Taxation of cross-border pensions – Netherlands National Report

Section 3 – Pension provision

An employee’s own contribution to a qualifying pension plan is deductible. There is no cap on the deductible amount. The only condition is that the pension plan qualifies under the statutory requirements for such a plan (Art. 18 ff, 1964 Wages Tax Act).

The employer’s contribution to the plan constitutes taxable income to the employee. However, similar to the employee’s own contributions, the employer’s contributions are not taxed to the employee provided it concerns a qualifying pension plan. Like any employee’s benefit paid for by an employer, the contribution to the plan is for the employer a deductible business expense.

Qualifying pension plans are administered by a pension fund, an insurance company or a closely held company. A pension fund is exempt from corporate income tax, with the result the investment yield is not subject to tax. Insurance companies, on the other hand, are subject to regular taxation, as are their returns on pension investments. Under certain conditions a qualifying pension may also be administered through a closely held company at least 10 percent of whose shares are held by the employee concerned. In the latter case the income from the invested premium is subject to taxation.

In all cases the pension payments are taxed as income from past employment. The tax is collected through withholding by the fund or company that makes the pension payments.

Section 4 – National schemes for pension provision

Under Netherlands public law, all residents of The Netherlands are required to contribute to the funding of the public social security scheme and are entitled to draw benefits from it when they meet the applicable conditions (age, physical incapability, etc.).

Apart from these social security entitlements, under Netherlands law employees are not required to have a pension right. As a matter of fact, however, most branches of trade and industry have under collective labour agreements compulsory company pension schemes for employees active in such branch. In some branches pension schemes are optional. In case of a compulsory scheme, the scheme may provide for the opportunity for the employee to make voluntarily additional contributions to increase his pension rights. Such voluntary contributions are tax deductible.

In The Netherlands, pension schemes, whether on an individual basis or collective, are capital-funded. Under all pension arrangements, including collective ones, participating employees have strictly individual rights the value of which is determined from year to year and of which the employee is also informed each year. An employer is not permitted to invest himself the pension premiums (either in his own company or otherwise); the investment must be made and managed by a third party such as a pension fund or an insurance company.
Pension schemes are established in consultation between employees and employers. If pensions are administered by a pension fund, the employer and employees will jointly manage the fund. The operations of pensions funds are subject to the supervision of the *Stichting van de Arbeid*, a public law body in which employees, employers and the government are represented. Pensions schemes that are insured with an insurance company are not covered by this special supervision and are subject only to the general supervision provided by the Insurance Chamber, a public law entity.

Section 7 – Tax treatment of cross-border pension provisions

7.1. An employee contributing to a *foreign* pension scheme is entitled to deduct any premiums paid to such a scheme, from his Netherlands-taxed employment income if:
   a. he started contributing to the foreign scheme during his prior stay abroad, and
   b. the foreign scheme closely resembles Dutch qualifying schemes. Effective 1 January 2001, the qualification rules for foreign schemes have been broadened subject to guarantees that any Netherlands tax due by the pension recipient in respect of the pension payments is secured and that pertinent information is provided to the Netherlands tax authorities.

7.2. Contributions made by a Netherlands employer to a foreign pension scheme are deductible from the employer’s income on the same footing as contributions to a domestic scheme. Such contributions are taxed to the employee (see section 3, above), however, unless the same requirements are met as apply for deductibility of contributions made by the employee him- or herself (see subsection 7.1, above).

7.3. As pensions funds are not subject to tax, any foreign withholding tax on investment income cannot be credited. An issue addressed in para.s 8.2 and 8.3 of the 2000 OECD update of the Commentary on Article 4 of the OECD Model Convention is whether pension funds that are exempt from tax in their residence state, may be considered as a treaty resident of that state and thereby qualify for a treaty reduction of the foreign withholding tax on dividends and interest received from the foreign country.

As insurance companies resident in The Netherlands are subject to ordinary income taxation, they are able to credit any foreign withholding tax on investment income they derive from abroad.

7.4. Pensions that are paid by a Netherlands employer, a pension fund or an insurance company to a nonresident person are subject to Netherlands withholding tax unless a tax treaty provides otherwise. Under the OECD Model provision Article 18 pensions received by a resident of the other country are subject to tax only in that country. In such instance, a request can be filed with the tax authorities to permit the pension payments to be made without any withholding of tax.

7.5. As discussed above in section 3, contributions made to a qualifying pension plan are tax deductible (for the employee who makes the payment, or non-taxable to the employee if made by the employer), while the pension payments received later by the employee are
tax-free. If the payments are made to a non-qualifying foreign pension plan, the contributions are not tax deductible in The Netherlands, with the risk of double taxation if the person at the time of receiving the pension payments is a resident of a foreign country that taxes such payments. Also in the reversed case (a Netherlands resident receives pension payments – which under Netherlands tax law will always be taxable – ) double taxation could occur, namely when under the tax law of the foreign country contributions to the pension plan were not tax deductible. In the latter case, however, upon demonstration by the pension recipient that the pension plan contributions were not deductible in the foreign country and certain conditions are met, the pension payments may be (partially) exempted from Netherlands taxation.

7.6. A small number of tax treaties concluded by The Netherlands contains a special non-discrimination provision with regard to pensions contributions made to foreign pension plans: such contributions must be allowed as a deduction on the same footing as contributions to qualifying domestic plans.

Under Netherlands internal tax law, there are four particular instances of special treatment of pensions in cross border cases:
A. When a taxpayer gives up his tax residence in The Netherlands the value of any pension rights may be taxed to him (‘exit taxation’ – although any tax due at that time may qualify for deferral).
B. Redemption, surrender or commutation of pension rights a nonresident has vis-à-vis a Netherlands resident company (including a pension fund and insurance company), will result in immediate taxation of the pension rights (unless an exception applies, which may be available under very strict conditions).
C. Transfer of pension capital from abroad to The Netherlands is subject to full taxation (again unless an exception applies, which may be available under very strict conditions).
D. Pension contributions are tax deductible only if made to a pension fund or insurance company resident in The Netherlands and not if made to such fund or company resident abroad (again unless an exception applies, which may be available under very strict conditions).