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Institute for Transnational and Euregional cross border cooperation and Mobility / ITEM

Cross-border impact assessment 2017

Dossier 6: The Qualifying Foreign Taxpayer Obligation ("90% rule"): A Quantitative Ex-Ante Impact Assessment

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Dossier 6: The Qualifying Foreign Taxpayer Obligation ("90% rule"): A Quantitative Ex-Ante Impact Assessment

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

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6. The Qualifying Foreign Taxpayer Obligation (“90% rule”): A Quantitative Ex-Ante Impact Assessment

1. Introduction

This dossier analyses the population of non-resident employees in the Netherland as of 1 December 2014 in order to estimate how many people are potentially affected by the qualifying foreign taxpayer obligation (“90% rule”) under the *Wet Inkomstenbelasting 2001* (hereafter *Dutch Income Tax Act 2001*). Entered into force on 1 January 2015, this legislation establishes that non-resident taxpayers in the Netherlands may benefit from the same deductions and tax credits as resident taxpayers if they earn 90% of their global income in the Netherlands. The qualifying foreign taxpayer obligation (hereafter QFTO) replaces the optional scheme, under which non-resident taxpayers could opt for the same tax treatment as resident taxpayers, even if earning less than 90% of their global income in the Netherlands. Under the new system, non-resident taxpayers only qualify for domestic taxpayer status if they earn 90% of their declared world income in the Netherlands, but they are excluded if their Dutch income is below this threshold.

Both the optional scheme and the QFTO respond to the Schumacker decision of the Court of Justice of the European Union (ECJ). The ECJ’s preliminary ruling in Schumacker obliges EU Member States to grant foreign taxpayers who enjoy all or almost all of their income in the Netherlands the same personal deductions as resident taxpayers.[1] After the ECJ ruled that the enjoyment of these personal benefits as required by EU law cannot be made contingent on the exercise of an option by the taxpayer,[2] the Dutch legislator abolished the optional scheme and enacted a mandatory income threshold (of 90%) as from 2015 to redefine the target group benefiting from the Schumacker doctrine. It has been shown that this contradicts the initial position of the legislator when the *Dutch Income Tax Act 2001* was introduced, as well as ECJ decisions explicitly disapproving of an arbitrary threshold for defining foreign taxpayers’ world income.[3] Most recently, the ECJ gave a preliminary ruling requested by the *Hoge Raad* (Supreme Court) in the Netherlands in the case X, also known as the Spanish football broker.[4] In this case, the ECJ ruled that the resident taxpayer in Spain, who earned 60% of his global income in the Netherlands and 40% in Switzerland, was eligible for Dutch mortgage-interest deductions. The ECJ ruling challenges the legislator’s definition of the Schumacker doctrine in the case of self-employed individuals as it makes the enjoyment of personal tax benefits not dependent on satisfying any particular income threshold, but rather contingent on the issue whether or not these benefits can be enjoyed in the state of residence. Should the state of residence not be in a position to grant these benefits (because it may not tax sufficient income), the ECJ ruled, then the state in which the taxpayer is a non-resident should award them in proportion to the income earned in that state.

In this dossier, we assess the potential cross-border impact of the qualifying foreign taxpayer obligation. The assessment focuses in particular on non-resident workers who are potentially

[1] ECJ 14 February 1995, Case-279/93 (Schumacker), Jur.1995, p. I-225.
[2] ECJ 18 March 2010, Case-440/08 (Gielen), NTFR 2010/795, Jur.2010. p. I-2323.
[3] ECJ 10 May 2012, Case C-39/10 (Commission v. Estonia), NTFR 2012/1371; ECJ 09 February 2017, Case C-283/15 (X).
[4] ECJ 09 February 2017, Case C-283/15 (X). See also H. Arts and J. Korving, De kwalificerende buitenlandse belastingplicht van art. 7.8 IB en het EU-recht. In: Grenseffectenrapportage 2016, Institute for Transnational and Euregional cross border cooperation and Mobility/ITEM, pp. 188-198.

affected by the 90% rule. In this first inventory of the potential impact of the QFTO, we focus on this group of persons who are employed in the Netherlands, but reside outside of the Netherlands, as they are likely the largest group affected by the rule. These non-resident workers, if they neither earn 90% of their world income in the Netherlands, nor have a sufficient taxable income in their country of residence, risk forfeiting tax benefits, e.g. mortgage-interest deductions for owner-occupied dwellings. Moreover, the rule may not only impact frontier workers but also have detrimental economic effects if such non-resident workers decide against an employment in the Netherlands and prefer to work in their country of residence. In such a scenario, especially employers in border regions should be concerned, given that the majority of non-resident workers are employed in areas along the Dutch border. Furthermore, nearly half of all non-resident workers are part-time employees who may be affected by the 90% threshold if (i) they have a second source of income in the country of residence or a third country, and (ii) their partners are not entitled to the status of qualifying foreign tax subject.

In the following, the dossier provides a statistical overview of the group of non-resident workers on 1 December 2014, one month before the 90% rule came into force. In this manner, we provide an ex-ante estimate of the potential cross-border impact of the QFTO introduced in 2015. Furthermore, the dossier maps out future avenues for data acquisition and analysis to prepare the ground for an ex-post assessment of the legislation's effect on cross-border worker mobility in the EU.

