

The Netherlands as residence country for foreign high net worth individuals

HNWI's and the 30%-ruling

Traditionally Switzerland has been a country to move to for wealthy individuals. In recent decades the United Kingdom (UK) has also become very popular. However, from a tax perspective the Netherlands also has much to offer to these High Net Worth Individuals (HNWI's).

The 30%-ruling offers very good tax planning possibilities.

The 30%-ruling, a facility of a wage tax nature, offers the possibility to claim, as a resident of the Netherlands, a partial tax exemption for the taxation of worldwide savings and investments. This apart from an untaxed payment of 30% of the salary. As a result of the application of the so-called partial foreign taxpayer status, the Netherlands is certainly worth considering by a high net worth individual looking for a favourable tax residence.

With respect to the tax residence regime the Netherlands can compete with the UK and Switzerland.

Below I will first address the advantages of the 30%-ruling. Then the conditions of the 30%-ruling and a brief comparison with favourable tax regimes in other countries are discussed. Finally, a step-by-step plan and the residence permit procedure are discussed.

The 30%-ruling, advantages

The main advantage of the 30%-ruling for high net worth individuals who take up residence in the Netherlands, can be found in the partial tax exemption for income from savings and investments.

In the Netherlands, a system is in place that includes three different boxes of taxation for resident taxpayers. In box 1, income from employment and home ownership is taxed. In box 2, income from a substantial interest

(5% or more) in a company with a capital divided into shares is taxed and in box 3 income from savings and investments is taxed. For these three boxes of taxation, three different tax rates are in place. In box 1 a rate applies up to 52%, in box 2 the rate is 25% and in box 3 the tax rate is 30% over a deemed income of 4%, resulting in a taxation of 1,2%¹ per year.

Under the 30%-ruling, an employee can opt for the partial foreign taxpayer status² as a result of which he or she is liable for tax in box 1 on the worldwide income. However, in box 2 and box 3 he or she qualifies as non-resident taxpayer. The income from a substantial share interest or from savings and investments is limited to Dutch source income only. This basically implies that only income from shares in a company located in the Netherlands or income from immovable property situated in the Netherlands is taxed³.

All other income from savings and investments worldwide is untaxed.

The mentioned exemptions apply regardless whether any income is actually remitted to the Netherlands or not.

Box 2 and box 3 income exempted, also for partner.

Applying the ruling to a foreign spouse in order to claim exemption of tax on worldwide savings and investments

In case a foreign spouse qualifies for the 30%-ruling, the exemptions in box 2 and 3 mentioned above are also available. Allocating the assets in box 2 and box 3 of the spouse (fiscal partner) to the person entitled to the 30%-ruling can further expand the advantage of the limited tax liability. In the Netherlands, certain income components can be allocated to the fiscal partner in the personal income tax return and these rules are regularly applicable to incoming employees employed under the 30%-ruling⁴. As a result, it is possible to obtain the 30%-ruling for the foreign spouse of a wealthy client by employing her with an income of € 36,705 in the Netherlands and to avoid her husband, owning millions in wealth, from

¹ New legislation was proposed for 2016 including a taxation in box 3 of 0,87% for assets between € 25,000-€ 100,000 to 1,65% for assets exceeding € 1,000,000. It is not certain whether this proposal will actually be implemented in the Dutch income tax act.

² Section 2.6 of the Dutch Income Tax Act 2001 in conjunction with section 11 of the Dutch Income Tax Implementation Decree 2001.

³ Or rights that are related to this immovable property, or entitlements to shares in the profit of a company of which the management is based in the Netherlands.

⁴ Also reference is made to the answer to question 1 in part 2 of the Decision of 21 October 2005, no. CPP2005/2378M.

paying box 3 taxation during a period of eight years. Even if he himself has the Dutch nationality, or if he has had former periods of stay or employment in the Netherlands before.

If the 30%-ruling is applicable with the individual him- or herself or with the spouse, subject to conditions it is thus also possible to, as a resident of the Netherlands, alienate a substantial interest in a foreign company without any box 2 taxation. Capital gains on foreign companies are under the 30%-ruling not taxable in the Netherlands.

