

**Euro Tax Flash**

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## **Euro Tax Flash from KPMG's EU Tax Centre**



### **Advocate General at the Court of Justice of the European Union issues Opinion on whether the 150-kilometer criterion in the Dutch 30% ruling violates EU law**

[Payroll Tax – Netherlands – 30% Tax Ruling](#)

On November 13, 2014 the Advocate General at the Court of Justice of the European Union (CJEU) issued her Opinion on whether the 150-kilometer criterion in the 30% ruling violates EU law. The Advocate General concluded that this is not the case if in the majority of cases the employees in question can commute daily between their foreign residence and their place of work in the Netherlands.

#### **The 150-kilometer criterion in the 30% ruling**

Employees from abroad with specific expertise that is scarce on the Dutch labor market are eligible for tax relief. This tax relief is subject to conditions i.e. the 30% ruling. If the 30% ruling is applicable, 30% of the employee's salary can be paid as a tax-free allowance to cover extraterritorial expenses (the additional expenses incurred as the employee is temporarily living and working outside his or her

home country). The remaining 70% is treated as taxable salary.

However, as of January 1, 2012, only employees who resided more than 150 kilometers from the Dutch border during two-thirds of the 24 months preceding the commencement of their employment or secondment in the Netherlands, are eligible for the 30% ruling.

### **Legal proceedings on measures violating EU law**

Legal proceedings on this measure are currently pending. In these proceedings taxpayers have taken the position that the 150-kilometer criterion violates EU law, as it excludes employees who resided less than 150 kilometers from the Dutch border from the 30% ruling. Moreover, they claim that the measure is discriminatory as it restricts the free movement of workers within the European Union – a restriction that is explicitly prohibited under EU law. The tax court had previously ruled that this restriction does not violate EU law; this was also the position taken in the Opinion issued by the Advocate General at the Dutch Supreme Court. Both the tax court and the Advocate General concluded that employees who live close to the border can easily commute and will therefore not incur extraterritorial expenses, or do so to a significantly lesser degree.

### **Proceedings before the CJEU**

In 2013, the Supreme Court referred this case to the CJEU for a preliminary ruling on whether the 150-kilometer criterion violates EU law and, if so, whether this violation is justified, i.e. the public interest justifies treating like cases differently.

In her advice to the CJEU, the Advocate General concluded that EU law is not violated if:

1. in the majority of cases the employees in question can commute daily between their foreign residence and their place of work in the Netherlands;
2. these employees do not incur any extraterritorial expenses.

If the CJEU follows the Advocate General's conclusion, then the Dutch court will have to establish whether the above two criteria have been met. The CJEU is expected to render its judgment in the first half of 2015.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor.

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