2. Objectives & Method

2.1 The Effects Today and In the Future: Ex-Post or Ex-Ante

This dossier employs an ex-ante approach in estimating the number of non-resident employees in the Netherlands as of 1 December 2014, one month before the status of the qualifying foreign tax subject under Article 7.8 of the Dutch Income Tax Act 2001 was amended. On the one hand, this estimation shows how many individuals and which demographic sub-groups are likely to be affected by the change in legislation. On the other hand, it establishes the status quo of non-resident employment in the Netherlands in 2014, which serves as a baseline against which future statistics can be evaluated.

Generally, assessing the effect of the 90% rule on labour mobility requires information on non-resident workers who filed a tax return in the Netherlands. The number of tax returns by non-residents for a fiscal year indicates which individuals from the population of non-resident workers claimed tax deductions under the optional scheme in 2014. Thus, they are the group of non-resident workers potentially affected by the QFTO if they earn less than 90% of their world income in the Netherlands. Non-resident workers who did not claim a tax refund at the end of a fiscal year did not make use of the optional scheme.

The data used in this impact assessment was provided by Statistics Netherlands and is made available in the harmonized output database of the *Stelsel van Sociaal-statistische Bestanden* (SSB), which provides processed registry data from various public administrations. However, tax registry data for the non-resident population is not processed and integrated into the SSB. In the absence of usable tax registry data at Statistics Netherlands (see section 4 below), we use data from the *Polisadministratie* and link these with data from the Municipal Personal Records Database (*BRP*). The

BRP contains personal information, such as the address of residence, age, and gender of all individuals who register with and currently live in a Dutch municipality. Both are contained in the SSB and can be connected by using an individual's random identification number (RIN). Similar to the BSN, the RIN identifies individuals in all Dutch registries and even in survey data, so that observations for individuals can be linked across different sources. The *Polisadministratie* is a registry managed by the Employee Insurance Agency or 'Uitvoeringsinstituut Werknemersverzekeringen' (UWV). It registers income data for employees in the Netherlands including information on social security contributions, pensions, and life insurances. The register lists only contracted employees for whom employers withhold payroll tax on their monthly salary (*loonbelasting)*. Some of these individuals may request a tax return or are obliged to file one.

By linking data from the *Polisadministratie* and the Municipal Personal Records Database, it is possible to identify the population of non-resident employees who are subject to payroll tax in the Netherlands. Consequently, non-resident employees are defined as those persons included in the *Polisadministratie* who are not registered in the Municipal Personal Records Database. In other words, linking the registries and eliminating the resident population from the employment data enables us to identify the target population as of 1 December 2014, one month before the 90% rule took effect. A limited set of background information is available for this population. In the following, this group is analysed by demographic characteristics,[5] country of residence, nationality, employment status and sector, as well as the region of employment in the Netherlands.

At present, the dossier can only provide a preliminary *ex-ante* assessment of the potential impact of the 90% rule. This prepares the ground for analysing whether the QFTO is associated with variation in the population of non-resident workers. An ex-post assessment is not possible at the moment as it encounters two challenges: one related to the time lag with which data for an assessment is collected and processed; another related to data availability on cross-border issues, particularly non-resident workers. Firstly, the assessment cannot be *ex post* because income data is only available up until the end of 2014 and not for a sequence of years following the legislation. Secondly, the assessment can only be a preliminary estimation because tax registry data for non-resident employees is generally not processed and accessible through the data system of Statistics Netherlands. Therefore, section 4 explains which data sources can be made available for future assessments.

2.2 Definitions: Non-Resident Employees, Employment Status, Border Region

The dossier defines non-resident workers as individuals who work but do not reside in the Netherlands. This definition excludes self-employed people as data from the *Polisadministratie,* only including contracted employees who pay income tax through monthly deductions from their salary by their employer. To become a qualifying foreign taxpayer under Article 7.8 Dutch Income Tax Act 2001, non-resident workers must (1) be a resident in a EU Member State or a state which is party to the EEA, Switzerland or the BES islands, (2) earn 90% or more of their income in the Netherlands, (3) provide a certified statement of income from the tax authority in their country of residence to the

[5] Information on the age group distribution among non-resident workers is unreliable as only the age of 32.3% of the population is known. The missing data for this variable exemplify the fact that data from the original registry (the *Polisadministratie* contains the age for all individuals) is lost along the processing stages from the input raw data to the output data system (SSB).

Dutch tax authority. Exceptions apply to pensioners and taxpayers who are not taxable for the entire year in the Netherlands.

To assess which groups are particularly affected by the 90% rule, the dossier presents non-resident employees disaggregated by employment status, gender, nationality, country of residence, professional sector, and COROP of employment. Employment status refers to the contracted number of weekly hours worked by an employee. Employees work either full-time, defined as a full day and week job, or part-time, defined as a special arrangement between the employee and the employer that determines the number of work hours below full-time employment. Non-resident workers' nationality refers to the country of which they hold citizenship. This is not necessarily their country of residence. For instance, a substantial number of German and Belgian residents has the Dutch nationality. In the data set that was used for this analysis, nationality is disaggregated by the major groups within the population: Dutch, Polish, Belgian, and German. The category 'Other' refers to citizens from any other state including non-European nationals. Likewise, only the major countries of residence of non-resident employees (Poland, Belgium, and Germany) are on display in the descriptive statistics below. Based on the statistical classification of economic activities in the European Community (NACE), non-residents are also grouped by sector of employment. Jobs are attributed to NACE and then aggregated by four employment sectors: (1) agriculture, (2) industrial jobs, e.g. in textile manufacturing, (3) commercial services in the private sector such as banking, commerce or marketing as well as (4) public and social services including teachers or nursing jobs.