30%-ruling for foreign spouse of wealthy individual results in considerable advantages.

Residents under the 30%-ruling are entitled to the advantages of the Dutch tax treaties and qualify as a resident of the Netherlands pursuant to article 4, subsection 1⁵ OECD Model. As a result, investment- or savings income can be treaty protected in another state whilst exempt in the Netherlands. Unlike the UK, this treaty protection is in place even though the income is not actually taxed in the Netherlands and irrespective of remittance.

Different rules apply to persons with the American nationality (or so-called green card holders)⁶.

Naturally, another advantage of the ruling is that 30% of the salary can be paid out tax free. Only 70% of the salary is included in the taxable income. In case of substantial salaries this advantage can mount up considerably. Despite voices to set a ceiling in respect of the level of the salaries for application of the 30%-ruling⁷, no maximum applies to the salary.

The 30%-ruling, conditions

The conditions to apply the 30%-ruling are that there must be an employment and that the employee was recruited from outside the Netherlands by the Dutch employer because of a specific expertise that

⁵ It is expressly indicated in the residence certificate, to be made available on request, that there is only unlimited resident tax liability with regard to income from (box 1) employment and homeownership (qualified residence certificate).

⁶ In pursuance of section 4 subsection 1 of the Dutch American tax treaty persons with the American nationality are deemed to be residents of the US.

⁷ Legislative Consultative Committee 2012 Tax Plan on 7 November 2011.

this employee possesses⁸. The said expertise must be scarce on the Dutch labour market. The ruling can be applied during a period of 8 years. Periods of previous stays or previous employment in the Netherlands are deducted from these 8 years.

In 2012 the 30%-ruling was tightened. It was determined that employees who prior to the employment resided at a distance of fewer than 150 kilometres from the Dutch border are not entitled to the ruling⁹. In addition, a salary requirement was implemented in that year in order to assess whether the specific expertise is met. In 2015 the taxable income of an incoming employee must amount to at least € 36,705¹⁰. Under circumstances the level of education and relevant working experience is taken into account. Finally, in 2012 the duration of the ruling was reduced from ten to eight years.

Pay attention in case of the Dutch nationality.

Restriction if Dutch nationality

The 30%-ruling can also apply to persons with the Dutch nationality. However, the restriction that an employee must have been away from the Netherlands for at least 25 years will usually throw a spanner in the works. This restriction of the duration briefly implies that all periods of stay or employment in the Netherlands that came to an end less than 25 years before the start of the new employment in the Netherlands, are deducted from the duration of eight years¹¹. This restriction applies to everybody to whom the 30%-ruling applies but will mainly play a role of importance in case of the Dutch nationality. However, if these wealthy Dutch nationals have a foreign spouse who can earn an income in the Netherlands of € 36,705, then by allocating their assets to this spouse (or

⁸ Sections 10e ff. of the Dutch Wage Tax Implementation Decree 1965.

⁹ During 2/3 of the 24 months prior to the employment the employee must have resided at more than 150 kilometres from the border. Proceedings are currently pending about this requirement. On 9 October 2015 the Advocate General Niessen concluded that the conditions in the 30%-ruling do not lead to a systematic overcompensation in relation to the actual costs made by the specific group of expats as a whole, after the European Court of Justice concluded the 150 km condition in itself is not disproportional and in breach of the free movement of persons. We now are awaiting the verdict of the Dutch Supreme Court.

¹⁰ In 2015 the **taxable salary** per annum must amount to more than € 36,705. Hence a **salary** of at least € 52,435 must be stipulated of which 30% is paid untaxed to fully benefit from the ruling. Exceptions apply to doctoral candidates and young people with a Master's degree.

¹¹ With the exception of 20 working days annually + 6 weeks annually (+ once 3 consecutive months) family visit or holidays in pursuance of section 10ef subsections 3 and 4 of the Dutch Wage Tax Implementation Decree 1965.

fiscal partner) they could take advantage of the partial exemptions in box 2 and box 3.

