



Cross-border Impact Assessment 2016

Dossier 1B: Tax Treaty Netherlands-Germany: Pension



The Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM is the pivot of research, counselling, knowledge exchange and training activities with regard to cross border mobility and cooperation.

Maastricht University

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Dossier 1B: Tax Treaty Netherlands-Germany: Pension

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The *Institute for transnational and Euregional cross border cooperation and Mobility / ITEM* is the pivot of research, counselling, knowledge exchange and training activities with regard to cross-border cooperation and mobility.

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List of abbreviations

AOW	Algemene Ouderdomswet	Dutch National Old Age Pensions Act
Anw	Algemene nabestaandenwet	Dutch Survivor Benefits Act
EStG	Einkommensteuergesetz	German Income Tax Act
EStG	Einkommensteuer- Durchführungsverordnung 1955	German Income Tax Implementing Regulation 1955
MBB	Maandblad Belasting Beschouwingen	Dutch monthly journal on tax law-related issues
MvT	Memorie van Toelichting	Explanatory Memorandum
PW	Pensioenwet	Dutch Pensions Act
SVB	Sociale Verzekeringsbank	Dutch Social Insurance Bank
Wajong	Wet arbeidsongeschiktheidsvoorziening jonggehandicapten	Disablement Assistance Act for Handicapped Young Persons
WAO	Wet op de	Incapacity Benefits Act
WAZ	Wet arbeidsongeschiktheidsverzekering zelfstandigen	Incapacity Insurance Act for self-employed persons
Wet IB 2001	Wet inkomstenbelasting 2001	Income Tax Act 2001
Wet LB 1964	Wet op de loonbelasting 1964	Wages and Salaries Tax Act 1964
WIA	Wet werk en inkomen naar arbeidsvermogen	Work and Income according to Labour Capacity Act

1. Introduction

The new Dutch-German Tax Treaty came into effect on 1 January 2016. Tax Treaties seek to avoid the occurrence of double taxation or lack of taxation.¹ They are concluded between states with strong political, financial and economic relations, such as between the Netherlands and Germany.² Since the Netherlands and Germany are of course also neighbouring countries, this raises issues of cross-border labour and cross-border retirement. The latter issue will be addressed in this section of the cross-border impact assessment.

The new Tax Treaty replaces the one concluded on 16 June 1959 in The Hague (hereinafter: the old Treaty). The main reasons to replace the old Treaty were that it was no longer in line with current OECD standards and no longer reflected the current economic relationship between both nations.³ During the revision of the old Treaty, the Netherlands pursued the improvement of the fiscal position of frontier workers residing in the Netherlands and a more favourable fiscal treatment of pension funds established in the Netherlands.⁴ Germany valued the fight against improper use of the Treaty.⁵

The Tax Treaty and the amendments included were extensively discussed during the preparation. This is demonstrated, among others, by the very extensive Dutch Parliamentary treatment.⁶ During the Lower House sessions, for example, attention was regularly drawn to the position of

¹ Two concepts are relevant in case of double taxation:

- economic double taxation: "bij twee natuurlijke personen of lichamen over één object door een of twee instanties belasting wordt geheven of bij een persoon twee maal over formeel verschillende, doch materieel identieke objecten door een of twee instanties belasting wordt geheven." (when tax is levied on one object of two natural persons or bodies by one or two authorities or when it is levied twice on formally different yet materially identical objects of one person by one or two authorities.)

- legal double taxation: "één persoon over één object door twee heffingsbevoegde instanties wordt belast." (when one person is taxed for one object by two different competent authorities.) Both definitions taken from the Dutch Syllabus Vrijstelling, Verrekening, Verliescompensatie Internationaal Belastingrecht (Exemption, Settlement, Loss Compensation in International Tax Law) <<http://wetten.overheid.nl/BWBR0016602/2004-04-13>>.

² This was also recognized during the parliamentary process, see *Kamerstukken II 2013/14*, 33 615, nr. 3 (MvT) (Explanatory Memorandum), part I.1.

³ See *Deutscher Bundestag*, 17. Wahlperiode, Gesetzentwurf der Bundesregierung, Drucksache 17/10752, A. Problem und Ziel and *Kamerstukken II 2013/14*, 33 615, nr. 3 (MvT) (Explanatory Memorandum), section I.1.

⁴ *Kamerstukken II 2013/14*, 33 615, nr. 3 (MvT), section I.1. Thus, the Explanatory Memorandum (Dutch: MvT) includes a separate paragraph regarding the impact of the new Tax Treaty on frontier workers (see *Kamerstukken II 2013/14*, 33 615, nr. 3 (MvT), section I.4. Frontier Workers). The inclusion of this paragraph reflects the commitment made by former Secretary of State for Finance De Jager to explicitly include the consideration of the consequences for frontier workers in new legislation (see the Cabinet's Opinion about the recommendations of the Frontier Worker Commission, 9 January 2009, 2008/2455 BCPP with reference to *Kamerstukken II 2000/01*, 26 834, nr. 5).

Although the parliamentary documents often use the term 'frontier workers', this assessment will use the less old-fashioned term 'cross-border workers'.

⁵ *Kamerstukken II 2013/14*, 33 615, nr. 3 (MvT), section I.1. This is particularly aimed at preventing 'treaty shopping', whereby third-country residents obtain access to a benefit from the Tax Treaty.

⁶ The complete Dutch parliamentary history of the new Tax Treaty is included in full in Douven (red.), *Het Belastingverdrag met Duitsland 2012 Teksten, toelichtingen en parlementaire geschiedenis*, p. 301-535, accessible through: <<http://www.grensoverschrijdendwerken.nl/ebook-verdrag-nl-dld>>.

pensioners with a Dutch pension, residing in Germany.⁷ Treatment in the Senate also included this explicit call for attention to the position of pensioners with Dutch pension rights, residing in Germany.⁸ The new Tax Treaty has financial consequences for this group, due to an amended treaty article on pensions and despite both a general and a special transitional regime to mediate these consequences.⁹ The special transitional regime is geared specifically to mediating the financial consequences of the change to the pension article. Contrary to the Netherlands, the new Tax Treaty received only very concise treatment in the German Parliament.¹⁰ Partly as a result of the comprehensive parliamentary treatment in The Netherlands, the original target date of entry into force of 1 January 2014 was not met. Besides in the parliamentary procedure, the new Tax Treaty was also dealt with in detail, and particularly commented on, in the relevant tax literature and media.¹¹

1.1 Approach

This section of the cross-border impact assessment will be using calculation examples to clarify the income effects of the new Tax Treaty for pensioners who reside in Germany and have previously built up a pension in the Netherlands. As already indicated briefly before, this is the group of pensioners 'hit' by the new Tax Treaty. Besides Dutch nationals who moved to Germany during their retirement, this also includes Germans who used to be cross-border workers in the Netherlands: *"In totaal gaat het om naar schatting 5.500 in Duitsland wonende gepensioneerden (Nederlanders en Duitsers) die een Nederlands pensioen hebben van meer dan € 15.000."*¹² (This involves an estimated total of 5,500 pensioners, both Dutch and German nationals, residing in Germany and receiving a Dutch pension of more than €15,000). This € 15.000 limit will be treated further when discussing the current Treaty article. Besides a review of the old and the new Treaty article, the general and special transitional regimes will also be considered here, as well as their practical application in the form of the so-called 'verdragsverklaring' (literally: Treaty Declaration).

⁷ During Parliamentary treatment in the Lower House, only one motion was adopted regarding the mapping of the consequences of cross-border employment for taxation and social security, including pensions. See Netherlands Parliamentary Papers: *Kamerstukken II 2013/14*, 33 615, nr. 10 (Motie van de leden Nijboer en Kerstens) (Motion by the MPs Nijboer and Kerstens).

⁸ See Netherlands Parliamentary Papers: *Kamerstukken I 2014/15*, 33 615, nr. B.

⁹ In this context, the State Secretary of Finance repeatedly referred to the general and special transitional regimes and the examples as elaborated in parliamentary history.

¹⁰ See, for example, the following German draft law: Deutscher Bundestag, Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zu dem Abkommen vom 12. April 2012 zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande zur Vermeidung der Doppelbesteuerung und zur Verhinderung der Steuerverkürzung auf dem Gebiet der Steuern vom Einkommen, Drucksache 17/10752, 24.09.2012.

¹¹ Media coverage includes, among others, the Dutch opinion pieces 'Belastingverdrag hakt er te diep in (Tax Treaty too Incisive), *Het Financieele Dagblad*, 13 August 2014 and K. Broekhuizen, 'Belastingverdrag met Duitsland treedt pas per 2016 in werking' (Tax Treaty with Germany not to take effect until 2016), *Het Financieele Dagblad*, 30 December 2014. The paragraphs below will refer to the fiscal literature whenever it is relevant to this cross-border impact assessment.

¹² P.H.J. Essers, 'Pensionado's in Duitsland met in Nederland opgebouwde pensioenrechten en het nieuwe verdrag Nederland-Duitsland', in: *Ondernemend met pensioen* (Dietvorstbundel), Deventer: Kluwer 2015, p. 41. Figures derived from: *Kamerstukken II 2013/14*, 33 615, nr. 8 (Nota naar aanleiding van het nader verslag) (Note as a result of the further report), p. 6.

