

Information on tax and social security obligations and labour law for full-time or part-time employment in the Netherlands

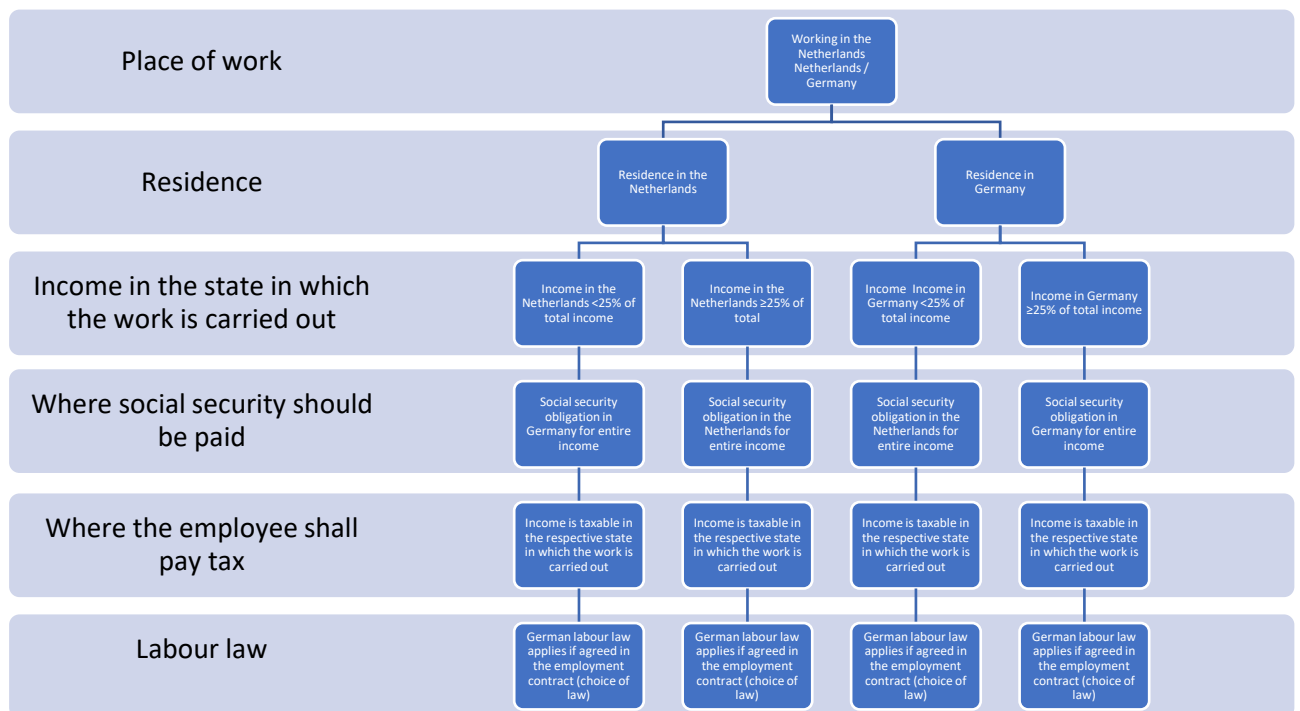
1. Information on your own situation

Employee's name	
Country of residence	
Work (hrs. per week) in Germany in hrs.	Work (hrs. per week) in the Netherlands in hrs.
% of total income in Germany	% of total income in Germany

2. Effects of different living and working constellations on tax and social security obligations and labour law

The member state where the employee is resident is responsible for determining the applicable legislation.

2.1 Schematic representation of the relationships



Place of residence	Germany					
	Income shares	100 % in D	< 25% in D > 75 % in NL	≥ 25% in D ≤ 75 % in NL	< 25 % in NL > 75 % in D	≥ 25 % in NL ≤ 75 % in D
SI obligation	D	NL	D	D	D	NL
Tax liability	100 % in D	< 25 % in D > 75 % in NL	≥ 25 % in D ≤ 75 % in NL	< 25 % in NL > 75 % in D	≥ 25 % in NL ≤ 75 % in D	100 % NL
		X				X

Place of residence	Netherlands					
	Income shares	100 % in D	< 25% in D > 75 % in NL	≥ 25% in D ≤ 75 % in NL	< 25 % in NL > 75 % in D	≥ 25 % in NL ≤ 75 % in D
SI obligation	D	NL	NL	D	NL	NL
Tax liability	100 % in D	< 25 % in D > 75 % in NL	≥ 25 % in D ≤ 75 % in NL	< 25 % in NL > 75 % in D	≥ 25 % in NL ≤ 75 % in D	100 % NL
		X	X		X	X

2.2 Social security

2.2.1 Working exclusively in the country of residence

2.2.1.1 Employee lives and works exclusively in Germany

If the employee resides in Germany and works exclusively there, the income they earn there is subject to German law. Their income is subject to social security contributions and liable to tax in Germany. This is regardless of the employer's registered office.

