. Registration is subject to Dutch car tax, called 'BPM' ('Belasting op Personenauto's en motorrijwielen'). Negligence of registration is prevented because the use of Dutch public roads with an unregistered car by a Dutch resident is also subject to BPM. However, if the car is part of the personal property of the employee and is transferred to the Netherlands in view of relocation, an exemption is possible. Under certain conditions even company cars can be considered as being personal goods to which a tax exemption applies.

The conditions that have to be met in order to apply for this BPM exemption are similar to the conditions as mentioned in section 2.2.5.1.

Exemption of BPM means a relief of a substantial amount of money. That is why customs are eager to check upon the conditions for exemption, both for the application as for the use after importation. At least, the following documents need to be delivered:

- registration forms (licence plates);
- invoice of purchase.

The registration of the car is marked in the database of the Public Department of Road Traffic. If the car is sold, leased, lend or otherwise transferred within 12 months after importation, customs will be informed and yet impose the BPM, in most cases added with a penalty.

The above also applies to cars and motorcycles being moved from another Member State of the EU towards the Netherlands.

If the conditions are not met when bringing the car into the Netherlands, the BPM is due, as well as VAT (19%) and/or import duty (from outside the EU). The current rate of import duty is in most cases 10%.

2.2.7 *Motor vehicle tax*

Any person in whose name a motor vehicle is registered is in principle liable to pay road tax. The tax must always be paid in advance. The tax-payer may be entitled to a refund on a time-proportionate basis (e.g. if the car is sold before the end of the term).

2.2.8 *Real estate tax*

This is a municipal tax levied on the ownership (or certain derivative rights) of real estate in the Netherlands. The tax is calculated on the WOZ-value of the property, which is the official appraisal by the municipality. Rates vary from one municipality to another.

2.2.9 *Other charges*

There are various other, minor charges, such as local tax on dog ownership, waste collection taxes, water board assessments, pollution charge, etc.

2.2.10 *Double taxation*

Since a person who is resident of the Netherlands has to pay tax on his world-wide income, he may be faced with double taxation. After all, income earned abroad is usually subject to local tax.

This situation is covered by the tax treaties the Netherlands has concluded with many countries. If the Netherlands has not concluded a tax treaty with the other country, the unilateral arrangement applies in cases of double taxation.

This often means that income earned abroad is exempt from taxation in the Netherlands, although it will be taken into account for the purpose of calculating the (progressive) tax rates applicable on the tax-payer's further income, which is thus taxed in the normal way.

Some treaties contain a "credit method"-provision that is applicable to certain income, such as dividends and interest. In that case, the tax paid abroad on the income can be credited against the Dutch tax due on the same income (or notional income, Box 3).

The treaties are applicable to income tax and (in many situations) to other taxes.

The countries with which the Netherlands has concluded a tax treaty are mentioned in Appendix I.

Tax treaty with Belgium/frontier workers

Under the treaty between Belgium and the Netherlands, employees living in the Netherlands, but working in Belgium, are subject to Belgian taxation on their income from employment, but they will be (partially) compensated by the Netherlands for the difference between the (higher) Belgian tax and the Dutch tax, as well as the loss of the benefit of the tax deductible items ('compensatie regeling').

2.3 Non-resident tax-payers

This section is intended for tax-payers who are non-resident of the Netherlands for tax purposes (see section 2.1) and partly (for income in Box 2 and Box 3 only) for partial non-resident tax-payers (see section 2.4).

2.3.1 *Income tax*

2.3.1.1 *Limited tax liability*

A non-resident tax-payer is only liable to pay income tax on his income from certain sources in the Netherlands. That is why the tax liability is limited. The tax year runs from January 1 through December 31.

Election

A non-resident tax-payer can elect to be treated as a resident tax-payer (see 2.2.1.1.) if he is a EU/EES National or a national of another country with which the Netherlands has concluded a tax treaty that provides for exchange of information between the contracting states. For the application of the tax treaty the individual remains a non-resident of the Netherlands, but is taxed as a resident tax-payer. The decision to elect to be treated as resident tax-payer requires careful consideration.

If a non-resident tax-payer in one year elects to be treated as a resident tax-payer, and in a later year has the possibility to elect, but does not make this election, the tax benefit he enjoyed over the past eight years, will be reversed.

The consequences are:

- world-wide income to be reported in the Netherlands (in all Boxes);
- all tax deductions available (e.g. mortgage interest on principal residence abroad, alimony etc.);
- relief for double taxation available under tax treaty (see 2.2.10.);
- partner rule available (see 2.2.1.2.2.);
- levy rebates available (see 2.2.1.4.).

2.3.1.2 *Sources of taxable income*

The main sources of income that determine a non-resident tax-payer's taxable income in the Netherlands are income from business, employment, real estate (in the Netherlands), periodical benefits (whether in cash or in kind) and a substantial interest in a Dutch company. Tax is charged on the gross income less deductible expenses. Partners are taxed on an individual basis.

Box 1: Income from work and home

Business income

Business income is taxable in the Netherlands if the person has a permanent establishment (e.g. a branch) or a permanent representative in the Netherlands. Specific regulations and exemptions apply to the calculation of business income earned in the Netherlands.

Income from employment

For non-resident tax-payers, sources of income from employment are:

1. income earned from dependent personal services (i.e. income from past or present employment) in the Netherlands. This means that only the income earned on working days of physical presence in the Netherlands is taxed in the Netherlands (please note that there are some exceptions to this rule);
2. income earned in the capacity of director or member of the supervisory board of an entity established in the Netherlands, even if the actual duties are performed solely abroad.

Income from employment is discussed in more detail in section 2.3.2.1.

Dutch real estate

For a non-resident tax-payer a house in the Netherlands is considered a second home. A second home or other real estate is taxed in Box 3 (see below).

Periodical benefits

Income in the form of periodical benefits includes certain State benefits.

Deductible expenses

Certain items may be deducted from the total amount of the above mentioned sources of income, such as negative income in previous years.

Box 2: Income from substantial interest

If a non-resident, together with his fiscal partner, owns at least (directly or indirectly) 5% of the shares or of any class of shares in a company established in the Netherlands, the income is taxed in Box 2. Certain expenses can be deducted.

Capital gains

Although the main rule is that capital gains are tax exempt and capital losses not tax deductible, an exception applies to capital gains on shares if the shareholder has an (in)direct substantial interest in a Dutch company (more than 5%). In that case, capital gains are taxed in Box 2.

Box 3: Income from savings and investments

The value of certain assets (for instance, real estate in the Netherlands) reduced with debts is the basis for taxing a fixed notional income of 4% of this balance. The actual income realized is not taxed.

2.3.1.3 Tax rates

The total income tax due is the result of the income tax calculated on the taxable income in the three different Boxes.

In the first two tax brackets of Box 1 the national insurance contributions are also levied if the individual is insured under the Dutch social security system.

The total amount of income tax and - if applicable - national insurance contributions is reduced with the applicable levy rebates (see 2.3.1.4).