The calculation examples provided will take into account the general and special transitional regimes. The so-called Dutch net pension scheme is also addressed here to illustrate the potential effects on cross-border workers of a recent national fiscal measure under a tax treaty. The net pension product is the result of a unilateral, national, fiscal 'capping measure'. The implementation of this capping measure may lead to legal double taxation under the Tax Treaty, whereby one income object and one subject, i.e. the taxpayer, are taxed by two states.¹³

This dossier opts for a fiscal-legal assessment of the cross-border effects. It is imaginable that further investigation of the effects of the new Tax Treaty on the sustainable economic development and the business climate of the border regions will take place from an economic perspective in the future, provided that sufficient cross-border data is available to substantiate the findings.

2. Research Objectives, Definitions, Themes and Indicators

2.1 Effects today or in the future, objective: ex-post or ex-ante

This cross-border impact assessment will contribute to the 'ex-post' mapping of the border effects of the new Dutch-German Tax Treaty, which entered into force on 1 January 2016. Since the Treaty has only recently entered into force, its effects on the border regions are still barely measurable. Moreover, the general transitional regime provides that the old Treaty from 1959 can still be applied for 2016.¹⁴ As a result, the first consequences for the border regions can only be established after 1 January 2017.

Using facts and data already known, this cross-border impact assessment will make an estimate of the border effects of the new Tax Treaty on the basis of income projections. On the basis of these income projections, the increase or decrease of the net pension payable - not to be confused with the Dutch 'net pension scheme'- will become visible and provisional conclusions can be drawn.¹⁵

¹³ See also <<http://wetten.overheid.nl/BWBR0016602/2004-04-13>>.

¹⁴ Art. 33, paragraph 6 of the new Treaty: *"Niettegenstaande het tweede en derde lid, indien een persoon uit hoofde van de Overeenkomst van 1959 recht zou hebben op grotere voordelen dan uit hoofde van dit Verdrag, blijft de Overeenkomst van 1959 naar keuze van een dergelijke persoon met betrekking tot deze persoon volledig van toepassing gedurende een tijdvak van één jaar, te rekenen vanaf de datum waarop de bepalingen van dit Verdrag van toepassing zouden zijn uit hoofde van het tweede lid."*

(Notwithstanding the second and third paragraph, if a person, by virtue of the Agreement of 1959, were entitled to greater benefits than under this Treaty, the Agreement of 1959 shall remain fully applicable to such a person at the discretion of this person for a period of one year from the date on which the provisions of this Treaty would apply under the second paragraph.)

¹⁵ The aforementioned Dutch net pension scheme will be dealt with in Paragraph 3.1.4, in particular with a view to the consequences of national tax legislation under the new Tax Treaty.

2.2 Effects: on which geographical area? Definition of the border region

For various reasons, it is next to impossible to provide concrete insight into the geographical scope of the Tax Treaty. As cited in the previous paragraph, a group of approximately 5.500 pensioners with a pension of more than € 15,000, residing in Germany, would be hit by the new Treaty article on pensions. However, the year of origin of this data is unknown.¹⁶ Moreover, no distinction was made between Dutch nationals who moved to Germany after retirement and German nationals who used to be cross-border workers in the Netherlands. Furthermore, it is very difficult for retired cross-border workers to concretely define in which geographical area they reside, as they are not necessarily tied to a border region, unlike active cross-border workers. As a result, the geographical area may be difficult to specify any further, partly because the statistical information about the residence of retired cross-border workers or their relocation after retirement is not kept up to date. A future recommendation would be to map these data and to provide a clear picture of the number of pensioners who live in Germany and receive a pension, both first- and second-pillar, from the Netherlands and vice versa.¹⁷

¹⁶ See *Kamerstukken II 2013/14*, 33 615, nr. 8 (Nota naar aanleiding van het nader verslag) (Note as a result of the follow-up report), p. 6, which states: 'Uit de meest recente gegevens van de Belastingdienst (...)'.
¹⁷ The records of the Dutch Social Insurance Bank (SVB), as well as the Parliamentary treatment provide some data, which is indicative only and non-exhaustive:

-for the number of 'AOW' pensioners outside the Netherlands in the period of 2005 to 2014, see <http://www.svbkennisplatform.nl/kennisbank/a1201_Algemene-Ouderdomswet-AOW->(last consulted: 14 August 2016).

- Number of 'AOW' clients in the Netherlands and abroad, including Germany; for the most recent data from the 4th quarter of 2015, published in March 2016, see: <<https://www.svb.nl/images/KB%202015%204e%20kwartaal.pdf>>.

- Data from parliamentary history:

- 63.917 persons who reside in the Netherlands received a German pension (German: 'Rente') in 2014; see the 'Rapportage fiscale knelpunten grenswerknemers' (Report on Fiscal Difficulties Encountered by Cross-Border Workers) from 11 September 2015, DGB/2015/3635YOU, p. 1.
- In 2013 over 64.500 Dutch residents received a German pension. Of those, approximately 2,500 people received an amount that exceeded € 15,000, while over 62,000 people remained under the € 15,000 limit. According to the information available, approximately 1,000 of these 62,000 persons would exceed the € 15,000 limit after all due to a supplementary pension received from Germany. Thus, the number of persons with a German pension income that, together with any other relevant income, remains below the € 15,000 limit can be estimated at 61,000 people in total; see Goedkeuring belastingverdrag Nederland-Duitsland (2012); Nadere Memorie van Antwoord; 6 februari 2015 IZV/2015/79U, p. 3.
- 17.066 residents of Germany receive a pension, an annuity or social benefits from the Netherlands, of whom 12.856 pensioners remain under the € 15,000 limit. The total annual amount of Dutch pension payable to this group is EUR 65.6 million, causing an annual tax loss of around € 1.5 million after deduction of the income tax-related part of the tax credits; see *Kamerstukken II 2013/2014*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report).

2.3 Border effects on? What are the themes of the research, its principles, benchmarks and indicators?

2.3.1 Dutch-German Tax Treaty Dossier on pension consequences and the effects on the cross-border situation from the perspective of citizens, associations and businesses in light of the objectives and principles of European integration

In this dossier, cross-border effects should be read as income effects. For the pension topic, calculation examples are used to clarify the concrete income effects for retired cross-border workers. To this end a comparison will be made between the new and old Tax Treaty. On the basis of this comparison and the calculation examples, it is possible to indicate the extent to which the new Tax Treaty differs positively or negatively in a certain situation. To ensure a maximally comprehensive comparison and for the assessment of equal fiscal treatment, i.e. non-discrimination on the basis of art. 24 of the Treaty, it is of interest to map the following subsequent to this first cross-border impact assessment:

- The income position of the neighbour and former colleague of the Dutch retired cross-border worker under both the old and the new Tax Treaty;
- The income position of the neighbour and former colleague of the German retired cross-border worker under both the old and the new Tax Treaty.

2.3.2 Dutch-German Tax Treaty Dossier on pension-related issues: what are the principles, objectives and benchmarks for achieving and measuring a positive situation in border regions

The overview below contains the principles, benchmarks and research method as applied in this dossier.

Principles	Benchmarks	Method
International law: A. rationale for the Tax Treaty: preventing legal double taxation. b. art. 24 OECD Model Convention and comment: non-discrimination.	To avoid legal double taxation: one object, i.e. income from employment or pension benefits, and one subject, i.e. the (retired) cross-border worker, taxed by two states.	To examine the cases under the current Tax Treaty that might be subject to double taxation, including analysis of national legislation and regulations and their effect on the Tax Treaty. ¹⁸
Pension: The free movement of EU citizens pursuant to Article 21 TFEU: no discriminatory fiscal treatment of retired cross-border workers. ¹⁹	The fiscal position of Dutch retired cross-border workers under both the old and the new Tax Treaty. ²⁰ The fiscal position of German retired cross-border workers under both the old and the new Tax Treaty.	To calculate the difference between the net payable pension of Dutch retired cross-border workers under the old and new Tax Treaty. To calculate the difference between the net payable pension of German retired cross-border workers under the old and new Tax Treaty.

The principles and benchmarks included in the above overview give direction to the analysis of the cross-border effects of the new Tax Treaty on retired cross-border workers. This assessment constitutes a first step, specifically for the position of German retired cross-border workers, taking into account the application of the general and special transitional regime.

¹⁸ For example, the influence of the Dutch net pension scheme under the new Tax Treaty.

¹⁹ ECJ 23 April 2009, C-544/07 (Rüffler).

²⁰ As pointed out above, the transfer of tax jurisdiction may influence the income position of both Dutch nationals who moved to Germany after retirement and German nationals who used to work as cross-border workers in the Netherlands and thus built up a pension there. For this reason, the calculations include both the position of a Dutch and a German retired employee.

3. Does the measure promote or impede European integration and what does that mean for the citizens of the border regions?

Given the very recent date of entry into force of the new Tax Treaty, it is not yet possible to indicate to which extent the changes relating to pensions actually promote or hinder European integration. Based on income projections, it is possible, however, to draw tentative conclusions regarding the income effects for the retired cross-border worker. For this reason, it is important that this is monitored in the future. This note is in line with the note as published in section 2.2. It is important that appropriate statistical data are available and, if possible, qualitative research is carried out to ensure that the concrete effects of the new Tax Treaty on the citizens of the border regions are measured. While this remains a pipe dream, the next section discusses the pension-related changes in the Tax Treaty and subsequently offers income projections and calculation examples, on the basis of which a tentative assessment can be made of whether there is a potential obstacle to European integration.

