

15:45 – 16:15

FOREIGN PERFORMANCES AND AVOIDING DOUBLE TAXATION



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HAS TAX BEEN PAID ABROAD?

No?

No issues. Only taxation on your worldwide income in your country of residence.

Yes?

Most countries have a **source withholding tax** on income earned by non-residents, while almost every country taxes its residents on their **worldwide income**. This creates an overlap, because foreign income is taxed twice with these two systems.

Check national law for an exemption or threshold amount.

If not, foreign country has the right to tax the source income for entertainers and sportspersons (article 17 OECD Model Tax Convention).

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ARTICLE 17 OECD MODEL TAX CONVENTION

Article 17 ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Some tax treaties have exceptions, such as an exemption for subsidized performers (>50%), a threshold amount of 20.000 USD per year or a limited approach to article 17(2).

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TAX CREDIT, BUT LIMITATION

Any foreign income should also be reported in the residence state. Normal tax calculation.

If foreign tax has been withheld, then: double taxation.

But: foreign tax credit for what has been paid abroad.

Limit to tax credit: equivalent to amount of tax in residence state

Example:

Foreign income: $30.000 \times 15\% \text{ tax} = 4.500$

Domestic income: 20.000

Expenses: - 25.000

Tax in residence state: $25.000 \times 25\% = 6.250$

Maximum tax credit: $30.000 / 50.000 \times 6.250 = - 3.750$

Excess tax credit: $4.500 - 3.750 = 750$

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TAX CREDIT PROBLEMS

1. A tax certificate is not available
2. The tax certificate is released in the name of the group, but the tax credit needs to be obtained by the performers
3. Foreign tax on higher fee than taxable amount in the Netherlands for the avoidance of double taxation (excess tax credit → see example)
4. Foundation/company: payment of salaries to artists → taxable profit is reduced / no tax credit against personal income tax (see next page)

These tax credit problems result in double taxation for the performer, because he is taxed in both the performance and the residence state.

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HOGE RAAD 24 SEPTEMBER 2021

Tax credit for foreign performances for DJ: not only for the corporation tax of his company but also for his personal income tax?

NO.

- No tax credit for his personal income tax.
- Residence state is only obliged to give a tax credit to the company.

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LOWER TAX BREDA 14 JUNE 2022

DJ with a LLC in the United States for his income in the US. The profit of the LLC is personally taxed at the DJ in the US with federal income tax.

Does the DJ has the right to get deduction to avoid double taxation in the Netherlands based on the tax treaty with the US?

Yes, because the US tax was personal tax of the DJ.

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CONTACT INFORMATION



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