

# PAYROLL SERVICE LETTER

Publication of the BDO Payroll Tax & Social Security Group

## EMPLOYEE INSURANCES

PAGINA 1

## NATIONAL INSURANCES

PAGINA 2

## MEDICAL INSURANCE

PAGINA 2



### FOREIGN SOCIAL INSURANCE CONTRIBUTIONS AND YOUR PAYROLL ACCOUNTS

Many Dutch employers use workers from abroad. These workers are generally compulsorily insured in the Netherlands under the social insurance legislation. However, exceptions to this obligation are possible. Examples would be where the person concerned is on temporary secondment or is employed simultaneously in two or more countries. Situations can occur in which an employee owes social insurance contributions in another country on income earned in the Netherlands. The question then arises of how a Dutch employer should deal with these social insurance contributions payable abroad (the employer's or the employee's part, as the case may be), insofar as the sum earned by the employee in the Netherlands constitutes pay from which payroll tax must be withheld. This question is specifically addressed in this Service Letter.

#### Employee insurances

Under the Payroll Tax Act (Wet op de Loonbelasting) 1964 the following entitlements and contributions are not treated as taxable pay for the purposes of the employee insurances:

- entitlements under the Sickness Benefits Act (ZW), the Work and Care Act (Wazo), the Work and Income (Capacity for Work) Act (WIA), the Invalidity Insurance Act (WAO) and the Unemployment Insurance Act (WW);
- entitlements which are comparable in nature and scope to the above entitlement;
- amounts which are deducted as social insurance contributions or as contributions for entitlements comparable to those referred to above.

The employer's contributions for the Dutch employee insurances referred to above are therefore not taxed and any accompanying employee's contributions are, in principle, deductible at source.

The above also applies in full to foreign social insurance contributions which are comparable in nature and scope and to contributions for comparable entitlements which are deducted from the employee's pay.

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- ▶ Foreign social insurance contributions and your payroll accounts
  - Employee insurances
  - National insurances (including old age pensions)
  - Medical insurance
  - Comparison of foreign social insurance systems/zero option

Because people matter.

## National insurances (including old age pensions)

The basic rule in the case of national insurances is that contributions for foreign social insurance which have been paid by the employer and which are comparable in nature and scope to Dutch national insurances (i.e. the General Old Age Pensions Act (AOW), the Surviving Dependents Act (Anw), the Exceptional Medical Expenses Act (AWBZ) and the General Child Benefit Act (Akw)) are deemed to form part of the taxable pay and that contributions paid by the employee are not deductible for tax purposes.

Where the contributions are payable for a foreign old age pension, it may be necessary to check whether it qualifies as a true pension scheme within the meaning of the Payroll Tax Act 1964. If the foreign scheme corresponds to the Dutch General Old Age Pensions Act, the employer's contributions form part of the taxable pay and the employee's contributions are not deductible for tax purposes. If this is not the case but the scheme does correspond to a Dutch pension scheme in the true sense, the employer's contributions are in principle exempted and the employee's contributions are deductible for tax purposes.

If the employee is also insured under Dutch national insurance schemes, any contribution to a foreign scheme which is comparable in nature and scope to the Dutch national insurance schemes can be reimbursed by the employer out of the discretionary budget under the work-related costs scheme. Under the transitional law applicable up to and including 31 December 2014, this reimbursement by the employer could still take place untaxed.

## Medical insurance

Foreign statutory medical insurance schemes comparable to the Dutch statutory system can be divided into two parts for this purpose: one part (in particular, the basic insurance) corresponds to the Healthcare Insurance Act (Zvw), and the other part to the Exceptional Medical Expenses Act (AWBZ). As regards the part corresponding to the Exceptional Medical Expenses Act, we would refer you to the above text concerning national insurances. Under the Payroll Tax Act 1964, the income-related contribution levied on pay under the Healthcare Insurance Act and owed by the employer in the Netherlands is not deemed to form part of the employee's pay.

This is also why it is provided that employer's contributions owed abroad, which correspond in nature and scope to the income-related contribution owed for the basic insurance under the Healthcare Insurance Act do not form part of the employee's pay. This must concern an independent statutory obligation of the employer to contribute to the employee's statutory medical insurance abroad. The premium or contribution paid by the employee is not eligible for deduction for tax purposes.

However, an allowance paid by the employer to the employee for the premium or contribution owed by the employee for medical insurance and payments and allowances which correspond in nature and scope to the deliverables referred to in the Healthcare Insurance Act do form part of the taxable pay.

## Comparison of foreign social insurance systems/zero option

In view of the above, it is of the utmost importance for employers to examine, when the occasion arises, on what conditions foreign social insurances can be exempted from tax in the Netherlands (or contributions can be reimbursed untaxed), but it is naturally hard to assess whether and, if so, to what extent the foreign social insurance systems are comparable to the Dutch social security system. The following criteria should be applied when considering whether social insurances 'correspond in nature and scope':

- Is the insurance/participation compulsory or voluntary for the employees?
- Is the risk covered by the foreign insurances comparable to that covered by the Dutch insurances?
- How do the payments and allowances under the foreign insurances compare in terms of scope and duration to those under the Dutch insurances?

Insofar as the foreign contributions do not correspond to the Dutch ones, this should result in the employer's part being added as notional income to the pay taxable in the Netherlands, since the entitlement is taxable. In practice, this is why many employers often (deliberately or otherwise) use the so-called zero option in their payroll accounts. When the zero option is applied, no foreign employee's contributions are deducted from the pay taxable in the Netherlands, but equally the contributions owed by the employer are not added to this pay.

However, this zero option has no basis in law and its use in practice is therefore not permitted by the Tax and Customs Administration.

Owing in part to the complexity of this subject matter, the Tax and Customs Administration itself examines how foreign social security systems should be classified for tax purposes and how foreign social insurances should be assessed. It indicates for each country how the assessment has been made, what social insurances it relates to and whether the employer's contribution is exempted or taxed and whether or not the employee's contribution is deductible for tax purposes. The results of its assessments are published by a communication of the Directorate-General of the Tax and Customs Administration/Taxation Cluster and can serve as a guide for employers in determining how foreign social insurances should be dealt with in the Netherlands.

Naturally, our specialists can assist you in determining how foreign social insurance premiums should be processed in your payroll accounts and how they should be remitted abroad.

## MORE INFORMATION

The specialists of the Payroll Tax & Social Security Group are part of BDO HR Services, your advisor on all possible staff issues in every stage of your organisation's life. For more information see: [www.bdo.nl/hr-services](http://www.bdo.nl/hr-services).

Naturally, you can also contact us directly through the secretariat of the Payroll Tax & Social Security Group: +31 (0)70 338 08 08 or at [alp@bdo.nl](mailto:alp@bdo.nl).

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