3.1 Pension-Related Changes

This section deals with the changes in the allocation of taxation power over pensions in the new Tax Treaty that are relevant to this cross-border impact assessment.²¹

3.1.1 Allocation rules under the old Tax Treaty (1959)

Under the old Treaty, taxation power over (private) occupational pensions was generally allocated to the state of residence on the basis of Art. 12, paragraph 1 of the Treaty. The old Tax Treaty text read as follows:

(1) Indien een natuurlijk persoon met woonplaats in een van de Staten wachtgelden, pensioenen, weduwe- of wezenpensioenen, andere uitkeringen of op geld waardeerbare voordelen ter zake van vroegere diensten verkrijgt, heeft de woonstaat het recht tot belastingheffing voor deze inkomsten.

((1) If a natural person, resident in one of the States, receives a tide-over allowance, pensions, survivor's pensions, benefits or other advantages measurable in money in relation to previously provided services, the state of residence shall have the right of taxation over this income.)

Thus Germany held taxation power over pensioners living in Germany and receiving a Dutch occupational pension, i.e. the 2nd pillar of the Dutch pension system. On the other hand, the source state obtained taxation rights over the social insurance pension, e.g. the AOW state pension as the first pillar of the Dutch pension system, on the basis of Art. 12, paragraph 2 jo paragraph 3, sub a of the Treaty. The AOW pension of pensioners living in Germany was therefore taxed in the Netherlands. The old Treaty text of this article read as follows:

²¹ For a full explanation, see: P.H.J. Essers, 'Pensionado's in Duitsland met in Nederland opgebouwde pensioenrechten en het nieuwe verdrag Nederland-Duitsland', in: *Ondernemend met pensioen* (Dietvorstbundel), Deventer: Kluwer 2015.

(2) In afwijking van het eerste lid komt het recht tot belastingheffing voor wachtgelden, pensioenen, weduwe- en wezenpensioenen, andere uitkeringen of op geld waardeerbare voordelen ter zake van vroegere diensten, die een van de beide Staten of „Länder“, provinciën, gemeenten of gemeentelijke verbanden en andere publiekrechtelijke rechtspersonen van een van de beide Staten rechtstreeks of door tussenkomst van een hiertoe in het leven geroepen publiekrechtelijke instelling aan zijn werknemers of hun nagelaten betrekkingen betalen, aan deze Staat toe.

(3) Het tweede lid vindt ook toepassing op:

1. uitkeringen, die krachtens de wettelijke sociale verzekering worden betaald;

((2) By way of derogation from the first paragraph, the right of taxation over tide-over allowances, pensions, widow and orphan's pensions, benefits or other advantages measurable in money, in relation to previously provided services, which one of the two States or "Länder", provinces and municipalities or municipal associations and other legal entities governed by public law of one of the two States pay to employees or their survivors directly or through an institution governed by public law set up for this purpose is allocated to this state.

(3) The second paragraph shall also apply to:

1. benefits payable under statutory social insurance;

3.1.1.1 AOW state pensions

The 'old' pension article established a favourable tax position for pensioners residing in Germany with a Dutch pension, in that the AOW state pension was taxed in the Netherlands as wage from previous employment, according to Article 11 (1) c jo. Paragraph 2 Implementation Decision Income tax, 1965. Thus, on the basis of Art. 2.10 of the Dutch Income Tax Act of 2001 (hereinafter: Wet IB 2001), these AOW benefits were subject to a maximum of 5,85% income tax in the first tax bracket and 10,85% in the second bracket in the Netherlands.²²

Pensioners living in Germany are, in principle, not required to make any national insurance contributions in the Netherlands since they are insured in Germany. After all, based on Art. 11 (3), part A, Regulation 883/2004, post-active persons are insured in their state of residence, regardless of whether the state that provides the benefits has an insurance obligation.²³

3.1.1.2 Occupational pensions

Moreover, German taxation of occupational pensions is significantly lower due to the reduced rates in the German 'Einkommensteuer' on the one hand and, in part, because these pensions are not completely included in the tax base in Germany on the other hand.²⁴ Germany considers occupational pensions as other income, with application of the so-called 'Ertragsanteil'.²⁵ Due to this 'Ertragsanteilsbesteuerung', combined with the reduction of the tax base, which was doubled

²² Percentages from 2016.

²³ Post-active persons are persons who have definitively or otherwise ceased their professional activities (ECJ 11 June 1998, Case C-275/96 (Kuusijärvi), ECR 1998, p. I-3419.

²⁴ See section 32A EStG. For example: amounts up to € 8,652 are exempt from taxation as 'Grundfreibetrag', and amounts over € 254,447 are taxed at a maximum rate of 45%.

²⁵ Sonstige Einkünfte (§ 2 Absatz 1 Satz 1 Nummer 7), § 22 Arten der sonstigen Einkünfte EStG (Einkommensteuergesetz).

for partners in case of a joint declaration, no German income tax was payable on the Dutch occupational pension in many cases.²⁶

3.1.2 Allocation rule under the new Tax Treaty (2012)

The Dutch fiscal treaty policy, as set out in the policy note from 2011, shows that the Netherlands pursues source-state levying on pensions in its treaty negotiations.²⁷ The Tax Treaty with Germany, like that with Belgium, includes a source-state levy on a proviso basis. The tax agreement with Belgium, signed in 2001 and effective since 1 January 2003, includes a limit of € 25,000. The allocation rule from the new Tax Treaty with Germany is explained further below.

Under the new Treaty, taxing powers over pensions were generally allocated to the state of residence on the basis of Art. 17, paragraph 1 of the Treaty. For the Netherlands, these include the regular pensions as stipulated in Art. 18 Income Tax Act 1964 as well as benefits from occupational pension funds and industry pension funds.²⁸ The Netherlands also assumes that the German 'Rentenversicherung', the 'Rürup-Rente', the benefits from 'landwirtschaftlichen Alterskassen' and the 'berufständischen Versorgungseinrichtungen', the 'Riester-Rente', the 'Betriebliche Altersvorsorge', benefits from a 'Pension Fund', from 'Pensionkassen', from 'Direktversicherungen' and the proceeds of annuities of private insurance companies are further German statutory pensions that fall within the scope of the Treaty.²⁹

Moreover, the source state has taxation power over the benefits paid under the provisions of a social security system.³⁰ For the Netherlands, this refers to the social benefits, i.e. social insurance and social services.³¹ It particularly concerns benefits pursuant the AOW, Anw, ZW, WAO, WIA and the WAZ regulations. This distribution of taxation powers means that, in principle, the situation remains unchanged for beneficiaries living in Germany with a Dutch pension.

The text of the Treaty reads as follows:

²⁶ Under specific conditions, no German tax was payable by recipients of a Dutch pension with a maximum amount of € 50,000 residing in Germany. T. Lühn, 'Quellenstaatsbesteuerung von Renten und Ruhegehältern im neuen DBA mit den Niederlanden', *IWB* No. 4 dated 26.02.2016, *NWB* DokID (YAAAF-67040).

²⁷ Ministry of Finance, *Notitie Fiscaal Verdragsbeleid 2011*, 11 February 2011, p. 53.

²⁸ The term 'pension' also includes survivor and incapacity benefits from the Dutch second pension pillar. *Kamerstukken II 2013/2014*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 16.

²⁹ *Kamerstukken II 2013/2014*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 16.

³⁰ The Netherlands will ask Germany for an overview of the most common German social security benefits covered by Article 17. However, the legislator does point out that 'Elterngeld' is regarded as a social security benefit. See *Kamerstukken II 2013/2014*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 61.

³¹ *Kamerstukken II 2013/2014*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 15.

(1) Onder voorbehoud van de bepalingen van artikel 18, tweede lid, zijn pensioenen en andere soortgelijke beloningen betaald aan een inwoner van een verdragsluitende staat alsmede lijfrenten betaald aan een inwoner van een verdragsluitende staat slechts in die staat belastbaar. Pensioenen en andere uitkeringen betaald krachtens de bepalingen van een socialezekerheidsstelsel van een verdragsluitende staat (socialezekerheidspensioenen) aan een inwoner van de andere verdragsluitende staat zijn slechts in die andere staat belastbaar.

((1) Subject to the provisions of Article 18, second paragraph, pensions and other similar remunerations paid to a resident of a Contracting State, as well as annuities paid to a resident of a Contracting State, shall only be only taxable in that State. Pensions and other benefits paid under the provisions of a social security system of a Contracting State (social security pensions) to a resident of the other contracting state shall only be taxable in that other state.)

On the basis of Art. 17, paragraph 2 of the Treaty, an exception will be made to the above taxation rule. The source State has the right to levy taxes if the total gross amount of (private) pension or other similar remuneration, as well as an annuity or social security pension in any calendar year, exceeds the sum of € 15,000.³² This threshold of € 15,000 also ensures that small pensions, annuities and social security benefits are only taxed in the state of residence. It prevents taxpayers from submitting mandatory tax declarations in the source state for relatively small amounts in pensions, annuities and social security benefits received. This limit is applied on an annual basis, thus making determination of whether a taxpayer has exceeded the € 15,000 limit possible only at the end of the year.³³ If the taxpayer is found to have received less than € 15,000 in pensions, i.e. taxation power has been unduly assigned to the source state, this state will make a refund of the taxes levied.³⁴

The text of the Treaty reads as follows:

³² According to Art.17, paragraph 5 of the Treaty, the state where the contributions to the pension or the annuity for tax reduction have been made shall be considered the source state of a pension, an annuity or other similar remunerations. Moreover, it is Dutch treaty policy to seek maximal allocation of taxation powers to the source state if that source state has, during the accumulation, allowed a facility in which there is also abstraction from the treatment in the new state of residence (Ministry of Finance, *Notitie Fiscaal Verdragsbeleid 2011*, 11 February 2011).

