

The new 30%-Rule of 2012

The 30%-rule applies as of EUR 35,000 taxable wages!

On November 17, 2011, Parliament voted on the proposed changes of the new 30%-Rule and the bill has been passed! The final legislation is expected in December.

We are attaching a flow chart in which it becomes clear in which situations the 30%-Rule apply for a so-called 'incoming employee'. This is based on the draft legislation and the amendments and comments to this legislation and these amendments in Parliament.

In addition to the flow chart, we are listing the most important changes and provide some comments. Finally, we advise how employers and employees can prepare on the new 30%-Rule legislation of 2012 and provide a points of attention list.

1. The changes

1. The so-called 'specific expertise' will be based upon a minimum taxable wages norm of EUR 35,000 and a kilometer norm of 150 km (i.e. living more than 16 months out of 24 months prior to employment in NL outside this 150 km from the NL border).
2. For certain scientists and researchers no minimum taxable wages levels exist (however kilometer norm of 150 km).
3. For Master graduates, PhD students- and graduates under 30 years a reduced taxable wages norm exist of EUR 26,605.
4. If salary norm and kilometer norm are met, specific groups of employees must also meet the 'scarcity test'.
5. Incoming employee – exception for PhD students and graduates and exception for 3 months period.
6. Maximum duration of the new 30%-Rule amounts to 8 years.

7. The so-called 'reduction rules' will be extended from 10/15 years to 25 years.
8. Transitional rules apply for existing 30%-Rule holders.
9. End of 30%-Rule. No application of 30%-Rule under circumstances.

2. Comments to the changes

Ad 1.

Salary norms based on taxable wages - not on compensation including the 30%-Rule

Please note that under the new 30%-Rule of 2012, to test the required specific expertise, the salary norms are based on taxable wages. Under the 30%-Rule of 2001, the required specific expertise is tested on salary norms that are more or less equal to the Knowledge Migrant Rule and were tested on compensation including the 30% tax free allowance (together with relevant experience and level of education).

As a consequence, employees who do not need a Knowledge Migrant Rule to work in NL (EU/EER) can be eligible for the 30% Rule as of a taxable wages of EUR 35,000 (and 26,605 for PhD/Masters under 30). The employers are not obliged to reimburse 30/70 of the taxable wages tax free; they can reimburse less than 30% free of tax!

This mechanism offers a lot of new possibilities to employers and employees, especially with intended salaries between EUR 35,000 and 50,000 including the 30% tax free allowance part. It also means that labor agreements or supplements to these agreements with respect to determining the 30% tax free part should be reviewed and if necessary adjusted.

Ad 1, 2, 3 and 4

Specific expertise and scarcity test

An employee that is hired from abroad is eligible to the 30%-Rule if the employee has the required specific skills. The employee is deemed to have these skills if his taxable wages amounts to at least EUR 35,000 on an annual basis.

For scientists and researchers of universities and subsidized research institutions (in line with the Knowledge Migrant Rule), no minimum 'salary norm' exist. For Master graduates and PhD graduates and PhD students, a reduced minimum taxable wages exist: EUR 26,605. Which scientists/researchers of which institutions exactly qualify and who will qualify as a Master graduate is not yet certain.

Only specific groups of employees can be tested whether they have the skills that are scarcely or not available on the Dutch labor market. Education level, compensation level and relevant experience are relevant factors. This means that not just any incoming employee outside 150 km radius and with a taxable wages level of at least EUR 35,000 will qualify (e.g. certain professional soccer players).

Every year the salary norms are adjusted and the 30%-Rule holders must meet these norms continuously. The salary norm will be transformed on an annual basis. So for example if an employee is coming to NL in June 2012, his monthly wages will be transformed to the employee's annual wages. Calculation difficulties may arise with variable wages and/or wages in kind that can fluctuate.

For salary splits, the foreign wages are also taken into account in the basis for calculating whether the salary norm has been met. However, the foreign wages do not qualify as basis for calculating the 30% part if these wages are 'exempt' from the Dutch taxable wages.

Ad 5.

Incoming employee – exceptions.

An employee must be hired from abroad to qualify for the 30%-Rule. This was under the 30%-Rule of 2001 however not the case if an employee changed employer's and the period in between was not exceeding 3 months. Under the 30%-Rule of 2012, this is slightly different: the employee must have realized a new employment within 3 months

and thus the actual start of the new employment can exceed the 3 months period. In addition, if a PhD graduate is employed in NL within one year after graduation, the 'period of stay' to get the doctor's title will not be taken into account if that was in NL or in the 150 km border radius. Please note that if the employee was living in NL or the 150 km border area before this 'period of stay', was in NL or in this border area (exceeding 16 out of 24 months), this exception does not apply.

