Netherlands, OECD

Decree to clarify impact of changes to OECD Model Commentary to articles 15 and 17 published

1 May 2015

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In the Official Gazette of 1 May 2015, Decree No. DGB 2015/584M of 23 April 2015, which applies from 2 May 2015, was published. The Decree provides guidance with respect to the changes to the OECD Model Commentary to article 15 (dependent services) with respect to termination payments and to article 17 (artists and sportsmen) on the interpretation of the term "personal activities".

Termination payments

(a) Guidelines of the Supreme Court

Based on decisions No. 37,714 and 38,112 of the Supreme Court (Hoge Raad der Nederlanden), the allocation of taxing rights concerning termination payments in cross-border situations was based on the employment history.

Furthermore, the Court held that termination payments are only taxable in the employment state if a sufficient connection existed between the termination payment and the employment exercised in the employment state.

Such connection was not deemed to exist if the termination payment is not borne by an employer resident in the employment state or by a permanent establishment of a fixed base which an employer has in that state.

(b) The OECD approach

The new OECD Commentary takes the view that the allocation of taxing rights with respect to termination payments has to be based on the last 12 months during which the employment was carried out.

(c) Clarification

The Decree clarifies that the Netherlands will follow the approach of the OECD Commentary with effect from 15 July 2014.

Artists and Sportsmen

In the decision of 9 February 2009, No. 40,465 and 40,604, the Supreme Court, inter alia, decided that whether a basic salary may actually be taken as remuneration for personal activities of a sportsman would depend on the intention of the contracting parties as expressed in the relevant employment contract. In the Court's view, if the employment contract obliges the sportsman to participate in races in foreign countries, the basic salary should be allocated to his activities in the various states of performance according to time spent there, unless the contract indicates otherwise. In addition, the Court held that also payments related to availability services, travels and necessary stay have to be taken into account if those days were spent in the state of performance.

Contrary to the Dutch Supreme Court, the new OECD Model Commentary to article 17 does not require that repetitions and trainings are related to performances in front of an audience.

The Decree clarifies that this new OECD Model Commentary to article 17 will be applied to tax assessments which were not yet final on 15 July 2014.

See also

Netherlands-2, News 2 January 2015
OECD-1, News 18 July 2014
Netherlands - Individual Taxation - Country Surveys sections 6.1.1., 6.3.1.
Netherlands - Individual Taxation - Country Analyses sections 7.1.1.2., 7.3.1.2.