Furthermore, the dossier defines border region as the Dutch NUTS3/COROP areas that are directly located along the Dutch-Belgian and Dutch-German borders, in distinction to COROP areas that are non-border regions. In total, there are 40 COROP areas in the Netherlands, 14 of which are border regions. Five areas are located along the Belgian border (Zeeuwsch-Vlaanderen, Overig Zeeland, West-Noord-Brabant, Midden-Noord-Brabant, Zuidoost-Noord-Brabant), seven along the German border (Oost-Groningen, Zuidoost-Drenthe, Noord-Overijssel, Twente, Achterhoek, Arnhem/Nijmegen, Noord-Limburg), and two (Midden-Limburg and Zuid-Limburg) share a border with both Germany and Belgium. Our definition of border region only refers to the Netherlands, but excludes German or Belgian NUTS3 regions that share a border with the Netherlands. To date this information is not available because only the country but not the exact address of residence outside the Netherlands is available from the data on non-resident workers.

2.3 The Theme of Investigation: Principles, Benchmarks, Indicators

2.3.1 Theme of Dossier

This impact assessment aims to estimate the number of non-resident workers that are potentially affected by the introduction of the 90% rule under Article 7.8 of the Dutch Income Tax Act 2001. The QFTO is expected to affect European integration more generally and the freedom of movement of workers and of establishment in particular (Art. 45 and Art. 49 TFEU). By assessing the status quo on 1 December 2014, one month before the new tax regime took effect, the results of this dossier can be considered a benchmark against which future statistics should be evaluated. As data from the tax registry is not readily available for non-resident workers, section 3 of this dossier presents statistics on the population's demographic characteristics and employment-related information, which is often associated with the decision to file a tax return. Therefore, the potential effect of the new tax system on the number of non-resident employees can only be assumed.

2.3.2 Principles, Benchmarks, and Indicators for a Positive Situation in the Border Region

Table 1: Principle, Benchmarks and Indicators for assessing the impact of the QFTO on European integration

Theme	Principles	Benchmarks	Indicators
European integration	Article 45 TFEU Freedom of Movement for Workers Article 49 TFEU Freedom of Establishment (for self-employed) Case C-279/93 (Schumacker) ("Schumacker Doctrine")	The situation on 1 December 2014 is the benchmark for free movement of labour and the proper application of the Schumacker doctrine.	The number of non-resident workers in the Netherlands who have submitted a tax return in 2014 serves as a benchmark for assessing the effect of the 90% rule on this group. As tax registry data is not available yet, the number of non-resident workers in general serves as a proxy.

3. Evaluation of the Theme European Integration

The qualifying foreign taxpayer obligation (90% rule) likely has an adverse effect on labour mobility in the cross-border region and the number of non-resident workers. This is problematic as many employers benefit from intra-EU labour mobility in the light of labour or skills shortages. It is expected that employers must increase incentives for retaining experienced and skilled non-resident workers in their companies because the indirect costs for some non-residents increase under the new regulation. The following accounts for the situation of non-resident workers in the Netherlands in December 2014. First, the assessment maps out the potentially affected groups and sectors. Next, it zooms in on the cross-border region and South Limburg in particular.

3.1 Identifying the Population and Sub-Groups of Non-Resident Workers

Overall, there are 131.2 thousand non-resident employees in the Netherlands. This number does not include self-employed non-resident workers because employment data comes from the *Polisadministratie*, which registers employees by their employer, who deducts payroll tax (*loonbelasting*), social security (SVB) and pension fund contributions from their monthly salary.

Table 2 shows that Dutch citizens represent the largest sub-group of non-resident workers in the Netherlands (43.4 thousand). They mostly live in Belgium (22.5 thousand) and Germany (16.1 thousand). Another third of non-residents are Polish nationals (42.6 thousand), most of whom reside in Poland (41.3 thousand) and a far smaller, yet remarkable number in Germany (2.6 thousand). Polish residents also constitute the biggest group of non-resident workers in the Netherlands, followed by Belgian (38.4 thousand) and German residents (34.3 thousand). Belgian and German residents more likely commute to the Dutch border regions on a daily basis as they live in the neighbouring countries. Commuters may more likely claim tax returns from the Dutch authorities for transport-related costs. Further, some persons only decide to reside in Belgium or Germany because of the favourable housing prices (Dossier 1 on Dutch-German Tax Treaty, Impact Assessment 2016) but still consider the Netherlands as their fiscal domicile. Surprisingly, the number of German and

Belgian citizens is nearly 3 times smaller than the number of Polish and Dutch nationals (11.4% and 11.0% of non-resident workers, respectively). All other nationalities and foreign residents who work in the Netherlands make up 11.6% of the population. Therefore, they are not listed at disaggregated level but merged into the category 'Other'. Numbers and rates for these groups are available on request.