Box 1

	Taxable income		tax	social security	total	total
	exceeding	up to	in %	in %	in %	in EUR
1st bracket	0	17,579	2.45	31.15	33.60	5,906
2nd bracket	17,579	31,589	10.70	31.15	41.85	5,863
3rd bracket	31,589	53,860	42.00	-	42.00	9,353
4th bracket	53,860	-	52.00		52.00	

Box 2

The tax rate applicable for income taxed in Box 2 is 25%.

Box 3

The tax rate is a flat tax rate of 30%.

The tax exempted amounts in Box 3 (see 2.2.1.3) are not available to non-resident tax-payers. However, some exempted amounts apply to residents of Surinam, Aruba, the Dutch Antilles and Belgium, as well as (under certain conditions) to residents of Germany.

2.3.1.4 Levy rebates

Non-residents are not entitled to the levy rebates (see 2.2.1.4); residents of Surinam, the Dutch Antilles, Aruba and Belgium are only entitled to a part of the income tax part of the levy rebate. Under certain conditions this also applies to residents of Germany.

2.3.1.5 Partner rule

The partner rule (see 2.2.1.2.2) is not applicable to non-resident tax-payers except for residents of Surinam, the Dutch Antilles, Aruba and Belgium, or for non-residents who elect to be taxed as resident tax-payers (see 2.3.1.1).

2.3.2 Wage withholding tax

2.3.2.1 Wage

The term wage is defined very broadly and comprises cash benefits, benefits in kind and also entitlements.

Income in cash

Besides normal wages, cash benefits include expat allowances, commissions, bonuses, etc.

Income in kind

Benefits in kind include the private use of a company car, free housing, free meals, free travel, stock option rights, goods, etc. There are general and specific rules to determine the taxable amount of benefits in kind.

Entitlements

The third category, entitlements, includes conditional rights to receive one or more future benefits in cash or in kind. Taxation of most entitlements is deferred to the time the benefits are received. Examples of such entitlements are pension rights, entitlements from a life course plan ('Levensloopregeling') and the right to benefits under one of the employee insurance schemes (see 3.3.).

Tax-free allowances

In certain cases, an employer is allowed to make tax-free payments or provide income in kind tax-free. For example, as a reward for certain periods of long service. The amount of these tax-free allowances is capped. The employer can also have the employee participate in a tax-reduced company savings scheme.

Pension schemes

The term "pension" is strictly defined for tax purposes. It does not refer to the General Old Age Pension based on the social security system. A pension scheme that complies with the pension definition is a qualifying pension scheme. In that case, the employee's contributions are deductible and the employer's contributions are tax-exempt. The benefits are subject to taxation at the time of payment. However, if a pension scheme does not qualify for Dutch tax purposes, the employee's contributions are not deductible and the employer's contributions constitute taxable income.

Participation in a foreign pension scheme requires particular attention in this respect, since such a scheme will often not meet the Dutch conditions. In order to qualify for Dutch tax purposes a corresponding approval can be requested from the Dutch tax authorities with respect to the foreign pension scheme. If the scheme is approved, pension contributions paid by the employee are tax deductible and the employer's contributions do not constitute taxable income for the employee.

Employees seconded to the Netherlands who continue building up pension rights under an approved foreign pension scheme (i.e. with a foreign pension fund or insurance company) will receive a preservative tax assessment ('conserverende aanslag') with respect to their pension rights so accrued. The annual increase of these pension rights is subject to taxation. However, if certain conditions are met, the income tax is not actually due. The preservative tax assessment will be imposed and renewed every year. If at any time the conditions are no longer satisfied, the income tax will actually have to be paid.

Stock option rights

Stock option rights are taxed at the moment of exercise. This means that at the moment of exercise the gain realised upon exercise, i.e. the difference between the fair market value of the underlying shares at the moment of exercise and the exercise price of the stock option rights, is taxed.

Until January 1, 2005 a different tax regime for stock option rights was applicable. With respect to certain stock option rights this 'old' tax regime may still be applicable after January 1, 2005.

The old tax regime remains applicable to the following stock option rights:

- A. Unconditional stock option rights that were granted before January 1, 2005;
- B. Stock option rights that vested before January 1, 2005;
- C. Stock option rights vesting in various tranches: if one or more tranches vested before January 1, 2005 the old tax regime also applies to the tranches vesting after January 1, 2005.

The old tax regime for stock option rights, i.e. the tax regime before January 1, 2005, can be summarised as follows:

- Stock option rights are taxed at the moment the stock option rights vest; i.e. when they are no longer subject to a condition precedent;
- An additional levy applies if the employee exercises the option rights within three years after the date of grant;
- Employees could elect the moment of exercise to be the taxable event, instead of the vesting date. This is the so-called 'election regime'.

2.3.2.2 Deductible expenses/cost allowances

Deductible expenses

Expenses incurred for the purpose of earning employment income - with some exceptions – cannot be deducted in the individual's income tax return.

Cost allowances

Allowances for expenses of a personal nature are subject to tax, whereas allowances paid for costs of having both a business and a personal component are not always fully exempt. Allowances for expenses of a strictly business nature are tax exempt.

Commuting

An employer can give a tax-free allowance of EUR 0.19 per kilometre, irrespective of how the employee commutes between home and work. If the employee, however, travels by public transport the employer may choose to reimburse the actual cost on a tax free basis in stead. In that case the employee must submit the tickets to the employer. The employer has to keep these tickets and record them in the administration.

30%-ruling

Under certain conditions, employees coming from abroad may be entitled to the 30%-ruling and receive a fixed tax-free allowance for extraterritorial expenses. This facility is explained in section 2.4.

Other examples of expenses and possible allowances are:

(N.B. Deviating treatment of allowances under 30%-ruling! see 2.4)

<i>Expenses</i>	<i>allowance employer taxable or tax-free</i>
relocation expenses (transport)	tax-free
further relocation expenses	tax-free up to 12% of gross salary, capped at EUR 5,445
accommodation expenses	taxable in principle, double housing expenses tax free under conditions
<i>Other travel</i>	
'OV-jaarkaart' (public transport/ student's season ticket)	tax-free
company bicycle	under conditions tax-free
private car	EUR 0.19/km tax-free, excess taxable
company car	private use taxable
<i>Business trips</i>	
business travel	tax-free

excursions and educational trips	tax-free
congresses, seminars, symposia, etc. (incl. travel expenses and accommodation)	tax-free
<i>Other expenses</i>	
books, magazines (if professional literature)	tax-free
representation allowance	tax-free under conditions
food, drinks	if business nature, under conditions tax-free
personal care	taxable (except for entertainers, presenters and athletes)
clothing	taxable unless, under conditions, specific work clothing
word processors, computers and similar equipment; video equipment, musical instruments, audio equipment and working tools if (also) used for professional purposes	tax-free under conditions, (sometimes only depreciation tax-free; special rules for PC's)
office space at home if more than 70% of income earned within or from home and 30% of income earned within home office space (if second working place available: 70%)	20% x rent or 20% x fair market rental value tax-free
teleworkers, furnishing office at home	tax-free if expenses do not exceed EUR 1,815, under conditions
study expenses	tax-free under conditions
telephone and internet	tax-free if at least 10% business use

2.3.2.3 Preliminary tax refund

In order to realize the tax benefit with respect to tax deductible items at an earlier point in time than through the final income tax assessment, a request can be filed with the tax inspector to pay the tax refund in advance during the current year through a preliminary tax refund. This only applies to certain types of expenses and some of the levy rebates (see 2.3.1.4.). The deductible amounts should be estimated as accurately as possible. The tax refund is paid by the tax office into the individual's bank account directly on a monthly basis. After having filed the income tax return for the (calendar) year, an income tax assessment is issued with respect to the final amount of tax due for the year. The preliminary tax refund is credited with this final amount of tax due.