Ad 6 .

The maximum duration of the new 30%-Rule amounts to 8 years.

In the 30%-Rule of 2012 the maximum duration has been reduced from 10 to 8 years. This has been changed at the very end of this legislation process because of reducing the minimum salary level of EUR 50,619 taxable wages to EUR 35,000. In the explanation it is stated 'that this adjustment does not count for employees who before January 1, 2012 were employed with the 30%-Rule and as a result it is only for new cases'.

From this explanation it is not yet clear whether employees who before January 1, 2012 were employed with the 30%-Rule are considered to be a new case though if they change employer's after January 1, 2012. These employees can then be 'punished' with an additional reduction of 2 years maximum duration.

Ad 7.

Extension of reduction rules to 25 years

Under the 30%-Rule of 2001, 10 years and 15 years of review exist in connection with earlier stay and earlier employment in NL. Under the 30%-Rule of 2012, the review period amounts to 25 years. Every previous period of earlier stay and/or employment will be deducted from the maximum duration of 8 years. This includes periods of earlier stay or employment that is longer than 25 years ago but ended in the 25 years period.

Please note that an employee is deemed to have been employed in NL during the entire period that he or she is considered an employee according to Dutch wage tax legislation. This means that for example the maximum 30%-duration of a statutory director of a Dutch BV who is not living in NL, is not only reduced with the actual periods of stay and employment in NL anymore (but with the entire period that the director is considered an employee).

Ad 8.

Transitional rules

Once the 30% ruling is granted already for more than 5 years on January 1, 2012, the Dutch tax authorities will respect the ruling for the rest of the granted duration (maximum 10 years).

Once the 30% ruling is not yet granted for more than 5 years on January 1, 2012, the Dutch tax authorities will only respect the ruling for the first 60 months of the ruling. The authorities may check after the 60 months period whether an employee meets the new requirements, employers should check whether these new requirements are met continuously. If not, the 30% ruling is no longer valid as of the moment that the new requirements are not met.

Ad 9.

End of 30%-Rule

If the employment ends, the 30%-Rule ends. If wages that were not final during employment but are paid later to the employee, these wages do not qualify for application of the 30%-Rule: e.g. certain bonuses or exercised stock options. As an explanation to the draft legislation it is stated that enjoying these wages is not in connection with extraterritorial costs.

3. Employers and employees – some points of attention

How can employers and employees prepare for the 30%-Rule of 2012? Some points of attention:

- Optimize application of the 30%-Rule tax free reimbursement (less than 30% is possible too).
- Communication. To inform current 30%-Rule holders what they can expect and to anticipate on communication with new or possible new 30%-Rule employees.
- Check current 30%-Rule grants in connection with transitional rules.
- Check where the 30%-Rule employees lived prior to employment in NL.
- Determining fixed and variable wages elements – getting the 30%-Rule and keeping it.

- Check contracts, addenda of contracts of current 30%-Rule employees and prepare new ones in connection with getting the 30%-Rule from start of employment and after that.
- Check the policy of the employer with respect to the 30%-Rule employees to determine whether possibilities exist to adjust their contracts.
- To hire possible employees earlier than planned and before January 1, 2012 if it is expected that after that date these employees will not qualify for the new specific expertise requirement (salary norm, 150 km norm).
- Planning on hiring of employees that (almost) meet the new rules as of January 1, 2012.
- To extend requesting the 30%-Rule (Masters, PhD students and graduates under 30 years).
- Timely adjustments on fixed and variable remuneration elements.
- Optimizing ET-costs if the 30%-Rule does not apply anymore.

4. How can we help you?

Just join us at the seminar on December 13, 2012 on behalf of the international Forum for Expatriate Management about this topic.

This event is free of charge to corporate HR-professionals and is run by Hillbrook Expatriate Tax Solutions and hosted by the International School of Amsterdam. The speakers are:

- Henk Amorison of Hillbrook Expatriate Tax solutions &
- Alain Camonier of Pallas Attorneys at Law

If you would like to attend this seminar, you can subscribe here:

<http://totallyexpat.com/fem-networking-chapters-homepage/netherlands-chapter/>



If you cannot attend the seminar but you are interested in the 30%-Rule Tax & Legal Optimizer of Hillbrook Expatriate Tax Solutions and Pallas Attorneys at Law, please do not hesitate to contact us (henk@hillbrook.nl)