Table 2: Number of non-resident employees (in thousands) by country of residence, nationality, and employment status

Country of residence			**Employment status**		**Total**
			Full-time	**Part-time**	
Germany	Nationality	NL	9.4	6.7	16.1
		DE	9.5	4.4	14.0
		PL	1.6	1.0	2.6
		Other	0.9	0.5	1.4
		Missing	0.3	0.0	0.3
	Total		21.7	12.6	34.3
Belgium	Nationality	NL	12.9	9.7	22.5
		BE	8.2	6.1	14.3
		Other	1.0	0.5	1.5
		Missing	0.1	0.1	0.2
	Total		22.1	16.3	38.4
Poland	Nationality	NL	0.4	0.4	0.9
		PL	17.6	22.1	39.7
		Other	0.3	0.4	0.7
		Missing	0.0	0.0	0.0
	Total		18.3	22.9	41.3
Other	Nationality	NL	2.8	1.2	4.0
		Other	6.5	6.6	13.1
		Missing	0.2	0.0	0.2
	Total		9.4	7.8	17.2
Total	Nationality	NL	25.4	18.0	43.4
		DE	10.0	4.9	14.9
		BE	8.3	6.1	14.4
		PL	19.4	23.2	42.6
		Other	7.9	7.3	15.2
		Missing	0.5	0.2	0.7
	Total		71.6	59.6	131.2

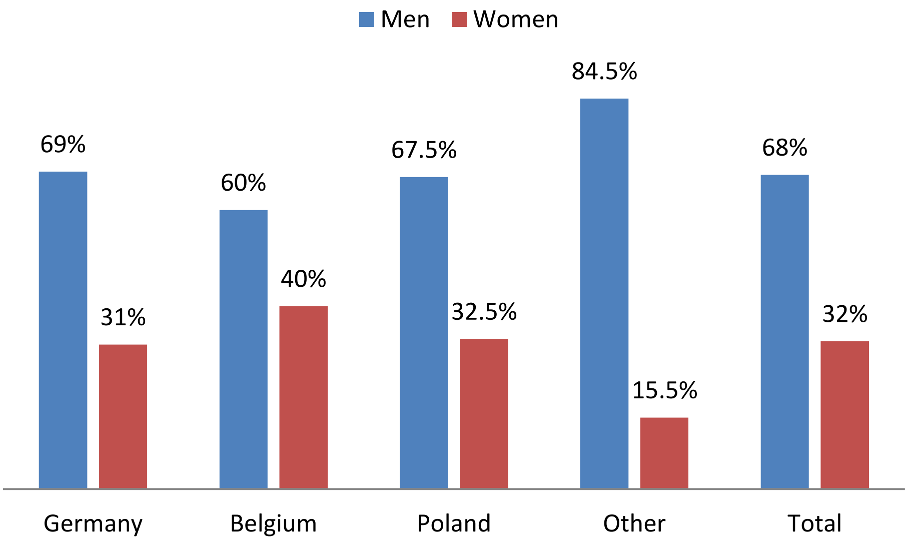
The majority of non-resident workers (54.6%) is employed full-time. This ratio is only partly reflected when data on employment status is disaggregated by nationality and country of residence (table 2). Whereas German, Belgian, and Other residents work predominantly full-time in the Netherlands, Polish residents are more often employed part-time. Similarly, Dutch, German, Belgian, and Other nationals are more often in full-time rather than in part-time employment, while Polish nationals more likely work part-time. As Poland, unlike Germany and Belgium, is not a Dutch border country, a possible scenario would be that of a Polish worker resident in the Netherlands for seasonal employment who returns to his/her country of residence for other employment. Part-time workers may be particularly concerned by the 90% rule, because they more likely have other employment or another source of income outside the Netherlands. Consequently, part-time workers are less likely to earn 90% of their global income in the Netherlands. Thus, they pay income taxes on the share of their income earned in the Netherlands but do not receive the same tax deductions as resident workers and non-resident workers earning at least 90% of their income in the Netherlands.

Full-time employees who file a tax return may also be affected by the 90% rule. Their income is not only calculated based on their salary, since non-resident workers submit a financial statement from their country of residence to the Dutch authorities, which also accounts for income generated from assets (-liabilities). Especially expatriated Dutch nationals who work in the Netherlands may be adversely affected as they are most likely informed about Dutch tax regulations. A situation is conceivable where a Dutch national bought a property in the country of residence under the assumption to benefit from the same mortgage-interest rate deductions ('hypotheekrentaftrek') as domestic taxpayers, even if earning less than 90% of the world income in the Netherlands. This situation changed as of 1 January 2015, and the individuals earning less than 90% of their world income in the Netherlands no longer benefit from these deductions while being levied payroll taxes. In the case of self-employment, the ECJ considers this law a violation of the freedom of establishment (Art.49 TFEU).[6]

Furthermore, more men than women may be directly affected by the 90% rule. Of all non-resident employees, 89 thousand (68%) are men, 42 thousand (32%) women. The gender balance does not vary significantly across the employees' country of residence, except for residents from countries other than Belgium, Poland, and Germany (Figure 1). Moreover, most non-resident employees are over 25 years old (2.1% are aged between 15 and 25). 15.7% are between 25 and 45 years old and 13.9% are over 45 and under 65. 0.7% are older than 65. Thus, especially middle-aged employees, who more likely have a family with younger children, are potentially targeted by the legislation. This age group more likely invests in real estate, but can no longer benefit from mortgage-interest rate deductions if the household income earned in the Netherlands is below the 90% threshold. However, as mentioned before, when interpreting information on the age group distribution among non-resident workers, it is important to acknowledge that this information is not yet complete.

[6] ECJ 16 October 2008, Case C-527/06 (Renneberg), NTFR 2008/2144, Jur. 2008, p. I-7735.