2.2.1.2 Employee lives and works exclusively in the Netherlands

If the employee resides in the Netherlands and works exclusively there, the income they earn there is subject to Dutch law. Their income is subject to social security contributions and liable to tax in the Netherlands. This is regardless of the employer's registered office.

2.2.2 Working in the country of residence and (mobile) working in the other country

2.2.2.1 Employee lives in Germany and works at least 25% in the Netherlands

If the employee resides in Germany and works there for at least 25% of their working hours (including remote work) or earns 25% of their income there, their entire income from dependent work is subject to German law.

Their income is subject to social security contributions in Germany. In this case, the University of Oldenburg – Department 2, Division 2.5 Payroll must contact the competent social security institution in the employee's country of residence. This (social security institution) will, at the request of the employer (University of Oldenburg – Department 2, Division 2.5 Payroll), determine the applicable legislation and issue an A1 certificate for the employee.

If the German social security institution determines that the employee shall be subject to Dutch social security legislation, the German social security institution informs the Sociale Verzekeringsbank (SVB). From there, the process of issuing the A1 certificate on the Dutch side is initiated. In the event of a posting, including in the case of remote work, German legislation remains applicable.

Note: It can take up to six months for the relevant social security institution to issue a valid A1 certificate. The issued certificate is sent to the employee by post. This certificate must then be sent to Department 2, Division 2.5 Payroll.

2.2.2.2 Arbeitnehmer*in wohnt in den Niederlanden und arbeitet mindestens 25% in Deutschland

If the employee resides in the Netherlands and works there for at least 25% of their working hours (including remote work) or earns 25% of their income there, their entire income from dependent work is subject to Dutch law. Their income is subject to social security contributions in the Netherlands. In this case, the employee must contact the competent social security institution in their country of residence. This (Sociale Verzekeringsbank; Social Insurance Bank, SVB) will, at the joint request of the employee and employer (University of Oldenburg – Department 2, Division 2.5 Payroll), determine the applicable legislation.

The Sociale Verzekeringsbank (SVB) shall ensure that an A1 certificate is issued for the employee.

If it determines that the employee shall be subject to German social security legislation, it informs the Deutsche Rentenversicherung Bund (German Federal Pension Scheme). From there, the process of issuing the A1 certificate on the German side is initiated.

2.2.3 In the case of compulsory social insurance in the Netherlands

In the cases marked with an X under point 2.1, the German employer (University of Oldenburg) is of the opinion that social insurance is compulsory in the Netherlands.

In these cases, an application must be submitted to the competent social insurance institution in the Netherlands. The competent social insurance institution in the Netherlands is the Sociale Verzekeringsbank. The application must be submitted so that the Sociale Verzekeringsbank can check whether there is actually a social security obligation in the Netherlands under local law.

The application must be completed partly by the employer (University of Oldenburg, Department 2, Division 2.5 Payroll) and partly by the employee. The employer (University of Oldenburg, Department 2, Division 2.5 Payroll) fills in the part of the application form intended for him/her and then forwards the application form to the employee. The employee completes the part of the application form intended for him/her and then sends the completed application form to the Sociale Verzekeringsbank in the Netherlands.

The Sociale Verzekeringsbank examines the application and whether it also comes to the conclusion that there is a social security obligation in the Netherlands.

If the Sociale Verzekeringsbank comes to the conclusion that social security is payable in the Netherlands, it will issue a certificate (A1 certificate) for the employee. This certificate states that there is a social security obligation in the Netherlands. The effect of this certificate is that the employee does not have to pay contributions to the German social security system, but to the Dutch system.

