Inland Revenue
Te Tari Taake

NETHERLANDS SOCIAL SECURITY PENSIONS - TAXATION WHEN THE RECIPIENT IS A NEW ZEALAND RESIDENT

PUBLIC RULING - BR Pub 98/6

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Law

All legislative references are to the Income Tax Act 1994 ("the Act"), and to the Double Taxation Convention between the Netherlands and New Zealand (which appears in the Schedule to the Double Taxation Relief (Netherlands) Order 1981, S.R. 1981/43) hereinafter referred to as "the Double Taxation Convention".

This Ruling applies in respect of Article 19(2) of the Double Taxation Convention.

The Arrangement to which this Ruling applies

The Arrangement is the periodic payment of a Netherlands social security pension to a person who is a resident of New Zealand, and there is no arrangement with the Department of Work and Income under section 70(3) of the Social Security Act 1964 to pay the person's Netherlands pension to that Department in order to receive the full rate of a benefit or benefits under that Act or the Social Welfare (Transitional Provisions) Act 1990.

If the recipient of such a pension is also eligible to receive a benefit or benefits under New Zealand's social welfare legislation and a reduction has been made to that New Zealand benefit by the Department of Work and Income under section 70(1) of the Social Security Act 1964, the Ruling only applies to the extent of the amount of the Netherlands pension over and above the amount of the reduction.

This person may be a national of the Netherlands, or of New Zealand, or of both countries.

For the purposes of this Ruling the word "national" has the meanings attributed to it by Article 3, paragraph 1.h of the Double Taxation Convention.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- When a New Zealand resident receives a Netherlands social security pension, and that person is also a New Zealand citizen, the pension is taxable only in New Zealand.

- When a New Zealand resident, who is not a New Zealand citizen, receives a Netherlands social security pension, the pension may be subject to tax in both the Netherlands and New Zealand; the Commissioner giving a credit for tax paid in the Netherlands in accordance with New Zealand's foreign tax credit rules.

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The period for which this Ruling applies

This Ruling will apply for the period from 1 December 1998 to 30 November 2001.

This Ruling is signed by me on the 17th day of November 1998.

Martin Smith
General Manager (Adjudication & Rulings)

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COMMENTARY ON PUBLIC RULING BR Pub 98/6

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in public ruling BR Pub 98/6 ("the Ruling").

Background

Confusion has arisen as to the New Zealand tax treatment of social security pensions paid by the Netherlands Government to people living in New Zealand. Some taxpayers believe that the pensions are not taxable in New Zealand if the recipients are not New Zealand citizens.

Legislation

Section BD 1(2) states:

An amount is not gross income of a taxpayer if it is …

(c) a foreign-sourced amount and the taxpayer is a non-resident when it is derived.

Article 19(2) of the Double Taxation Convention reads as follows:

a. Any pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority and any pension paid to an individual under the social security scheme of one of the States, may be taxed in that State.

b. However, such pension shall be taxable only in the State of which the individual is a resident if he is a national of that State.

Article 3(1)(h) defines the term "national" to mean:

1. in the case of the Netherlands, any individual possessing the nationality of the Netherlands, and any legal person, partnership and association deriving its status as such from the laws in force in the Netherlands;

2. in the case of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership and association deriving its status as such from the laws in force in New Zealand.

Article X of the Protocol to the Double Taxation Convention states:

X. With reference to Articles 18 and 19

It is understood that the term "pensions and other similar remuneration" includes only periodical payments.

Application of the Legislation

Under the Income Tax Act 1994, persons who are resident in New Zealand are subject to New Zealand tax on their worldwide income. Double Taxation Conventions with other countries override the Income Tax Act and determine which country has jurisdiction to tax the income in question. Among other issues the Double Taxation Convention between the Netherlands and New Zealand determines the tax treatment of periodic pensions paid by an organisation in one country to residents of the other country.

Article 18 of the Double Taxation Convention sets out which country has the jurisdiction to tax pensions paid by one country to the residents of the other country. This article, however, does not apply to pensions paid out:

- under social security schemes, or
- for services rendered to the country paying the pension.

Instead, Article 19 defines which country may tax these pensions. Article 19(2)(a) states that the country paying a social security pension **may** tax the pension. The use of the word "may" in this Article permits both the country of residence and the country paying the pension to tax the pension. If the pension is taxed by both countries, the country of residence will credit the recipient with the amount of tax deducted by the country paying the pension. New Zealand will do this under its foreign tax credit rules in Subpart LC of the Income Tax Act 1994.

Article 19(2)(b) limits the application of Article 19(2)(a). It provides for the pension to be "taxable **only** in the State of which the individual is a resident if he is a national of that State", thereby giving the State of residence an exclusive right to tax the pension when the recipient is a national of that State.

The Double Taxation Convention defines a person to be a national of New Zealand when that person is a citizen of New Zealand. Accordingly, under Article 19(2)(b) New Zealand will have an exclusive right to tax a Dutch social security pension when the New Zealand resident recipient is a New Zealand citizen. (This will be so whether or not that person is also a Dutch national. In the case of dual nationality, the recipient will still satisfy the requirements of Article 19(2)(b) - New Zealand residency and citizenship - and the additional fact of possessing Dutch nationality will not alter the conclusion that only New Zealand may tax the pension.)

However, if the pensioner is resident in New Zealand and is not a New Zealand citizen, New Zealand will not have an exclusive right to tax the pension but may do so. The Netherlands may tax the pension at the time that it is paid to the New Zealand resident. People who are not New Zealand citizens and have tax deducted by the Dutch Government from their Netherlands social security pensions are entitled to tax credits under section LC 1. When this occurs the Commissioner will, in accordance with New Zealand's foreign tax credit rules, give the recipient a tax credit for the tax paid in the Netherlands. However, these tax credits cannot exceed the amount of tax due in New Zealand.

It is intended that the Ruling will apply only to those Netherlands social security pensions that are paid **directly** to New Zealand residents and the value of which is more than any New Zealand benefit or benefits that are received. If the recipient has entered into an arrangement with the Chief Executive of the Department of Work and Income to reduce any benefit according to the amount received from the Netherlands, or to receive the full rate of a social welfare benefit in return for the Netherlands social security pension (section 70 of the Social Security Act 1964 applying in these cases), then to the extent that the Netherlands pension is reduced by these arrangements, it is exempt from income tax. That is, paragraphs (f) and (fa) of section CB 5(1) would apply in those circumstances.

Example 1

A taxpayer is a Dutch citizen who emigrated to New Zealand two years ago. He receives a Netherlands social security pension. He has not become a New Zealand citizen, but is a tax resident of New Zealand. Both New Zealand and the Netherlands may tax his pension. New Zealand will grant him a tax credit for the tax charged on the pension by the Netherlands.

Example 2

A taxpayer also has Dutch nationality and emigrated to New Zealand five years ago. She likewise receives a Netherlands social security pension. Unlike the taxpayer in Example 1 she has become a New Zealand citizen. Only New Zealand may tax the social security pension that she receives from the Netherlands.