Global Rewards Update: 
The Netherlands – Dutch 30% ruling

December 2011

Background on Dutch 30% ruling and equity incentives

Employees from outside the Netherlands, who are hired by a Dutch employer or seconded to the Netherlands, can apply for the Dutch 30% ruling with the Dutch tax authorities provided they meet certain conditions. This is a favorable tax regime for expatriates that enables the employee to receive 30% of his remuneration tax free (other benefits may also be available under the ruling). The 30% ruling is applicable to foreign employees who have specific skills that are not readily available on the Dutch labor market and also to employees who left the Netherlands a number of years ago and return to work in the Netherlands again and have the requested specific skills.

If the application of the 30% ruling is approved by the Dutch tax authorities, the 30% ruling may also be applied on any Netherlands-sourced income from equity incentives such as stock options or share awards. However, if employees have already left the Netherlands at the taxable moment of the equity incentives, the Dutch tax authorities have commented in the past that the 30% ruling can only be applied on the taxable benefit of equity incentives, if at the moment the employee left the Netherlands, the employee still had a valid 30% ruling and the employee had an unconditional right to receive the equity income. Broadly, the 30% ruling can only be applied to Netherlands-sourced equity incentive income realized after departure from the Netherlands if the incentive was vested when the employee left the Netherlands.

Amendments proposed in Dutch 30% ruling

The Dutch State Secretary of the Ministry of Finance has suggested several adjustments to the Dutch 30% ruling in order to restrict its use. It is now confirmed that the adjustments will be in effect for Netherlands employments or secondments that start on or after January 1, 2012. In summary, the main proposed amendments are as follows (for an overview of all amendments please refer to the GES NewsFlashes):

• The specific skills test (i.e., specific education level and working experience) will be replaced by a fixed annual salary standard of at least EUR 50,000 including the 30% tax-free amount (EUR 35,000 excluding the tax-free amount). However, the expatriate employee must still demonstrably have skills that are not readily available in the current Dutch labor market. For certain (research) scientists, no fixed annual salary standard will apply, and for certain foreign students a reduced fixed annual salary standard will apply.

• Currently, the 30% ruling can be approved to be applicable for a period of up to 10 years. However, the period of coverage would be reduced for any previous stays in the Netherlands over the past 10 or 15
years (the exact period to consider depends upon the specifics of the prior-period Netherlands work days). Under the new system, the maximum period of coverage for new applicants will be reduced by two years (i.e., maximum period of coverage will change to eight years). Furthermore, any previous stays in the Netherlands in the past 25 years will be considered to reduce the maximum period of coverage.

- Workers who live within 150 kilometers of the Dutch border before the time they start working in the Netherlands will no longer be eligible.

- Wages earned subsequent to termination of employment in the Netherlands are no longer eligible for the 30% ruling as of January 1, 2012. This is important in the event of income from equity incentives after the termination of the employment in the Netherlands (for more details see below).

Based on the proposed amendments, in some cases new employees will no longer be eligible for the 30% ruling. This will also affect the Dutch tax due on equity incentives income for these employees, as the full benefit (instead of only 70%) will now be subject to taxation in the Netherlands. **Note the proposed changes do not impact the sourcing rules in the Netherlands per se, and equity gains sourced to the Netherlands will continue to be calculated in accordance with the existing rules.**

If companies are considering hiring foreign employees or seconding employees to the Netherlands who would have been eligible for the 30% ruling based on the current conditions but not under the new rules, it may be advantageous for the employee to move to the Netherlands in 2011 so as to benefit from the 30% ruling under the current rules.

Employees who have been granted the 30% ruling before January 1, 2012, may keep this ruling. However, as under the current regulation, after five years from the ruling’s start date, the tax authorities may check to see whether an employee still qualifies for the 30% ruling in the remaining period. Employees that do not meet the salary standard test, and/or have been living in cross-border areas before starting work in the Netherlands, will no longer qualify once this check has been performed. It appears, however, that tax authorities may decide not to check whether the ruling still applies for employees that already had the ruling for more than five years as of January 1, 2012.

**Income from equity incentives after termination of employment in the Netherlands**

As mentioned above, according to the Dutch tax authorities, the 30% ruling cannot be applied on equity incentive income if the equity incentives have not yet vested at the time when the employee leaves the Netherlands.

This proved to be especially tax-disadvantageous for expatriates who had stayed relatively briefly in the Netherlands and who were granted options in relation to their Dutch activities, which they could only exercise after having left the country. However, the Court of Den Bosch recently ruled that the 30% ruling should still be applicable in such cases (i.e., the 30% ruling can be applied to reduce the Netherlands tax liability regardless of the vesting date of the stock options (provided the 30% ruling was still valid when the employee left the Netherlands)).

The Ministry of Finance has filed an appeal against this court case. As such, the ruling is subject to change and companies are advised to seek specific advice prior to relying on the current interpretation.

In the meantime, the State Secretary of Finance has announced that the 30% ruling will be amended. Based on the formal text of the amendment, the 30% ruling will no longer be applicable after the termination of employment in the Netherlands. In our view this formal text implies that the 30%-ruling cannot be applied if the taxable moment of the equity incentives is after the termination of employment in the Netherlands, regardless of whether or not the equity
incentive had already vested before the employee leaves the Netherlands. However, in the explanation to the amendment, it is stated that this amendment has been introduced in order to prevent the application of the 30% ruling on income earned after termination of the employment in the Netherlands if this income has not yet become unconditional during the employment in the Netherlands. Therefore, the formal text of the amendment and the explanation are not in agreement.

It is assumed that this amendment should only apply to equity incentives that have not yet vested when the employment in the Netherlands terminates. However, this has not yet been confirmed by the State Secretary of Finance or the Dutch tax authorities.

Therefore, the amendment would imply that as of January 1, 2012, it will in principle no longer be possible to apply the 30% ruling on equity incentive income earned subsequent to termination of employment in the Netherlands, regardless of whether or not the equity incentive has already vested before the employee leaves the Netherlands.

In view of the announced changes, in certain situations, it might be beneficial for employees to exercise their stock options before January 2012. However, this of course is determined on a case-by-case basis.

We cannot foresee whether additional changes or adjustments will be announced during the coming weeks. Therefore, we advise you to keep following the developments.

**Action**

- Employers should carefully consider the implications of the proposed amendments to the 30% ruling for employees relocating to the Netherlands and for current rulings that have been applicable for less than five years on January 1, 2012.
- Employers should review whether the 30% ruling can be applied on the taxable benefit of equity incentives, particularly those that generate Netherlands taxable income after departure from the Netherlands.
- Employers should consider how to track which employees have the 30% ruling and how that applies when they receive income from options or share awards.

**People to contact**

For assistance in this matter or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services advisor or email us at: globalequity@deloitte.com and a global rewards consultant will contact you.

This Global Rewards Update information is also included in our bi-weekly GES newsletter, Global InSight, which you will receive directly if you are on the central distribution list.

If you are not on the central distribution list and received this communication by some other means, you can follow these few simple steps to be added to the central distribution list:

Go to the Deloitte Subscriptions Page on Deloitte.com
Make sure that under Email Newsletters you select “Global InSight” which is under the Tax heading
Then fill out your contact information and click “Save Profile”

Be sure to visit us at our Web site: www.deloitte.com/tax
If you require information about doing business in a specific country, including individual tax considerations, please log-on to www.deloittetaxguides.com and select the countries of interest. In addition to detailed guides, there are at-a-glance summaries contained in the Snapshot series section.

Deloitte Belastingadviseurs B.V.
Wilhelminakade 1
3072 AP Rotterdam
The Netherlands

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.