The Sociale Verzekeringsbank sends this certificate directly to the employee. The employee submits this certificate to the employer (University of Oldenburg, Department 2, Division 2.5 Payroll). This informs the employer (University of Oldenburg, Department 2, Division 2.5 Payroll) that social security contributions are not to be paid in Germany, but in the Netherlands. The transfer of social security contributions to the Netherlands is then arranged by the University of Oldenburg, Department 2, Division 2.5 Payroll.

2.3 Taxes

2.3.1 Working exclusively in the country of residence

2.3.1.1 Employee lives and works exclusively in Germany

If the employee resides in Germany and works exclusively there, the income they earn there is subject to German law. Their income is subject to social security contributions and liable to tax in Germany. This is regardless of the employer's registered office.

2.3.1.2 Employee lives and works exclusively in the Netherlands

If the employee resides in the Netherlands and works exclusively there, the income they earn there is subject to Dutch law. Their income is subject to social security contributions and liable to tax in the Netherlands. This is regardless of the employer's registered office.

2.3.2 Working in the country of residence and (mobile) working in the other country

The location of work is a determining factor. In principle, the right of taxation is based on the territorial principle. According to the applicable double taxation treaties, taxes from employment are generally due in the state in which the work is carried out.

The OECD Model Tax Convention on Income and on Capital, which serves as the basis for many double taxation treaties, provides for an exception to this rule (Art. 15.2): accordingly, the state of residence has the exclusive right of taxation if

- the employee is present in the state in which the work is carried out for a period not exceeding 183 days,
- the employer paying the remuneration is not a resident of the state in which the work is carried out
- and the remuneration is not borne by a permanent establishment that the employer has in the state in which the work is carried out.

A certificate of application of the double taxation treaty can be applied for at the local tax office (Oldenburg tax office) by the employee or employer at the instigation of the employee.

2.3.3 Extract from Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems

Article 21

Obligations of the employer (obligation to pay social security contributions)

(1) An employer who has his registered office or place of business outside the competent Member State shall fulfil all the obligations laid down by the legislation applicable to his employees, notably the obligation to pay the contributions provided for by that legislation, as if he had his registered office or place of business in the competent Member State.

(2) An employer who does not have a place of business in the Member State whose legislation is applicable and the employee may agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions without prejudice to the employer's underlying obligations (employer's liability remains). The employer shall send notice of such an arrangement to the competent institution of that Member State.

The contact person for the above matters in Department 2, Division 2.5 Payroll is

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You can find out more information on the tax implications of your employment from income tax assistance organisations and tax consultants.

2.4 Labour law

The Rome I Regulation, which has been in force since 17 December 2009, is applicable to all contractual obligations in civil and commercial matters that were established on or after 17 December 2009 and have a foreign connection. According to Art. 3.1 of the Rome I Regulation, the parties are free to choose the applicable law. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. of the Rome I Regulation. In the case of cross-border employment relationships, however, the choice of law may not, according to Art. 8.1.2 of the Rome I Regulation, exclude mandatory provisions protecting employees which would be applicable without this choice of law. This could lead to a coexistence of the legal systems. Mandatory standards within the meaning of Art. 8.1.2 of the Rome I Regulation are provisions of objective law which are not at the disposal of the parties to the employment contract and which improve the legal position of the weaker party, i.e. the employee. In this context, particular mention should be made of the principle of equal treatment, the provisions on employee inventions, protection against dismissal, transfer of contracts in the event of transfer of undertakings,

protection of young people at work, maternity leave and the provisions on working time. It should be noted, however, that the mandatory conditions are only to be applied if they grant the employee greater protection than the legal system chosen by the parties, i.e. if they are more favourable to the employee.

If no choice of law is made, the law applicable to the contract is determined by Art. 8.2 of the Rome I Regulation. Accordingly, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. Since the usual place of work is not permanently fixed by the circumstances at the time of the conclusion of the contract, but can change in the course of the implementation of the employment contract, the use of a choice of law clause is recommended.

The following wording for an employment contract choice of law clause is proposed: "The present employment contract shall be governed by the law of the Federal Republic of Germany."

If Groningen is to be the place of work in addition to Oldenburg, this must be stated in the application for employment (see top of page 1). Only then can such wording be included in the employment contract or both places of work in the record according to the Nachweisgesetz (Law on notification of conditions governing an employment relationship). The contact persons for related questions regarding labour law are the relevant HR officers in Division 1.