

**Memo**

**The pensioners' regulation**

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## 1. Introduction

The pensioner's regulation is in force as from the year 1989. Except for a number of changes in 1997 to clear up a number of uncertainties in the practical use of the regulation, it has basically remained unchanged.

The pensioners' regulation, using a 10% rate for, for instance, pension benefits, annuities, old-age pensions and capital gains, is an attractive tax regime for foreign taxpayers who meet the following conditions.

## 2. Conditions

Application of the new pensioners' regulation depends on the following conditions:

- taxpayer must have lived outside the Netherlands Antilles at least 60 months before filing a request for application of the pensioners' regulation;
- taxpayer must have reached the age of 50;
- taxpayer must have reported to the tax inspector within two months after registration in the municipality register;
- taxpayer must own a house for own use worth at least ANG 450,000 within 18 months after registration in the municipality register;
- taxpayer and spouse may in principle not have any income from dividends and business profits or labour from sources within the Netherlands Antilles (notwithstanding the exceptions to be mentioned hereinafter).

The condition under the old pensioners' regulation that a pensioner must employ a local person for at least thirty hours a week has been deleted. The income tax rate applicable to pensioners has been raised to 10% and is solely applicable to income from foreign sources.

## 3. Foreign sources

For application of the pensioners' regulation, the following net income is considered income from foreign sources:

- a. income from current or former employment or from other work carried out outside the Netherlands Antilles, unless it concerns income from current employment as a managing or supervisory director of a company in the Netherlands Antilles, which is either actually located or has its registered office there;
- b. income from business, as far as this business is conducted outside the Netherlands Antilles personally by means of a permanent establishment or through permanent representatives or proxies;
- c. income from real estate or rights established on such real estate located outside the Netherlands Antilles;
- d. income from bank balances and other debtors, except for:

1. debtors secured by mortgage, established on real estate located in the Netherlands Antilles;
  2. debtors, other than bank balances, at the expense of a natural or legal person domiciled in the Netherlands Antilles, actually located in the Netherlands Antilles or having its registered office there;
- e. income from rights to shares in the profit, other than those as a shareholder, of a business conducted outside the Netherlands Antilles;
  - f. income from shares in or profit-sharing certificates at the expense of a company which is not actually located in the Netherlands Antilles or has its registered office there and whose capital has fully or partially been divided into shares;
  - g. profit from the alienation of shares that are part of a substantial interest or profit-sharing certificates of a company which is not actually located in the Netherlands Antilles or has its registered office there and whose capital has fully or partially been divided into shares;
  - h. income from rights to periodical payments at the expense of a natural or legal person not domiciled in or actually located in the Netherlands Antilles;
  - i. capital sum from life insurance that is paid at the expense of a natural or legal person not domiciled or actually located in the Netherlands Antilles.

Companies which are not actually located in the Netherlands Antilles or have their registered office there are understood to include offshore companies actually located in the Netherlands Antilles or having their registered office there.

#### **4. Optional arrangement**

The underlying pensioners' regulation still includes the option to report a fixed income of ANG 500.000 at the standard rate instead of using a 10% rate on the income from foreign sources, resulting in a tax burden of ca. ANG 235.000, which is inclusive of contributions under the acts regarding Old-Age Pension (AOV)/Widows', Widowers' and Orphans' Benefits (AWW) and Special Medical Expenses Insurance (AVBZ).

In case the taxpayer decides to use the fixed income option, the protection offered by the Kingdom Tax Regulation with the Netherlands (KTR: for more information, see chapter 6) does not apply.

It is not possible to choose each year for an option regulation with or without KTR protection. Should a pensioner choose for the KTR protected option, he/she may then only invoke the option of the fixed income of ANG 500.000 after three years. It is therefore advisable to consider all alternatives thoroughly before making a choice.

#### **5. Prohibition to work/exceptions**

If, in any year, a pensioner or his/her spouse benefits from local employment or receives income from self-employment or from acts, work or services of any nature whatsoever, the pensioners' regulation will not be applicable in that year (notwithstanding the exceptions mentioned

hereinafter). In other words, the normal progressive rates will fully be applied to the income received. If income is received from the aforementioned sources in two consecutive years, the pensioners' regulation may definitively no longer be applied.

The exceptions to this prohibition to work apply if:

- there is an employment relationship between a pensioner and a company located in the Netherlands Antilles, in which the pensioner holds, either directly or indirectly, at least 40% of the nominal capital paid in;
- a pensioner serves as a supervisory director in a company located within the Netherlands Antilles.

## 6. Dutch source income

For pensioners with Dutch source income the following information applies.

### 6.1. KTR protection

Pensioners with Dutch source income may need the protection of the KTR. No KTR protection means in fact that the Netherlands may fully levy income tax at a maximum rate of 52% on Dutch source income components. Even with KTR protection, the Netherlands are entitled to levy income tax on income from Dutch real estate and Dutch government pension (e.g. ABP-pension).

### 6.2. Income from an investment B.V.

Income (dividend, purchase of shares) from an investment B.V. whose actual management has been moved to the Netherlands Antilles may be taxed at a 19.5% rate max., insofar as it does not exceed **10% of the B.V.'s equity or once its annual profit.**

If you wish to know more about this subject, or have any queries/remarks regarding matters contained in this memo then feel free to contact our tax consultants of PricewaterhouseCoopers Netherlands Antilles, at tel. 00-599-9-430 0000 Curaçao or at fax number 00-599-9-461 1119 Curaçao or send an email to [info@an.pwc.com](mailto:info@an.pwc.com)

*This memorandum has been composed as meticulously as possible with the data available on the above-mentioned date, but should only be regarded as a general guide. We cannot therefore accept responsibility for any action undertaken, without recourse to expert advice, as a result of that contained in this publication.*