VU UNIVERSITY AMSTERDAM Human Resource Management	06/2011 EU fellows - legal status *EU-fellows rechtspositie*

1. EU fellow

The European Union has launched a research and development programme to promote Europe's competitive position in the global marketplace. Part of this programme is to create a European system of research grants for postdoctoral scientists. The aim is to enable researchers from one Member State or Associated State to enhance their skills by conducting research at a university/research institute in another Member State or Associated State. These researchers are known as EU fellows.

2. Employment contract in accordance with Article 2.3 paragraph 10 sub e of the Collective Labour Agreement

In the opinion of the Dutch tax authorities, the situation of EU fellows (hereinafter referred to as Fellows) can be seen as employment as it meets the following three conditions for this category. Firstly, work is carried out; secondly there is an agreement concerning salary; and thirdly one party can be said to enjoy a position of authority with respect to the other.

Should there be any doubt about whether genuine employment is involved, the situation can at least be said to involve fictitious employment[1], as it meets the following three conditions for this category. Firstly, personal labour is performed; secondly, the individual's gross weekly income is typically at least 2/5 of the statutory minimum wage; and thirdly, the duration of the work relationship in question is for a period in excess of one month.

The temporary employment contract with the fellow is based on Article 2.3 paragraph 10 sub e of the Collective Labour Agreement ('... as a student in training for a profession or in connection with their further scientific or practical training').

3. Pay scale rules

In the case of such fellows, the normal pay-scale rules for academic staff apply. In those cases where the European Union allowance is insufficient to cover the resultant costs, the faculties must make up the difference from their own resources.

4. Not covered by the ABP Pension Fund

The ABP pension scheme is not applicable, on the basis of Article 1, sub g of the Order for the restriction of public employee status within the meaning of the Public Servants' Superannuation (Privatisation) Act (Ministerial Decree of 19 August, 1997, No. AB97/U1083, published in the Government Gazette on 28 August, 1997 and last amended on 3 February, 2002).
Accordingly, the fellow is subject to market sector social security schemes. In practice, this means that there is no entitlement to any extra-statutory benefits deriving from the public sector and education sector, such as ABP's extra-statutory Disability Retirement (AAOP) and the Extra-Statutory Unemployment Scheme for Dutch Universities (BWNU). Most fellows are not entitled to unemployment benefits, as they do not meet the availability requirement for the Dutch labour market once they have returned to their country of origin.

[1] Fictitious employment means that income tax must be paid (as if genuine employment was involved).

5. Liability for taxation in the Netherlands

Fellows who are resident in the Netherlands are liable for Dutch taxation. For tax purposes, a fellow's actual country of residence must be determined on the basis of the individual circumstances of each case. The main factors on which an assessment of this issue is based include the place of residence of the fellow's family, whether or not the individual in question owns property abroad, whether or not the fellow maintains financial and economic ties outside this country, and the length of their stay in the Netherlands. It is the tax authorities who ultimately determine where, for tax purposes, an individual is effectively resident.

6. Exemption from taxation liability in the Netherlands

Fellows who are not resident in the Netherlands can, on the basis of a tax treaty, be exempted from paying tax in the Netherlands or in their country of origin. This ensures that they are not subject to double taxation.

Professorial provision

The 'professorial provision' and the 'employment provision' are important in determining which country is entitled to levy tax on the individual in question. In general, the professorial provision means that professors, lecturers and scientific researchers who move from one state to another state for a limited period[2] (usually two years) to teach or to conduct scientific research at an educational institution, shall be exempted from taxation with regard to income received in the latter state. A treaty can incorporate additional conditions or restrictions.

Employment provision

For those cases in which the professorial provision does not apply, the employment provision may be applicable. This provision means that an individual who works in one state (but not on a self-employed basis) shall be taxed on the earnings from this work in the state in which the work in question was carried out.

If these provisions do not apply or if there is no treaty with the latter state, then the Netherlands is required to levy tax, except in those cases where the Dutch tax authorities have issued a ruling granting exemption from income tax in the Netherlands.

The following section lists those countries (and the associated conditions) which are subject to an exemption (either temporary or permanent) in accordance with the above-mentioned provisions.
Under the treaty's professorial provision, salary payments to fellows from the following countries will be exempt from taxation in the Netherlands for a period of up to two years: France, Ireland, Italy, Sweden, Portugal, Bulgaria, Estonia, Hungary, Israel, Latvia, Lithuania, Malta, Poland and Romania.

Use of the professorial provision is subject to the following additional conditions:

- During their stay in the Netherlands, fellows from the following countries are not allowed to relinquish their status as residents of their own country: France, Portugal, Sweden, Bulgaria, Hungary, Israel, Malta, Poland and Romania. Fellows from Sweden are subject to the additional requirement that they must have been invited to come to the Netherlands.
- Fellows from the following countries are also subject to the requirement that they must not have become resident in the Netherlands: Ireland, Italy, Estonia, Latvia and Lithuania.
- For fellows from the following countries, the professorial provision is only applicable if the fellow in question is doing teaching work: Belgium, Denmark, Germany, Greece, Spain and the Czech Republic.

The professorial provision is not applicable to fellows from the following countries: Great Britain, Northern Ireland, Luxembourg, Norway, Austria and Switzerland.

7. Legal obligation to pay contributions for employee insurance schemes and national insurance schemes

Fellows who are residents of the Netherlands are subject to mandatory Dutch national insurance contributions and employee insurance contributions. Under EU Regulation 1408/71, fellows who are not residents of the Netherlands are also subject to mandatory Dutch national insurance contributions and employee insurance contributions, unless the stay in question does not exceed 12[3] months and is on the

[2] Some treaties may refer to the intention to perform these activities for a period of two years, while others refer to an effective duration of two years.
[3] In some cases, the original country can approve an extension of no more than 12-months before the initial 12-month period has expired (Article 14 of the Regulation).

basis of a secondment from a post in their home country. The applicability of the EU Regulation allows for the aggregation of periods and the retention of acquired rights within the EU.

8. 30% ruling

Although there is sometimes a lack of clarity as to whether the requirement of ‘specific expertise not available in the Netherlands’ has been met, in practice the Dutch tax authorities do (occasionally) honour applications for use of the 30% ruling.

It should also be pointed out that, when completing their income tax declaration, fellows who are liable for taxation in the Netherlands have the option of designating part of the remuneration for job-related expenses as untaxed expenses. This might, for example, involve the cost of accommodation outside their home town or city for a period not exceeding two years. Given the range of fiscal variants involved, fellows should be advised to engage the services of a tax consultant.