

To all international organisations in the Netherlands

Protocol Department
Desk for International Organisations
Bezuidenhoutseweg 67
2594 AC The Hague

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Encl.
Re

Privileges and immunities of persons with the same status as administrative and technical staff of embassies.

Contact 10 2 e
Tel. 070 - 348 10 2 e
Fax 070 - 348 5268
10 2 e @minbuza.nl
www.minbuza.nl

Dear Sir, Madam,

Today 27 June 2005, the General Secretary of the Ministry of Foreign Affairs of the Netherlands, Mr Majoor, informed all international organisations about the Policy Paper which has been send today to the Dutch Parliament on attracting international organisations and the position of the Netherlands as a host country.

I would like to inform you about the effects for international organisations of the decision taken by the government to streamline the position of all staff members of international organisations in the Netherlands.

The government has decided to put a standard regime in place for all staff in the Netherlands, according to internationally recognised categories of staff. The highest ranking staff of an international organisation will be granted the same status as diplomats of equivalent rank at embassies, while other staff will be granted the same status as administrative and technical staff of embassies, in accordance with the Vienna Convention on Diplomatic Relations (1961) or where applicable as service staff of an embassy¹. This applies to non-Dutch nationals working for an international organisation and persons not permanently resident in the Netherlands.

This means in practice, that especially the group of employees of international organisations having a status equal to administrative and technical staff of an embassy will be extended. Therefore, in the following an explanation is given of the privileges and immunities of administrative and technical staff of an embassy.

¹ NB: persons working as service staff at international organisations will also be granted the same status as service staff at embassies.

Immunities of administrative and technical staff of an embassy

Administrative and technical staff of an embassy enjoy certain immunities under the Vienna Convention on Diplomatic Relations (1961).

In this respect article 37, paragraph 2 is of importance: 'Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties'.

Articles 29 to 35 refer inter alia to the inviolability as a person, to the immunity from criminal jurisdiction in the receiving State and to the waiver of immunities. Persons enjoying the status of administrative and technical staff of an embassy shall not be liable to any form of arrest or detention.

As far as traffic offences is concerned, the Ministry of Foreign Affairs points to the obligation of article 41 of the Vienna Convention to respect the laws and regulations of the receiving state. The Ministry expects privileged persons to pay fines and respect the Dutch laws. The Ministry will not meet requests by international organisations to exempt staff from paying fines or regulating other traffic offences.

The Ministry will uphold the same policy with regard to driving under the influence of alcohol. The Ministry refers in this respect to its note verbale of 25 March 2003 (DKP/BV-2003/143) in which this policy is laid down. As indicated in that note, the Ministry intends to request the International Organisation to waive the person's immunity so that criminal proceedings can be initiated and any sentence passed can be enforced.

Fiscal privileges of administrative and technical staff of an embassy

Article 37, paragraph 2 of the Vienna Convention on diplomatic relations also states the following on administrative and technical staff of an embassy: 'They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation'. This paragraph describes the tax exemptions which will be granted on the basis of the Vienna Convention and national law to staff members of international organisations and the members of their families who qualify for the same immunities and privileges as administrative and technical personnel in the Netherlands.

The 'equalization' provisions mean that if in the future laws and regulations on diplomatic tax exemptions for embassy staff would change, these changes will apply in a similar way to international staff of international organisations having comparable rank and to their families.

Income tax

In accordance with the Vienna Convention on Diplomatic Relations 1961 staff members of international organisations and the members of their families who qualify for the same immunities and privileges as administrative and technical personnel and the members of their families will be exempt from the so called Box 3 income tax. For the record it should be noticed that there are some limited exceptions according to article 7.7 paragraph 2 of the Income Tax Act 2001².

Staff members of international organisations are already exempt from Dutch income tax in relation to earnings, paid by the international organisation.

The exemptions of Box 3 income and the above mentioned earnings do not imply an exemption from Dutch income tax in relation to other sources of income earned in the Netherlands. This means that for example income tax will be due on income from freelance work.

Import taxes and duties

Imports, including goods purchased from bonded warehouses and cars, are normally subject to import duties (goods originating outside the EU), VAT and sometimes excise duties.