³³ *Kamerstukken II 2013/2014*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 32.

³⁴ *Kamerstukken II 2013/2014*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 34.

(2) Niettegenstaande de bepalingen van het eerste lid, mag een pensioen of andere soortgelijke beloning, alsmede een lijfrente of socialezekerheidspensioen ook worden belast in de verdragsluitende staat waaruit het afkomstig is, in overeenstemming met de wetgeving van die staat, indien het totale brutobedrag ervan in enig kalenderjaar de som van 15.000 euro te boven gaat.

((2) Notwithstanding the provisions of the first paragraph, a pension or other similar remuneration, as well as an annuity or a social security pension may also be taxed in the Contracting State from which it was derived, in accordance with the legislation of that state, if the total gross amount in any calendar year exceeds the sum of 15.000 euros.)

If a pensioner lives in Germany with a Dutch AOW pension and a Dutch occupational pension that together exceed € 15,000, the Netherlands shall hold taxation power over both pensions and Germany shall offset the tax levied in the Netherlands.³⁵ It is irrelevant how the pensions and annuities are included in taxation in the state of residence.³⁶ Thus, under the new Treaty, the only relevant criterion for source-state levying is the amount of the benefits. This means, among other things, that for pensioners living in Germany with a partly German and a partly Dutch pension, it depends on the height of the Dutch pension whether The Netherlands have taxation power over it. Note that the Tax Administration can determine whether or not a taxpayer exceeds the € 15,000 limit based on the information obligation regarding pensions.³⁷

In short, pensioners residing in Germany were subject to taxation on their AOW benefits in the Netherlands and on their occupational pension in Germany under the old Tax Treaty. Under the new Treaty, both the AOW and the occupational pension are taxable in the Netherlands, provided that the total gross amount exceeds € 15,000. Pensions are thus integrally taxed in the Netherlands, and taxpayers may thus be designated as qualifying foreign taxpayers if they fulfil the conditions.³⁸ This grants them the same deductions and tax credits as a resident of the Netherlands, including, for example, mortgage interest deduction. Under the old Treaty, a pensioner living in the Netherlands was liable to taxation of his German 'Rente' pension in Germany and to taxation of his German occupational pension in the Netherlands. Under the new Treaty, both the 'Rente' pension and the occupational pension are taxable in Germany, provided that the total gross amount exceeds € 15,000.

An example can illustrate the consequences of this change in taxation power.³⁹ An unmarried Dutch citizen moved to Germany in the past and receives an occupational pension of € 30,000 built up in the Netherlands and an AOW state pension of € 13,500. Under the old Treaty, the Netherlands only held taxation power over the AOW pension, whereas Germany was given taxation power over the occupational pension. In 2014 this Dutch citizen would have had to pay €

³⁵ For this franchise, the public pensions receivable are relevant, cf. Art. 18 of the Treaty.

³⁶ No or low taxation on the relevant benefits in the state of residence may be a reason to also allocate taxation power to the source state in the treaty with Belgium.

³⁷ *Kamerstukken II 2013/2014, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 35.*

³⁸ Art. 7.8 Wet IB 2001.

³⁹ Example based on *Kamerstukken II 2013/14, 33 615, nr. 8, p. 27 et seq.*

735 in total in German and Dutch taxes together. Under the new Treaty, the Netherlands has been granted taxation power over both the AOW pension and the occupational pension since it exceeds the € 15,000 limit. As a result, the taxpayer in point will need to pay a total of € 7,316 in Dutch income tax in 2016, constituting a rounded increase of € 6,581 or 895%. The above transfer of taxation powers was introduced to eliminate an unintentional advantage for the Dutch in particular: the fiscal treatment of pension accrual in the Netherlands and the favourable German taxation of foreign pensions.⁴⁰

3.1.3 Avoidance of double taxation under the new Tax Treaty and the per-country-limitation: double taxation

This section covers the methods on the avoidance of double taxation under the new Tax Treaty from the principle of the rationale behind tax treaties: the prevention of double taxation. The starting point and benchmark is avoiding legal double taxation. The analysis also takes into account the national laws and regulations of both countries.

Pensioners living in Germany and receiving a Dutch pension of more than € 15,000 are liable to Dutch taxation as well under the new Treaty. The fact that the Netherlands has taxation power too seems to cause taxation of the pension in both the Netherlands and Germany, thus leading to double taxation. In order to avoid such double taxation Germany shall provide an offset on the basis of art. 22, paragraph 1, subsection b, sub ee of the Treaty. This article provides that, in accordance with the provisions of the relevant German tax law regarding the offsetting of foreign tax, the relevant German tax of a resident of Germany, payable on the income items that can be taxed in the Netherlands in accordance with Article 17, paragraph 2 & 3 (on pensions, annuities and social security benefits), will be settled with the Dutch taxes payable under Dutch tax law. However, this deduction shall be granted only in compliance with German tax law regarding the settlement of foreign tax. Paragraph 34c EstG (Einkommensteuergesetz) io. paragraph 68a, paragraph 1 EStGV 1955 (Einkommensteuer-Durchführungsverordnung 1955) apply to the adoption of this deduction.⁴¹ As addressed earlier, Germany imposes low taxes on the Dutch pensions of pensioners residing in Germany. The settlement to be offered by Germany regarding the taxes due in the Netherlands has been maximized at this low German tax. This increases the total tax burden of the pensioner living in Germany.

However, if a resident of the Netherlands receives a German pension, taxable in Germany on the basis of art. 17, paragraph 2 of the Treaty, i.e. amounting to a total exceeding € 15,000, the Netherlands, on the basis of art. 22 (2) (b) of the Treaty, shall exempt this pension by means of the proportionality methodology with a tax progression clause. This reduction shall be calculated on the basis of the provisions in Dutch legislation for the avoidance of double taxation.⁴²

⁴⁰ Kamerstukken II 2013/14, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), p. 16.

⁴¹ This article provides that: "Die für die Einkünfte aus einem ausländischen Staat festgesetzte und gezahlte und um einen entstandenen Ermäßigungsanspruch gekürzte ausländische Steuer ist nur bis zur Höhe der deutschen Steuer anzurechnen, die auf die Einkünfte aus diesem ausländischen Staat entfällt."

⁴² See Art. 10 Besluit voorkoming dubbele belasting 2001 (decision prevention of double taxation 2001).

3.1.4 The Dutch net pension scheme and the cross-border worker: double taxation?

This section is intended to clarify the effects of a recent national measure under a tax treaty, i.e. the Dutch net pension scheme, on cross-border workers.

The net pension scheme is a voluntary pension scheme, the fiscal relief of which focuses on participants with a pensionable income of more than € 101.519 (2016). On the basis of art.18ga (1) Wet LB 1964, the so-called 'Witteveen framework' offers no fiscal relief above this amount. Thus, deferred taxation, known as the 'reverse rule' (Dutch: 'omkeerregel'), does not apply to the net pension scheme. In this case, tax relief consists of a Box 3 exemption, i.e. entitlements from a net pension scheme are not considered property on the basis of Art. 5.17 (1) Wet IB 2001.⁴³

In addition to the aforementioned case of possible double taxation, this may also affect a cross-border worker with a net pension.⁴⁴ This refers to a post-active cross-border worker residing in Germany who used to work in the Netherlands for an employer who made use of a net pension scheme.

3.1.4.1 The Old Tax Treaty with Germany (1959)

Cross-border workers who reside in Germany and work in the Netherlands can make use of the net pension scheme via their Dutch employer. Since cross-border workers already live outside the Netherlands, they do not qualify for the fiscally inconspicuous buyout option. As they are not emigrating, they will have to have the net pension paid out to them.

In the above example, Germany will consider the pension as pension in the sense of Art. 12, paragraph 1 of the Treaty of 1959. As a general rule, the taxation power was allocated to the state of residence, Germany, in this example. It is unlikely in this scenario that Germany will make the distinction between gross pension, to which deferred taxation applied, and net pension.⁴⁵ As a result, Germany will tax the benefits from the net pension, leading to double taxation since the Netherlands never granted an exemption for pension entitlements, nor a deduction for pension contributions paid.

3.1.4.2 The New Tax Treaty with Germany (2016)

As a general rule, the Member State of residence, i.e. Germany, in this example, has taxation power under the new Treaty, on the basis of art. Art. 17, paragraph 1 of the Treaty: In such cases, the same problem arises as in the previous section.

⁴³ To achieve this tax relief, Art. 5.17A (1) Wet IB 2001 describes a net old-age pension as a pension, built up on the basis of a defined contribution scheme, focused on providing a pension that, after 40 years of accrual, does not exceed 75% of the average amount that does not belong to the pensionable income under Art.18ga Wet LB 1964, multiplied by the net factor referred to in art. 5.16 (4) Wet IB 2001.

⁴⁴ For an elaborate explanation of this issue, see: A.H.H. Bollen-Vandenboorn, 'De vergeten grensarbeider en zijn nettopensioen', *MBB* 2015/09.

⁴⁵ In the same spirit: A.H.H. Bollen-Vandenboorn, 'De vergeten grensarbeider en zijn nettopensioen', *MBB* 2015/09. As the secretary of state asserts, it depends on the national law of the new country of residence whether the net pension is actually, in whole or in part, included in the levy (*Kamerstukken II* 2015/16, 32 042, nr. 329 (Verslag van een schriftelijk overleg) (Report of a written consultation)).

