The Netherlands as residence country for foreign high net worth individuals and the 30%-ruling

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Introduction

Traditionally Switzerland has been a country to move to for wealthy individuals. In recent decades the UK has also become very popular. However, from a tax perspective the Netherlands also has much to offer to these high net worth individuals (HNWIs).

> 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 in addition to 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 HNWI looking for a favourable tax residence.

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

This article first addresses 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 HNWIs 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% of a deemed income of 4%, resulting in a taxation of 1.2%[1] per year.

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1 New legislation will enter into force in 2017 including a taxation in box 3 of 0.87% for assets between €25,000 and €100,000 to 1.65% for assets exceeding €1,000,000.

Under the 30%-ruling, an employee can opt for the partial foreign taxpayer status, and[2] as a result he is liable for tax in box 1 on the worldwide income. However, in box 2 and box 3 he qualifies as a 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 taxed.[3] All other income from savings and investments worldwide is untaxed.

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

> Box 2 and box 3 income exempted, also for spouse or fiscal partner.

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

If a foreign spouse qualifies for the 30%-ruling, the exemptions in box 2 and 3 above are also available. Spouses include civil partners and same sex partners. 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%-ruling.[4] As a result, it is possible to obtain the 30%-ruling for the foreign spouse of a wealthy client if she is employed in the Netherlands with an annual income of €36,705, to avoid paying box 3 taxation for a period of 8 years; even if he himself has Dutch nationality, or if he has had former periods of stay or employment in the Netherlands.

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

> A 30%-ruling for foreign spouse of a 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 Art 4(1)[5] of the 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 US nationality (or so-called green card holders).[6]

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2 Section 2.6 of the Dutch Income Tax Act 2001 in conjunction with s 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.

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 s 4 subs 1 of the Dutch USA tax treaty, persons with US nationality are deemed to be residents of the USA.

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 the case of substantial salaries this advantage can mount up considerably. Despite calls to set a ceiling in respect of the level of the salaries for application of the 30%-ruling,[7] no maximum applies to the salary.

The 30%-ruling, conditions

The conditions for applying the 30%-ruling are that there must be employment and that the employee was recruited from outside the Netherlands by the Dutch employer because of specific expertise that this employee possesses.[8] This expertise must be scarce in 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 their employment resided at a distance of fewer than 150 kilometres from the Dutch border are not entitled to the ruling.[9] 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 €36,705.[10] Under certain circumstances the level of education and relevant work experience is taken into account. Finally, in 2012 the duration of the ruling was reduced from 10 to 8 years.

Pay attention in the case of Dutch nationality.

Restriction due to Dutch nationality

The 30%-ruling can also apply to persons with 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 on the duration briefly means that all periods of stay or employment in the Netherlands that came to an end less than 25 years before the start of new employment in the Netherlands, are deducted from the duration of 8 years.[11] This restriction applies to everybody to whom the 30%-ruling applies, but will mainly play an important role in the case of Dutch nationality. However, if these wealthy Dutch nationals have a foreign spouse who can earn an income in the Netherlands of €36,705 (2015), then by allocating their assets to the spouse (or 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 HNWIs. The taxation system of the so-called non-domiciled resident in the UK also offers substantial advantages.

7 Legislative Consultative Committee 2012 Tax Plan (7 November 2011).

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

9 During two-thirds of the 24 months prior to employment the employee must have resided more than 150 kilometres from the Dutch border. Proceedings are currently pending about this requirement. On 9 October 2015 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 Court of Justice of the European Union concluded the 150 kilometre 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 have amounted to more than €36,705. Hence, a salary of at least €52,435 must have been stipulated of which 30% was paid untaxed to benefit fully from the ruling. For 2016 this will be approximately €37,000. 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 visits or holidays in pursuance of s 10ef subss 3 and 4 of the Dutch Wage Tax Implementation Decree 1965.