2.3.2.4 Tax rates/levy rebates

The wage withholding tax rates are based on the annual income tax rates. However, there may be some small differences due to the way in which the wage tax is levied. The amount of wage tax withheld can be credited against the amount of income tax due. Non-residents are not entitled to the tax part of the levy rebate, in principle.

2.3.2.5 Payroll deductions

In general, employers are required to deduct the wage withholding tax due from the employee's wage and pay it to the tax authorities. The amount deducted can later be credited against the

income tax due. In some cases, no tax assessment is imposed and thus the payroll deduction is the final tax due (see section 2.5.1).

Only Dutch employers and non-Dutch employers with a permanent establishment (e.g. an office or a branch), a permanent representative in the Netherlands or a deemed permanent establishment (see below), are required to withhold wage tax. A non-Dutch employer may, under certain circumstances register as an entity being required to withhold wage tax and social security contributions. In this respect, please note that non-Dutch employers are held to withhold social security contributions although they do not have a permanent establishment in the Netherlands in case the employee is subject to the Dutch social security system. Furthermore, the Dutch Wage Tax Act determines that non-Dutch employers, who professionally hire out employees to a Dutch principal (either a third party or a group company), have a “deemed permanent establishment” in the Netherlands. This means that such non-Dutch employer is held to register as a withholding entity for Dutch wage tax purposes.

If an employee is employed by a non-Dutch employer not having a permanent establishment, a deemed permanent establishment or a permanent representative in the Netherlands and the employer is not registered to withhold wage tax, there is no wage withholding tax liability; the employee is required to file an income tax return.

2.3.3 *Gift tax and inheritance tax*

A non-resident may be confronted with Dutch inheritance or gift tax. Inheritance taxes are due on what an individual receives pursuant to inheritance law upon the death of a person/ an individual who, at the time, was resident or was deemed resident in the Netherlands. It is irrelevant whether the deceased was a deemed partial non-resident tax-payer for income tax purposes. When levying inheritance tax, the country in which the estate of the deceased was maintained and where the beneficiary lives are irrelevant. The beneficiary owes the inheritance tax. Similar rules apply to gifts received from a benefactor who is resident or deemed resident in the Netherlands. In that case, the beneficiary owes gift tax. The benefactor is jointly and severally liable for the gift tax.

A Dutch national is deemed resident in the Netherlands at the time of his death or the time of bestowing the gift up to ten years after he has left the Netherlands for the purpose of emigrating elsewhere. Anyone - regardless of his nationality - is deemed resident in the Netherlands at the time of his death or at the time of bestowing a gift up to a year after having left the Netherlands as country of residence.

In some cases, an inheritance or a gift received from an individual/person who is not resident - and cannot be deemed resident - in the Netherlands, can be subject to a transfer levy. This is the case, for instance, if the beneficiary receives real estate located in the Netherlands.

The tax is levied over the fair market value at the time of receipt. There are some exemptions but there are almost no exemptions from the transfer levy. The exemptions and the rates depend, among others on the value of the inheritance or gift and the (family) relationship between the deceased or the benefactor and the beneficiary. The tax rate varies from 5% to

68%. In the case of children inheriting or receiving a gift from their parents, depending on the value, a rate of 5% to 27% applies.

2.3.4 *Real estate transfer tax*

The transferee is subject to tax on the transfer of real estate (or certain rights on such property) located in the Netherlands. The tax is levied on the value of the property at a rate of 6%.

2.3.5 *Real estate tax*

This is a local tax levied on the ownership (or certain derivative rights) of real estate in the Netherlands. The tax is calculated on the WOZ-value of the property, which is the official appraisal by the municipality. Rates vary from one municipality to another.

2.3.6 *Double taxation*

Since a non-resident tax-payer is generally also liable for tax on income earned in the Netherlands in his country of residence, he could be faced with double taxation.

Income from employment

This situation is covered in tax treaties. In most of the treaties the Netherlands has concluded with other countries, income from employment in the Netherlands is tax exempt in the Netherlands, provided that all following conditions are met:

1. the non-resident tax-payer is present in the Netherlands for a period or periods not exceeding an aggregate of 183 days in any 12-month period or in a (tax) year; and
2. the remuneration is paid by or on behalf of an employer who is not a resident of the Netherlands; and
3. the remuneration is not borne by a permanent establishment of the employer or by a permanent representative in the Netherlands.

If one or more of these conditions are not met, the income related to employment activities actually exercised in the Netherlands will be taxable in the Netherlands. In that case, the country of residence is held to grant relief for double taxation, at least if there is a tax treaty between the two countries.

As to the second condition the Netherlands Supreme Court decided in December 2006 that – solely for the purpose of applying treaty – the company to which the employee is made available must be considered this employee's 'economic employer', if the following conditions are met:

- there is a relationship of authority between the employee who is sent to work abroad and the receiving company in the country of employment; and
- the work is carried out at the expense and risk of the company in the country of employment; the latter entailing that;
- the benefits of the work activities as well as the disadvantages and risks, are for the account of the receiving company; and

- the costs in connection with the work are borne by the company in the country of employment. If the wages are paid by the formal employer in the country of origin, then these should be specified and charged to the 'economic employer' in the country of employment, in order to meet this condition.

The relevance thereof is that, regardless of whether the employee spends fewer more than 183 days in a year in the country of employment, he will owe taxes in this country as of day one, if the receiving company must be considered his 'economic employer'. Please note that the Supreme Court has only ruled on the Dutch interpretation of the tax treaties. In other countries it may be decided that the position of formal employer is the deciding factor when determining which country may levy taxes. This will always have to be determined in advance in order to avoid problems with double taxation. Please bear in mind that the status of 'economic employer' is relevant only for the application of the tax treaties and does not influence the civil law of fiscal employer-employee relationship.

Statutory directors/supervisory director's fee

As far as fees received by statutory directors and supervisory directors of entities established in the Netherlands are concerned, the Netherlands is entitled to levy tax under most tax treaties it has concluded, even if the directors work outside the Netherlands only (please note that an exception is made in the tax treaty concluded with the United States).