On the basis of Art. 17, paragraph 2 of the Treaty, the source state - in this example: the Netherlands - can also tax the benefits from the net pension, provided that the total gross amount of pensions receivable exceeds € 15,000. The Netherlands will not tax these benefits on the basis of national law, so no double taxation will ensue. The new Treaty does not contain any specific agreements on net pensions either. As a result, Germany will not distinguish between gross and net pensions under the new Treaty either.⁴⁶ Source-state levying does not grant the Netherlands exclusive taxation power though.⁴⁷

If the Netherlands, as the source state, can tax the net pension of the cross-border worker residing in Germany, the offsetting procedure is applied to prevent double taxation, according to Art. 22, paragraph 1, subsection b, sub ee of the Treaty. This implies that the German tax will be offset against the tax payable on the basis of Dutch tax law. As has already been pointed out, the net pension benefits in the Netherlands are not taxed. The offsetting method prescribes that a tax offset shall only be granted when taxation has effectively taken place. Since no actual taxation takes place, Germany offers no tax offset for the benefits resulting from the net pension scheme, effectively leading to double taxation.

3.1.4.3 Summary

The preceding makes it clear that the treaty negotiations anticipated insufficiently on potential negative consequences of the 'capping measure' introduced unilaterally by the Netherlands. For a concrete explanation of these consequences, it is important to have insight in the number of cross-border workers that use a net pension scheme.⁴⁸

3.1.5 General and special transitional regime for pensions

As a result of the transfer of taxation power in the new Tax Treaty, pensioners residing in Germany who used to be cross-border workers in the Netherlands and who receive a pension from the Netherlands that exceeds € 15,000 are faced with substantial changes in their income position in comparison with the old Tax Treaty. This group is the most affected by the transfer of this power of taxation. An estimated 5,500 pensioners are involved.⁴⁹

Under the old Tax Treaty, the Netherlands had only been allocated taxation power over the AOW state pension. Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there. The fact that Germany hardly taxes Dutch pensions relates to the so-called 'Besteuerungsanteil' of paragraph 22, Part 1, third sentence, letter a, letter aa of the Einkommensteuergesetz, EStG (income tax act). A person who has been receiving an AOW benefit since 2005, for example, is only taxed for 50% of this benefit in Germany. A person enjoying an AOW benefit since 2016 will face a level of 72% taxation on that benefit. This

⁴⁶ See also A.H.H. Bollen-Vandenboorn, 'Belastingverdrag Nederland-Duitsland', *MBB* 2013/11, paragraph 4.1.

⁴⁷ After all, Art. 17, paragraph 2 of the Treaty provides that 'a pension or other similar remuneration, as well as an annuity or a social security pension can also be taxed in the contracting state from which it was derived'.

⁴⁸ See also Netherlands Parliamentary Papers: *Kamerstukken II* 2015/16, 32 043, nr. 329. According to the Secretary of State, the number of pensioners with a net pension has not been registered at an aggregate level.

⁴⁹ *Kamerstukken II* 2013/14, 33 615, nr. 8, p. 6, which references to the most recent data from the Tax Administration.

exemption shall remain effective for all of the following years. Dutch occupational pensions are subject to the so-called 'Ertragsanteil', according to paragraph 22, Part 1, third sentence, letter a, letter bb, of the German Income Tax Act (EStG). Only 18% of the occupational pension of someone who retires at age 65 or 66 years, is added to the tax base under the German income tax regime. For a 67-year-old pensioner this percentage is only 17%. However, a qualification problem has arisen in Germany with regard to supplementary pensions. Some Tax Authorities ('Finanzämter') equate such pensions with 'Leistungen aus einer betrieblichen Altersvorsorge', thus causing 58% of the pension to be added to the tax base as 'Besteuerungsanteil', while other Tax Authorities brand these pensions as 'Leibrente aus einem Altersvorsorgevertrag oder aus einer betrieblichen Altersvorsorgung', in which case only 18% of the pension is taxed as 'Ertragsanteil'.⁵⁰

The aforementioned transfer of taxation power from Germany to the Netherlands, may have substantial tax consequences for pensioners. For this reason and as a first step, the general transitional regime was introduced, as laid down in Article 33, paragraph 6 of the Treaty. On the basis of this transitional regime taxpayers can still choose application of the old Tax Treaty for the year 2016. Given the favourable German taxation of Dutch pensions mentioned above, the majority of pensioners are expected to opt for this. This implies that the consequences for pensioners residing in Germany with a Dutch pension will only become noticeable per 1 January 2017.

In drawing up these transitional regimes, the Secretary of State for Finance did take into account a number of factors, including the height of the tax rates in both countries, the number of pensioners with a Dutch pension and the ratio between the number of pensioners in both countries.⁵¹ In view of these factors, among others, Germany and the Netherlands deemed the general transitional regime of one year, as laid down in Article 33, paragraph 6 of the Treaty, to be appropriate.

In addition, the Dutch cabinet saw reason to unilaterally provide an additional special transitional regime as part of the ratification act. The comparative tax levels in Germany and the Netherlands have been a major factor in the design of this unilateral transitional regime. This special transitional regime was introduced for certain items of income that fall under Article 17, paragraph 2 of the new Treaty and over which Germany held taxation power under the old tax law.⁵² Under certain conditions, these items of income will be taxed at a lower rate for the first six calendar years following the year of entry into force, i.e. 2016.

⁵⁰ In 2011 it was found that the Finanzämter lacked a consistent approach to the qualification of Dutch company pensions. Some Tax Authorities ('Finanzämter') equate such pensions with 'Leistungen aus einer betrieblichen Altersvorsorge', thus causing 58% of the pension to be added to the tax base as 'Besteuerungsanteil', while other Tax Authorities brand these pensions as 'Leibrente aus einem Altersvorsorgevertrag oder aus einer betrieblichen Altersvorsorgung', in which case only 18% of the pension is taxed as 'Ertragsanteil'. According to B. Kloosterman, Ulrich P. Meyer and D. Laruelle, 'Welk buurland is een fiscaal paradijs voor gepensioneerden?', *Over de grens* 2011/3.

⁵¹ *Kamerstukken II* 2013/14, 33 615, nr. E (Nadere memorie van antwoord) (Further Memorandum of Reply).

⁵² Introduced in Netherlands Parliamentary Papers: *Kamerstukken II* 2013/14, 33 615, nr. 6 (Nota van wijziging) (Letter of Amendment).

Calendar Year	Maximum tax burden
2016	10%
2017	10%
2018	15%
2019	20%
2020	25%
2021	30%

The compensation is provided by offering a reduction on the income tax that would have been payable according to the 2001 Income Tax Act had this transitional regime not been applied. The calculations below will further clarify this.

This transitional regime can be applied under a number of cumulative conditions:

1. the object is a pension or another, similar remuneration, an annuity or a pension or other type of benefit paid according to the stipulations of the Dutch social security system;
2. the receiving natural person has been a resident of Germany without interruption since the ratification of the Treaty on 12 April 2012.
3. payment of said income item already took place prior to the date of entry into force of the Treaty on 1 January 2016; in other words: this concerns existing pensions, annuities, etc.
4. according to Art. 17, paragraph 2 of the Treaty said income items are taxable in the Netherlands, meaning that the total gross amount of pension or other, similar remuneration, annuity or other type of benefit paid per calendar year according to the stipulations of the Dutch social security system exceeds the amount of € 15.000.
5. taxation on the income item was solely assigned to Germany under the old Treaty.

The above implies that a taxpayer who became a resident of Germany between 12 April 2012 and 1 January 2016 has no right to apply this special transitional regime. Likewise, pensioners residing in Germany with a Dutch pension who migrated back to the Netherlands before 1 January 2016 cannot invoke the transitional regime. Nor does the special transitional regime apply to retired civil servants who reside in Germany and only receive an AOW pension besides their occupational government pension. The income consequences will not be mitigated for these groups. Moreover, it can be inferred from the condition under 4 that lump-sum payments of annuities and pensions do not fall under the transitional regime as they fall under Article 17, paragraph 3 of the Treaty. Under 5 it is stipulated that the income item has to have fallen under German taxation authority under the old Treaty. This condition implies that Dutch social security benefits such as AOW, WIA,

WAO and Wajong remain outside of this transitional regime.⁵³ These benefits do, on the other hand, count towards the € 15.000 limit.

The reduction mentioned earlier is calculated as follows: the total of tax payable by a taxpayer in one calendar year is reduced by the difference between the part of the total income tax on the taxpayer's taxable income from work and home, according to section 7.2 of the 2001 Dutch Income Tax Act, in a calendar year proportionally attributable to the income items without application of the transitional arrangement, and the tax payable on these income items as calculated using the lower rates. The part of the total tax on work and home which is proportionally attributable to the income items without application of the transitional regime is the amount of tax payable on income and home multiplied by the proportion of the relevant income items to the total positive income from work and home. The example below will clarify this calculation.

Furthermore, taxpayers may have other income components taxable in the Netherlands besides their pension, annuity or social security benefits, to which the transitional regime does not apply. In that case, the tax burden on the pension, annuity or social security benefits will increase with the income as a result of the progressive income tax rates. The application of the aforementioned lower rates could then lead to greater compensation as income rises. This is also evident from the following calculations.

