



Overeenkomst tussen de bevoegde autoriteiten van Duitsland en Nederland over de toepassing en interpretatie van artikel 14 van het Belastingverdrag en een tijdelijke vrijstelling van enkele Duitse uitkeringen

De Staatssecretaris van Financiën deelt het volgende mee.

Op grond van artikel 25, derde lid, eerste volzin van het Verdrag tussen het Koninkrijk der Nederlanden en de Bondsrepubliek Duitsland tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen van 12 april 2012, zoals gewijzigd bij protocol van 11 januari 2016 kunnen de bevoegde autoriteiten in overleg treden om moeilijkheden of twijfelpunten die rijzen met betrekking tot de uitlegging of de toepassing van het Verdrag in onderling overleg op te lossen.

In het licht van de coronacrisis hebben de bevoegde autoriteiten van Nederland en Duitsland overeenstemming bereikt over de interpretatie respectievelijk toepassing van artikel 14 van het Verdrag. Daarnaast is vastgelegd dat Nederland unilateraal zal besluiten 'Kurzarbeitergeld', 'Insolvenzgeld' of 'Arbeitslosengeld' dat een inwoner van Nederland die normaal in Duitsland werkt, ontvangt door de coronacrisis, vrij te stellen.

*De Staatssecretaris van Financiën,
Namens deze,
De directeur Internationale Zaken en Verbruiksbelastingen*



Mutual agreement between the Competent Authorities of Germany and the Netherlands according to the first sentence of paragraph 3 of article 25 of the Convention between the Federal Republic of Germany and the Kingdom of the Netherlands for the avoidance of double taxation signed on 12th of April 2012 as amended by protocol signed on 11th of January 2016

COMPETENT AUTHORITY AGREEMENT

1. Introduction

Based on paragraph 3 of Article 25 of the Convention between the Federal Republic of Germany and the Kingdom of the Netherlands for the avoidance of double taxation signed on 12th of April 2012 as amended by protocol signed on 11th of January 2016 (the 'Convention'), the Competent Authorities of Germany and the Netherlands shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

Given that the coronavirus- ('COVID-19') pandemic is a situation of force majeure and considering that the measures taken in response to the pandemic can lead to substantial uncertainty with respect to the tax position of cross-border workers, the Competent Authorities share the view that a mutual agreement as referred to in the first sentence of paragraph 3 of Article 25 of the Convention is warranted.

In this context, the Competent Authorities of the Netherlands and Germany have reached an agreement on the application respectively interpretation of Article 14 of the Convention in situations where due to COVID-19 or COVID-19 -related measures a cross border worker works from home or spends days, that would normally be working days, idle at home (i.e. without working).

2. Days spent working at home

For purposes of paragraph 1 of Article 14 of the Convention (income from employment), days of work for which wages are received and during which the employment was exercised at home (home office-days) solely due to the measures taken to combat the COVID-19 pandemic by the German or Dutch Government or their local subdivisions, may be deemed as days of work spent in the Contracting State where the cross-border worker would have exercised the employment without the measures taken to combat the COVID-19 pandemic. This fiction does not apply to working days that would have been spent either as home office-days or in a third State, independent from these measures. In particular, it does not apply to cross-border workers who, according to their employment contract, are generally exercising their employment at home.

Cross-border workers who make use of the fiction are obliged to apply this fiction consistently in both Contracting States and to keep appropriate records (i.e. written confirmation of the employer which part of the home-office-days were solely due to the COVID-19 pandemic related measures). This fiction shall only apply to the extent that the respective wages for the days spent working at home are actually taxed by the Contracting State in which the cross-border worker would have exercised the employment without the measures taken to combat the COVID-19 pandemic. The cross-border worker accordingly agrees that these items of income will be actually taxed in the Contracting State where he would have exercised the employment without the measures taken to combat the COVID-19 pandemic. Those items of income shall be regarded as 'actually taxed' when they are included in the assessment basis used to calculate the tax.

3. Days spent idle at home while receiving salary

The Competent Authorities of Germany and the Netherlands agree on the following interpretation of Article 14 of the Convention (income from employment) in situations where a resident of either State who normally works in the other State, spends a day that would normally be a working day idle at home (i.e. without working).

For the purpose of Article 14 of the Convention it is understood that the same work pattern (i.e. the ratio of days worked in the work-state / total working days) is applied as when the employee would have continued working if:

- an employee spends one or more days that would normally be working days idle at home (i.e. without working) and
- the employee continues to receive salary from the employer.



The Competent Authorities agree that this treatment follows from the OECD commentary to the OECD Model Tax Convention.¹

4. Days spent idle at home while receiving German social security payments

Dutch residents who normally work in Germany and now spend their time idle at home due to COVID-19 measures may receive German 'Kurzarbeitergeld', 'Arbeitslosengeld' or 'Insolvenzgeld' instead of their regular salary. If in a calendar year the total gross amount of these (and other) German social security payments received does not exceed the sum of € 15,000, under Article 17 of the Convention the Netherlands would be entitled to tax these social security payments.

Considering that aforementioned German social security payments are paid on a net basis and in order to match the application of the Convention for days spent idle at home while receiving salary, it is understood that the Netherlands will take a unilateral measure to exempt these social security payments received due to COVID-19 and under certain circumstances. This unilateral measure is to be published separately by the Netherlands.

5. Duration

With respect to numbers 2 and 4 of this agreement, this agreement is applicable in the period from 11th March 2020 until 30th April 2020. From 30th April onwards, the application of this agreement will automatically be extended at the end of each calendar month to the end of the following calendar month, unless the agreement is terminated by either Competent Authority of a Contracting State by written notice to the other Competent Authority at least one week prior to the beginning of the respective following calendar month.

With respect to number 3 of this agreement, the agreement is a clarification of existing views of both Competent Authorities on the application of Article 14 of the Convention to days spent idle at home while receiving salary. Thus, the Competent Authorities agree that no fixed starting date nor a time limit applies.

This agreement shall enter into force on the day following its signature by both Competent Authorities. It can be terminated unilaterally by either Competent Authority of the Contracting States by giving notice to the Competent Authority of the other Contracting State.

This Competent Authority Agreement will be published in the Dutch Government Gazette (in Dutch: 'Staatscourant') and in the German Federal Tax Gazette (in German: 'Bundessteuerblatt').

Agreed by the undersigned competent authorities:

For the Competent Authority of Germany
S. Bruns
Head of Division Federal Ministry of Finance of Germany

For the Competent Authority of the Netherlands
R. Janssen
Acting Director International Tax and Consumer Tax Ministry of Finance of the Netherlands

¹ Paragraph 2.6 and 2.16 of the OECD-commentary to Article 15 of the OECD Model Tax Convention as it reads at the time of entering into this agreement. Furthermore, from a Dutch perspective this treatment of days spent idle at home is in line with the Dutch approach to the treatment of sick leave as set out in Dutch case law.