If the non-resident tax-payer is a resident of a country with which the Netherlands does not have a tax treaty, in general, no tax relief is granted, unless special national rules provide tax relief to avoid double taxation.

The countries with which the Netherlands has concluded a tax treaty are specified in Appendix I.

2.4 The 30%-ruling

2.4.1 Introduction

The 30%-ruling is a tax facility provided in the Wage Tax Act for employees who have been assigned to the Netherlands or are recruited from abroad to work in the Netherlands and who meet certain conditions, called "extraterritorial employees". If the facility is granted, the employer may pay to the employee a – fixed – tax-free allowance of up to 30% of the employee's wage. The 30%-tax free allowance is intended to cover the extraterritorial expenses, extra expenses incurred due to the fact that the employee works outside his home country. The ruling may also have consequences for the employee's income tax position. On the basis of the 30%-ruling resident employees have the option to be treated either as a resident tax-payer or as a partial non-resident tax-payer.

Employees who do not satisfy (all) requirements for the 30%-ruling can also receive a tax-free allowance for (the actual) extraterritorial expenses but the employer has to submit vouchers of proof.

2.4.2 *The conditions of the 30%-ruling*

General

The 30%-ruling is available to employees only. Directors of a Dutch resident company (e.g. B.V. or N.V.) may also qualify for the 30%-ruling, even if the company is their own personal company. In October 2007, the Dutch Supreme Court ruled that the 30%-ruling is also available to supervisory boardmembers.

Whether an employee satisfies the conditions of the 30%-ruling depends on the circumstances at the start of his employment in the Netherlands.

Under circumstances, the employer can also be a non-Dutch employer (see 2.3.2.5.).

The ruling can be applied in the payroll calculations only.

The 30%-ruling is also available in case the work is (physically) not performed in the Netherlands but the income is taxable in the Netherlands. Therefore, statutory directors living abroad may qualify.

The employee does not need to be resident of the Netherlands.

Coming from abroad

The employee should be assigned to the Netherlands or recruited from abroad. Dutch nationals returning to the Netherlands may also qualify.

Dutch payroll

For application of the ruling there must be a Dutch withholding agent processing a payroll, i.e. deduct wage tax (and social security contributions, if applicable) from any wage paid to the employee and contribute it to the Dutch tax authorities. A non-Dutch employer can also act as a Dutch withholding agent (see section 2.3.2.5).

Specific expertise/scarcity

The employee must have specific expertise, which is not or scarcely available on the Dutch labour market. The employer has to demonstrate that a person with the required level of education, work experience, expertise, etc. could only be found abroad. This may not be difficult to demonstrate when it comes to top managers and top specialists, scientists with specific knowledge and teachers at international schools. On the other hand, it will be difficult to demonstrate that a trainee satisfies the conditions. In principle, 2.5 years of relevant work experience is required.

If a work permit is required and the permit granted, the specific expertise still has to be demonstrated for the 30%-ruling.

An employee at a medium or higher level who will be employed in the Netherlands on a "job rotation" basis and has worked at least 2.5 years within the same group of companies outside the Netherlands is deemed to have specific skills.

Request of both employee and employer

The 30%-ruling can only apply if employee and employer jointly file a request. The application must be filed with the Tax Office for Non-Residents in Heerlen. The tax office will confirm its approval via a formal Decision. The application for the 30%-ruling must be made within four months from the start of the employee's employment as extraterritorial employee.

Employment agreement

For the 30%-ruling to apply, employer and employee must agree (in writing) that a separate tax-free allowance for extraterritorial expenses will be paid in addition to his gross salary amounting to approximately 30% of the remuneration.

In order to increase the costs of the employment, the contractual gross salary must be reduced with the 30%-allowance. Reducing the contractual gross salary could have an impact on certain benefits, the social security position and on the pensionable base. For practical reasons, in the payroll an administrative split can be made on the monthly pay slips starting from the original gross salary. The conditions are that a proper, written agreement is made between employer and employee that the 30%-ruling applies (addendum to the employment contract, approved wording available) as well as that the consequences of reducing the contractual gross salary are implemented correctly.

The 30%-allowance amounts to 30% of the total of the (taxable) income from present employment plus the 30%-allowance. The 30%-ruling is not applicable to a severance payment and pension benefits. However, in May 2006, the Court of The Hague ruled that the 30%-ruling should also be applicable to severance payments. An appeal has been filed with the Supreme Court, that is still pending.

Maximum period ten years

The ruling applies for a maximum period of ten years, as long as the employee's specific skills are still scarce. The facility is always available for a period of at least five years. After five years from the start of the 30%-ruling, the employer should demonstrate to the satisfaction of the tax authorities that an extended stay in the Netherlands is required because of the continued lack of that specific expertise on the Dutch labour market. In that case, the ruling will be available for ten years.

Reduction of period of ten years

All earlier periods of staying or working in the Netherlands will be deducted from the maximum period of ten years unless there is a period of at least ten years between the date of leaving the Netherlands and the date of return. Periods of previous stay or work in the Netherlands that ended (!) at least fifteen years ago prior to the return to the Netherlands, will not be taken into account. If the employee visited the Netherlands in the preceding ten years for business or private purposes, special rules apply.

If the conditions of the ruling are satisfied at a later date, or in the case of late filing of the request, the 30%-ruling will apply as of a later date and the time spent in the Netherlands will also be deducted from the maximum period of ten years.

New employer

If an employee benefiting from the 30%-ruling switches from one employer to another, with an interruption of three months at maximum, he will again be able to benefit from the 30%-ruling in his new employment (provided that the conditions are met) after having filed a new request (within four months).

2.4.3 Consequences of the 30%-ruling for wage tax purposes

Basis for taxation

After having determined the tax-free 30%-allowance (see 2.4.4), an employee's taxable wage is assessed in the same way as that for all employees in the Netherlands. Tax exempt allowances for certain expenses may be paid in addition to the 30%-allowance. Additional allowances for specific extraterritorial expenses may reduce the amount of the 30%-allowance. Therefore, it is important to qualify whether expenses are extraterritorial, business or private expenses.

School fees international schools

The employer may pay a tax-free allowance for the school fees for children attending an international (primary or secondary) school. An allowance for the cost of private transport (if not arranged by the school) is not tax exempt. Under certain conditions Dutch schools with an international stream also qualify as "international school" for purposes of the 30%-ruling.

2.4.4 The non-taxable 30%-allowance

2.4.4.1 Calculation of the 30%-allowance

The tax-exempt allowance for extraterritorial expenses that can be paid is 30% (at a maximum) of a specific basis, being the taxable wages (including fringe benefits) plus the 30%-allowance for extraterritorial expenses.

2.4.5 Impact of the 30%-ruling on social security and pensionable base

If an employee is compulsorily covered under the social security schemes (see section 3.2) of the Netherlands, the 30%-ruling also applies to the basis on which these contributions are calculated.

If the contractual gross salary is reduced in view of a tax-free 30%-allowance being given (see section 2.4.2), employee insurance contributions are due on this lower salary only. Consequently, future benefits will also be lower.