The Pauschal ruling in Switzerland

In Switzerland the Pauschal ruling (or rather: the 'lump-sum taxation') applies, subject to certain conditions, to persons who want to reside there. This ruling applies an exemption from taxation on all foreign income subject to the payment of a fixed amount (forfait) of income tax. This fixed amount is based, in particular, on the costs of the individual's lodging (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 of 1 January 2016, it must be determined per canton what fixed minimum amount is levied, the taxation will amount to seven times the rental value of the Swiss home (instead of five times) and the basis for the lump-sum amount is determined at a federal level and cannot be less than CHF400,000.

The non-domiciled resident ruling in the UK

In the UK, under the non-domiciled resident regime, known as the 'remittance basis', overseas income is untaxed as long as it is not remitted to the UK. 'Domicile' is a complex matter of English law, but individuals born to parents with no UK connection are often classified as 'non-domiciled'. Under the old double tax treaty between the Netherlands and the UK from 1980, the Netherlands could also under certain conditions not levy any taxes on income earned outside the UK that was not transferred to that country. In the meantime, this means of avoidance has been detected and from 2008 the rules changed under the new double tax treaty between the Netherlands and the UK.[12] However, the fact remains that due to this ruling it remains extremely attractive to reside in the UK; HNWIs 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 period during which an individual can claim the remittance basis without charge was reduced to 7 years. After an individual has been UK-resident for 7 of the previous 9 tax years, an annual charge of £30,000 per annum has to be paid for each year in which the remittance basis is claimed. The annual charge increases after 12 years of residence in the UK to £60,000. The remittance rules, which determine whether there is a 'remittance' (transfer to the UK) of income which would result in a tax liability, have also become stricter since April 2008, broadening the scope of remittances.

As the regimes in Switzerland and the UK have been tightened considerably, the Netherlands should definitely be considered as a country of residence. As said, this applies to persons who do not have Dutch nationality (unless these Dutch individuals have already been gone for a very long time or have a spouse who can earn at least €37,000 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

12 Effectively in force as from 25 December 2010.

payable on the foreign income in box 2 and box 3 during the 8-year period of the 30%-ruling, similarly 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 HNWI must be certain that there will be employment with a Dutch employer as soon as he starts living in the Netherlands. It cannot be set up afterwards. 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.

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

A joint request[13] to apply for the 30%-ruling must then be submitted to the Dutch Tax Authorities by the BV as the employer and by the (partner of the) wealthy individual as the employee. This request must be submitted within 4 months after the start of employment to achieve a retroactive effect from the start. If an individual comes to the Netherlands first and then tries to apply for the 30%-ruling, whether or not as an employee of a personal private limited company, the application 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 yet residing in the Netherlands.

Furthermore, it is important that the period between two consecutive employments under the 30%-ruling, cannot exceed 3 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 programme'.[15]

> Residence permit 'for sale' in the case of investment of €1.25 million.

13 Section 10ea subs 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 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 million

On 1 October 2013 a new rule was introduced by State Secretary Teeven for Justice and Security. In the case of an investment of at least €1.25 million 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 in the Netherlands. However, the scheme did not have the desired effect. According to recent information only one person submitted a request for application to this scheme and this person did not appear to dispose of the required documents. It is currently argued that an investment in Dutch immovable property or the creation of employment should also qualify to obtain 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 have already 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 knowledge of the migrant scheme, mentioned above, to which a salary requirement of €54,289 (2015) applies.

Choosing the Netherlands

Another feature of the Dutch tax system that qualifies 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 individual's personal life 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 HNWIs 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. A recent survey identified Amsterdam as the fourth most competitive city in the world.[16] 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 speak English well. The Netherlands are number five on the list of the most competitive economies in the world according to the World Economic Forum in October 2015.[17]

Conclusion

When it comes to 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.

The Netherlands is very attractive as a residence country for HNWIs from a tax perspective. Under the 30%-ruling, an exemption from taxation on income from worldwide assets is available. Specific conditions need to be met, and taking action in advance is required.

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16 Survey of PwC 12 December 2014.
17 The Global Competitiveness Report 2015–2016, ANP 2 October 2015.