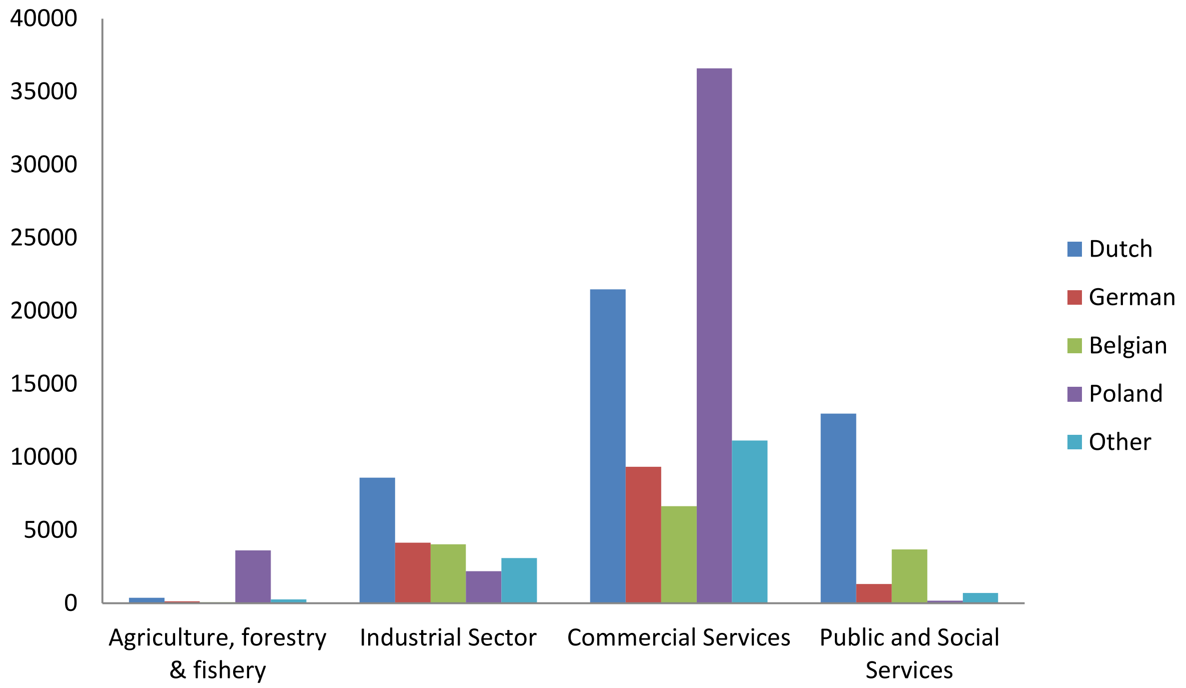
Figure 1. Gender distribution among non-resident workers by country of residence



The 90% rule also has a differential effect across work sectors. 65.2% of non-resident workers are employees in the commercial service sector, 17% work in industrial jobs, 14.4% work in non-commercial, and 3.4% in agriculture (absolute numbers are displayed by nationality in Figure 2). The relatively small primary sector mainly employs Polish nationals (81.1%). The secondary sector is dominated by Dutch nationals who reside outside the Netherlands (38.6%), but also employs a significant share of German and Belgian nationals (18.6% and 18.1%, respectively). The commercial service sector, which is the largest employer of non-resident workers in the Netherlands, is dominated by Polish (42.8%) and Dutch nationals (25.1%). The non-commercial service sector mainly employs Dutch nationals (68.6%), followed by Belgian citizens (19.4%). Comparatively few German (6.9%) and Polish nationals (0.9%) work in this sector.

Disaggregated in 20 NACE sectors (A – U), the largest group of non-residents (50.2 thousand) works in administrative and support service activities (NACE N) including jobs in the rental and leasing business, travel agencies, call centres, security and investigation, cleaning, or office administration. Polish nationals constitute by far the majority in this group: 33.6k Polish nationals compared to the second largest group, 3836 Dutch nationals, exercise these professions. The second largest group of non-residents works in manufacturing (NACE C) (16.6 thousand). Most of these employees are Dutch nationals (6.4 thousand), followed by Belgian (3.5 thousand) and German (3.2 thousand) citizens. Trade (NACE G) is the third largest sector for non-resident employees (14.0 thousand). Most jobs in this sector are occupied by Dutch nationals (6.9 thousand). All other sectors employ less than 10% of the non-resident worker population.