Pension rights may also be accrued on the actual (lower) gross salary only, not on the tax-free 30% allowance. However, it has been approved that, in case the actual salary is no less than 70% of the normal gross salary, the pension may be built up over the full salary (i.e. inclusive of 30% allowance).

2.4.6 Payment abroad/working outside the Netherlands/salary split

If part of the wage for duties performed in the Netherlands is paid abroad, that part will be taxable in the Netherlands. The 30%-ruling is only available on this part of the income if wage tax is paid through a Dutch payroll.

An employee, resident of the Netherlands (resident or partial non-resident tax-payer), who also performs duties abroad for a non-Dutch employer (salary split) is subject to income tax in the Netherlands on the wage received for those duties. It is possible, under conditions, to claim a relief for double taxation for that part of his income (in which case, however, the non-taxable 30% allowance is not available). See section 2.2.10.

If the employee is a non-resident for tax purposes, he generally does not have to report income (physically) earned outside the Netherlands nor income from non-Dutch employment (see section 2.3.1.2).

2.4.7 Housing expenses

If free accommodation is provided to the employee, the rent actually paid creates taxable income, except for that part that can be qualified as extraterritorial expenses (which is tax free unless a fixed 30%-allowance is paid). This is different in case the accommodation qualifies as a second home (non-residents). In that case the rent qualifies as extraterritorial costs and can be compensated tax free (only if the 30%-ruling does not apply).

2.4.8 Resident tax liability or (partial) non-resident tax liability

An employee who is resident in the Netherlands can choose whether he wishes to be treated as a resident tax-payer or as a (partial) non-resident tax-payer (see 2.4.8.3.).

If the employee is not resident in the Netherlands for tax purposes, he will be treated as a “real” non-resident tax-payer. However, he can choose to be treated as a resident tax-payer (see 2.3.1.1) and subsequently elect the status of a partial non-resident tax-payer (see 2.4.8.3.).

2.4.8.1 Resident tax-payers

Tax treatment of resident tax-payers is explained in section 2.2.

2.4.8.2 Non-resident tax-payers

Section 2.3 summarizes the tax position of an individual who is not considered a resident of the Netherlands for tax purposes.

2.4.8.3 *Partial non-resident tax-payers*

2.4.8.3.1 *Resident tax-payer for Box 1*

Being a partial non-resident tax-payer, the employee is first of all a resident tax-payer for income taxed in Box 1. Therefore, on the whole paragraphs 2.2.1 through 2.2.10 apply in his situation.

2.4.8.3.2 *Treatment as a partial non-resident tax-payer*

The limited tax liability of a “real” non-resident tax-payer also applies in the situation of a partial non-resident tax-payer, for income taxed in Box 2 and Box 3. See section 2.3.

2.4.8.3.3 *Special status US citizens*

On the basis of the US-NL tax treaty, US citizens who have made the election to be treated as partial non-resident tax-payers, are considered “real” non-resident tax-payers. This implies that they are only liable for taxation on income physically earned in the Netherlands. Different rules apply to US citizens who are statutory director of a Dutch resident company.

2.4.8.3.4 *Summary/comparison*

The advantages and disadvantages of the resident tax status in comparison with the (partial) non-resident tax status can be summarized as follows:

Comparison of resident tax status, partial non-resident tax status and “real” non-resident status

<i>Resident tax-payer</i>	<i>Non-resident tax-payer (partial)</i>	<i>Non-resident tax-payer (real)</i>
Unlimited tax liability: liable to taxation in the Netherlands on total world-wide income	Limited tax liability: liable for income tax on world-wide income in Box 1; limited tax liability in Box 2 and 3	Limited tax liability, liable for income tax in the Netherlands on a limited number of sources of income, in most cases only Dutch employment and notional income from real estate in the Netherlands
Entitlement to a large number of deductions and exemptions	Entitlement to a large number of deductions and exemptions in Box 1	Entitlement to deductions and exemptions limited*
Employment income earned outside the Netherlands is always subject to taxation in the Netherlands. Relief for double taxation available	Employment income earned outside the Netherlands is subject to tax in the Netherlands. Relief for double taxation available	Employment income earned outside the Netherlands is not subject to tax in the Netherlands
The 30%-ruling can only be applied to this income if no relief for double taxation is claimed	The 30%-ruling can only be applied to this income if no relief for double taxation is claimed	

Levy rebates available	Levy rebates available	Levy rebates not available*
Partner rule available	Partner rule available	Partner rule not available*
Dutch dividend tax and foreign source taxes may be credited with Dutch income tax	Dutch dividend tax and foreign source taxes cannot be credited with Dutch income tax	Dutch dividend tax and foreign source taxes cannot be credited with Dutch income tax
Mortgage interest paid for the principal residence is deductible	Mortgage interest paid for the principal residence is deductible	Mortgage interest paid for Dutch real estate or principal residence abroad is not deductible

* Except only partly/under certain conditions for residents of Surinam, Aruba, Dutch Antilles, Germany and Belgium, and/or when choosing to be treated as resident taxpayer.

Conclusion

The partial non-resident tax status will always be attractive. Depending on the actual circumstances non-residents may benefit from choosing to be treated as a resident tax-payer and subsequently choose the partial non-resident status.

2.4.9 Checklist upon arrival/30%-ruling

- a. It has to be established whether a company should be registered to withhold wage tax and social security contributions. If so, such registration should preferably be made prior to the employee's arrival in the Netherlands.
- b. The employee has to obtain a tax/social security registration number ('Burgerservicenummer' or 'Sofi-nummer') from the municipality or, in certain situations, from the tax office.
- c. It has to be established that the employee was truly recruited when still living and/or working abroad.
- d. Will the employee be faced with earlier periods of stay in the Netherlands?
- e. It has to be checked whether the criteria of specific expertise and scarcity on the Dutch labour market are satisfied. The employer has to provide a statement to this effect and the employee must provide a curriculum vitae. Evidence that recruitment in the Netherlands took place not resulting in hiring Dutch candidates may be asked for. A work permit (see section 1.6.2) will partially exempt the employer from these requirements. No proof is required if the employee has been posted to the Netherlands on the basis of job rotation (see also section 2.4.2).
- f. The contract of employment has to include that employer and employee have agreed to pay a non-taxable 30%-allowance for extraterritorial expenses in addition to the gross salary. The initial gross salary must be reduced. An addendum providing approved wording (by the Ministry of Finance) is available.
- g. Application for the 30%-ruling must be filed within four months after start of the employment in the Netherlands.

2.5 General provisions

2.5.1 *Tax return, tax assessment, objection and appeal*

Not every tax-payer in the Netherlands is held to file an income tax return. An income tax return should be filed if the amount of income tax due after credit of wage tax and a preliminary tax return in view of levy rebates exceeds EUR 42.

Both resident and non-resident tax-payers are entitled to a refund of wage tax deducted by their employer, if this refund exceeds EUR 13.

