

Taxation of Nonresident Artists, Athletes to End

by **Dick Molenaar**

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The Dutch government has decided to abolish the taxation of nonresident artists and athletes as of January 1, 2007. The government believes that this action will remove an obstacle for international performing artists and athletes and will lead to fairer taxation. The Netherlands plans to ask other OECD and EU countries to follow this initiative.

This radical change attracts special attention because the Netherlands has the right to levy a source tax from nonresident artists and athletes under 74 of its 78 bilateral tax treaties, which closely follow article 17 of the OECD model. But the government believes that the tax revenue from this special group of taxpayers is too low and the administrative burden is too high to justify source taxation.

The Netherlands prefers that only the residence country levy tax from its international performing artists and athletes. This is an important deviation from the OECD recommendation in article 17 of the model treaty, in which the primary taxing right has been allocated to the country of performance.

Change in 2001

In 2001 the Netherlands changed its taxation of nonresident artists and athletes by allowing the deduction of expenses before performances and accepting normal income tax returns after the end of the year. The Netherlands no longer wanted to follow the recommendation of section 10 of the commentary on article 17 of the OECD model, which allows countries to levy a final source tax from nonresident artists and athletes on a gross basis.

Many other countries still use that gross taxation, although at lower tax rates (15 percent to 30 percent) than the normal rates. This is especially interesting for EU member states after the decision of the European Court of Justice in *Gerritse* (C-234/01, June 12, 2003), in which the court ordered that expenses must be deductible. (For the judgment, see

2003 WTD 153-12 or Doc 2003-18287.) The ECJ decided that taxation on a gross basis is in breach of the freedom principles of the EC Treaty, and EU member states needed to change their legislation. But the Netherlands had taken action earlier, in 2001, following the examples of the net taxation of artists and athletes in the United Kingdom, the United States, Australia, and New Zealand.

Evaluation of Tax Rules in 2004

The new Dutch artists and athletes tax rules were evaluated in 2004, and it was determined that the administrative burden was high for the artists and athletes, the promoters, and the tax administration, and that the tax revenue was low. Per year the average tax revenue was only €6.4 million of a total Dutch tax revenue of €100 billion, which is less than 0.01 percent of the total. And when the tax credits for resident artists and athletes who had been performing abroad were deducted from those figures, the balance of the tax revenue was close to nil.

After discussions with representatives of arts and sports organizations and specialized advisers, Dutch Minister of Finance Gerrit Zalm has decided to end the special source taxation of nonresident artists and athletes in the Netherlands beginning in 2007. The country is not required to use the taxing right from article 17 of the various bilateral tax treaties. By not using article 17, the normal tax rules as specified in article 7 (for companies and independent work) and article 15 (for employees) of the OECD model treaty will apply to nonresident artists and athletes in the Netherlands.

Treaty Countries

Exemption from nonresident artist and athlete taxation will apply only to artists and athletes living in a country that has a bilateral tax treaty with the Netherlands, because the Netherlands wants to counteract tax avoidance schemes with artists or

athletes who say they live in tax havens. An official certificate of fiscal residence will be required for a tax exemption in the Netherlands, giving the residence country the information that performance income from the Netherlands can be expected in the artist's or athlete's next income tax return.

The Netherlands has a network of 78 tax treaties with most of the countries in the world. For artists and athletes from nontreaty countries, the existing source taxation in the Netherlands will remain the same.

Tax Exemption Method

In 12 of the 78 Dutch bilateral tax treaties, double taxation for performance income that falls under article 17 is prevented by means of the tax exemp-

tion method. When the Netherlands no longer uses its taxing right, if the residence country exempts the Dutch performance income, the result would be double nontaxation. To avoid this, the Netherlands intends to approach those treaty partners in the coming months with a request not to allow tax exemptions for Dutch performance income. That may result in protocols to the treaties.

The other 66 Dutch bilateral tax treaties contain the tax credit method, which gives the residence country the full taxation in the absence of Dutch source tax. ◆

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