Figure 2. Number of non-resident employees by sector and nationality



3.2 Potential Effects of the QFTO on the Border Region

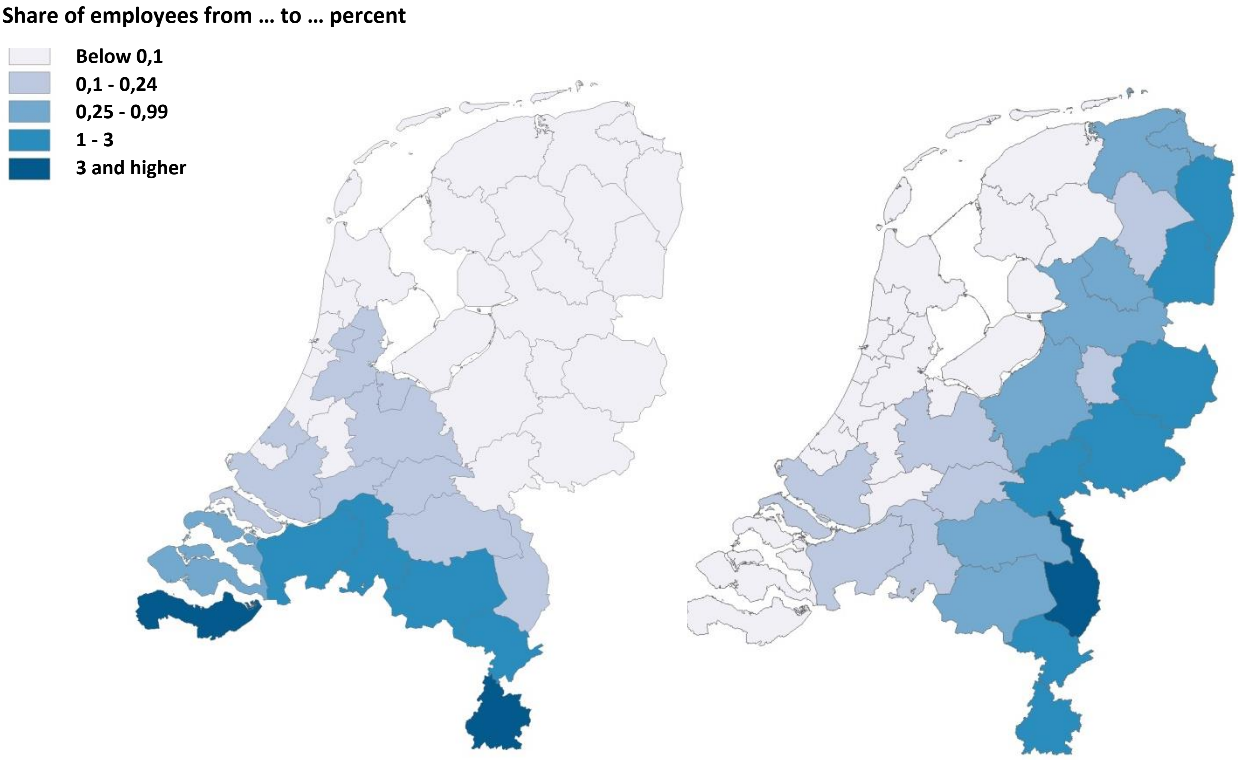
Zooming in on the border region, it is clear that cross-border labour mobility is particularly relevant for Dutch border regions (table 3). The 14 COROP areas along the Dutch-German and Dutch-Belgian borders employ the majority of non-resident workers (63.4%). Most of them are Belgian or German residents, hence they likely commute to their workplace on a daily basis. The map in Figure 3 reveals that the area of the Southern Netherlands benefits most from the freedom of movement for workers inside the EU. Compared to other regions, the COROPS in this Province employ most non-resident workers in absolute terms and relative to the total employed population. Belgian residents mostly work in Zuid-Limburg (33.0%), Zuidoost-Noord-Brabant (19.7%), and West-Noord-Brabant (11.1%), which are COROPS that share a border with Belgium. German residents mostly work in Twente (21.3%), Noord-Limburg (13.3%), Arnhem/Nijmegen (10.4%), Zuid-Limburg (9.7%), and Achterhoek (9.0%), which are all regions located along the Dutch-German border.

In addition, Zuid-Limburg and Midden-Limburg hold a special position because they share a border with both Germany and Belgium. Zuid-Limburg is the region with the largest number of non-resident employees in the Netherlands (16.7 thousand). While only 20% of them are German residents, 76% live in Belgium. Zuid-Limburg is also the COROP area with the highest rate of non-residents workers relative to the total employed population in the region. 6.63% of the total employed population in this area commute across the border, mostly from Belgium (5.25%), but also from Germany (1.35%) (Figure 3; see Table A3 for details). While the number of non-resident employees is relatively small in Midden-Limburg, it is one of the COROP areas with the highest rate of non-resident employees relative to the employed population (3.63%). Hence, the 90% rule likely reduces the positive effects of EU labour mobility in the Dutch border regions. While some workers may be willing to move to the Netherlands, others might decide to change their employer to benefit from tax deductions in their country of residence.

Table 3. Non-resident employees by NUTS3/ COROP areas in thousands and relative to total number of non-resident employees

NUTS1 region (landsdeel)	NUTS3/COROP region	Number (1000s)	%
Northern Netherlands	Oost-Groningen	0.6	0.5
	Delfzijl en omgeving	0.2	0.2
	Overig Groningen	0.7	0.5
	Noord-Friesland	0.1	0.1
	Zuidwest-Friesland	0.1	0.1
	Zuidoost-Friesland	0.1	0.1
	Noord-Drenthe	0.3	0.3
	Zuidoost-Drenthe	1.5	1.1
	Zuidwest-Drenthe	0.3	0.2
Eastern Netherlands	Noord-Overijssel	1.0	0.8
	Zuidwest-Overijssel	0.2	0.1
	Twente	8.0	6.1
	Veluwe	2.1	1.6
	Achterhoek	3.7	2.9
	Arnhem/Nijmegen	5.2	4
	Zuidwest-Gelderland	2.5	1.9
	Flevoland	1.5	1.2
Western Netherlands	Utrecht	8.7	6.7
	Kop van Noord-Holland	1.9	1.5
	Alkmaar en omgeving	0.3	0.2
	IJmond	0.6	0.5
	Agglomeratie Haarlem	0.6	0.5
	Zaanstreek	0.2	0.1
	Groot-Amsterdam	5.9	4.5
	Het Gooi en Vechtstreek	0.4	0.3
	Agglomeratie Leiden en Bollenstreek	1.7	1.3
	Agglomeratie's-Gravenhage	2.0	1.5
	Delft en Westland	2.0	1.5
	Oost-Zuid-Holland	0.8	0.6
	Groot-Rijnmond	6.4	4.9
	Zuidoost-Zuid-Holland	2.3	1.8
	Zeeuwsch-Vlaanderen	1.9	1.5
	Overig Zeeland	0.8	0.6
Southern Netherlands	West-Noord-Brabant	8.1	6.2
	Midden-Noord-Brabant	4.7	3.6
	Noordoost-Noord-Brabant	3.5	2.7
	Zuidoost-Noord-Brabant	11.0	8.4
	Noord-Limburg	11.2	8.6
	Midden-Limburg	3.9	3
	Zuid-Limburg	16.7	12.7
Missing		7.3	5.6
Total		131.2	100