Personal income tax returns must be filed prior to April 1 of the year following the year of assessment. Under conditions, an extension for filing is available. If the tax return is not filed in time, a fine can be imposed.

The tax authorities may impose a provisional tax assessment awaiting the final assessment. Tax-payers can file a letter of objections against an assessment with the tax authorities within six weeks of the date of the assessment.

If the tax authorities do not agree with the objection, appeal can be lodged with the First Court of Appeal ('Rechtbank').

If the First Court dismisses the appeal, it is possible to lodge appeal with the Second Court of Appeal ('Gerechtshof') and finally -if necessary- with the Supreme Court of the Netherlands ('Hoge Raad').

2.5.2 *Interest*

Statutory interest for late payment of tax assessments (hereafter: "interest") is due in case the final assessment differs from the tax return (or a preliminary refund was paid). Interest is due (or paid) on the amount of tax due (refund) on both preliminary and final tax assessments. The interest rate is determined fixed quarterly. The current interest rate is 5.30% per year.

2.5.3 *Fines*

The tax authorities may impose a fine, see section 2.5.1 above, if, for example a person has intentionally filed an incorrect tax return. The tax authorities will then impose an additional assessment. The fine is equal to the amount of the additional assessment, although part of it may be waived, depending on the degree of intent or negligence.

2.5.4 *Social security/tax registration number*

Each individual working in the Netherlands has to register with the tax authorities in order to obtain what is called a 'SoFi-nummer' or 'Burgerservicenummer'. Such number is required for social security purposes, wage and income tax and can be obtained from the municipality or, in certain situations, the tax office (e.g. temporary stay). The individual must have a valid passport. Please note that the number must be issued prior to filing the 30%-ruling request.

3. Social security

3.1 Introduction

Employees who are posted to the Netherlands to perform work in employment are subject to the Dutch social security system. This legislation also applies to their partners and other members of their families.

There are two kinds of compulsory social insurance schemes in the Netherlands, one that is applicable to the population in general and one for employees.

3.2 National Insurance Schemes

The national insurance schemes ('volksverzekeringen') cover all persons living or working in the Netherlands. These schemes are embodied in the following legislation:

- General Old Age Pensions Act ('AOW');
- Surviving Dependants Act ('ANW');
- Exceptional Medical Expenses Act ('AWBZ');
- General Child Benefit Act ('AKW').

3.2.1 *General Old Age Pensions Act ('AOW')*

The AOW gives entitlement to an old age pension upon reaching the age of 65. The entitlement is built up between the ages of 15 and 65. For each year the beneficiary is insured, he accrues 2% of the maximum benefit. The full pension (2008) is EUR 984.86 (excluding holiday bonus of EUR 53.68) per month for a single person and EUR 1,347.68 (excluding holiday bonus of EUR 76.70) per month for a married couple. Special rules apply to people living together who are not married and to pensioners with a partner under the age of 65.

3.2.2 *Surviving Dependants Act ('ANW')*

The ANW provides entitlement to benefits for widows, widowers and dependent children. The deceased spouse, partner or parent must have been insured under the ANW on the date of his or her death.

In general, there is entitlement to an ANW survivor's benefit if the surviving relative:

- has an unmarried child under the age of 18 who does not belong to another persons household; or
- is incapacitated for work for at least 45%; or
- was born before January 1, 1950

The maximum amount of the benefit does not exceed 70% (90% with a dependent child) of the gross minimum wage per month which results in EUR 1,042.88. The actual benefit can be less, since the ANW survivor's benefit is income dependent.

3.2.3 *Exceptional Medical Expenses Act ('AWBZ')*

The AWBZ makes provision for treatment and care in recognized institutions and nursing homes. In addition, it provides for the supply of artificial appliances. It does not generally provide for facilities that are covered by the Healthcare Insurance Act ('ZVW').

3.2.4 *General Child Benefit Act ('AKW')*

In principle the AKW provides for family benefit ("kinderbijslag") for children under the age of 18. The size of the benefit depends on the age of the child and, for children born before January 1, 1995, the allowance also depends on the number of children.

3.2.5 *National insurance schemes – contributions*

	employer	employee
AOW	–	17.90%
ANW	–	1.10%
AWBZ	–	12.15%
AKW	–	0 %
Total		31.15%

Contributions for the national insurance schemes are levied on income up to EUR 31,589 per year, together with income tax. The contributions are payable to the tax authorities.

From the age of 18 onwards, everybody has to pay a nominal premium to the health care insurer. Children up to the age of 18 are compulsorily insured, but do not pay a premium. The amount of the premium differs per insurer and per insurance.

Every person who has a taxable income (box 1) will also have to pay an income-dependent contribution for the health care insurance. This contribution is 7.2% of the so-called contribution-income. The contribution is due up to a maximum income of € 31,231 and must be paid to the tax authorities.

3.3 Employee insurance schemes

In principle, all employees in the Netherlands are compulsorily insured under the employee insurance schemes ('werknemersverzekeringen'). These schemes are embodied in the following legislation:

- Sickness Benefits Act ('ZW');
- Work and Income according to Earnings capacity Act ('WIA');
- Unemployment Insurance Act ('WW').

3.3.1 *Sickness Benefits Act ('ZW')*

The ZW only applies to a small group who have no contract according to the Dutch Civil Code. The employer is obliged to continue paying 70% of the employee's salary during the first 104 weeks of sickness (the maximum daily wage for this purpose is EUR 177.03 gross or EUR 46,204.83 gross on an annual basis). The minimum is the minimum daily wage. The maximum is the maximum daily wage for employee insurance levy purposes. On the basis of supplementary arrangements, for example, Collective Labour Agreements, the wage can be increased to 100% (only in the first year).

The ZW only exists as a 'safety net' for employees who do not, or no longer have an employment agreement according to the Dutch Civil Code, for example, employees who lose their jobs in the first year of sickness, temporary workers and those who are voluntarily insured. Sickness benefits may also be awarded in some specifically defined cases (e.g. bankruptcy of the employer who is responsible for salary payment). For the safety-net groups, the first two days of sick leave are sometimes at the expense of the employee. The same applies to persons with voluntary insurance.

Female employees are given leave of at least sixteen weeks in case of pregnancy. Sick pay is also due during this leave. The amount of the benefit is then 100%.

If the total of the sickness benefit and any other family income is less than the statutory social minimum income, the recipient is entitled to apply to the Social Security Institution for a supplement under the Supplemental Benefits Act ('Toeslagenwet').

3.3.2 *Work and Income according to Earnings capacity Act ('WIA')*

On January 1, 2006 a new disability act was introduced. The new act applies to employees who became/become ill after January 1, 2004 and who receive wage payments during that period.

The WIA entitles employees under the age of 65 to benefits if they are still at least 35% unfit for work after 104 weeks of disability.

According to the new law, the government will only pay out a full benefit if the employee is permanently and completely disabled for work. These people are covered by the IVA (Benefit for Fully Disabled Employees).

The maximum benefit amounts to 75% of EUR 177.03. This is dependent on the last wage earned. The benefit will be paid until the age of 65.

