

Court Addresses Foreign Workers' Travel Compensation

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COUNTRY DIGEST

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The Netherlands Supreme Court on April 9 rendered a decision (09/01778) in a case that deals with the compensation of travel expenses incurred by foreign employees who were temporarily assigned to the Netherlands.

During the years 2001-2003, a U.K. resident company (X Ltd.) hired U.K. resident employees to carry out projects in the petrochemical industry in the Netherlands. The employees stayed in a hotel in the Netherlands during the week, and usually traveled back to the U.K. on weekends.

X Ltd. had to withhold and pay Dutch wage tax on the U.K. employees' salaries. However, the employees benefited from the "30 percent rule" in the Dutch Wage Tax Act, which allows an employer to give a tax-free allowance to foreign employees temporarily assigned to the Netherlands.

In addition to the tax-free allowance under the 30 percent rule, X Ltd. gave the employees compensation for expenses they incurred by traveling back to the U.K. on the weekends. X Ltd. did not withhold any wage tax from those compensation payments.

The tax inspector said that because the employees were already receiving a tax-free allowance under the 30 percent rule, the additional compensation they received for their travel expenses formed part of their taxable salaries and was thus subject to Dutch wage tax.

X Ltd. argued that the compensation for the travel expenses should be treated as a tax-free allowance and is not already covered by the allowance received under the 30 percent rule.

According to the Wage Tax Act, all benefits derived from employment are part of the taxable wage. Certain allowances designed to compensate for expenses incurred in connection with the employment can be given tax free.

Those tax-free allowances include compensation given to foreign employees who are temporarily assigned to the Netherlands for additional costs they incur in connection with their temporary stay outside their country of origin (extraterritorial costs), if certain conditions are met (the 30 percent rule). The maximum tax-free allowance for extraterritorial costs that can be paid to an employee is 30 percent of the aggregate amount of the salary and the allowance itself. The costs actually incurred do not have to be substantiated.

The Supreme Court ruled that expenses that already fall under the extraterritorial costs covered by the 30 percent rule cannot be separately compensated tax free. Based on parliamentary history, the court held that the travel expenses concerned are part of the extraterritorial expenses covered by the 30 percent rule. Accordingly, no separate allowance can be given tax free for those travel expenses in conjunction with the allowance under the 30 percent rule.

The decision is in line with a Statement of Practice issued by the Dutch Ministry of Finance, as well as the Supreme Court's June 5, 2009, ruling (08/02104), which dealt with an additional reimbursement paid to employees for double housing expenses. Those double housing expenses incurred by employees temporarily assigned to the Netherlands also fell under the 30 percent rule, the Court said. ♦

♦ *Eric van der Stoep, Otterspeer, Haasnoot & Partners, Rotterdam*