Figure 3. Commuting non-resident workers from Belgium (left) and Germany (right) as share of the total employed population by COROP/NUTS3 region



Share of Belgian commuters in total employed population | **Share of German commuters in total employed population**

4. Conclusions from a Euregional Perspective

4.1 Substantive conclusions

In conclusion, this impact assessment identified and analysed the population of non-resident workers in the Netherlands as of 1 December 2014 in the context of the introduction of the Qualifying Foreign Taxpayer Obligation (90% rule) in January 2015. Overall, there are over 130 thousand non-resident employees. Part-time employees in the Netherlands who have another source of income outside the Netherlands are particularly likely to be affected by the 90% threshold if they file a tax return. Dutch nationals, who mainly (but not exclusively) reside in Belgium or Germany, as well as Polish nationals constitute the major groups among non-resident employees. Yet, there are also significant groups of German and Belgian nationals who reside in their country and work in the Netherlands who may be affected by the new legislation. Across all nationalities, most non-resident workers are employed in the commercial service sector. Yet, a sizable number of Dutch nationals work in the public and social services as well as in the industrial manufacturing sector. While the number of Polish nationals is highest in the commercial service sector, they represent the major share of agricultural non-resident workers. These sectors may have experienced a decline in non-resident workforce after the 90% rule took effect.

In addition, the border region is highly affected by the shift from the optional scheme to the qualifying 90% regime. Over 60 per cent of all non-resident workers are employed in the 14 COROP regions along the Dutch-German and the Dutch-Belgian borders. Many of these non-resident workers commute from Belgium or Germany. South Limburg, the COROP region that employs nearly 10 per cent of all non-resident workers, may experience a decline in EU workers who do not live in the Netherlands. Thus, the 90% rule likely decreases worker mobility inside the EU, especially in the border region. Paradoxically, while the interpretation of the Schumacker doctrine by the Dutch legislator sought to transpose European law to Dutch law, its implementation likely infringes on the principles of European freedom of movement.

4.2 Future Outlook

This impact assessment can only be ex ante and preliminary because of three challenges that were encountered during the data collection process. First, at the time of completing this report (11 August 2017), processed tax returns are only complete for the fiscal year 2014. Non-resident taxpayers are required to submit an income statement from their country of residence to submit their tax returns in the Netherlands. Consequently, they submit their tax returns relatively late, up to 3 years after the end of the fiscal year of reference. If the 90% rule has an effect on a non-resident employees' decision to work in the Netherlands, it likely does not show immediately after the legislation took effect but with a one or two year time lag. Thus, changes will only become noticeable in tax registry data as of the fiscal year 2016, which will not be complete before 2019. Consequently, an ex-post assessment is only possible with a significant delay. Forecasting techniques using observations on tax subjects from previous years could make early income tax-related predictions. However, they may not be easily exploited in this case, because the QFTO creates unstable forecasting conditions by changing the legal setting.

Second, for an assessment of the ex-post impact of the new tax regime, data must include relevant information about taxpayers' income in the Netherlands, in their country of residence, and possibly in third countries. However, tax registry data for non-residents, particularly their exact income situation, is not readily available. From the *Polisadministratie*, it is impossible to distinguish between non-resident workers who pay social security contributions and income taxes but do not submit a financial statement in the Netherlands and those who do declare their income situation. Although Statistics Netherlands receives the original data on all tax subjects in the Netherlands from the Dutch tax authority, the relevant tax registry data for non-residents is only available as raw data and still requires formatting, variable selection, and ID-encrypting (RIN) before being accessible in the harmonized output data base (SSB). In the future, this data could be made available, which would allow an ex-post impact assessment of the QFTO on the cross-border economy, including labour-market dynamics and the attractiveness of the cross-border region for employers and employees. Importantly, the raw data also includes a variable indicating whether a non-resident applied for domestic taxpayer status. Changes in this variable relative to the total number of non-resident employees should be observed over time to assess the effects of the 90% rule. This exercise involves non-standard activities and thus involves substantial resources and amounts of time to carry out these tasks. Therefore, this should be carefully planned. A quantitative assessment could be combined with qualitative interviews with HR managers and employees to assess their experience with the new tax rule.

Third, this dossier uses a minimal definition of the term border region as it excludes German and Belgian regions along the Dutch border. This information is of particular use to evaluate whether the effects of the QFTO are more pronounced in the Euregion. For example, a more general impact assessment could include implications of the tax regime on the local housing market in some of the areas that are interesting for frontier workers, both on the Dutch side of the border, as well as in Germany and Belgium. Unfortunately, data on the exact address of non-resident workers in their country of residence is not yet available. However, in the course of 2017, the so-called 'non-resident registration' (*niet-ingezetenen registratie*) will be made available by Statistics Netherlands within the SSB. Consequently, future assessments can be more accurate with regards to the non-resident workers' identity, their precise tax situation, and country of residence.