The tax regimes compared

As noted, traditionally Switzerland has had a favourable tax regime for high net worth individuals. The taxation system of the so-called non-domiciled resident in the United Kingdom (UK) also offers substantial advantages.

The Pauschal ruling in Switzerland

In Switzerland the Pauschal ruling (or rather: the 'lump-sum taxation') applies, subject to conditions, to persons who want to reside there. This ruling implies an exemption from taxation on all foreign income subject to the payment of a fixed amount (forfait) of income tax. This fixed amount is, in particular, based on the costs of lodging of the individual (value of the house). The exact conditions depend on the relevant canton. A big difference with the Dutch ruling is that pursuant to this Swiss ruling no paid activities can be performed.

It has become ever more difficult in Switzerland to qualify for the Pauschal ruling and in some cantons it has even been rescinded. The ruling came under heavy fire and on 30 November 2014 a referendum was needed to decide that the ruling can remain in place. The outcome of this referendum is that effective as from 1 January 2016, it must be determined per canton what fixed minimum amount is levied, the taxation will amount to 7 times the rental value of the Swiss home (instead of 5 times) and the basis for the lump-sum amount is determined at a federal level and cannot be less than CHF 400,000.

The non-domiciled resident ruling in the UK

In the UK, under the non-domiciled resident ruling, overseas income is untaxed as long as it is not transferred to the UK. Non-domiciled residents are, basically, residents of the UK who were not born there. Under the old double tax treaty between the Netherlands and the UK from 1980, also the Netherlands could under conditions not levy any taxes on income earned outside the UK that was not transferred to that country. In the meantime, this leak has been detected and the rules have changed under the new double tax treaty between the Netherlands and the UK from

2008¹². However, the fact remains that due to this ruling it remains extremely attractive to reside in the United Kingdom. High net worth individuals usually move to London.

As the Pauschal ruling in Switzerland is under fire and the non-dom regime is tightened ever more in the UK, the Netherlands could be considered as place of residence.

In recent years this regime in the UK has also been tightened. The non-domiciled ruling was reduced to 7 years. After these 7 years a fixed amount of GBP 30,000 per annum has to be paid. The remittance rules have also become stricter, the rules for transferring income to the UK. As a consequence one is more easily deemed to dispose of the income earned abroad.

As the regimes in Switzerland and the UK were tightened considerably, the Netherlands should definitely be considered as a country of residence. As said, this applies to persons who do not have the Dutch nationality (unless these Dutch individuals have already been gone for a very long time or have a spouse who can earn at least € 36,705 in the Netherlands). It is also possible to opt for a combination with Switzerland or the UK as country of residence. A considerable advantage compared to Switzerland is that in the Netherlands no taxation whatsoever is payable on the foreign income in box 2 and box 3 during the 8-year period of the 30%-ruling. Like in the UK during the first 7 years. Residing in the Netherlands for a limited period of time using the 30%-ruling may therefore offer opportunities, for instance after 7 years of residence in the UK, or vice versa.

Time sequence of the steps

Before taking up residence in the Netherlands a high net worth individual must be certain that there will be an employment with a Dutch employer as soon as he or she starts living here. It cannot be set up afterwards. The employment can also be concluded with a personal limited liability company (BV), which can actually be incorporated especially for this purpose. Professional guidance is strongly recommended in that case.

¹² Effectively in force as from 25 December 2010.

In the past, the scarcity of the expertise had to be specifically proved, sometimes causing lengthy discussions with the tax authorities. Since 2012, in case of a taxable salary of more than € 36,705 for 2015, the requirement of specific expertise is in general deemed to be met.

The 30%-ruling can be requested with a personal company, which can be incorporated especially for this purpose.

Then a joint request¹³ of the BV as the employer and the (partner of the) wealthy individual as the employee for application of the 30%-ruling must be submitted to the Dutch Tax Authorities. This request must be submitted within four months after the start of the employment to achieve retroactive effect from the start. If one first comes to the Netherlands and then tries to apply for the 30%-ruling, whether or not at a personal private limited company, it will be rejected. The planning and sequence of the steps is therefore very precise. It is of crucial importance that the employment agreement is concluded whilst not residing in the Netherlands yet.