Example of the reduction⁵⁴

A taxpayer lives in Germany, is older than 65 years and receives a Dutch occupational pension of € 30,000. He also receives other Dutch income to the amount of € 20,000, taxable in the Netherlands as well. Assuming that the taxpayer uses the transitional regime in 2016, the amount of Dutch tax is calculated as follows.⁵⁵

⁵³ These types of benefits were not taxed in Germany under the old Treaty. They were, however, included in the tax progression clause.

⁵⁴ The example below was derived from *Kamerstukken II 2013/14*, 33 615, nr. 6 (Nota van wijziging) (Letter of Amendment). A plenary report (*Handelingen II 2013/14*, 92, item 12, p. 2) mentions that the Association of European Border Region Residents (Vereniging Europese Grenslandbewoners) has also illustrated the impact of the new Tax Treaty through various examples.

⁵⁵ This calculation uses the 2016 Dutch income tax rates and does not include deductions or tax credits.

Total income from work and home (BOX 1)	€50,000
Dutch income tax payable in 2016	€9,853
Ratio occupational pension - total income	€ 30,000/€ 50,000 = 60%
Proportional part of the taxation of pension without transitional regime (60% * €9,853)	€5,911
Maximum amount of tax payable on the pension	10%
Maximum amount of tax payable on the pension as a result of the transitional regime (10%)	€ 3,000 (10% * € 30,000)
Reduction as a result of the transitional regime	€2,911 (€ 5,911 -/- €3,000)
Total Dutch tax on income after application of transitional regime	€6,942 (€9,853 -/- €2,911)

Article 2, paragraph 5 of the special transitional regime regulates the overlap with the general transitional rules of Article 33, paragraph 6 of the Treaty. Taxpayers who choose this transitional regime in 2016 are not entitled to any of the special transitional regimes in that year.

The fact that the transitional regime is not already being applied by the paying agencies (pension funds, insurers, and the Dutch Sociale Verzekeringsbank) when paying the income components (pensions, annuities and social security benefits) has also been brought up in parliamentary history.⁵⁶ However, the reduction in Dutch income tax payable, to be granted according to the transitional regime, depends on the size of any income to which the transitional regime does not apply. It is for this reason that the paying agencies do not take into account the application of the transitional regimes when collecting any Dutch income tax. Compensation cannot be obtained through a provisional assessment; taxpayers have to report their income / national insurance contributions.⁵⁷

3.2 Treaty declarations

Under the old Treaty, taxing powers over pensions were generally allocated to the state of residence. For pensioners living in Germany, this means that Germany held exclusive taxation power over occupational pensions. In practice, the paying agency, in this case, the pension provider, deducts wage tax and transfers it to the Tax Administration. These executing bodies may be exempt from their deduction duties if a so-called 'verdragsverklaring', i.e. an exemption

⁵⁶ *Kamerstukken II* 2013/14, 33 615, nr. 6 (Nota van wijziging) (Letter of Amendment).

⁵⁷ <http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/priv/internationaal/verdragen/het_nieuwe_belastingverdrag_tussen_nederland_en_duitsland/compensatieregeling/compensatieregeling> (last consulted on 08/08/2016).

request for deductions of tax and national insurance contributions, has been issued to the person entitled to a pension.

Since the taxation power over occupational pensions with a total gross amount exceeding € 15,000 was transferred to the Netherlands under the new Treaty, these ‘verdragsverklaringen’ have lost their validity. The executive bodies will in fact have to deduct wage tax and national insurance contributions in such cases. One may ask the question of who will inform the pensioner of the changes in such cases.⁵⁸ The Tax Administration has promised to inform those pensioners with a Dutch pension or benefits who reside in Germany and who have received a relevant ‘verdragsverklaring’ in writing about the consequences of the new Treaty and the possibility of using the one-year transitional regime.⁵⁹

Note that ‘verdragsverklaringen’ already issued have not been repealed as per immediately, particularly because of the option to still apply the old Treaty in 2016, as regulated by Art. 33, paragraph 6 of the Treaty. Moreover, repeals depend on the facts and circumstances of each individual case, such as whether or not the € 15,000 limit has been exceeded. The Tax Administration actively approached pensioners with a Dutch pension, residing in Germany, asking them whether they wished to make use of the transitional regime mentioned above. Subsequently, the Tax Administration assessed which ‘verdragsverklaringen’ were to be repealed and informed both the taxpayers involved and the executing bodies.

⁵⁸ In the same spirit: H. van Bijnen & M. Visser, ‘Pensioenperikelen in het nieuwe belastingverdrag Nederland-Duitsland’, *Pensioenmagazine* February 2014, p. 14 . et seq.

⁵⁹ Rapportage fiscale knelpunten grenswerknemers 11 september 2015, DGB /2015/3635U, p. 5.

3.3 Calculations on pensions: the pensioner living in Germany with a Dutch pension⁶⁰

The group of pensioners living in Germany which have built up a pension in The Netherlands, AOW state pension as well as an occupational pension, are confronted with a possible decline in income as a result of the new Tax Treaty. This paragraph will outline the income effects under the old Treaty and the new Treaty using five cases and taking into account the application of the general and special transitional regimes. To this end, we will apply the system used in the example in paragraph 3.1.5. The following principles govern these cases:

- The pensioner is assumed to have built up both an AOW pension and an occupational pension in the Netherlands, and, for example, no annuity.
- Regarding the amount of AOW pension: the two most common situations will be elaborated in the five cases: single pensioners with a gross annual AOW pension of € 13,736.64 and married or cohabitant pensioners, both of pensionable age, with a gross annual AOW pension of € 9,465.72. The AOW amounts are therefore fixed. In addition, for the sake of convenience, no further indexation is assumed of the AOW pension amounts after 2016.
- For the gross occupational pension, the following annual amounts are used:
 - € 10,000;
 - € 30,000;
 - € 50,000;
 - € 75,000;
 - € 110,000.⁶¹

The calculations are based on the tax laws and regulations of 2016. The elaboration of the following situations assumes application of the general transitional regime in 2016. As mentioned above, this means that the special transitional regime can only be invoked for five years, from 2017 to 2021. The application of the special transitional regimes will be mapped for this period.

⁶⁰ For various other examples, see *Kamerstukken 2013/14 II*, 33 615, nr. 5, NNV II, p. 27-30. The calculations as included in this report do not take into account national insurance contributions, since the person is assumed to be covered under social insurance in Germany. See also the examples listed in the annex to the above Parliamentary Papers.

⁶¹ This income category has been included to provide insight into the effects on the highest incomes rather than to demonstrate the application of the net pension scheme. To qualify for application of the transitional regime, a payment from the net pension scheme must have been made before the date of entry into force of the Treaty, i.e. 1 January 2016. This is unlikely given the recent date of entry into force of the net pension scheme, i.e. 1 January 2015. This makes application of the transitional regime to benefits from the net pension scheme unlikely.

3.3.1 Case 1: € 10,000 occupational pension and AOW (Dutch State Pension)

Single

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€13,736.64	€13,736.64	€13,736.64	€13,736.64	€13,736.64
Occupational pension	€10,000.00	€10,000.00	€10,000.00	€10,000.00	€10,000.00
Total income from work and home (BOX 1)	€23,736.64	€23,736.64	€23,736.64	€23,736.64	€23,736.64
Dutch income tax payable	€2,140.74	€2,140.74	€2,140.74	€2,140.74	€2,140.74
Ratio occupational pension - total income	42.13%	42.13%	42.13%	42.13%	42.13%
Proportional part of the taxation of occupational pension without transitional regime	€901.87	€901.87	€901.87	€901.87	€901.87
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€1,000.00	€1,500.00	€2,000.00	€2,500.00	€3,000.00
Reduction as a result of the transitional regime	No reduction (€901.87 - €1,000.00)	No reduction (€901.87 - €1,500.00)	No reduction (€901.87 - €2,000.00)	No reduction (€901.87 - €2,500.00)	No reduction (€901.87 - €3,000.00)
Total Dutch tax on income after application of transitional regime	€2,140.74	€2,140.74	€2,140.74	€2,140.74	€2,140.74

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Married or cohabitant, both of pension age

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€9,465.72	€9,465.72	€9,465.72	€9,465.72	€9,465.72
Occupational pension	€10,000.00	€10,000.00	€10,000.00	€10,000.00	€10,000.00
Total income from work and home (BOX 1)	€19,465.72	€19,465.72	€19,465.72	€19,465.72	€19,465.72
Dutch income tax payable	€1,617.55	€1,617.55	€1,617.55	€1,617.55	€1,617.55
Ratio occupational pension - total income	51.37%	51.37%	51.37%	51.37%	51.37%
Proportional part of the taxation of occupational pension without transitional regime	€830.98	€830.98	€830.98	€830.98	€830.98
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€1,000.00	€1,500.00	€2,000.00	€2,500.00	€3,000.00
Reduction as a result of the transitional regime	No reduction (€ 830.98 - €1,000.00)	No reduction (€ 830.98 - €1,500.00)	No reduction (€ 830.98 - €2,000.00)	No reduction (€ 830.98 - €2,500.00)	No reduction (€ 830.98 - €3,000.00)
Total Dutch tax on income after application of transitional regime	€1,617.55	€1,617.55	€1,617.55	€1,617.55	€1,617.55

Conclusion

This case shows that the special transitional regime has no effect for occupational pensions of € 10,000 supplemented by an AOW pension of € 13,736.64 for single persons or € 9,465.72 for married or cohabitant couples. This is caused by the small reduction due to lower rates. The transitional regime has little or no effect on incomes below this line, whereas it is exactly this group that should receive compensation given that the tax increase puts a relatively heavier burden on these taxpayers.

