

---

# Foreign employee in the Netherlands: key issues for (UK) employers

**The impact of the COVID pandemic on working arrangements has meant that employers are increasingly likely to have staff working remotely. Van Benthem & Keulen has worked together with best friend (UK) firm Mills & Reeve to present an overview of the key legal issues to address where a foreign employee is based in the Netherlands.**

## **Employment rights**

Permanent employees based in the Netherlands will be normally entitled to benefits of Dutch employment law, regardless of whether they have an English law contract or a contract that is expressly subject to Dutch law. The fact that they are working remotely for a UK employer is not decisive. However, this might be different if the employee is posted to the Netherlands on a temporary basis or would return to the UK immediately after their posting in the Netherlands.

Many of the protections conferred by Dutch law will be familiar to UK employers, since they derive from EU law – for example the laws on discrimination and working time. However, the elements of employment protection that derive solely from Dutch local law are different, and in some important respects more generous to an employee than the corresponding rights under UK law. For illustration purposes: it is much more difficult to dismiss an employee under Dutch law, and employees who cannot work during illness are entitled to sick pay during a (very generous) first two years of their illness.

Assuming Dutch law applies to the working relationship, it is unlikely that the worker would be able to bring proceedings in a UK employment tribunal as well as the Dutch employment courts in the event of a dispute. However, there may be some circumstances where such a claim may be possible – for example if the remote worker is a UK national, or there are additional factors connecting the employment to Britain, other than the mere fact of the employer being based in the UK.

## **Tax and social security**

If foreign employees live and work in the Netherlands, their salary will be subject to Dutch taxation (progressive rates of 37,10% – 49,50 %) and social security contributions will be due by both the employees and the employer. The employer may also be required to register as a withholding agent for Dutch wage tax purposes. This would be mandatory if a permanent Establishment (“PE”) or Permanent Representative (“PR”) would be present in the Netherlands (see below), but may be done on a voluntary basis as well, as this would lessen the administrative burden for the employees. Also, the registration opens up the possibility to apply for the attractive “30% ruling” for a 5 year term which allows employees to receive a tax free compensation of their extraterritorial costs or receive 30% of their wage (including compensation) tax free.

The UK employer is advised to appoint a payroll agent in The Netherlands to facilitate the appropriate deductions from the employee’s salary and prepare the payments towards the tax authority.

Whether or not a PE or PR is present in the Netherlands, depends on various facts and circumstances. In short, a PE or a PR would be present if the employees would conduct business on behalf of the employer in the Netherlands

through a fixed place of business (e.g. office space) or if they would have the authority to negotiate and/or sign contracts on behalf of the company (and would often exercise this authority). Assuming the employee is not conducting any business on behalf of the employer in the Netherlands, and is simply working from home, the engagement of a sole remote employee is not likely to amount to the creation of a PE or PR.

However, if the tax authority does conclude that the business conducted in the Netherlands qualifies as a PE or PR, this triggers an obligation for the UK employer to pay Dutch corporate income tax on the income it derives from any operations in the Netherlands, as well as having potential liabilities in relation to the Dutch equivalent of VAT ("BTW").

If the employee has previously lived in the UK, there is a possibility that for a least the first tax year, they may be liable for tax in both jurisdictions. Any adverse impact for the employee would however be alleviated by the UK/the Netherlands double taxation treaty (though it is necessary to apply in advance for treaty treatment to avoid the need to pay double tax up front). The same may apply to social security contributions, though there are some exceptions for temporary employment arrangements (known as the "detached worker" provisions) under the UK/EU Trade and Cooperation Agreement, which would avoid the need for social security contributions to be paid in both the UK and the Netherlands.

## Immigration

Working in The Netherlands is freely permitted for people with a Dutch nationality or the nationality of one of the member countries of the European Economic Area (EEA) and Switzerland. UK nationals are now no longer eligible for the rights regarding the free movement of persons and goods. This means that a UK national would need to comply with Dutch immigration rules and would need a valid residence or work permit to live and/or work in The Netherlands, which – post Brexit – can only be received in limited, specific circumstances. This does not apply to UK nationals who have been living and/or working in the Netherlands up to 31 December 2020, who can yet apply for a residence permit and do not need a work permit.

The Foreign Nationals Employment Act bans employers from allowing foreign nationals, who do not have free entry into the Dutch labour market, to work for them without a valid work permit ('TWV') or a combined residence and work permit ('GVVA'). In addition, the employer must establish and verify the foreigner national's identity and retain copies of the identity documents and permit. The Inspectorate SZW will check whether these permits are indeed present. If the permits cannot be produced, this will constitute illegal employment, in which case the Inspectorate will impose severe fines.

## Further information

This document is a very brief summary of complex legal provisions. Specific advice should always be sought, based on your organisation's precise situation.

The original article can be found on the Mills & Reeve [website](#). For advice on UK law please contact [David Mills](#), partner at Mills & Reeve.

For advice in the Netherlands please contact [Pieter Mantel](#), partner at Van Benthem & Keulen or [Evelien Brussee](#), lawyer at Van Benthem & Keulen.