Employees who are partially disabled are covered by the WGA (Resumption of Work by Partially Disabled Employees). The duration of this benefit depends on the period of former employment (maximum: 5 years). The benefit is dependant on the last wage earned (maximum: 75% of EUR 177.03). Afterwards, dependent on the earned income from employment, payment of benefits will be continued.

If an employee is partially disabled, but works to his full (relative) capacity (or more) he will receive a supplement to his wages.

3.3.3 *Unemployment Insurance Act ('WW')*

The WW is an employee insurance against the financial consequences of unemployment. An employee is entitled to a WW benefit if he has been employed for a period of at least 26 of the 36 weeks immediately prior to becoming unemployed. Different requirements apply for different categories of employees (seasonal workers, for instance). A person who only satisfies these conditions receives a WW benefit at 75% of the minimum wage for a period of two months. After these two months the benefit will be 70% of the minimum wage (or 70% of the daily wage if this is less than the minimum wage). In order to become entitled to a salary-related WW benefit, (75% during the first two months, and after that 70% of the last-earned wage with a maximum of EUR 46,204.83 per year) wages must have been received over 52 days or more in at least four of the five calendar years prior to the year in which the person in question has become unemployed.

The duration of salary-related benefits depends on the employment record. In this respect, the period during which unemployment benefits are paid may be extended. Depending on the person's employment record, benefits may be paid for an additional period of three months to three years and two months.

3.3.4 *Employee insurance schemes - contributions*

	employer	employee
WAO/WIA	5.65%	-
WW	4.75%	3.50%

Contributions to the employee insurance schemes are levied on wages and salaries up to EUR 46,204.83 per year, separately from income tax (no WW premiums are due on the first EUR 61 per day). The contributions are payable to the tax authorities.

3.4. *Healthcare Insurance Act ('ZVW')*

Every individual is covered by health insurance that consists of a basic package regulated by law. Besides, it is possible to get supplementary insurance for care not covered by the basic package.

The premium consists of a nominal and an income-related component. All individuals from the age of 18 have to pay their insurer an insurance premium. The nominal premium for the basic package is unrelated to age, gender, health, status and income. The amount that has to be paid is dependent on the health insurance company.

Every employee will additionally owe an income-related contribution for health care insurance. This contribution equals 7.2% of the income and will be payable up to an income ceiling of EUR 31,231. The employer has to withhold the contribution from the employee's wage and pay this to the Dutch tax authorities. The employer is legally obligated to reimburse the employee fully for this contribution.

For 2008 a maximum amount of EUR 2,248.63 (7.2% of EUR 31, 231) has to be reimbursed. The employee will pay tax on this through the pay-roll.

Depending on the personal situation and the income of the insurant, the insurant may be entitled to receive a contribution ('zorgtoeslag') from the state to cover part of the health insurance premium.

Family members are also compulsorily insured for health insurance. Partners without income have to pay the nominal premium. They do not have to pay an income related contribution. Children under age of 18 are also compulsorily insured but do not have to pay a nominal premium or an income related contribution, provided that they do not have any income. Special attention may be required for non-residents.

3.5 *Benefit Entitlement (Residence Status) Act (BEA) and Benefit Restrictions (Foreign Residence) Act*

BEA contains provisions for those who do not reside in the Netherlands on the basis of a valid permit. These persons are not covered by Netherlands social insurance laws and are not entitled to benefits. As of January 1, 2000, the Limitation to the Payment Abroad of Benefits Act ('BEU') entered into force. Pursuant to this act, payment abroad of Dutch social insurance benefits is restricted. The right to a Dutch social insurance benefit is linked to residence in the Netherlands. If a person lives abroad or is outside the Netherlands for a period exceeding three months, he loses entitlement to benefit payment. This is also applicable to benefits that have been built up by means of a voluntary insurance. These limitations are not applicable to countries with which the Netherlands has entered into a social security treaty that contains provisions on the payment of benefits abroad. Also, special provisions have been made regarding the "export" of State old age pensions to the Dutch Antilles and Aruba for persons active on aid projects and for international institutions.

3.6 *Implementing bodies*

The following bodies are responsible for the benefits of the social security system:

AOW, ANW and AKW

Social Insurance Bank ('Sociale Verzekeringsbank')

ZW, WAO/WIA and WW

Social Security Board ('Uitvoeringsorganisatie Werknemersverzekeringen (UWV)')

ZVW and AWBZ

Health Care Insurance Companies ('Zorgverzekeringsmaatschappijen')

3.7 *Posting from another EU Member State*

An employee who works in the Netherlands is subject to the Netherlands social security legislation, unless he has been posted from another EU or EES Member State or a state with which the Netherlands has concluded a treaty on social security. In the following sections we shall discuss this exception in more detail.

3.7.1 *Conditions for posting*

Under European Union Regulation (EC) No. 1408/71 (the 'Regulation'), a person who is employed by a foreign company in an EU Member State and temporarily posted to the Netherlands may be subject to the social security legislation of the first Member State, provided the following conditions are satisfied:

- the employee is insured according to the social security schemes of the sending State;
- the employee is a national of one of the countries to which the Regulation applies*;
- the employment with the enterprise in the other State is continued during the posting;
- the work in the Netherlands is paid for by the foreign enterprise;
- the anticipated duration of the duties for which he was posted does not exceed twelve months;
- the employer must have substantial (for agencies, usual) activities in the home country;
- he is not sent to replace another person who has completed his maximum term of posting;
- the Dutch enterprise to which the person is temporarily posted will not subsequently post him to work for yet another enterprise.

* As from 1 June 2003 the regulation also applies to third country nationals, provided they reside legally in the EU/EES and migrate.

If the above conditions are satisfied, the social security legislation of the first Member State applies. It is advisable to apply for a certificate demonstrating the applicable legislation (see section 3.7.5).

If these provisions apply, a person employed in the Netherlands will be exempted from payment of social security contributions in the Netherlands.

3.7.2 *Temporary workers*

The above conditions also apply to temporary workers who are employed in a Member State of the EU. In this connection, the term 'temporary worker' extends to more than simply persons employed by an employment agency. It means, any person who enters an employer's service solely with the purpose to be hired out to a company other than the employer.

3.7.3 *Extension of period of posting*

If the duration of the posting is likely to exceed the twelve month limit due to unforeseen circumstances, the legislation of the first State may continue to apply for a further maximum period of twelve months. In this case, certain formalities must be fulfilled in order to remain insured in the first State, among which filing a request for such an extension in time.

3.7.4 *Working in more than one country; exceptions*

The Regulation provides special rules in respect of situations in which the employee performs his duties in more than one country. In most cases he will be subject to the social security system of one country only.

Furthermore, the Regulation contains certain exceptions (Article 17) that can be invoked in cases in which it is in the interest of the employee to deviate from the above rules.

In the event of such a request, the two States concerned will conduct negotiations. If the request is approved, an agreement will be concluded between the two States.

