

# Netherlands Clarifies Treatment of Cross-Border Severance Payments under Tax Treaties

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On 22 December 2023, the State Secretary for Finance published a Decree on the taxation of cross-border severance payments under Tax Treaties. The decree results from a decision of the Dutch Supreme Court of 14 October 2022 (see [Dutch Supreme Court: Later OECD Model Commentary of Limited Significance for Interpretation of 'Employer' under 1959 Treaty with Germany \(17 October 2022\)](#)). The Court decided that subsequent commentary the [OECD Model Convention](#) is relevant only if it constitutes a precisioning or clarification of the corresponding provision of the Model or previous relevant Model Commentary.

The most important aspects of the Decree are summarized below:

## OECD Commentary on severance payments

Due to the fact that the OECD Commentary on the severance payments was significantly changed on 15 July 2014, the Decree distinguishes between tax treaties signed before and after that date.

### Tax treaties signed after 15 July 2014

The OECD Model commentary is leading and the basic principle is that the allocation of taxing rights takes place on the basis of the entire period of service with the employer who pays the severance payment. If, due to the passage of time, the course of the employment relationship cannot be (completely) traced and the correct allocation cannot be reasonably approximated in any other way, the last twelve months of the employment relationship with the employer in question are used. It is not important whether and to what extent the employment relationship has been passed on to an employer or permanent establishment in the other state.

### Tax treaties before 15 July 2014

For these treaties, the so-called 4+ method applies. According to this method, the distribution of the taxing right over the severance pay follows, in summary, the distribution of the taxing right over the salary in the year of termination of employment and the four preceding years. The taxing rights are allocated to another state only if a corresponding part of the severance payment has been borne by an employer in that state or a permanent establishment or fixed base in that state.

## Double taxation

In cases of double taxation arising from the application of the 4+ method by the Netherlands and the OECD Model commentary by the other treaty state, the Netherlands will also apply the latest OECD Model Commentary.

Other cases of double taxation must be resolved under the Mutual Agreement Procedure.

For the full text of the clarifying [Decree no 2023-24998](#) of 21 December 2022, was published on the Official Gazette no. 31183 of 21 December 2023.

The Decree replaces a decree of 25 January 2022 (see [Netherlands Clarifies Treatment of Cross-Border Employment Severance Payments Based on Article 15 of OECD Model Convention \(4 February 2022\)](#)).

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