5. Annex

Table A1. Number and share of non-resident employees in COROP areas along the Belgian and the German borders

	NUTS3/ COROP area	Frequency	Percent	Valid Percent
COROP along German border	Oost-Groningen	0.6	0.5	0.5
	Zuidoost-Drenthe	1.5	1.1	1.2
	Noord-Overijssel	1.0	0.8	0.8
	Twente	8.0	6.1	6.5
	Achterhoek	3.7	2.9	3
	Arnhem/Nijmegen	5.2	4	4.2
	Noord-Limburg	11.2	8.6	9.1
COROP along Belgian border	Zeeuwsch-Vlaanderen	1.9	1.5	1.6
	Overig Zeeland	0.8	0.6	0.7
	West-Noord-Brabant	8.1	6.2	6.5
	Midden-Noord-Brabant	4.7	3.6	3.8
	Zuidoost-Noord-Brabant	11.0	8.4	8.9
Along both borders	Midden-Limburg	3.9	3	3.2
	Zuid-Limburg	16.7	12.7	13.5
Other COROP		45.4	34.6	36.6
Valid Total		123.9	94.4	100
Missing		7.3	5.6	
Total		131.2	100	

Table A2. Number and relative share of non-resident workers by region and employment status

		Employment Status		Total
		Full-time	Part-time	
Zuid-Limburg	DE	1.9	1.4	3.3
	BE	7.1	5.6	12.7
	PL	0.2	0.2	0.5
	Other	0.1	0.1	0.2
Sub-Total		9.4	7.4	16.7
Midden-Limburg	DE	0.8	0.5	1.4
	BE	1.2	0.8	2.0
	PL	0.2	0.2	0.4
	Other	0.1	0.1	0.2
Sub-Total		2.2	1.7	3.9
COROP area along German border	DE	13.4	7.4	20.8
	BE	0.5	0.3	0.8
	PL	3.3	4.4	7.7
	Other	1.1	1.0	2.1
Sub-Total		18.2	13.1	31.3
COROP area along Belgian border	DE	1.1	0.5	1.6
	BE	9.6	6.7	16.4
	PL	2.8	3.9	6.7
	Other	1.0	0.9	1.9
Sub-Total		14.5	12.0	26.5
Other	DE	3.7	2.2	5.9
	BE	3.5	2.6	6.0
	PL	10.8	12.9	23.7
	Other	5.7	4.1	9.8
Sub-Total		23.6	21.8	45.4
Total	DE	21.7	12.6	34.3
	BE	22.	16.3	38.4
	PL	18.3	22.9	41.3
	Other	9.4	7.8	17.2
Missing		3.6	3.7	7.3
		71.6	59.6	131.2

Table A3. Commuters from Belgium and Germany relative to COROP regions' employed population

NUTS1 region (landsdeel)	NUTS3/ COROP region	Share of non-residents in total employed population German residents	Belgian residents	Total
Northern Netherlands	Oost-Groningen	1.06%	0.02%	1.08%
	Delfzijl en omgeving	0.28%	0.10%	0.38%
	Overig Groningen	0.25%	0.03%	0.28%
	Noord-Friesland	0.04%	0.01%	0.05%
	Zuidwest-Friesland	0.04%	0.03%	0.07%
	Zuidoost-Friesland	0.04%	0.01%	0.05%
	Noord-Drenthe	0.23%	0.01%	0.24%
	Zuidoost-Drenthe	1.86%	0.06%	1.92%
	Zuidwest-Drenthe	0.35%	0.02%	0.37%
Eastern Netherlands	Noord-Overijssel	0.41%	0.03%	0.43%
	Zuidwest-Overijssel	0.20%	0.02%	0.22%
	Twente	2.79%	0.03%	2.82%
	Veluwe	0.25%	0.05%	0.30%
	Zuidwest-Gelderland	0.21%	0.16%	0.37%
	Achterhoek	2.01%	0.03%	2.04%
	Arnhem/Nijmegen	1.15%	0.08%	1.22%
	Flevoland	0.06%	0.07%	0.13%
Western Netherlands	Utrecht	0.18%	0.22%	0.41%
	Kop van Noord-Holland	0.06%	0.03%	0.09%
	Alkmaar en omgeving	0.02%	0.02%	0.04%
	IJmond	0.08%	0.03%	0.11%
	Agglomeratie Haarlem	0.03%	0.04%	0.06%
	Zaanstreek	0.03%	0.12%	0.15%
	Groot-Amsterdam	0.07%	0.11%	0.18%
	Het Gooi en Vechtstreek	0.06%	0.11%	0.16%
	Agglomeratie 's-Gravenhage	0.04%	0.12%	0.16%
	Delft en Westland	0.06%	0.10%	0.16%
	Agglomeratie Leiden en Bollenstreek	0.02%	0.09%	0.12%
	Oost-Zuid-Holland	0.08%	0.08%	0.16%
	Groot-Rijnmond	0.10%	0.21%	0.31%
	Zuidoost-Zuid-Holland	0.09%	0.25%	0.33%
	Zeeuwsch-Vlaanderen	0.04%	4.69%	4.74%
	Overig Zeeland	0.03%	0.31%	0.34%
Southern Netherlands	West-Noord-Brabant	0.11%	1.50%	1.61%
	Midden-Noord-Brabant	0.11%	1.16%	1.28%
	Noordoost-Noord-Brabant	0.31%	0.21%	0.52%
	Zuidoost-Noord-Brabant	0.27%	2.06%	2.32%
	Noord-Limburg	3.38%	0.23%	3.62%
	Midden-Limburg	1.49%	2.14%	3.63%
	Zuid-Limburg	1.38%	5.25%	6.63%

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