

Memo

The ex-patriate regulation

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1. General

The expatriate regulation creates attractive fiscal facilities for highly qualified ex-patriates active in the financial offshore industry. The regulation applies to the tourism industry, telecommunications industry, the aviation industry, the oil industry and universities (medical schools) and since 2003, airport operations. (also see section 4)

The expatriate regulation can be applicable, under certain conditions, for 2 x 5 years.

2. Main issues: Fiscal advantages

a. Net salary

The most important advantage of the ex-patriates regulation by far is the "net salary" advantage. When an employer enters into a net salary agreement under which the wage- and income tax of the employee are for the account of the employer, the net salary does not have to be grossed-up.

For example, with a net salary of (USD 56,000) the wage- and income tax amounts to approximately USD 15,000. In order to arrive at a net salary of USD 56,000 without applicability of the ex-patriate regulation, a gross salary of approximately USD 85,000 would have to be agreed upon.

The wage- and income tax payable then amounts to approximately USD 29,000 resulting in a net salary of USD 56,000. Consequently, the advantage of the ex-patriate regulation amounts to approximately USD 14,000 (in this example the effects of social security have been omitted; as you may know, the employer can assume the employees contributions of the premium AOV / A WW and the AVBZ free of taxes).

Consequently: A wage contract with net salary construction is mandatory to realize this fiscal advantage

b. Tax exempt salary elements

A number of wage components are not included in the taxable salary;

- reimbursement of expenses for the International School, the Schroder School as well as comparable education abroad with a maximum of USD 14.000;
- travel expenses reimbursements upon arrival and repatriation with a maximum of USD 2,250 for a single person, USD 4,500 for a couple and USD 6,700 for a family;
- reimbursement of hotel expenses during the first 2 months after arrival with a certain maximum;
- a refurbishment allowance upon arrival with a maximum of 2 months salary or USD 6,700 (the lower of the two amounts);
- car rental expenses during the first 2 months after arrival with a maximum of USD 1,500 per month.

c. *Fringe benefits*

In addition, fringe benefits (wages in kind) with a maximum of USD 8,000 per year are tax exempt.

Please note: Only real wages in kind are exempt. Every monetary allowance, no matter what its purpose, will be regarded as taxable wages (e.g. home-allowance).

3. Who can apply

The regulation is meant for ex-patriates; employees who resided for a period of at least 5 years in a foreign country prior to their employment in the Netherlands Antilles.

In addition, the employee must contribute "specific expertise" to the company. This expertise can be proven in 2 ways:

- the employee must have completed studies at an institution of higher education or academic institution and have at least 3 years of working experience, or
- the employee must have at least 5 years working experience and have a salary of at least ANG 100,000.

In order to qualify, the "specific expertise" may not be, or not readily be, available in the local labor market. Finally, the employee must be employed in one of the listed foreign exchange generating industries.

4. Foreign exchange generating industries

The following foreign exchange generating industries have been listed:

- the international service industry; this includes those companies which almost exclusively (more than 90%) provide financial services to non-resident persons and companies. Qualifying companies are offshore corporations. In addition it can be assumed that trust companies, although not specifically mentioned in the text of the regulation, also qualify;
- the oil industry;
- the aviation industry, including companies operating an airport;
- the tourist industry, more specifically hotels and apartment complexes;
- the telecommunications industry, more specifically those companies which are almost exclusively active in the field of long distance communications;
- institutions of education established in the Netherlands Antilles which almost completely educate foreign students at academic or college level.

5. Procedure

- a. Upon a written request of the employer, the employee will be awarded the ex-patriate status for a period of 5 years. **The request must be co-signed by the employee.**

- b. If the employer, before expiration of the 5 year period, proves that an extension of the contract is necessary because of the ongoing unavailability of local employees with comparable specific expertise, a one time extension of 5 years is possible.
- c. Requests must be filed with the Inspector of Taxes. The request must be filed **within 3 months after commencement of the employment**. In that case the ex-patriate status will be awarded retro-active to the date of commencement of the employment. If the request is filed after expiration of the 3 months period, ex-patriate status can be awarded as of the first of the month following the month in which the request was filed. **Timely filing of the request is therefore of the utmost importance.**
- d. Requests must be accompanied by a resume, work- and residence permits, a breakdown of fringe benefits and the date of employment. When the work- and residence permit has not been awarded as yet, it is advisable to file the request. The ex-patriate status can then be awarded for a period of 1 year followed by an extension to 5 years, as soon as the permits are filed with the Inspector of Taxes.
- e. In addition, the employer is required to provide certain information and is subject to other conditions, violation of which will result in substantial penalties. **Specific mention deserves the obligation to notify the Inspector within one month of the termination of the contract with an ex-patriate.**

The penalties may be retro-active loss of the expat-status (which of course will result in substantial increase in wage tax) and/or fines of up to 100% of the tax due.

6. Change of employer

Upon a change of employer, the ex-patriate status can be maintained under the following conditions:

- the new employer files a request to that extend;
- the new employer is active in one of the industries mentioned in chapter 4;
- the regulation will be applicable for the remainder of the period mentioned in section 5b or 5b;
- the period between the termination of the first employment and the commencement of the new employment is not longer than 3 months;
- the new employer must be able to prove that the ex-patriate regulation has been applicable to the employee and who has been the prior employer.

7. Final remarks

A number of conclusions can be drawn:

- the ex-patriate regulation is advantageous for the listed industries,
- in order to enjoy the maximum possible advantages the wording of the employment contract is of the utmost importance. The fiscally most advantageous contract must be "tailor-made",

- the regulation contains a number of formal conditions (terms, sanctions, etc.); not meeting these conditions result in a substantial cost increase.
- the employer should keep a good administration of the current ex-patriate decrees, so that extensions may be requested timely, and that also termination of employment may be filed with the tax inspector.

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

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