These provisions can be invoked, for example, when it is clear beforehand that the duration of the posting will exceed twelve months.

Requests to continue the applicability of the foreign social security legislation under these provisions are generally allowed when the anticipated duration of the posting is less than five years.

3.7.5 *Formalities*

If, under the Regulation, the person posted remains insured in the first State during his posting, a certificate of coverage to this effect may be requested.

Depending on the situation, either of two certificates (known as E101 and E102) is required. The certificate can be produced if it is not clear in which country contributions have to be paid. In some cases, application for a certificate is a compulsory element of the conditions for posting.

3.8 *Posting from another treaty state*

If a person who works in the Netherlands is posted from abroad to the Netherlands and the Netherlands has concluded a social security treaty with that other country, the applicable legislation will be determined according to the contents of the treaty.

It should first be examined whether the person falls within the scope of the treaty. Generally it is required that the employee is a national of one of the two treaty states and that he was insured in one of the states before his posting.

If the posting is temporary, most treaties allow the legislation of the country from which the employee is posted to remain applicable.

The conditions that must be satisfied can vary slightly from one treaty to the other, but generally comprise the following:

- the employment with the enterprise in the country from which the person is posted is continued during the posting;
- the wage is paid by the foreign enterprise;
- before he was posted, the employee was insured according to the social security legislation of the posting country.

The period during which the posting is allowed to continue varies from twelve months to an unlimited period. The table in Appendix III shows the maximum period of posting allowed in each treaty state and also whether an extension is possible.

It is advisable to apply for a certificate demonstrating the applicable legislation. In some treaty states, such an application is actually one of the conditions for posting.

If the conditions are not satisfied, the general rule of the relevant treaty takes effect. In all treaties, the general rule is that the Dutch legislation is applicable if the duties are carried out in the Netherlands. Nearly all treaties prevent the legislation of two countries being applicable at the same time.

3.9 Posting from a non-treaty state

If a person is posted from a country with which the Netherlands has not concluded a social security treaty, it is generally not possible to obtain an exemption under Dutch legislation.

As no treaty is applicable in this case, it is possible that the employee will be required to participate in the social security systems of both countries. This could result in both a double liability to pay contributions and a double entitlement to benefits. It is therefore important to examine the legislation of both countries.

If a non-resident carries out duties in the Netherlands which last less than six months, under certain conditions he will not fall under the compulsory employee insurance schemes. However, if his income earned in the Netherlands is subject to wage tax, and the duties are in fact carried out in the Netherlands, he will nevertheless fall under the compulsory national insurance scheme.

3.10 Family members

Family members accompanying the person to the Netherlands are in principle subject to the Dutch national insurance legislation because of their residence. If they work under an employment agreement, they are also covered by the employee insurance schemes.

Appendix I

Countries in respect of which a double taxation treaty is applicable*

Albania	Indonesia	Russia
Argentina	Ireland	Serbia*
Armenia	Israel	Singapore
Aruba	Italy	Slovak Republic
Australia	Japan	Slovenia
Austria	Jordan	South Africa
Azerbaijan	Kazakhstan	Spain
Bangladesh	Korea (Rep.)	Sri Lanka
Belarus	Kuwait	Surinam
Belgium	Kyrgyzstan*	Sweden
Barbados**	Latvia	Switzerland
Bosnia-Herzegovina*	Lithuania	Taiwan
Brazil	Luxembourg	Tajikistan*
Bulgaria	Macedonia	Thailand
Canada	Malawi	Tunisia
China	Malaysia	Turkey
Croatia	Malta	Turkmenistan*
Czech Republic	Mexico	Uganda
Denmark	Moldova	Ukraine
Dutch Antilles	Mongolia	United Arab Emirates**
Egypt	Montenegro*	United Kingdom
Estonia	Morocco	United States
Finland	New Zealand	Uzbekistan
France	Nigeria	Venezuela
Georgia	Norway	Vietnam
Germany	Pakistan	Yugoslavia
Greece	Philippines	Zambia
Hungary	Poland	Zimbabwe
Iceland	Portugal	
India	Rumania	

* It is not entirely clear whether certain countries that formerly belonged to the former Soviet Union or the former Federal Republic of Yugoslavia will apply the 1986 Income tax treaty with the Soviet Union respectively the 1982 Income tax treaty with the Federal Republic of Yugoslavia. The Netherlands, however, has confirmed that for the time being, it will apply these tax treaties to all countries concerned (except the countries with which the Netherlands has concluded a new tax treaty).

** not yet in force

Appendix II

Scheme: social security treaties and the countries the treaties can be applied to

Regulation (EC)

no. 1408/71

Austria
Belgium
Bulgaria
Czech Republic
Cyprus (Greece part)
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Latvia
Liechtenstein
Lithuania
Luxembourg
Malta
Netherlands
Norway
Poland
Portugal
Rumania
Slovak Republic
Slovenia
Spain
Sweden
Switzerland
United Kingdom

Bilateral Treaties

Australia
Bosnia-Herzegovina
Canada
Canada-Quebec
Cape Verde
Chile
Croatia
Cyprus
Egypt
Israel
Macedonia
Montenegro
Morocco
New Zealand
Serbia
South Korea
Tunisia
Turkey
United States of America

Multilateral Treaties

Co-ordination treaty
European Interim Agreement (old age pension, invalidity and death)
Rhine navigation personnel Treaty
International Transport Treaty
European Social Security Treaty

Appendix III

Scheme: terms for posting

<i>Country</i>	<i>Maximum period of posting</i>	<i>Extension possible</i>
Australia	60 months	no
Bosnia-Herzegovina	term of employment	no
Canada	60 months	no
Cape Verde	12 (+12) months	yes - total of five years
Chili	24 months	yes - total of five years
Croatia	24 months	yes - total of five years
Cyprus	24 months	yes - total of five years
Egypt	24 months	
Israel	24 months	yes - total of five years
Macedonia	term of employment	no
Montenegro	term of employment	no
Morocco	12 (+12) months	yes - total of five years
New Zealand	60 months	no
Serbia	term of employment	no
South Korea	60 months	no
Tunisia	12 (+12) months	yes - total of five years
Turkey	12 months	yes - total of five years
United States of America	60 months	no

Appendix IV

Scheme: particularities bilateral and multilateral treaties

<i>Country</i>	<i>Secondment of citizen of third country</i>	<i>Insurance of family members of employees possible</i>	<i>Constitutive operation of secondment certificate</i>
Australia	yes	yes	yes
Bosnia-Herzegovina	no	no	no
Canada	yes	yes	yes
Chile	yes	no	no
Cyprus	yes	no	no
Cape Verde	no	no	no
Croatia	yes	no	no
Egypt		yes	
Israel	yes	yes	no
Macedonia	no	no	no
Montenegro	no	no	no
Morocco	no	no	no
New Zealand	yes	no	yes
Serbia	no	no	no
South Korea	yes	yes	no
Tunisia	no	no	no
Turkey	no	no	no
United States of America	yes	yes	yes

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