Under the old Tax Treaty, the Netherlands had only been allocated taxation power over the AOW state pension, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or € 795.12 on an AOW pension of € 9,465.72 for married or cohabitant couples.⁶² Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

⁶² Based on the 2016 percentages.

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3.3.2 Case 2: € 30,000 occupational pension and AOW (Dutch State Pension)

Single

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€13,736.64	€13,736.64	€13,736.64	€13,736.64	€13,736.64
Occupational pension	€30,000.00	€30,000.00	€30,000.00	€30,000.00	€30,000.00
Total income from work and home (BOX 1)	€43,736.64	€43,736.64	€43,736.64	€43,736.64	€43,736.64
Dutch income tax payable	€7,324.01	€7,324.01	€7,324.01	€7,324.01	€7,324.01
Ratio occupational pension - total income	68.59%	68.59%	68.59%	68.59%	68.59%
Proportional part of the taxation of occupational pension without transitional regime	€5,023.71	€5,023.71	€5,023.71	€5,023.71	€5,023.71
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€3,000.00	€4,500.00	€6,000.00	€7,500.00	€9,000.00
Reduction as a result of the transitional regime	€2,023.71 (€5,023.71 - €3,000.00)	€523.71 (€5,023.71 - €4,500.00)	No reduction (€5,023.71 - €6,000.00)	No reduction (€5,023.71 - €7,500.00)	No reduction (€5,023.71 - €9,000.00)
Total Dutch tax on income after application of transitional regime	€5,300.30 (€7,324.01 - €2,023.71)	€6,800.30 (€7,324.01 - €523.71)	€7,324.01	€7,324.01	€7,324.01

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Married or cohabitant, both of pension age

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€9,465.72	€9,465.72	€9,465.72	€9,465.72	€9,465.72
Occupational pension	€30,000.00	€30,000.00	€30,000.00	€30,000.00	€30,000.00
Total income from work and home (BOX 1)	€39,465.72	€39,465.72	€39,465.72	€39,465.72	€39,465.72
Dutch income tax payable	€5,598.55	€5,598.55	€5,598.55	€5,598.55	€5,598.55
Ratio occupational pension - total income	76.02%	76.02%	76.02%	76.02%	76.02%
Proportional part of the taxation of occupational pension without transitional regime	€4,255.76	€4,255.76	€4,255.76	€4,255.76	€4,255.76
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€3,000.00	€4,500.00	€6,000.00	€7,500.00	€9,000.00
Reduction as a result of the transitional regime	€1,255.76 (€4,255.76 - €3,000.00)	No reduction (€ 4,255.76 - € 4,500.00)	No reduction (€ 4,255.76 - € 6,000.00)	No reduction (€ 4,255.76 - € 7,500.00)	No reduction (€ 4,255.76 - € 9,000.00)
Total Dutch tax on income after application of transitional regime	€4,342.79 (€ 5,598.55 - €1,255.76)	€5,598.55	€5,598.55	€5,598.55	€5,598.55

Conclusion

This case shows that the special transitional regime only has an effect for pensions of € 30,000 supplemented by an AOW pension of € 13,736.64 for single persons or € 9,465.72 for married or cohabitant couples. For a pension of € 13,736.64 and an occupational pension of € 30,000, the arrangement will be advantageous in 2017 and 2018. For a pension of € 9,465.72 and an occupational pension of € 30,000, the arrangement will only be advantageous in 2017. The transitional regime has little or no effect on incomes below this line, whereas it is exactly this group that should receive compensation given that the tax increase puts a relatively heavier burden on these taxpayers.

Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or € 795.12 on an AOW pension of € 9,465.72 for married or cohabitant couples.⁶³ Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

⁶³ Based on the 2016 percentages.

3.3.3 Case 3: € 50,000 occupational pension and AOW (Dutch State Pension)

Single

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€13,736.64	€13,736.64	€13,736.64	€13,736.64	€13,736.64
Occupational pension	€50,000.00	€50,000.00	€50,000.00	€50,000.00	€50,000.00
Total income from work and home (BOX 1)	€63,736.64	€63,736.64	€63,736.64	€63,736.64	€63,736.64
Dutch income tax payable	€15,404.01	€15,404.01	€15,404.01	€15,404.01	€15,404.01
Ratio occupational pension - total income	78.45%	78.45%	78.45%	78.45%	78.45%
Proportional part of the taxation of occupational pension without transitional regime	€12,084.11	€12,084.11	€12,084.11	€12,084.11	€12,084.11
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€5,000.00	€7,500.00	€10,000.00	€12,500.00	€15,000.00
Reduction as a result of the transitional regime	€7,084.11 (€12,084.11 - €5,000.00)	€4,584.11 (€12,084.11 - €7,500.00)	€2,084.11 (€12,084.11 - €10,000.00)	No reduction (€12,084.11 - €12,500.00)	No reduction (€12,084.11 - €15,000.00)
Total Dutch tax on income after application of transitional regime	€8,319.90 (€15,404.01 - €7,084.11)	€10,819.90 (€15,404.01 - €4,584.11)	€13,319.90 (€15,404.01 - €2,084.11)	€15,404.01	€15,404.01

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Married or cohabitant, both of pension age

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€9,465.72	€9,465.72	€9,465.72	€9,465.72	€9,465.72
Occupational pension	€50,000.00	€50,000.00	€50,000.00	€50,000.00	€50,000.00
Total income from work and home (BOX 1)	€59,465.72	€59,465.72	€59,465.72	€59,465.72	€59,465.72
Dutch income tax payable	€13,678.55	€13,678.55	€13,678.55	€13,678.55	€13,678.55
Ratio occupational pension - total income	84.08%	84.08%	84.08%	84.08%	84.08%
Proportional part of the taxation of occupational pension without transitional regime	€11,501.21	€11,501.21	€11,501.21	€11,501.21	€11,501.21
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€5,000.00	€7,500.00	€10,000.00	€12,500.00	€15,000.00
Reduction as a result of the transitional regime	€6,501.21 (€11,501.21 - €5,000.00)	€4,001.21 (€11,501.21 - €7,500.00)	€1,501.21 (€11,501.21 - €10,000.00)	No reduction (€11,501.21 - €12,500.00)	No reduction (€11,501.21 - €15,000.00)
Total Dutch tax on income after application of transitional regime	€7,177.34 (€13,678.55 - €6,501.21)	€9,677.34 (€13,678.55 - €4,001.21)	€12,177.34 (€13,678.55 - €1,501.21)	€13,678.55	€13,678.55

Conclusion

This case shows that the special transitional regime has an effect for a pension of € 50,000 supplemented by an AOW pension of € 13,736.64 for single persons or € 9,465.72 for married or cohabitant couples. For both cases, single and married/cohabitant, the regime will remain effective from 2017 to 2019. The transitional regime has little or no effect on incomes below this line, whereas it is exactly this group that should receive compensation given that the tax increase puts a relatively heavier burden on these taxpayers.

Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or € 795.12 on an AOW pension of € 9,465,72 for married or cohabitant couples.⁶⁴ Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

⁶⁴ Based on the 2016 percentages.

3.3.4 Case 4: €75,000 occupational pension and AOW (Dutch State Pension)

Single

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€13,736.64	€13,736.64	€13,736.64	€13,736.64	€13,736.64
Occupational pension	€75,000.00	€75,000.00	€75,000.00	€75,000.00	€75,000.00
Total income from work and home (BOX 1)	€88,736.64	€88,736.64	€88,736.64	€88,736.64	€88,736.64
Dutch income tax payable	€28,092.62	€28,092.62	€28,092.62	€28,092.62	€28,092.62
Ratio occupational pension - total income	84.52%	84.52%	84.52%	84.52%	84.52%
Proportional part of the taxation of occupational pension without transitional regime	€23,743.82	€23,743.82	€23,743.82	€23,743.82	€23,743.82
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€7,500.00	€11,250.00	€15,000.00	€18,750.00	€22,500.00
Reduction as a result of the transitional regime	€16,243.82 (€23,743.82 - €7,500.00)	€12,493.82 (€23,743.82 - €11,250.00)	€8,743.82 (€23,743.82 - €15,000.00)	€4,993.82 (€23,743.82 - €18,750.00)	€1,243.82 (€23,743.82 - €22,500.00)
Total Dutch tax on income after application of transitional regime	€11,848.80 (€28,092.62 - €16,243.82)	€15,598.80 (€28,092.62 - €12,493.82)	€19,348.80 (€28,092.62 - €8,743.82)	€23,098.80 (€28,092.62 - €4,993.82)	€26,848.80 (€28,092.62 - €1,243.82)

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Married or cohabitant, both of pension age

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€9,465.72	€9,465.72	€9,465.72	€9,465.72	€9,465.72
Occupational pension	€75,000.00	€75,000.00	€75,000.00	€75,000.00	€75,000.00
Total income from work and home (BOX 1)	€84,465.72	€84,465.72	€84,465.72	€84,465.72	€84,465.72
Dutch income tax payable	€25,871.74	€25,871.74	€25,871.74	€25,871.74	€25,871.74
Ratio occupational pension - total income	88.79%	88.79%	88.79%	88.79%	88.79%
Proportional part of the taxation of occupational pension without transitional regime	€22,972.40	€22,972.40	€22,972.40	€22,972.40	€22,972.40
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€7,500.00	€11,250.00	€15,000.00	€18,750.00	€22,500.00
Reduction as a result of the transitional regime	€15,472.40 (€22,972.40 - €7,500.00)	€11,722.40 (€22,972.40 - €11,250.00)	€7,972.40 (€22,972.40 - €15,000.00)	€4,222.40 (€22,972.40 - €18,750.00)	€472.40 (€22,972.40 - €22,500.00)
Total Dutch tax on income after application of transitional regime	€10,399.34 (€25,871.74 - €15,472.40)	€14,149.34 (€25,871.74 - €11,722.40)	€17,899.34 (€25,871.74 - €7,972.40)	€21,649.34 (€25,871.74 - €4,222.40)	€25,399.34 (€25,871.74 - €472.40)

Conclusion

This case shows that the special transitional regime has an effect for a pension of € 50,000 supplemented by an AOW pension of € 13,736.64 for single persons or € 9,465.72 for married or cohabitant couples. For both cases, single and married/cohabitant, the regime will remain effective from 2017 to 2021. Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or € 795.12 on an AOW pension of € 9,465.72 for married or cohabitant couples.⁶⁵ Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

⁶⁵ Based on the 2016 percentages.