Staff members who qualify for the same immunities and privileges as administrative and technical personnel will be allowed to import free of taxes goods for their personal use at the time of their first installation, being defined as the first year after taking up employment in the Netherlands. For staff members who are already in the service of the international organisation at January 1, 2006, this one year period has started to count at the moment of taking up employment in the Netherlands.

For excised goods such as alcoholic beverages and tobacco products, quota do apply.

Immovable property tax

Staff members of international organisations will be exempt from the user component of immovable property tax. The owner component of the immovable property tax will remain due.

Motor vehicle tax

Staff members of international organisations who qualify for the same immunities and privileges as administrative and technical personnel will be exempt from motor vehicle tax on motor vehicles intended for their personal use during the first ten years after taking up employment in the Netherlands. For staff members who are already in the service of the international organisation at January 1, 2006, this ten year period has started to count at the moment of taking up employment in the Netherlands.

² The most relevant exception is a second home or other property in the Netherlands which still will be subject to income tax.

Exemption from motor vehicle tax will be granted on the condition that the vehicle concerned has been provided with a BN/GN registration number in the exempt series. If necessary, the authorities will cooperate in changing the registration number. The exemption will be granted for one motor vehicle per family.

Excise duties on motor vehicle fuel

According to national law, exemption from excise duties on motor vehicle fuel will be granted in respect of motor vehicles intended for the personal use of staff members of international organisations who qualify for the same immunities and privileges as administrative and technical personnel of embassies during the first year of employment in the Netherlands. For staff members who are already in the service of the international organisation at January 1, 2006, this one year period has started to count at the moment of taking up employment in the Netherlands. The exemption will be granted for one motor vehicle per family.

BPM

For the record, staff members of international organisations are already granted exemption from BPM on motor vehicles intended for their personal use during the first 10 years after taking up employment in the Netherlands. This exemption is granted on the same basis to international staff qualifying for diplomatic tax exemptions. For this matter therefore there is no change. The exemption will be granted for one motor vehicle per family.

Entry into force of the new regime

Assuming that the Dutch Parliament agrees with the policy paper, the new regime will be applicable from January 1, 2006. To give legal effect to the decisions of the Council of Ministers the Netherlands government intends to conclude an agreement with all international organisations (except with those organisations which already have such a regime). This -standard- agreement should therefore be realised before 1 January 2006. Only on the base of this agreement, legal rights in respect to the above mentioned are created.

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Director of Protocol,
For the Minister of Foreign Affairs

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Note Verbale DKP/DIO-2005/220 behandelt de criteria die het ministerie van Buitenlandse Zaken toepast bij de bepaling van de (verblijfs-)status van medewerkers van internationale organisaties. Het moment van werving is daarbij bepalend. Als 'duurzaam verblijvend' ten tijde van hun eerste indiensttreding bij een internationale organisatie, worden medewerkers beschouwd die:

- op het moment van werving een verblijfsvergunning hebben zoals bedoeld in artikel 9 van de Nederlandse Vreemdelingenwet,
- op het moment van werving langer dan 6 maanden in Nederland verblijven,
- op enig moment na werving een permanente verblijfsvergunning hebben aangevraagd, overeenkomstig de relevante bepalingen van de Nederlandse wet.

Verder geldt voor medewerkers die binnen 12 maanden na een verblijf buiten Nederland terugkeren dat zij, ook in de periode dat zij buiten Nederland verblijven, als duurzaam in Nederland verblijvend worden beschouwd.

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Note Verbale DKP/NG 2016/283 informeert de internationale organisaties over een aanpassing van het beleid zoals vastgelegd in Note Verbale DK/DIO-2008/171 op twee punten met ingang van 1 april 2016.

Vanaf dat moment geldt voor medewerkers van internationale organisaties die voorafgaand aan hun aanstelling in Nederland als niet-duurzaam verblijvend familielid verbleven, dat zij op het moment dat zij in dienst treden bij een internationale organisatie als niet-duurzaam verblijvend worden beschouwd. Voor medewerkers die tijdens hun aanstelling bij een internationale organisatie de status niet-duurzaam verblijvend hadden, geldt vanaf dit moment dat zij die status behouden wanneer zij bij een andere internationale organisatie in Nederland in dienst treden mits het nieuwe contract ingaat binnen zes maanden na beëindiging van het vorige contract.

Beide wijzigingen worden niet met terugwerkende kracht toegepast.