Furthermore, it is important that the period between two consecutive employments under the 30%-ruling, cannot exceed three months in order to continue the ruling. Freelancing is usually disastrous for the application of the 30%-ruling, unless 'opting in'¹⁴ is used.

Work and residence permit if from outside the EU

Apart from the tax procedure, the permit procedure must be taken into account. Persons who arrive from outside the EU will need to apply for a residence and work permit with the Immigration and Naturalisation Service (IND) if they want to reside or work in the Netherlands. A procedure that runs almost parallel to the 30%-ruling is the knowledge migrant scheme, also referred to as the Highly Skilled Migrant programme¹⁵.

Residence permit 'for sale' in case of investment of € 1.25 M

¹³ Section 10ea subsection 1 of the Dutch Wage Tax Implementation Decree 1965.

¹⁴ The contractor and the client jointly opt to qualify the work relationship as a fictitious employment ('Opting In' Declaration Wage tax).

¹⁵ Please note that additional requirements apply to a newly incorporated private limited company before this employer qualifies as a highly skilled migrant organisation and a work permit can be obtained.

Residence permit 'for sale': invest € 1.25 M

On 1 October 2013 a new rule was introduced by State Secretary Teeven for Justice and Security. In case of an investment of at least € 1.25 M in the Dutch business community, a temporary residence permit can be obtained. This scheme was meant to attract, for instance, IT companies and to employ multiple employees here. However, the scheme did not have the desired effect. According to recent information only one person submitted a request for application of this scheme and this person did not appear to dispose of the required documents. It is currently argued to also qualify an investment in Dutch immovable property or the creation of employment for the temporary residence permit. In particular wealthy Russian and Chinese individuals showed interest in this scheme and in Cyprus and Malta, where comparable systems were implemented, many residence permits already have been granted this way. These are permanent residence permits as a result of which the gates to Europe are opened. There is considerable opposition to these facilities.

It is much easier and cheaper to obtain a residence permit in the Netherlands by relying on the aforementioned knowledge migrant scheme to which a salary requirement of € 54,289 (2015) applies.

Choosing the Netherlands

Another feature of the Dutch tax system that could be qualified as an advantage, is that there is no day count method in order to qualify as a resident. Facts and circumstances determine if the centre of the personal life of an individual is in the Netherlands. The Netherlands should be the country with the closest social and economic ties in order to qualify as a resident. Pre-arrival planning should be done, by ending these ties in the former country of residence.

Of course there are, apart from the tax reasons, also non-tax reasons for high net worth individuals to take up residence in the Netherlands.

Non-tax reasons to choose the Netherlands

The Netherlands is still seen as the 'gateway to Europe'. Amsterdam, located close to Schiphol Airport, has tremendous appeal. It follows from a recent survey that it is the fourth most competitive city in the world¹⁶. The beautiful historic Amsterdam Canal ring is on the Unesco World Heritage List. Reference can also be made to the good infrastructure, reliable economy, and relatively well-educated labour force that speaks English well. The Netherlands are number five on the list of most competitive

¹⁶ Survey of PwC 12 December 2014.

economies in the world according to the World Economic Forum in October 2015¹⁷.

A comparison of the climate for taking up residence

When it comes to the normal climate Switzerland, the UK, and the Netherlands are comparable, although the Netherlands has less snow than Switzerland (you cannot ski here!) and it rains less in Amsterdam than in London.

Also in terms of the tax climate these countries are comparable. HNWI's taking up residence in the Netherlands: it's certainly worth considering.

Diane Nijkamp LL.M. is Estate Planner and Tax Lawyer at Monterey Tax - Private Clients.

**Monterey Tax – Private Clients, 0031 20 303 2079 in Amsterdam,
dn@montereytax.nl**

¹⁷ The Global Competitiveness Report 2015-2016, ANP 2 October 2015.