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3.3.5 Case 5: € 110,000 occupational pension and AOW (Dutch State Pension)

Single

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€13,736.64	€13,736.64	€13,736.64	€13,736.64	€13,736.64
Occupational pension	€110,000.00	€110,000.00	€110,000.00	€110,000.00	€110,000.00
Total income from work and home (BOX 1)	€123,736.64	€123,736.64	€123,736.64	€123,736.64	€123,736.64
Dutch income tax payable	€46,292.62	€46,292.62	€46,292.62	€46,292.62	€46,292.62
Ratio occupational pension - total income	88.90%	88.90%	88.90%	88.90%	88.90%
Proportional part of the taxation of occupational pension without transitional regime	€41,153.44	€41,153.44	€41,153.44	€41,153.44	€41,153.44
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€11,000	€16,500	€22,000	€27,500	€33,000
Reduction as a result of the transitional regime	€30,153.44 (€41,153.44 - €11,000)	€24,653.44 (€41,153.44 - €16,500)	€19,153.44 (€41,153.44 - €22,000)	€13,653.44 (€41,153.44 - €27,500)	€8,153.44 (€41,153.44 - €33,000)
Total Dutch tax on income after application of transitional regime	€16,139.18 (€46,292.62 - €30,153.44)	€21,639.18 (€46,292.62 - €24,653.44)	€27,139.18 (€46,292.62 - €19,153.44)	€32,639.18 (€46,292.62 - €13,653.44)	€38,139.18 (€46,292.62 - €8,153.44)

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Married or cohabitant, both of pension age

	2017	2018	2019	2020	2021
AOW (Dutch State Pension)	€9,465.72	€9,465.72	€9,465.72	€9,465.72	€9,465.72
Occupational pension	€110,000.00	€110,000.00	€110,000.00	€110,000.00	€110,000.00
Total income from work and home (BOX 1)	€119,465.72	€119,465.72	€119,465.72	€119,465.72	€119,465.72
Dutch income tax payable	€44,071.74	€44,071.74	€44,071.74	€44,071.74	€44,071.74
Ratio occupational pension - total income	92.08%	92.08%	92.08%	92.08%	92.08%
Proportional part of the taxation of occupational pension without transitional regime	€40,579.77	€40,579.77	€40,579.77	€40,579.77	€40,579.77
Maximum amount of tax payable on the occupational pension	10.00%	15.00%	20.00%	25.00%	30.00%
Maximum amount of tax payable on the occupational pension as a result of the transitional regime	€11,000	€16,500	€22,000	€27,500	€33,000
Reduction as a result of the transitional regime	€ 29,579.77 (€ 40,579.77 - € 11,000)	€ 24,079.77 (€ 40,579.77 - € 16,500)	€18,579.77 (€ 40,579.77 - €22,000)	€13,079.77 (€ 40,579.77 - €27,500)	€7,579.77 (€ 40,579.77 - €33,000)
Total Dutch tax on income after application of transitional regime	€14,491.97 (€ 44,071.74 - €29,579.77)	€19,991.97 (€ 44,071.74 - € 24,079.77)	€25,491.97 (€ 44,071.74 - € 18,579.77)	€30,991.97 (€ 44,071.74 - € 13,079.77)	€36,491.97 (€ 44,071.74 - €7,579.77)

Conclusion

This case shows that the special transitional regime has an effect for a pension of € 110,000 supplemented by an AOW pension of € 13.736,64 for single persons or € 9.465,72 for married or cohabitant couples. For both cases, single and married/cohabitant, the regime will remain effective from 2017 to 2021. Under the old Tax Treaty, the Netherlands had been allocated taxation power over the AOW state pension only, in which case taxpayers would have to pay a mere € 1,153.88 in income tax on an AOW pension of € 13,736.64, or €795 on an AOW pension of € 9.465,72 for married or cohabitant couples.⁶⁶ Occupational pensions, of which the taxation powers were allocated to Germany, incurred very little or no income tax there.

This income category has been included to provide insight into the effects on the highest incomes rather than to demonstrate the application of the net pension scheme. To qualify for application of the transitional regime, a payment from the net pension scheme must have been made before the date of entry into force of the Treaty, i.e. 1 January 2016. This is unlikely given the recent date of entry into force of the net pension scheme, i.e. 1 January 2015. This makes application of the transitional regime to benefits from the net pension scheme unlikely.

⁶⁶ Based on the 2016 percentages.

4. Conclusions and recommendations from a Euregional perspective

4.1 Substantive conclusions: pension effects of the Tax Treaty between the Netherlands and Germany

As indicated previously, the income effects of the new Tax Treaty were central to this dossier. The income effects of the new pension article on various income groups have been illustrated for the next several years, while taking into account the application of the special transitional regime.

It can be concluded from this study that the special transitional regime is particularly advantageous for pensioners with a relatively high pension, residing in Germany, as evidenced by the five cases used to clarify the impact of the special transitional regime. One explanation for this effect can be found in the progressive rates in Art. 2.10a Wet IB 2001, which shows that the maximum rates of the first two tax brackets were 5.85% and 10.85% respectively in 2016. As a result, especially taxpayers in the third (42%) and fourth bracket (52%) will reap a relatively greater benefit from the transitional regime. As the amount of tax payable rises, the reduction available from the special transitional regime increases more rapidly in relative terms. The Dutch Secretary of Finance stated that the cabinet had made the special transitional regime for pensioners residing in Germany with the specific purpose of achieving a more gradual transition, mainly for those with higher pension incomes, as the new Treaty may entail a higher tax burden, particularly for them.⁶⁷ Thus, the reduced rates mentioned above are specifically related to the level of tax rates in Germany and in the Netherlands. In addition, the Secretary of State emphasized that designing any transitional regime is a matter of customization. The State Secretary has ensured that residents of the Netherlands with a pension, an annuity or a social insurance benefit from Germany totalling less than € 15,000 suffer no income loss. For this reason, no transitional regime was made for this group of pensioners.⁶⁸ This is due to the fact that the state of residence retains the power of taxation over pensions up to € 15,000, meaning that no transfer of taxation power takes place in such cases.

Despite the principle of achieving a more gradual transfer of taxation powers, it has had large income effects, particularly for pensioners residing in Germany with a Dutch pension of more than € 15,000, for whom the transitional regime was designed in particular. Regarding the above, it should be pointed out that pensioners residing in Germany with a pension exceeding € 15,000, making them integrally taxable in the Netherlands, can be regarded as qualifying foreign taxpayers.⁶⁹ Taxpayers who meet these conditions may be granted the same deductions and tax credits as residents of the Netherlands, including, for example, mortgage interest deduction.

⁶⁷ *Kamerstukken II 2013/14*, 33 615, nr. E (Nadere memorie van antwoord) (Further Memorandum of Reply).

⁶⁸ *Kamerstukken II 2013/14*, 33 615, nr. 5 (tables 3 and 4 in the Appendix).

⁶⁹ Art. 7.8 Wet IB 2001.

4.2 Conclusions regarding the cross-border impact assessment and the further development of the instrument

The production of this dossier can be seen as a first step from a Dutch fiscal-legal point of view towards further research in the future. As such, it does not pretend to be comprehensive, and explicit attention was paid to a national fiscal measure, i.e. the Dutch net pension scheme, which may raise questions about its fiscal treatment on treaty level. Future research might also study the Treaty from the German perspective. To this end, it is also important that adequate statistical data is available that can be used to clarify the impact of the new Tax Treaty in practice. The following topics could qualify for future research:

- The fact that the transitional regime is used for residents of Germany who have built up a pension in the Netherlands can be seen as an indication that the problems particularly occur there and not vice versa. Nevertheless, it would be recommendable to shed light on the latter situation as well in the future,⁷⁰ with the ultimate goal of making a comparison of:
 - The income position of the ‘next-door neighbour’ and former colleague of the Dutch retired cross-border worker under both the old and the new Tax Treaty.
 - The income position of the ‘next-door neighbour’ and former colleague of the German retired cross-border worker under both the old and the new Tax Treaty.
- Pursuing further research from an economic perspective into the effects of the new Tax Treaty on the sustainable economic development of the border region and its business climate.

⁷⁰ For an illustration, see: *Kamerstukken II 2013/14*, 33 615, nr. 5 (Nota naar aanleiding van het verslag) (Note in response to the report), Appendix 1.



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